

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 2nd July, 2019

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

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

PRAYER

PETITIONS

LAND OWNERSHIP DISPUTE BETWEEN MWAKITAU RESIDENTS AND ISANGA IWISHI GROUP RANCH

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, pursuant to Standing Orders 226(1)(a), and 230(2)(b), I hereby report to the Senate that a petition has been submitted, through the Clerk, by Residents of Taita Taveta County, Mwatate Sub County, Mwakitau Location.

As you are aware, under Article 119(1) of the Constitution, and I quote-
“Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation.”

The salient issues raised in the said Petition are as follows-

(a) The land on which over 10,000 people in Mwakitau Sub Location are occupying had its title deed given to Isanga Iwishi Group Ranch-

(i) That, the people of Mwakitau settled there in 1920 while Isanga Iwishi Group Ranch was registered in 1972 and its title deed acquired recently;

(ii) That, Isanga Iwishi Group Ranch members are mainly from the neighbouring Bura location and have never settled in Mwakitau to either farm or keep livestock.

(b) The Isanga Iwishi Group Ranch has no right to claim ownership of Mwakitau land considering:

(i) That, Section 7 of the Limitation of Actions Act provided that if a person has been living on a private land for more than 12 years continuously and uninterrupted, the land becomes his through adverse possession; and

(ii) That, they have never attempted to evict the citizens of Mwakitau since they settled there in 1920 to date

(a) Isanga Iwishi Group Ranch was fraudulently compensated for Mwakitau residents' parcels of land compulsorily acquired to construct Mwatate-Taveta-Holili Road instead of the individual residents of Mwakitau.

Consequently, the Petitioner prays that the Senate-

(i) Hears and considers the petition;

(ii) Investigates the circumstances that lead to the fraudulent registration of Mwakitau land as a ranch and acquisition of its title deed by Isanga Iwishi Group Ranch and takes all necessary action therewith including revoking the title deed and re-issuing it to the residents of Mwakitau;

(iii) Investigates the fraudulent payment of compensation for the construction of the Mwatate-Taveta-Holili Road to the Isanga Iwishi Group Ranch; and

(iv) Any other measure the Senate deems fit to resolve the matters raised herein.

Hon. Senators, pursuant to standing order 231, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

Hon. Senators, I do not see any request to comment on this petition. Pursuant to Standing Order 232(1), the Petition stands committed to the Standing Committee on Land, Environment and Natural Resources.

In terms of Standing Order 232(2), the Committee is required, in not more than 60 calendar days from the time of reading the Prayer, to respond to the Petitioner by way of a Report addressed to the Petitioner, and laid on the Table of the Senate.

I thank you.

WASTE DISPOSAL AND MANAGEMENT IN WAJIR TOWN

Hon. Senators, I have a second Petition. I hereby report to the Senate that a petition has been submitted, through the Clerk, by Mr. Noor Abdirashid, a citizen of the Republic of Kenya and a resident of Ali Mao Village, in Wajir County.

As you are aware, under Article 119(1) of the Constitution, and I quote-

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

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

(i) That the Wajir dumping site was established in 1992. However, at that time, the waste was manageable due to the low population and that the dumping site was far from human settlement;

(ii) That waste disposal and management has been highlighted as a major problem in Wajir County. In particular, the residents of Ali Mao Village, have had to bear the brunt of the negative impact of the Wajir disposal site which continues to jeopardize their health and livelihoods;

(iii) That the government has been using the dumping site illegally to dump raw medical waste, human and medical waste as well as hazardous materials;

(iv) That some of the risks the disposal site is exposing the residents of Wajir county to also include; skin and blood infections resulting from direct contact with water

and from infected wounds; Eye and respiratory infections resulting from exposure to infected dust, especially during landfill operations; Different diseases that result from the bites of animals feeding on the waste; Intestinal infections that are transmitted by flies feeding on the waste; and cancers resulting from exposure to hazardous compounds and chemicals.

(v) There is now little grazing land as most of the land is covered by the dumping site, where the livestock is susceptible to serious health risks since they are exposed to harmful toxins;

(vi) That as a result of the mismanagement of the waste disposal site, water in and around the local community is contaminated, thereby exacerbating the problem even further as pathogens from human waste have caused numerous cases of cholera and hepatitis, as well as diarrhoea leading to the deaths of some residents of Ali Mao Village;

(vii) That there is an overwhelming possibility that many people are likely to die as a result of the continued operation of the dumping site and that the residents are now concerned about the increase in the number of patients in hospitals within Wajir County;

(viii) That efforts have been made to have the matter addressed by the County Government of Wajir, the National Environmental Management Authority and other relevant authorities but there has been no change of situation;

The petitioner prays that the Senate investigates the matter and intervenes with a view to -

(1) Ensuring that the lives and livelihoods of the residents of Ali Mao Village in Wajir County are safeguarded against the harmful effects of mismanagement of waste disposal site;

(a) Ensure that an Environmental Inspector is appointed by the National Environment Management Authority (NEMA) pursuant to Section 117 of the Environment Management and Coordination Act (EMCA), 1999, to ensure that the County Government of Wajir restores the settlement areas affected by the disposal site and that it is relocated and the area cleaned-up;

(b) Ensure compensation of persons in Ali Mao Village whose health has been negatively affected as a direct result of the devastating impact of the dump site;

(2) Ensuring that funds through the National and County budgeting process are availed to the Wajir County Government for rehabilitation of the dump site;

(3) Ensuring that the Wajir County Government enhances the policy, legal and regulatory framework for disposal of waste in the county;

(4) Ensuring that medical institutions in Wajir County adhere to proper waste disposal practices;

(5) Make appropriate recommendations to the NEMA and other bodies charged with safeguarding the environment;

(6) Review national legislation to address the challenges of waste management in the country; and

(7) Any other recommendation that the Honourable House deems fit and just in the circumstances.

Hon. Senators, pursuant to Standing Order 231, I shall now allow comments, observations or clarifications in relation to the petition for not more than 30 minutes.

I see no request.

An hon. Senator: What is happening?

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! My screen is blank. Since I have---

(Sen. Cheruiyot stood up in his place)

Order, Sen. Cheruiyot! That is not how to catch my eye.

Until now, my screen is blank. So, I do not know who is talking.

Sen. Sakaja: On a point of order, Mr. Deputy Speaker, Sir. As you sort out that technological challenge, when we came to the House, I noticed that these iPads have been locked onto one interface, yet we use them to store resources, read e-mails and also go online and research. Through your office, I kindly ask that you make sure it goes back to where it was. Sometimes we send e-mails, research papers and documents that we use for reference in the House, but now it is only locked to one interface. It is like a notice board. Can they just keep it free as it was before?

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Sakaja, I am advised that it is a temporary setback which is being addressed. Nevertheless, I hope that you do not use the gadget to read newspapers because under the Speaker's Rules, it is not allowed to do so during proceedings.

What is it Sen. Khaniri?

Sen. Khaniri: On a point of order, Mr. Deputy Speaker, Sir. Unlike my counterpart from Nairobi City County, I use mine for the Order Paper. Now that I cannot access the Order Paper, would I be in order to request that we be provided with the hard copies?

An hon. Senator: It is there.

Sen. Khaniri: It is not there; at least, not in mine.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. I am told it is not big a problem. Any person who has a challenge accessing the Order Paper will be assisted by the orderlies.

(Sen. Wetangula spoke off record)

Are you on a point of order, Sen. Wetangula?

(Sen. (Dr.) Ali and Sen. Pareno stood up in their places)

Order, Sen. (Dr.) Ali and Sen. Pareno!

I will give a few Members a few minutes. So, use your time well. Nobody should take more than three minutes, so that we can have a few people making their comments.

Sen. Cheruiyot.

Sen. Cheruiyot: Thank you, Mr. Deputy Speaker, Sir. I will be brief as directed.

The prayer by the petitioners is very interesting, when you listen to the challenges that residents of Wajir County have had to go through because of the challenge of refuse removal and waste management. If you follow keenly on the challenges that many county governments continue to face, you will realise that the issue of waste management is not unique to Wajir Town alone. Almost all county governments, without fail, have not been able to handle this menace. Part of it is because of the amount of investment that will be needed to have a proper refuse or waste management system in place, and also because of the cultural sensitivities.

Let me use the example of Kisumu City, where Sen. Nyamunga comes from. Kisumu is a very beautiful City but not until you approach Moi Stadium, where there is a big eyesore and tonnes of waste that have been left lying around. I know the challenge that the previous Governor faced and which Gov. Nyong'o – having spoken to him recently – continues to face. The challenge is where to move this waste to.

On many occasions – and I have seen this happen even in my county – when they try to relocate or establish a proper waste management site, the people protest and ask the Governor: “So you want to take development elsewhere and bring garbage into our village?” That tells you that this issue is not only technological but also cultural.

In conclusion, this is what I propose for the Committee. In the last Senate we had a unique situation where about four or five counties that did not have county headquarters, apart from the sharable revenue that we divide across all the 47 counties, we set aside some amount of money for them to build their headquarters.

Since this appears to be a unique challenge to all the 47 counties, could the Committee perhaps consider recommending that we pick at least two or three counties and set aside – as we do division of revenue – a significant amount of resources to ensure that we use these three or four counties as a modern example of how to properly manage waste? Then, the rest of the counties will be able to manage it well.

Mr. Deputy Speaker, Sir, with those few remarks, I support.

The Deputy Speaker (Sen. (Prof.) Kindiki): Good recommendation.

Sen. Wetangula.

Sen. Wetangula: Thank you, Mr. Deputy Speaker, Sir. As the distinguished Senator for Kericho County has said, that Petition from a resident of Wajir County would pass for a petition from every county. It is not like the petitioner is calling upon us to legislate that there is absence of law. We have the Environmental Management and Co-ordination Act (EMCA) and the National Environment Management Authority (NEMA). The NEMA is immensely empowered to protect the environment and stop people from constructing on riparian land, stop dumping and make sure the environment is safe. We saw a move in the right direction by banning the single use plastics.

If you listen to that Petition carefully, it tells a lot of things. The Petitioner is even appearing to say that there is raw human waste being dumped on the dumpsite. How human waste is finding its way on a dumpsite is a question that the Committee must thoroughly investigate. More important, there is sufficient technology on the market. How do cities like Shanghai with 25 million people manage their solid waste? How do

cities like London and Calcutta manage their solid waste? Wajir Town must be having a population of under 100,000, and is choking with solid waste.

When my distinguished nephew, the Senator for Nairobi City County, stood up, I thought he would speak about the Dandora eyesore.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Wetangula, who is distinguished? Is it the nephew or the Senator?

(Laughter)

Where is the distinction?

Sen. Wetangula: Mr. Deputy Speaker, Sir, it is the distinguished Senator for Nairobi City County, who is also my nephew. Therefore, he is a distinguished nephew.

I thought he would speak about the Dandora eyesore, and the same thing is in Kisumu City. I have a pile of letters from my own county residents protesting about dumping. The question is not dumpsites; it is the ability of the cooperation between the national Government and county governments to set up solid waste management processes by erecting incinerators and sorting components, so that all the solid waste that we have is burned away and converted into energy, manure and other by-products.

This Petition should enable the Committee concerned to have a wholistic approach and look at the whole country; whether it is Mombasa or even small towns like Salgaa where there is solid waste by the roadside. It is a serious problem that we need to deal with. I do not quite agree with Sen. Cheruiyot that we pilot this in two counties. What we need to do as a House is to carry out an assessment of the needs of each and every county. If we really care about the environment, we need to have a direct provision of resources in the budget for each county for solid waste management.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Wetangula. Keep it brief so that we can have a few more contributions.

Sen. Wetangula: Is your screen working now?

The Deputy Speaker (Sen. (Prof.) Kindiki): Yes, it is.

Proceed, Sen. Farhiya.

Sen. Farhiya: Thank you, Mr. Deputy Speaker, Sir, I had an opportunity to visit this dumpsite. Sen. (Prof.) Ongeru and Sen. (Dr.) Abdullahi Ali will attest that no one is allowed to put hospital waste into a dumpsite. However, that is what is happening to this dumpsite.

Mr. Deputy Speaker, Sir, there is also another issue of dumping expired food into the dumpsite including---

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senators. Please consult in low tones. Sen. Cheruiyot, having had an opportunity to be heard, you are now busy in protracted salutation exercise. Consult in low tones. You can sit next to the Senator for Nakuru and consult.

Proceed, Sen. Farhiya.

Sen. Farhiya: Thank you, Mr. Deputy Speaker, Sir. As I was saying, expired food, drinks and alcohol are dumped into this dumpsite. This dumpsite does not only affect the residents of Ali Mao. It also affects Bula Burwaqo and another Bula Hodhan. These are three major villages that are close to that dumpsite.

Mr. Deputy Speaker, Sir, when children do what they do best which is playing around, they find dumped expired alcohol and they drink it. That means that children of those villages are exposed to drugs not out of their choice but because of the malpractice that is going on in that dumpsite.

The Deputy Speaker (Sen. (Prof.) Kindiki): Be brief. We are not debating, we are making observations. You are almost done with your three minutes.

Sen. Farhiya: Mr. Deputy Speaker, Sir, when waste is mismanaged, it becomes an environmental hazard which emits greenhouse emissions. These are some of the things that need to be addressed.

Article 42 of the Constitution of Kenya on environment provides that-

“Every person has the right to a clean and healthy environment which includes the right-

(a) to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and,

(b) to have obligations relating to the environment fulfilled under Article 70.”

Mr. Deputy Speaker, Sir, part II (g) of the Fourth Schedule of the Constitution also expressly provides that county governments shall be responsible for-

“refuse removal, refuse dump and solid waste disposal.”

The Deputy Speaker (Sen. (Prof.) Kindiki): What is your observation? We are making observations. We are not debating or learning environmental policy. We are making observations about the Petition.

Sen. Farhiya: Mr. Deputy Speaker, Sir, the issues that are raised in this Petition are grievous. The petitioners must have felt that the Senate is the best place to handle this issue. That is why they brought their Petition to the Senate.

I request the Committee that is concerned to do thorough due diligence in terms of the failure of the county officials to protect the residents who are vehemently complaining.

Mr. Deputy Speaker, Sir, one week ago, the residents protested because of the dumping. Therefore, this has far-reaching implications on the lives and livelihood of those people and needs to be adequately addressed.

I agree with other Senators that this should be addressed so that other counties can follow.

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

Sen. (Prof.) Onger: Thank you, Mr. Deputy Speaker, Sir. The question of solid waste management in this country is in a very sad state. We are all fully aware that one of the pillars of United Nations (UN) Habitat which is the headquarters of UN is about solid management waste. This organisation has helped various towns and cities in that area.

Mr. Deputy Speaker, Sir, right here in Nairobi, the amount of solid waste which is deposited in Dadora can generate enormous megawatts of energy apart from enormous tones of fertilizer to help this country move forward.

In my little town of Kisii, unfortunately, waste management is in the backyard of a hospital. When you talk of health and sanitation and you find large amounts of solid waste within that region, it creates a sad story. In Wajir, it is even more interestingly. I had an occasion to work there. In the rubble of solid waste, there are expired or unexpired drugs and some other weaponry that were deposited or disposed there and therefore pose a dangerous effort for them to sort them out.

So, what is the solution or proposal in this Petition? The time has come for us to use the new urban agenda which clearly spells out how towns and urban centres need to be run and how to segregate the waste for energy, water purification and many other purposes. In other words, waste is turned into resources rather than turning waste into waste.

Mr. Deputy Speaker, Sir, at this rate, this country runs the risk of being turned into a village full of inhabitants, with waste poorly disposed all over the place. For example, in Abuja and other places, people go towards the roundabout and find it convenient to dispose their disposals.

I support this Petition. When it is prosecuted by the Committee, we shall be ready to give it new ideas and impetus to move forward to a better solution.

The Deputy Speaker (Sen. (Prof.) Kindiki): I give you three minutes to make your comments and observations.

Sen. (Dr.) Ali: Mr. Deputy Speaker, Sir, first and foremost I support the Petition. As it has been stated by many Senators, this problem is countrywide; it is not only in Wajir. The issue of Wajir came up because the villages surrounded the area. Therefore, when the place was set for the dumpsite, people grew and built houses and now it is in the middle of the town which is a problem for the children, animals and everybody who goes to the place.

The other problem in Wajir Town, which many of you do not know, is that those who can afford have septic tanks. All the others use “bucket” latrines. When officers of the County Government decide to collect waste, instead of taking it outside the Town, they just dump it there. So, the issue of human waste is a problem.

The other thing is that there are incinerators in Wajir County Referral Hospital but private clinics in the Town are not properly managed. In the process, they dump all the expired drugs, needles and other things in the dumpsite. That can harm animals and even children who play around there.

I urge Members of the Committee that will look into this to go to Wajir and see for themselves the problem in the rural counties. We are ready to accompany them.

I thank you.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, in my view, the question of waste is a matter we should take up as a Senate because that is a devolved function. It amazes me that we actually think that solid and even human waste is something that should be ignored.

I went to Kibera through an organisation called Ufanisi. The people of Kibera recycle waste to produce gas which they use for cooking. Just like Sen. (Prof.) Ongeru said, we can use waste in Nairobi and many other places as something that is useful.

I was in Berlin in 2015. The most amazing thing is that the lady who manages waste in Germany is a Kenyan, a Luo from Kisumu but we cannot manage waste in Nairobi. If we need the consultancy, it is there.

The question of incinerators is serious. I have come across needles in Makeni County dumped next to where children play. I have also come across waste in rivers in Nairobi. The Senator for Wajir County is the Vice Chairperson of the Committee on Health. This is a devolved function and under the docket of the Committee on Health. This matter must be taken seriously.

Mr. Deputy Speaker, Sir, I recall there was the issue of asbestos. Somebody went to Makeni County and dug a three-foot pit and started dumping asbestos there. The worst thing is that the people who were dumping them were not wearing protective gear. Human waste is not only segregated garbage. Where my daughter goes to school, they put papers in a different bin from bottles.

There are simple little things that Members of the Committee on Health can do in interrogating the matter of Wajir. We can even come up with a Bill. We should demand that where there is a health facility, every county government must set up an incinerator and report how they dump both medical and any other waste. Like Sen. Wetangula was---

Sen. (Dr.) Ali: Point of order!

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

Sen. (Dr.) Ali: Mr. Deputy Speaker, Sir, while I agree with the hon. Senator, this should not only involve the Committee on Health but also the Committee on Lands, Environment and Natural Resources.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Senator! Are you trying to commit the Petition? Please conclude, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: We call him Pascolini the Italian Senator.

Mr. Deputy Speaker, Sir, the Committee on Health can help with the health component, so that when it comes to dumping of asbestos, solid waste and paper, it can be done a little better to help the people of Nairobi. It should not be like Sen. Wetangula mentioned. The question of waste management in Nairobi is under a cartel or mafia. If you touch it, you die.

The Deputy Speaker (Sen. (Prof.) Kindiki): Speaking of Nairobi, next is Sen. Sakaja who will have three minutes. He is the distinguished nephew of the Senator for Bungoma County.

Sen. Sakaja: I am proudly so.

The Deputy Speaker (Sen. (Prof.) Kindiki): You should also tell the House whether Sen. Wetangula is also your distinguished uncle.

(Laughter)

Sen. Sakaja: Mr. Deputy Speaker, Sir, certainly, Sen. Wetangula is my distinguished uncle. As we say at home, he is *khotsa*.

Mr. Deputy Speaker, Sir, you have heard Members decry the sad state of environmental management in this country. We have countries like Sweden that import waste from other neighbouring countries because they know the value.

Everyone who has spoken touched on Nairobi and I have got statements about waste management in Nairobi. As Members of the Committee will be dealing with this, they should also investigate the budget lines that are put to waste management and compare them to the state.

Sen. Mutula Kilonzo Jnr. has slightly mentioned about a cartel and that is true because it is business. In fact, amounts are allocated sometimes to hide the truth since you cannot measure how much waste is dealt with every day because there are thousands of tonnes. It has become a cash cow especially in Nairobi City County.

For years, we have known that waste can be converted to generate energy. Why is that not being done? The previous Governor of Nairobi City County, Dr. Kidero started the process but of course it is not more profitable to get it done. Governor Sonko claims that he will start the process but it has not been done. This is something we must be hard on.

Just recently when there was an issue of bodies of babies being dumped at Pumwani Maternity Hospital, we went there with Members of the Committee on Health and we were told that the incinerator is not working because of lack of diesel. Can Nairobi City County not afford to put diesel in the incinerators? There is something more fishy than just saying we do not know how to manage waste because we have professionals around the world and even locally who can help us not only to recycle the waste but also put it into good use; to generate power, produce construction materials or fertiliser.

Mr. Deputy Speaker, Sir, this is squarely within the Committee on Health and the Committee on Lands, Environment and Natural Resources. Members of these committees should help us to develop standards. Let it not be a pilot for only two counties. We should start with the biggest producers of waste, which are major cities, and have that as a template that can be used across the country. If done well, it can even provide a lot of jobs for our young people who currently do not have employment.

I thank you.

Sen. Were: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this Petition. Wajir is a special county which experiences cholera outbreaks very often because of the low water table. There is even a joke that if you go to Wajir by road, to know that you have arrived, there is a certain smell that you get. That is because of the low water table and the poor waste disposal thereof.

This issue is not new to this House. During the previous session, Sen. Kihika brought a Motion which had good recommendations on waste management. If those recommendations were looked into, we would have helped not only Wajir County but other counties as well. Perhaps this begs the question whether or not we should return the Implementation Committee because some of these issues would have been dealt with and we would not be having repeat Statements and Motions on the same issue. There are regulations for medical waste management in this country but why are counties not following them?

The dumpsite in Wajir County is 26 years old. Certainly the population has grown and there is much development. There must be an alternative and the County Government needs to move with speed to relocate the dumpsite.

With those few remarks, I beg to support.

The Deputy Speaker (Sen. (Prof.) Kindiki): I am sorry, Senators we have to leave it at that because we have a number of petitions today. That means that petitioners have faith in what we are doing here.

Hon. Senators, pursuant to Standing Order No.232(1), the Petition is committed to the relevant Standing Committee for consideration. In this case, I direct the Petition to the Standing the Committee on Lands, Environment and Natural. The Committee may invite the expertise of any other committee or Members of this House.

In terms of Standing Order No.232(2), the Committee is required, in not more than 60 calendar days, from the time of reading the prayer which is today, to respond to the petitioner by way of a report addressed to the petitioner and laid on the Table of the Senate.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, I have another Petition to read.

LACK OF SUPPORT TO FAMILIES OF VICTIMS OF THE ETHIOPIAN AIR CRASH

The Deputy Speaker (Sen. (Prof.) Kindiki): Pursuant to Standing Orders No. 226(1)(a), and 230(2)(b), I hereby report to the Senate that a Petition has been submitted, through the Clerk, by residents of Murang'a County and families of victims of the Ethiopian Air Crash.

As you are aware, Article 119(1) of the Constitution states that-

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

The salient issues raised in the said Petition are as follows-

Following the ill-fated Ethiopian Airline flight from Addis Ababa to Nairobi that crashed on 10th March, 2019, killing 157 lives among them 32 Kenyans-

THAT, the Government, through the Ministry of Foreign Affairs committed to support all the families of the 32 Kenyans who lost their lives by providing counseling services and acting as the link Government agency in the attendant bureaucratic procedures;

THAT, the Government has not fulfilled this promise as no support counseling has been provided in spite of the post-traumatic stress the families are experiencing considering the fact that they were not even able to retrieve their loved ones' remains for burial;

THAT, this has forced the families to seek private counseling at expensive rates from their own meager resources despite the tragic losses; and

THAT, the families have agonized to get death certificates to no avail yet this role falls under the purview of the Ministry of Foreign Affairs owing to the fact that the air crash occurred in a foreign country.

Consequently, the Petitioner prays that the Senate-

(i) Hears and considers the petition;

(ii) Investigates the matter and makes appropriate recommendations thereon.

Honourable Senators, pursuant to standing order No. 231, I shall now allow comments, observations or clarifications in relation to the Petition for not more than thirty minutes. I am not asking you to debate the Petition. You are to give comments, observations or seek clarifications about the Petition and not the subject matter.

Let me give the chance to those who did not have the opportunity to speak on the other Petition. We will hear from Sen. Poghismo, who was once a Minister for Transport.

Sen. Poghismo: Thank you, Mr. Deputy Speaker, Sir. I also served as the Chairman of the Kenya Civil Aviation Authority. This matter needs to be taken seriously. I support the Petition by the affected families. A lot of Kenyans were affected when this crash happened and they would have supported this Petition at that moment. However, we tend to forget too fast. This crash did not happen long ago yet we had to wait for these families to appeal to us for them to get assistance. As Kenyans, we must continue caring for each. These families are dealing with trauma. The Government must fulfill promises that it makes to families such as these.

I support this Petition and I hope that the House will push for the prayers of the Petitioners to be answered. That will help these families put this matter to rest.

The Deputy Speaker (Sen. (Prof.) Kindiki): Well done, Sen. Poghismo. You were brief and straight to the point.

Sen. Shiyonga: Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to support the Petition by the affected families.

It is sad that we have to stand here to discuss a Petition where families of 32 Kenyans who lost their lives are crying for justice. I request the Government, through the Ministry of Foreign Affairs, to avail what is needed by those families because the death of their loved ones affected them. These families need to be assisted. They do not need to send petitions. I urge the Government to look into the issues raised by these families because they need to continue with their lives.

The Deputy Speaker (Sen. (Prof.) Kindiki): Well done for the short comments and observations.

Sen. (Dr.) Milgo: Thank you, Mr. Deputy Speaker, Sir, for allowing me to support this Petition. We are sorry for what happened. Actually, that was a sad day in Kenya because we lost 32 people.

The Government of Kenya committed through the Ministry of Foreign Affairs to assist the affected families. It is unfortunate that nobody has considered them up to date, having in mind that they did not get a body to bury, hence their trauma is at a higher level. We have been told that no counselling services have been offered yet these families need counselling services.

Families lost breadwinners and we are being told that they cannot obtain a death certificate. Without a death certificate, they cannot make claims to the institutions where

their relatives were working. As a Senate, we urge the Directorate of Immigration and Registration of Persons to take this as a matter of urgency. They should provide the death certificates to the remaining members of the families for them to claim for their dues from the various institutions where their relatives were working.

Death is a serious challenge and it is sad to learn that this thing has not been considered several months later. The Committee that is going to handle this Petition should treat it as a matter of urgency to ensure that these families receive their rightful dues.

I also wish to take this opportunity to say that I am very proud because one of us, Sen. Halake, was able to trounce---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. (Dr.) Milgo. You cannot sneak on anything, at any time in any manner.

Proceed Sen. Ochillo-Ayacko.

Sen. Ochillo-Ayacko: Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to join my colleagues who have expressed sympathy and support for this Petition.

As a nation, we must have a conscience and a soul. We are quick as a nation to express our condolences and sympathies for the affected families but we have been slow to act. This Petition is a stark reminder that when the Government speaks for us, it should also act for us.

The families are traumatised and are asking for what they need to have. For instance, most of them need to bring closure to this very sad moment by being assisted in having documents relating to their families. As families, they also need to initiate legal action to get what is rightfully theirs.

Mr. Deputy Speaker, Sir, in conclusion, I beg to support this extremely touching Petition. Thank you.

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

Sen. Were: On a point of order, Mr. Deputy Speaker, Sir. I am wondering whether it is out of order to stop Sen. (Dr.) Milgo from congratulating Sen. Halake for being the first woman to be elected as Chairperson of the Centre for Multiparty and Democracy (CMD) Kenya. You should not have interrupted Sen. (Dr.) Milgo.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order. What did you just say in your last statement, Sen. Were?

Sen. Were: Mr. Deputy Speaker, Sir, I asked if it was in order---

The Deputy Speaker (Sen. (Prof.) Kindiki): To who was that question directed?

Sen. Were: To Sen. (Dr.) Milgo. Is it in order for her to—

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! You are treading on dangerous ground.

(Laughter)

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

The Deputy Speaker (Sen. (Prof.) Kindiki): What is out of order, Leader of Majority? Be careful Sen. Were.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, is Sen. Were in order to try to challenge the Chair in the name of raising a point of order against the Chair?

Mr. Deputy Speaker, Sir, you must not allow this to fly because if you do, it will create a very bad precedent. What the House wants to know from Sen. Were's statement is who was out of order.

The Deputy Speaker (Sen. (Prof.) Kindiki): Leader of Majority, actually, I have been here for seven years and have never seen anything like this. I know there are Members who have been in this House longer.

(Laughter)

Sen. Khaniri: On a point of order, Mr. Deputy Speaker, Sir. I want to draw your attention to Standing Order No. 117(2). I have been in this House for very many years. This is the first time I am experiencing this, where a Member is challenging a ruling or a directive of the Chair. This falls under Standing Order No. 117 which is gross disorderly conduct.

I call upon you to take appropriate action against this Member who happens to be a Member of my Political Party. I am totally embarrassed.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senators. Sen. Khaniri, you are one of the most experienced Members of this House. You are absolutely right. Let me not say more than Sen. Khaniri and Sen. Murkomen have said.

(Laughter)

I just want to imagine, Sen. Khaniri, that perhaps Sen. Were did not defy because Standing Order No. 117 talks about defiance. However, the consequence is the same whether it is defiance, challenge or whatever you call it. Sen. Were, be advised accordingly.

(Sen. Wetangula interjected)

Order, Sen. Wetangula what you are engaged in is called touting.
I am sure Sen. Orenge understands that language. It is prohibited to tout.

(Laughter)

(Interruption of debate on Petition)

COMMUNICATION FROM THE CHAIR**VISITING DELEGATION FROM NAKURU BOYS
HIGH SCHOOL, NAKURU COUNTY**

Hon. Senators, I would like to acknowledge, the presence, in the Public Gallery this afternoon, of visiting students and teachers from Nakuru Boys High School, Nakuru County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

Thank you.

(Applause)

The Deputy Speaker (Sen. (Prof.) Kindiki): We need to conclude on this Petition. But before we do that, as per our tradition, Senator for Nakuru County would you wish to say something on behalf of everyone?

Sen. Kihika: Thank you, Mr. Deputy Speaker, Sir. I also join you in welcoming the students and teachers from Nakuru Boys' High School. It is one of the schools that have very good performance in my county and nationally. I am glad to have them here today. I am hopeful that in being with us today, we shall be able to participate so that they can see what we do when we come to Parliament. In the future, you never know; there might be some of the students there who would want to be in these seats when the time comes.

I remember coming to Parliament as a young student when my father was a Member of Parliament. I remember very distinctly watching the then President Mwai Kibaki engaging in debate. I remember being so impressed that I hoped one day in time, to be one of the people sitting in here. That dream is not so farfetched for the students.

It is also a time in this county when we are working hard so that anybody can be anything they so desire. I am sure that you are such bright students, you are doing so well that you can be anything that you want to be in this country and this world.

Thank you, very much teachers and students for joining us here today.

(Resumption of debate on Petition)

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Kihika. Just before we proceed, I know I am past the issue of the purported point of order by Sen. Were. Sen. Khaniri had raised an issue around Standing Order No. 117. Just for clarity, Standing Order No. 117 deals with defiance and extreme cases of rebellion.

This is not to try and excuse Sen. Were or Sen. (Dr.) Milgo but Hon. Senators may also want to look at Standing Order No. 116 which talks about a similar conduct of a lesser impact such as creating disorder or even raising a false point of order. I would categorise what Sen. Were was trying to do as engaging in or trying to bring a false point of order because there was no point of order there. You cannot bring a point of order

against the Chair. We will look at that area because there are consequences across the continuum from lighter misconduct to overly gross misconduct.

Sen. (Dr.) Zani: On a point of order, Mr. Deputy Speaker, Sir.

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

Sen. (Dr.) Zani: Thank you, Mr. Deputy Speaker, Sir. Would it be in order to take a moment to congratulate Sen. Halake for this great achievement she has done?

Mr. Deputy Speaker, Sir, I would like to congratulate Sen. Halake for her great achievement. We, the nominated Senators, are proud of her and would like the House to recognize that women have made a step so they should acknowledge and praise us.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. (Dr.) Zani, you are on a point of order, but that is noted. You can bring a Motion to that regard if you think it is worth it.

What is it Sen. Wambua?

Sen. Wambua: On a point of order, Mr. Deputy Speaker, Sir. This is a House of record and Sen. Khaniri went on record to be embarrassed on behalf of a Member of his party. Since you have withdrawn the embarrassment by the Member, is Sen. Khaniri's embarrassment also going to be withdrawn?

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Wambua. You are offending the same Standing Order that I have just highlighted.

What is it Sen. Orengo?

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, I am speaking to the Petition. This is a unique petition that if we subject it to red tape and bureaucracy, the result will be the same kind of crying without solutions. If this matter is committed to the relevant committee, they should summon the Ministry of Interior and Coordination of National Government, the Ministry of Foreign Affairs and International Trade and the Office of the Attorney-General; because the registrar of births and deaths is located in the Office of the Attorney-General.

You cannot control the work of a Committee but I hope that you direct the Committee to sit immediately. It will be a big shame for this country when lawyers out there in the United States of America (USA) are already running amok with this matter trying to deal with the consequences of that crush while we are still talking about certificates of death. Immediate action should be taken. The only thing that we can do to show that we are condoling with the families, the Government should give the death certificates within a period of two weeks. That will require the Committee to be seized of this matter as quickly as possible.

Mr. Deputy Speaker, Sir, I hope that when you will be giving your directions, it should not be a matter that will be subjected to red tape as a way and means of summoning those affected and go on for another 60 days. I offer my condolences once more to the families of those who are bereaved and those that were injured but survived the terrible plane crush.

An Hon. Senator: Did anyone survive?

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, I stand corrected.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sadly, there were no survivors. Kindly proceed, the Senate Majority Leader.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I support the petition and urge the Committee to act expeditiously. In the interim, instead of waiting for the report to be brought to the House, I request the Office of the Speaker to be in close touch with the relevant committee so that certain administrative actions can be taken in the interim where it is possible without the need to wait for a report to be tabled in this House for implementation.

Counselling should be provided for the family members of the victims. Death certificates should also be issued because they are useful in pursuing benefits of the families including those who were dependents to the deceased. The death certificates, among others things, are very important for them to continue with their life in terms of benefitting from what their loved ones left behind for them.

Mr. Deputy Speaker, Sir, I offer my condolences and believe that this House has demonstrated that there are many Kenyans who have faith in what we do. Although, I will get an opportunity to speak tomorrow, I would like to use this opportunity to remind the country that there has been an erroneous image being portrayed in the other House that we are supposed to only discuss a certain calibre of issues. I encourage the Senators not to be dragged into such side shows. We must focus. We did very well with the Kenya Airways inquiry. The report that the Senate committee came up with contributed to the change in the transport sector particularly, the Kenya Airways. We made an inquiry into the Solai Dam issue. Some people said that we have no jurisdiction but we did a very good job.

We must do a good job on this issue that concerns the victims of the Ethiopian Air Crash so that our critics can only interact with us in terms of work and deliverables and not debates that have no legal and constitutional basis. I offer my condolences and believe that we shall provide the solutions that the people of Kenya need in this sector. I know a number of people who lost loved ones.

Mr. Deputy Speaker, Sir, my classmate, Dr. Tom Kabau and the Principal Secretary, National Treasury, lost their brothers. Personally, I knew a Chinese guy who was doing a good job in the Technical Training Institutes (TTIs) of AVIC International. I interacted with him when he made a presentation at a forum on the TTIs in the National Youth Service (NYS). There are so many people that we knew personally and people who were relatives of our friends. We should do something to make sure that such a situation does not recur in the future.

The Deputy Speaker (Sen. (Prof.) Kindiki): I can see the interest on this petition is still very high. We are not doing very well on time management. Sen. Wetangula, assisted by Sen. Mutula Kilonzo Jnr. are the lead touts but I am afraid you may not comment on this petition. We should find a way to substantially deal with this issue. I am persuaded that even if I allowed everybody to speak, we will still not do justice to this matter. Therefore, with your indulgence, I would rather we proceed because we have

some statements, then I will give directions that can help us canvass this matter a little more substantively.

I am persuaded that this House is doing a good job and one way of ensuring that we maintain that good job is to ensure that we become innovative in some of these issues. As both the Senate Majority and Minority Leaders have suggested, when a petition is brought before this House, it should not just be taken as a routine petition and it dies. That said, I would like to invoke Standing Order 51(1)(b) which takes about Chairpersons of Committees making reports once every three month. However, it has a second part which states-

“(1) A Committee Chairperson-

(b) shall, at least once in every three months, on such day as shall be assigned by the Senate Business Committee, and at any other time if so required by the Speaker, make a Statement relating to the activities of the Committee; and”

The statement by the committee chairperson is to be done once every three months at least. That means that it can be done more times.

Secondly the statement by the chairperson shall be done *Suo moto*; by his own motion or if the speaker so requires. The Speaker requires the chairperson to get seized of this matter independent of the petition. The petition has to run its course in terms of the standing orders which says that you should respond to the petitioner within 60 days. Other than that, we can innovatively use Standing Order No.51(1b) and in two weeks, the Chairperson of the Committee, having done what was suggested by those who spoke, should report to this House what actions the House recommends or has been able to secure from the Government as we wait for the disposal of the petition.

Order, Senators. You know the Chairperson of the Committee because I am now committing the petition to---

(Laughter)

Hon. Senators, pursuant to Standing Order 232(1), the Petition stands committed to the Standing Committee on National Security, Defence and Foreign Relations.

*(The Petition was committed to the Standing Committee on
National Security, Defence and Foreign Relations)*

In terms of Standing Order 232(2), the Committee is required in not more than 60 calendar days, from the time of reading the prayer, to respond to the petitioner by a way of a report addressed to the petitioner and laid on the Table of the Senate.

Thank you.

Next Order.

PAPERS LAIDFINANCIAL STATEMENTS OF VARIOUS
COUNTY AGENCIES/FUNDS

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Tuesday, 2nd July, 2019-

Report of the Auditor-General on Kisii County Bursary Fund for the year ended 30th June 2018.

Report of the Auditor-General on the financial statements of Bomet County Car Loan and Mortgage Scheme for the year ended 30th June, 2018.

Report of the Auditor-General on the financial statements of Bomet County Bursary for the year ended 30th June 2018.

Report of the Auditor-General on the financial statements of Bungoma County Community Development Fund for the year ended 30th June, 2018.

Report of the Auditor-General on the Financial Statements of Bungoma County Women Empowerment Fund for the Year ended 30th June, 2018.

(Sen. Murkomen laid the documents on the Table)

The Deputy Speaker (Sen. (Prof.) Kindiki: Thank you very much. Order, Senators. We have a number of statements. Sen. Wetangula, you may now proceed.

Next Order.

STATEMENTS

STATE OF MALABA INTERNATIONAL BORDER POINT

Sen. Wetangula: Mr. Speaker, Sir, I rise pursuant to Standing Order No.48(1) to seek a statement from the Standing Committee on Roads and Transportation concerning the state of the Malaba International Border point.

Mr. Speaker, Sir, in the Statement, the Committee should-

- (1) State when the Malaba One Stop border point will be operationalized.
- (2) Explain when the Government plans to improve the road infrastructure to reduce congestion on the road leading to and around the border point on the Kenyan side, considering that the Ugandan side of the road is in good state. For instance, for the last couple of weeks, trucks have formed queues of up to 25 kilometres stretching from Malaba in Busia County to Kimayeti Town in Bungoma County.
- (3) State what other plans the Government has to address safety issues posed by congestion of trucks at the border; some of whose cargo is inflammable and dangerous, but have to queue for hours on end in the sweltering heat of the area and could easily explode.
- (4) State when the Government plans to construct the Nairobi-Malaba Road,

A104, to a dual carriageway to enhance trade with the hinterland countries that use the Mombasa Port, namely; Uganda, Rwanda, Burundi, Democratic Republic of Congo (DRC), South Sudan and beyond.

The Deputy Speaker (Sen. (Prof.) Kindiki: Order, Senate Majority Leader. I know that Sen. Halake is a member of the Majority Coalition. You might have been congratulating her but I would like to call you to order to allow me be on my feet.

(Interruption of debate on Statement)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM ST. ALFONZA KISAU GIRLS HIGH SCHOOL, MAKUENI COUNTY

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

I thank you.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, on behalf of the Senate and the Senate Minority Whip, Sen. Mutula Kilonzo Jnr., who has been called to his office to attend to another matter, I would like to welcome the students from St. Alfonza Kisau Girls High School. They have one of the best Senators and debater in this Republic.

They are welcome to the Senate and to get inspired by the debates that are taking place in this place as they learn about our legislature, architecture and structure of the Government. I want to congratulate Sen. Mutula Kilonzo Jnr. because Makueni County visits the Senate more than any other county.

I do not know whether Sen. Mutula Kilonzo Jnr. solicits for visits from his own schools, but when they go back home, let them tell their parents and the community that their Senator is doing exemplary well when it comes to inviting, welcoming and entertaining students from his own county.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki: Sen. Ochillo-Ayacko, are you on the students?

Sen. Ochillo-Ayacko: No, Mr. Speaker, Sir, I wanted to speak on the Statement.

The Deputy Speaker (Sen. (Prof.) Kindiki: You have three minutes.

(Resumption of debate on Statement)

Sen. Ochillo-Ayacko: Thank you. Mr. Speaker, Sir. It is order to welcome the students to the Senate. The Senate is a good place and they should aspire to be Senators and more. Welcome.

Having said that, I would like to say that on Saturday I had an occasion to fly to Busia County. I overflowed Malaba. The state of affairs on the border is wanting, terrible and bad. I saw kilometers of trucks queueing to get to Uganda. When I inquired from the people in the know, I was told that the neighboring countries namely, Uganda, Rwanda and Burundi no longer use Malaba border point because the waiting period is not economically or efficiently tenable. They decided to use Dar-es-Salaam Port and the road to their countries.

As a nation, we are losing revenue that we ought to have earned. We are losing opportunities. This is an urgent Statement. This is a weighty matter because it touches on our economy. If we do not address it urgently and effectively, we will lose our strategic position as a preferred entry point to East Africa and neighboring countries. I hope that the Committee to which this Statement will be referred will give this matter the requisite attention and we will get an adequate response for it.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): The Chairperson of the Committee on Roads and Transportation should get seized of the matter.

What is it, Sen. Wetangula?

Sen. Wetangula: On a point of order, Mr. Deputy Speaker, Sir. Before you give direction, you have heard what Sen. Ochillo-Ayacko has said. I believe even my colleague, Sen. Orengo, must have seen this nightmare. You can imagine a queue of 25 kilometres of trucks waiting to cross the border. It is not something that we, as Kenyans, can be proud of.

I beg that you give firm directions to the Chairperson of the Committee to take up this matter and report back in the shortest time possible; say, within the next 10 days or less. This is because of what people are being exposed to. You have seen in Salgaa where inflammable substances have exploded and killed people because of being parked in the smoldering sun the whole day.

What we saw on Saturday is something unprecedented.

The Deputy Speaker (Sen. (Prof.) Kindiki): Where is the Chairperson, Vice Chairperson or any Member of the Committee on Roads and Transportation?

Nevertheless, the Chairperson of the Committee on Roads and Transportation, the Committee has two weeks to dispose of this issue. I see the Committee is doing well. I have seen them in the counties but I direct the Chairperson of the Committee on Roads and Transportation and other committees, that when you visit the countryside; our counties, it is courteous to inform the host Senator.

If you are working towards fulfilling the requirements of a Statement that was raised here, the person who raised that issue should at least be told what you are doing. If you are visiting anywhere, they should also know so that they can also have an input, not just a technical appearance.

If you go to County "X", for example, like in this matter, if the Committee visits Malaba, at least the Senator for Busia County and Sen. Wetangula, who has requested, need to know your itinerary. That way, if they want to accompany you or provide information, that can be done.

I direct the Committee on Roads and Transportation to attend to it as an important national issue. Malaba Town is an exit and entry point for our country. It is, therefore, a serious matter. The Committee should report back with concrete recommendations to the House within two weeks.

Sen. Sakaja, do you have a statement?

Sen. Sakaja: Mr. Deputy Speaker, Sir, before the Statement, I was on a point of order. I wanted to I request you---

The Deputy Speaker (Sen. (Prof.) Kindiki): What is out of order? I hope you do not want to commit a misdemeanor.

Sen. Sakaja: No, Mr. Deputy Speaker, Sir. I wanted to request you to really emphasize the point you have just made; not only on committees that visit counties informing their Senators, but even committees that are dealing with a matter that a Senator has raised, to do it in good time. For instance, I raised an issue on Mihang'o in Embakasi East and I have just been told today that I should appear tomorrow yet I am chairing two committees tomorrow. Sometimes it does not help us to deal with those issues.

I implore upon fellow chairpersons that they give the area Senator or the person concerned at least some good time before they are invited.

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

(Interruption of debate on Statement)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM ST. CHARLES
LWANGA HIGH SCHOOL, NAIROBI CITY COUNTY

Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from St. Charles Lwanga High School, Nairobi City County.

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

Thank you.

Sen. Sakaja, you can welcome the visitors and also request for your Statement.

Sen. Sakaja: Thank you, Mr. Deputy Speaker, Sir. I join you in welcoming the students from St. Charles Lwanga High School to the Senate. I know this school and it is doing quite well. I am happy that they have come here to not just see their Senator who is incidentally on the Floor, but also what other Senators are doing; representing them and playing a part as one of the pillars of our democracy as an institution.

I encourage them to work hard and keep putting their best efforts in their studies. I hope we can interact with them at a later date.

(Resumption of debate on Statement)

LAUNCH OF RRI FOR PROCESSING AND ISSUANCE
OF BIRTH CERTIFICATES

Mr. Deputy Speaker, Sir I stand to make a Statement on the launch of the Rapid Results Initiative (RRI) for processing and issuance of birth certificates as well as issues raised by colleagues on police reservists.

Pursuant to Standing Order No.51(1), I rise to make a Statement on two matters, for which the Committee on National Security, Defence and Foreign Relations is responsible. Article 53 of our Constitution states that every child has a right to a name and nationality from birth. The importance of ensuring all Kenyans access their birth certificates, which is the most important form of documentation, cannot be overemphasized.

However, the challenges surrounding the issuance of birth certificates have previously been raised by many Senators on the Floor of the House. There have been perpetual complaints from the public on the delays in obtaining birth certificates due to the pending backlog in most counties.

Some of the concerns that were raised include-

(1) The impact of the delay on children who require birth certificates to join pre-school, primary and secondary schools and registration for examinations.

(2) The cost of travel by parents and guardians who have to check the status of the application several times.

(3) Inadequate staff and lack of resources like printing papers which has been an excuse reported to the public.

Mr. Deputy Speaker, Sir, pursuant to this, I wish to report to the House that the Ministry of Interior and Coordination of National Government on 27th June, 2019 at a function to which my Committee was invited, launched the Rapid Results Initiative (RRI) for processing and issuance of birth certificates in Kajiado Town. The initiative by the Ministry is aimed at ensuring that all Kenyans who do not have birth certificates or identification cards obtain these crucial documents so that they can even register for Huduma Namba.

All assistant chiefs have been directed to ensure that all births occurring in their respective areas of jurisdiction are registered immediately. They have been further directed to ensure that only funerals taking place within their areas or jurisdiction have been issued with burial permits so that all cases are accounted for. Within this one month, 1.3 million uncollected birth certificates are to be issued across the country in every location. There are 1.3 million certificates that are uncollected as we deal with this.

Through the initiative, the Ministry aims at-

(1) Increasing the capacity of all registration officers across the country to rationalize the process and issuance of birth certificates.

(2) Reduce the current backlog of birth certificates pending processing and issuance of birth certificates in counties

(3) Implement the RRI for one month by giving resources and support to the civil registrar's office at the county level.

(4) Identify priority areas; that is, children who need to join educational facilities and facilitation of registration for examinations.

(5) Inculcate mass awareness on the importance of registration of births and deaths.

Mr. Deputy Speaker, Sir, as the Chairperson of the Committee, I have advised the Ministry to instruct county commissioners to get in touch with their respective Senators and local leaders so as to furnish them with county specific strategies during this one month of RRI. I have a response on that. We hope that we can encourage those who have not collected, those with birth notification or those who never got it to come for the document. When we issued these certificates, some people even at the age of 30 who have never got these birth certificates in Kajiado County got their certificates. This is very important across the country.

WITHDRAWAL OF NATIONAL POLICE RESERVISTS FROM COUNTIES IN KERIO VALLEY REGION

On the second issue, on 23rd May, 2019, the Leader of the Majority Party and the Senator for Elgeyo-Marakwet County, Sen. Murkomen, requested for a Statement from the Committee on National Security, Defence and Foreign Relations on the withdrawal of guns from National Police Reservists (NPRs) from counties in the Kerio Valley region.

Senators from Samburu, Wajir, West Pokot, Narok, Turkana, Marsabit and Isiolo counties raised similar concerns on the impact of the withdrawal of NPR on the security situation in their respective counties.

Mr. Deputy Speaker, Sir, considering the sensitivity of this matter, I take this opportunity to invite Members from those counties – even other counties – who have been affected or have questions on similar issues, to a meeting with the Standing Committee on National Security, Defence and Foreign Relations. The Committee will host the Cabinet Secretary for Interior and Coordination of National Government together with the security leadership, to deliberate on this matter. The meeting will be this Thursday, 4th July, 2019 at 10.00 a.m. at Shimba Hills, First Floor, Kenyatta International Convention Centre (KICC).

Finally, for the information of the Senate, tomorrow, the Committee on National Security, Defence and Foreign Relations will be meeting the Cabinet Secretary for Defence to conclude on a petition that had been brought on awards to ex-soldiers at 9.30 a.m. at the County Hall.

Thank you very much, Mr. Deputy Speaker, Sir, for your kind indulgence.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Sakaja. Senators, take note of those invitations so that we maximize the time we get to meet the members of the Executive. That will reduce many requests for Statements that we get here. Please, note those invitations.

Next Order. What is it, Sen. (Prof) Ongeri?

Sen. (Prof) Ongeri: Mr. Deputy Speaker, Sir, I am sure you are fully aware that we wanted in accordance with the Standing Order No.51(b) to present a Statement from

the Committee on Education. I see you have called the next Order and we had submitted that Statement.

The Deputy Speaker (Sen. (Prof.) Kindiki): I think that is in the Order Paper for tomorrow.

Order, Senators! I direct that we defer Orders No.8 and 9. With regard to Order No.8, the Senator we requested the recommittal is not ready with the amendments.

In regard to Order No.9, Sen. Olekina is out of the country.

COMMITTEE OF THE WHOLE

THE STATUTORY INSTRUMENTS (AMENDMENT) BILL
(SENATE BILLS NO. 24 OF 2018)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

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

(Committee of the Whole deferred)

BILL

Second Reading

THE KENYA MEDICAL SUPPLIES AUTHORITY
(AMENDMENT) BILL (SENATE BILLS NO. 38 OF 2018)

(Sen. Seneta on 18.6.2019)

(Resumption of Debate interrupted on 18.6.2019)

The Deputy Speaker (Sen. (Prof.) Kindiki): I see no requests.

Sen. Sakaja: Mr. Deputy Speaker, Sir, I would like to contribute to this Bill and, again, register my disappointment at being highly inconvenienced. My talking notes were in this iPad, but I cannot access them.

I want to congratulate Sen. Seneta for this amendment that seeks to, in accordance to devolution, make sure that county governments are better involved in the running of the Kenya Medical Supplies Authority (KEMSA). We know very well that in the Fourth Schedule of our Constitution, one of the most important functions that have actually been devolved is health. In fact, many people keep saying that maybe it was devolved too quickly because there are problems in many counties across the country. People have not

been able to access quality healthcare. When you go to hospital, there are no drugs and we have a lot of industrial action in our counties.

We have seen challenges in Laikipia, Kirinyaga and Nairobi City counties on the issues of equipment and medical supplies, but much of that has been because of the speed. We are trying to move from a highly centralized system, where health was being managed from the national Government, to what we have now at the county governments, which includes the human resource, doctors and nurses.

Mr. Deputy Speaker, Sir, on this particular amendment by Sen. Seneta, I want to note a few things. First, we have come to a time and place that we must weed out the level of corruption that is going on in our counties. I can speak for Nairobi City County. Some of us were born in this city and never had to go to the big hospitals. We had dispensaries and hospitals just around that would deal with our issues.

There has been a breakdown of the referral system because of corruption, and I say it for the following reasons. One, when you go to Mama Lucy Kibaki Hospital, Mbagathi District Hospital or Pumwani Maternity Hospital and get a prescription from the doctor, nine out of ten times that medicine which you have received a prescription for will not be found in that hospital. However, the doctors are very quick to then follow up and tell you that if you go to the chemist out there, you will get those supplies.

Mr. Deputy Speaker, Sir, many of the pharmacies around our county and national hospitals have a direct relation with either administrators in the health sector at the national or county level. That must be weeded out. Our counties are spending a lot of money when it comes to medical supplies and equipment, but *dawa* cannot be found. I have to say that because many of my people are listening to the debate in Kiswahili.

Mr. Deputy Speaker, Sir, when we bring together the Council of Governors (CoG), who will be sending two representatives, as I read in the Bill, the counties will also be able to make sure that the kind of stock that they require is what is stocked by KEMSA. It is very difficult to plan for a client who is not involved in the process.

We know that the medical needs or the kind of drugs required possibly in Wajir might be different from those needed in Kisii or Kisumu for that matter. Therefore, that involvement is very important. We want to make sure that those who set up pharmacies and chemists in cahoots with the administrators of our hospitals are brought to book.

Secondly, we must look at the referral systems in this country. The referral system of health has broken down. Today, if you go to Mbagathi District Hospital, Mama Lucy Kibaki Hospital or any referral hospital across the country, you will find people coming there with ailments that ideally should not have reached a referral hospital. Unless we work on the dispensaries and the lower levels; all the way from Level 2, Level 3 until Level 5, we will have such a burden at Kenyatta National Hospital, Mama Lucy Kibaki Hospital, Mbagathi District Hospital, yet many of those issues can be dealt with at the primary healthcare level.

Mr. Deputy Speaker, Sir, I want to urge that even as this Bill is implemented, we must check the referral system and make sure—

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

Sen. Kinyua: On a point of order, Mr. Deputy Speaker, Sir. I am getting worried. When a patient asks the doctor where he can get the medicine, is it wrong for the doctor to direct him or her where he or she can get it? Is it an offence?

Sen. Sakaja: Mr. Deputy Speaker, Sir, that is not a point of order, but a point of argument. It is wrong because I am talking about public health facilities that should have medicine that has been paid from the taxpayers. The medicine has been bought, but many doctors in cahoots with those who run pharmacies say that they are out of stock, yet the stocks are there, so that you can go and purchase it. It is actually an avenue of corruption in many cases, and I have seen this in my county.

Many times, you will find that certain medicine, for instance, Amoxil, will be reported to be out of stock, but if you go out there, you can get the supplies. Many times, even beyond that, police stations should have photocopying machines, but if you go for P3 forms, you are told to go across the police station to get a photocopy. It is corruption that we have gotten used to that we even try to justify it.

In the case where that medical supply or that particular drug is not in stock in our hospitals--- Kenyans should know it is a right and not a favour that our hospitals must be stocked with drugs. They should be available to them either cheaply or for free depending on the ailment. In case that drug is not available, that is when the pharmacy in the public hospital should ask you to go to a private chemist and can even specify which one. So, I stand firm on that point.

Mr. Deputy Speaker, Sir, my people in Nairobi are suffering because many of them cannot afford some of these drugs. They are being overcharged, yet these drugs should be available to them. We have passed huge budgets in this county. As the Senator for Nairobi City County, I am proud that the first time I came here we made sure that Kshs15.4 billion went to Nairobi City County Government. This year, we are talking about Kshs17 billion. You cannot tell me out of that Kshs17 billion, a Nairobiian should be told to go and buy medicine from a private practitioner, when they have gone to a public facility that should be having that medicine. I completely disagree on that. It is immoral and an avenue through which corruption is setting in.

Mr. Deputy Speaker, Sir, as I conclude, we must fix the referral system to make sure that the entire chain of our medical facilities is working. It cannot be that we only focus with the big hospitals yet the small ones do not have medicine, doctors and personnel. We must look at the primary healthcare providers. We have thousands of community health volunteers in this country.

Mr. Deputy Speaker, Sir, back then when I grew up in Ngara, there would be someone who would come every so often to find out the state of health. There were community health volunteers who were taken care of and had a stipend. However, today, community health volunteers across this country are not able to get a small allowance to move around yet they are the ones who will tell you that in a particular part of Nairobi, there is a particular ailment or epidemic that might be coming. This is because prevention is ultimately better than cure.

There is a matter that must be looked at carefully. The Kenya Medical Supplies Authority (KEMSA) will play a big role together with the health practitioners and other agencies in the medical area to make sure that Patient Information Management System

(PIMS) is handled properly. Many Kenyans are suffering or their health is getting complicated because, for example, if they go to Machakos General Hospital, are treated and given certain drugs, they feel that it is not enough so they come to Kenyatta National Hospital (KNH) in Nairobi and they tell the doctor a different story. So, there is no record of the drugs and treatment regimen the person has been on. You might find that many people are getting drugs that they are either allergic to or do not work well for them.

We must have a digitized card and use technology to make sure that, for example, if Sen. Wambua is unwell and he goes to whichever public hospital in this country, the doctor can just check on that card and know that Sen. Wambua was treated for “a”, “b”, or “c” and the drugs he has been on and prescribe drugs for him. We must take health seriously. It is the most important devolved function.

Mr. Deputy Speaker, Sir, in 2016, I had dreams of being a governor. The biggest part of my manifesto when I had that dream was something I called Sakaja Care. This is because I calculated that Nairobi had 486,000 households below the poverty line, but with Kshs2.5 billion annually with that card, they would get medical attention in any public hospital. However, today, if you look at the budget, we are running in this county and in many counties, a lot of money is used on wastage and trips yet healthcare is the most important function. That money would go to the dispensaries and primary level healthcare outlets, for example, Mbagathi and Mama Lucy hospitals, to make sure that they are run properly. Everyone in Nairobi would have the Sakaja Care card and use it in any public hospital. In fact, with the help of the National Hospital Insurance Fund (NHIF), we can achieve it. Universal healthcare is one of the biggest pillars. However, it cannot be done unless we put our money where our mouths are.

I know that my county assembly has today walked out because of bursaries. However, I urge them when they come down to look at their budget, because we brought to them close to Kshs17 billion, to put proper amounts of money for healthcare in Nairobi. In Pumwani Maternity Hospital, there is a white elephant project that has stayed for years. However, if we dealt with it, we would reduce congestion in Pumwani Maternity Hospital.

In Mathare North, there is an almost 300 bed capacity structure that has stayed idle for years. However, if we dealt with Mama Lucy Hospital and many other hospitals, we would be freed up. Therefore, I urge them and Senators to implore upon their county assemblies to allocate more resources to health because health is a devolved function and the most important. Health budgets are done at the county. Therefore, Senators should build the capacity and implore upon Members of County Assembly (MCAs) to allocate more resources when it comes to healthcare at the primary level.

I congratulate Makueni County which gave a presentation to the Kenya Young Parliamentarians Association (KYPA) on what they have been able to do even before Universal Health Care (UHC) was launched as part of the Big Four Agenda Programme by the President. They have made sure that their facilities, drugs and personnel are taken care of. I congratulate them.

Mr. Deputy Speaker, Sir, finally, we cannot talk about the health management system, referral system and the drugs without touching on the personnel who will do this

work. Our counties are treating our doctors and nurses in a manner that leaves so much to be desired. These are important people.

An issue has come to the Committee on Health and there has been a request because there are labour issues. Something is going on in Laikipia where the Senator feels that it is okay for patient to buy drugs in private establishments when they go to a public hospital. That is the point of order he rose on. What is going on in Kirinyaga County must be dealt with---

Sen. (Dr.) Ali: On a point of order, Mr. Deputy Speaker, Sir.

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

(Sen. (Dr.) Ali spoke off-record)

Order! You are not on record.

Sen. (Dr.) Ali: Mr. Deputy Speaker, Sir, is the hon. Member in order to insinuate that the Senator for Laikipia told his people to buy *dawa* from private dispensaries when the hospital does not have? Is that the way to treat Members of the House?

The Deputy Speaker (Sen. (Prof.) Kindiki): Is that what you said, Sen. Sakaja?

Sen. Sakaja: Mr. Deputy Speaker, Sir, the HANSARD will bear me out. When I made the point about people being sent to buy drugs in private establishments, the Senator for Laikipia stood on a point of order and asked if there is anything wrong with that. So, I have not said that he asked his people to do it. I have said that the Senator for Laikipia sees nothing wrong with people buying drugs yet we have paid our counties. Unless he contradicts himself or changes his position, the HANSARD will bear me out. That was the point of order that he raised.

Sen. Kinyua: Mr. Deputy Speaker, Sir, I repeat that I did not say that. Sakaja is insinuating that. I was clear.

The Deputy Speaker (Sen. (Prof.) Kindiki): Are you referring to Sen. Sakaja?

Sen. Kinyua: Yes, Mr. Deputy Speaker, Sir. I said Sen. Sakaja. May be, it is because I was quick. I did not say that. I asked whether that is what he meant. He was clear that he did not mean exactly that. However, he is insinuating that it is what I meant. I did not mean that I am comfortable with patients leaving the Government hospitals to buy drugs from private pharmacies outside the hospital. I asked whether that is what he meant.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Kinyua. You asked whether the Senator for Nairobi City County was in order to say that a citizen should be referred to a private hospital to insinuate that it is improper. I was listening carefully.

Sen. Kinyua: Mr. Deputy Speaker, Sir, if there are no drugs in the hospital, as you said, what is the doctor supposed to do with the patient? I was asking if it is true and he said yes. He has repeated it and said that if we do not have drugs in the hospital and the patient asked the doctor where to get the medicine---

The Deputy Speaker (Sen. (Prof.) Kindiki): That is a point of debate. Although he has argued that it is wrong and he is correct---

Sen. Kinyua: Mr. Deputy Speaker, Sir---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator. Do you know what the Standing Orders say? Sen. Sakaja has argued and he is right that it is not right for public health officers in public hospitals who claim that there are no drugs to direct patients to private entities. This is his view.

You rose on a point of order challenging that. You could have a different view but it does not mean that Sen. Sakaja is out of order. It means that you have a different argument. What you are supposed to do is not to rise on a point of order but to wait until you are given your turn. I can see that you are waiting to speak although you are number last in the requests, but there is time. You will still have time to say what you want to say.

Conclude, Sen. Sakaja so that we make progress.

Sen. Sakaja: Mr. Deputy Speaker, Sir, I was finishing the matter on personnel and how we need to treat and deal with the labour issues that are coming up within our counties. Additionally, as the Chairperson of the Committee on Labour and Social Welfare, we are mulling over a Bill that we will bring to the House that will ensure that employees of counties are not stationed in one county especially for skill sets that need inter county transfer. We do not have 47 neurosurgeons or neurologists or radiologists. Therefore, we need to make sure that they can move across counties and have similar schemes of service so that a doctor in Wajir can work in Mombasa or within the region and be supported through our structures of devolution.

Mr. Deputy Speaker, Sir, with those many remarks, I congratulate, Sen. Seneta and hope that we will put more flesh into this and take the issue of health as seriously as it deserves.

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

(Interruption of debate on Bill)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM KANGA
HIGH SCHOOL, MIGORI COUNTY

The Deputy Speaker (Sen. (Prof.) Kindiki): I would like to acknowledge the presence in the Public Gallery of visiting students and teachers from Kanga High School, Migori County.

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

Sen. Ochillo-Ayako: Thank you Mr. Deputy Speaker Sir. I would like to welcome the students and teachers from Kanga High School. That is a school we regard as a jewel in Migori County. It has produced good students and leaders in this country. From that school we have two current Members of Parliament; Anthony Tom Oluoch and Tom Joseph Francis Kajwang’.

I want to encourage the students who are here to work hard and aim high. We are likely to get more leadership into Parliament and other institutions through them and

other schools which perform as well as they do. I want to wish them success in everything they are doing and also encourage them to be disciplined and to always do what is right.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker Sen. (Prof.) Kindiki: Thank you. We will continue.

Sen. Halake: Thank you, Mr. Deputy Speaker---

The Deputy Speaker Sen. (Prof.) Kindiki: Can we account the misdemeanor that was committed earlier? But proceed, Sen. Halake.

(Resumption of debate on Bill)

Sen. Halake: Thank you Mr. Deputy Speaker. I will not comment on that, but thank you for giving me the opportunity to comment on this important amendment to the Kenya Medical Supplies Authority (KEMSA) Bill.

I would like to congratulate Sen. Seneta very much because many of our legislations and Acts are still reading as though counties do not exist. It is about time this House took stock and an inventory of all Bills for their alignment to the Constitution and also for the acknowledgement of the fact that we have two levels of Government as we speak.

Health, as everybody has said, is devolved leaving only policy matters to the national Government. As such, service provision, including procurement should have been devolved through the KEMSA Bill being consulted so to speak. As it stands, KEMSA does everything as though health is not a devolved function. Therefore, this Bill is very timely to provide a framework within which KEMSA can collaborate with counties, deal with assessment of counties and ensure that what they are procuring is based on the needs within the counties and not just what they would like to procure.

In the health sector, there is a lot of below optimal procedures and below optimal practices that have resulted in a lot of waste for this country. By hierarchy, the Ministry of Health and the health sector tends to be one of the most mentioned in issues to do with corruption, misappropriation and not providing the required services. It is for this reason that the strategic direction of the country has focused on the Universal Health Care (UHC).

We have seen a lot of drugs expiring because they were procured without a county needs assessment being done. It is about time the health sector was made to be aligned to the Constitution, namely, for the national level to remain with policy and policy frameworks and give service provision to the frontlines of service delivery, which is counties.

I am very proud of the fact that this House is very keen to ensure that if there is anything that is contrary to the Constitution or is undermining counties, at least, this will be through practice, but not legislation. I would like to congratulate Sen. Seneta for these timely amendments. It is about time we looked at all these things.

She has amended even the title to ensure that counties are recognized as service providers where health has been devolved. There is also the section where the definition

of the word “medical supplies” has been enhanced to include therapeutic feeds and nutritional formulations. This is a really major part of prevention.

Mr. Deputy Speaker, Sir, one of the biggest problems we face in our country is global acute malnutrition. In counties like Isiolo, global acute malnutrition ranges from between 27 and 30 per cent. That is a threshold for crisis in terms of nutrition. The effect of this is that it stunts the growth of our children not just in the body but in the mind as well. Sometimes when I see how our children are behaving, I keep wondering whether it is because of this phenomenon of acute global malnutrition.

We see kids who are really stunted not just in body but also in the mind. In the next few years, we will have a generation of children in this country that are so disadvantaged in terms of both body and mind. I am very happy that in this Bill, we are not just looking at curative but also preventive measures especially from the perspective of ensuring that there are good nutrition formulations and therapeutic feeds.

The amendment in Section 3(e) spells out how KEMSA will enter into partnership with county governments to establish drawing rights and maintain appropriate supply chain systems and drug supplies. For a long time, I worked with the Global Fund System and I can attest to the fact that there are always stock-outs and expired drugs. There is no system in place within KEMSA of triggering supplies to go to our dispensaries and health facilities regularly and in good time. I think this Bill is very timely and will provide a framework within which stock-outs and the issue of expiry of drugs will be managed and also the needs of counties will be prioritized not just from the national level.

Mr. Deputy Speaker Sir, regarding Clause 5, I am very happy that we have not neglected the issue of personnel. This Bill seeks to enhance the involvement of counties in medical health personnel. This is especially for the authority where two persons are competitively recruited and appointed by the Cabinet Secretary, but also two persons of the opposite gender.

I am very happy to note that this Bill has tried to make sure that our constitutional requirement to have not more than two-thirds of the same gender in any appointive or elective positions is adhered to. Therefore, I am happy that she has also looked at the issue of health workers and health personnel.

Paragraph 6(19) of the principle Act is amended by inserting sub-sections immediately after sub-section 1, which I think is very timely as well. It says that where procurement is carried out pursuant to agreement with a county government under Section 4(i)(e), the Authority shall ensure that there is consultation and proper identification of the needs of the county government prior to such procurement.

Participation of the key stakeholders or the key clients, in this case the county, is paramount. We cannot afford to have national agencies just doing whatever they feel like without consulting or working together with counties. I am glad that this provision which did not exist in the principal Act has been taken care of.

Paragraph 7(21)(i) states as follows-

“The Cabinet Secretary may, under recommendation of the Authority and upon consultation with the council make regulations for the better carrying out of the objects of the Act.”

I think we should say “shall” so that then they are compelled to do it and not given a leeway to decide whether to do it or not.

Mr. Deputy Speaker, Sir, we have the Constitution and also the Health Act, 2017. This Bill is timely because it seeks to assign responsibilities to the county governments to procure medical supplies for health facilities. Therefore, the Bill seeks to strengthen the national Government or its agencies. In fact, we should not only interrogate devolved functions but also other Acts with a view to finding out whether or not they are suitable for national or county governments and have legislation around that.

With those few remarks, I support this Bill. I hope all other Bills, whether about devolved functions or not, will be interrogated by this House for alignment to the Constitution and other pieces of legislation.

I thank you.

Sen. Ochillo-Ayacko: Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to make my remarks on this Bill. I would like to start by congratulating Sen. Seneta for thinking about health, counties and devolution.

Devolution is the centerpiece of the Constitution 2010. That is what is on every Kenyans lips and expectation when it comes to the mode and methodology of governance in our current dispensation.

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

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

Mr. Temporary Speaker, Sir, Article 174 of the Constitution is about objects of devolution. I will read Article 174(h) and (j) which states that—

“The objects of the devolution of government are—

(h) to facilitate the decentralisation of State organs, their functions, and services, from the capital of Kenya; and,

(j) to enhance checks and balances and the separation of powers.”

The Constitution envisaged devolution of state organs and institutions and decentralisation of services to be as close as possible to the smallest or average person in the village. This Bill seeks to appreciate that other than the fact that health is a devolved function under the Fourth Schedule of the Constitution, it is important that institutions that offer services to Kenyans are devolved and taken to the levels or areas where Kenyans ordinarily reside. So, the enjoinder of the KEMSA to the county governments where services are offered is the right step at the right time and for the right reason, which is a constitutional requirement.

There have been instances of repeated attempts by Members of the National Assembly to legislate on matters affecting counties without consulting this House. We have ended up in situations with pieces of legislation that do not mirror the constitutional architecture which are put in place; pieces of legislation that do not align themselves to the spirit of the Constitution have come forth. The Constitution envisages that health matters are dealt with in the counties. Only matters of policy should be dealt with at the national Government level.

It is unfortunate that we have been talking about budgets. A lot of funds remain in Nairobi whereas functions and responsibilities, particularly important ones like health, are not adequately funded thereby leaving county governments with inability to discharge functions. In Migori County where I come from, we are appreciative of the fact that we get funded through the Equitable Shareable Revenue. However, just like other counties, we are not adequately funded. So, healthcare has suffered adversely in Migori County just like in other counties. As we legislate matters of health, it is important to stay focused. It is in the counties where the rubber meets the road. That is where we should take resources, opportunities and focus when it comes to matters of health.

Last month, an employee of Migori County Government lost his life at the only referral hospital we have in my county, which is Migori Level 5 Referral Hospital, because there was no supply of drugs and blood. That is unfortunate. You can imagine how many people lose their lives in Migori and other counties because they cannot access blood supplies because there is no facility in the county to keep blood and make it available for use when it is wanted.

Such is the kind of situation that this piece of legislation seeks to address to ensure that we develop legislative infrastructure to ensure that the focus of medical supplies in the counties is done in consultation with our county governments and the boards that will be set up. It also aims to ensure substantive resources are allocated by the national Government. Counties will also have their members in the boards that will be identified and recommended by the Council of Governors (CoG), so that we do not have the national Government having both the knife and the yam. It is like having the money and making decisions not based on firm policy but perhaps the mood of the national Government on who gets medicine or medical supplies.

I congratulate our distinguished sister, Sen. Seneta, for thinking about health matters and ensuring that we match our desire to have devolution by introducing legislation that midwifes this process. This piece of legislation will go a long way in providing a platform for the voices and opinion of representatives of the CoG in the boards when policy and regulations are enunciated. It will provide a platform for representatives of county governments when matters that affect counties are discussed. When agreements that facilitate the work of our county governments are drafted and signed, representatives of the county governments will be there to articulate and amplify the positions of our county governments when it comes to making policy.

If we do not support this Bill, the county governments will operate at the mercy and discretion of the Cabinet Secretary responsible for health yet the Constitution states that matters beyond policy are domiciled and belong to the county governments. Therefore, those matters have to be done according to the plans and the desires of the county governments for the citizens to reap the full benefit of devolution.

The KEMSA will be resourced so as to enable it to provide medical supplies to the county governments. Therefore, its resources, methods of accessing those resources and the benefits of those resources should be pigeon holed in a way that will make all the county governments proud to be associated with its activities and programmes.

With those remarks, I beg to support. I congratulate Sen. Seneta for coming up with this Bill. It is a step towards to right direction.

Sen. Omogeni: Thank you, Mr. Temporary Speaker, Sir. I rise to support this Bill. First, I would like to pass my condolences to the family of Bob Collymore who succumbed to cancer yesterday.

Health is an important and key function that was devolved by the Constitution of Kenya 2010 that was enacted by the people of Kenya. Health is everything. For this country to develop, for our economy to flourish, we need a healthy generation. Most of the people who seek medical services reside in the counties. To stop the people that we represent from seeking medical services in Nairobi City, we have to ensure that medical care in our counties is functioning.

The biggest disconnect in our endeavour of providing adequate and quality medical care to our people is lack of adequate medical supplies in the county hospitals. I salute the Mover of this Bill, Sen. Seneta, who has acknowledged the key role played by our governors in ensuring that we have adequate medical supplies in our county hospitals.

I visited my county, Nyamira, in response to the cries of our people regarding shortage of medicine. Most County Executive Committee Members (CECs) will tell you that they place orders to the Kenya Medical Supplies Authority (KEMSA) but KEMSA does not meet the requirement of various counties. In the process, patients are attended to by well-trained doctors who prescribe to them medicine, but they end up being referred to various chemists within the counties. I do not know about the other counties but that is what happens in Nyamira. It is not a good thing.

For us to have a functioning healthcare system, we need a one stop shop where a patient can be attended to by a doctor and given medicine in the hospital pharmacy. In fact, our county governments have employed county pharmacists so as to ensure that there are adequate supplies. We even have good storage facilities that include refrigeration system for storage hence we should not have shortage of medicine.

In acknowledging the need of having good interaction between the county governments and KEMSA, the Council of Governors (CoG) will now be represented in the board of the proposed Kenya Medical Supplies Authority. It does not make sense to have representation from the National Treasury and Planning, the Ministry of Devolution and Arid and Semi-Arid Lands and the Ministry of Health, but end up excluding the governors who are consumers of KEMSA services. This is a good Bill.

However, we are approaching this matter with the view that everything should revolve around the Ministry. The Bill proposes the representation of the principal secretaries from the National Treasury and Planning, Ministry of Devolution and Arid and Semi-Arid Lands and the Ministry of Health in the board. It has also given the Cabinet Secretary (CS) the leeway to pick four other board members. In total, the central Government will pick seven representatives and the CoG will pick two. I would rather we give more representation to the CoG. The CS can pick two members and the representation for the CoG can be increased to four.

Last week, we had a public hearing on the Cancer Prevention and Control (Amendment) Bill, 2019, that was moved by my good friend, Sen. (Dr.) Ali. There were people who proposed for alternative therapy on the treatment of cancer. They said that we should not just concentrate on chemotherapy as the only remedy for treatment of cancer. Instead, they said that we can look for other remedies including nutritional remedies and

herbal therapies. I am happy that we are now obligating KEMSA to think outside the box. They should consider making supplies that have nutritional formulations to the county hospitals. From the presentations during the public hearings, I learnt that the nutritional therapies and the herbal therapies can also provide good solutions to the treatment of cancer. Some of those proposals were given by trained medical doctors who have interacted with patients and have an understanding of nutrition to cancer patients.

This Bill is progressive. It is good when you can have a period within which to execute something. For example, when you are doing medical supplies to counties and you are putting something in the minds of those who are in charge, they need to have stocks for at least six months. That will create hope that we will have an end to this issue of shortage of drugs.

Mr. Temporary Speaker, Sir, if you look at the budgetary allocations of most counties, the highest allocation is to the health department. However, in most of our health facilities, despite that endeavour by our county governments to provide for what I will call adequate finance to the health department, there is still a problem with enough medicine in the stocks. The reason they will tell you is that: “We had made requisition and were promised by the Kenya Medical Supplies Authority (KEMSA) that these drugs will be delivered on time. However, up to now, we are waiting for these deliveries.” Therefore, if we can have a situation where, as we plan, we ensure that we are going to have stock that will last for the next six months, that will provide some solution to this issue of shortage of medicine.

Mr. Temporary Speaker, Sir, you will be surprised that other than the concerns being raised by the Ministry of Health in terms of getting the data correct, other departments do not take health as a matter where they have figures or statistics. We engaged the Ministry in charge of census, and they gave us a sample of the questionnaires that they will use for the upcoming census. You will be surprised that there is nothing on them touching on health. We asked those people: “Does it not concern you that for the Government to plan, you need to slot in something in your questionnaires where families should respond on, for example, how many families are taking care of people who are suffering from a terminal illness?” or “What is your response to the medical care that you have managed to get from the county hospitals or the referral hospitals?” It is important to have these figures on record.

In our counties, we need to know the number of people who have been afflicted by cancer or any other terminal illness. We, as a country, need to see, in our budgetary allocations, that this is what we need to set aside for sufficient provision of drugs for the terminally ill patients.

Moreover, we need to know, in terms of our senior citizens aged 65 and above, who are getting Medicare in our counties. Do they get sufficient supplies of medicine for the conditions they are suffering from? I was once in Australia, and you will be surprised to know that anybody there suffering from cancer gets free supply of drugs from any pharmacist. It is the responsibility of the Government to meet that cost. If you go to a hospital and the prescribed medicine is not there, you can get your prescription from any chemist, and the Government will meet the cost. I think that is the favour that we should

return to our senior citizens. We should be pondering on how that can be achieved in our counties, as we look at this Bill.

Mr. Temporary Speaker, Sir, in supporting this Bill, I hope that it will provide a solution, and the only solution I am thinking about is the timely distribution of medical supplies to our facilities at the county level. I hope that by this House enacting this Bill, we will be getting a solution to that problem of ensuring that we provide adequate Medicare to the people who reside in our counties.

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

Sen. (Dr.) Ali: Thank you, Mr. Temporary Speaker, Sir. The problem with the Senate is that we pass very good amendments, and when it goes to the other side, it is shelved or things are changed. These amendments are good.

The county government is the main customer of KEMSA. However, the national Government wants to stick back to it and handle it like their baby, which is a very big mistake. Yesterday, the Committee of Health went to Laikipia County, where there was a problem. We were told that 61 doctors were sacked. When we asked the Governor what happened, he told us that they left their job: "They were away for 21 days and I sacked them." That is the attitude of some of the governors, which is unfortunate and wrong.

Mr. Temporary Speaker, Sir, this is the same case with some of the Senators in this House. Look at this House now, it is almost empty. We have a problem. Senators just want to be seen up to 4.00 p.m., when they can be seen on the television. They do not want to come and contribute to issues which are devolution-oriented. Issues about health and KEMSA are mainly about devolution. We are killing devolution ourselves, and yet we are supposed to protect it. This is a very unfortunate thing.

Everywhere you go, you will find unions fighting counties when it comes to health issues and the counties do not respond in the right way. The national Government does not want to let go of health, despite the fact that it is a devolved function. There is this tug of war, whose end result will cause a lot of problems in the counties. Some few days ago, it was Kirinyaga; now it is Laikipia and I am told Kisumu also has a problem. It will eventually go to every county. How are we going to deal with these things? These are not only labour issues.

Sometimes when we talk to the doctors, they have genuine concerns. When some hon. Members here say that if counties do not have supply of medicines, then a doctor prescribes medicine and tells his patients to go and buy it from outside, then that becomes a crime. Where will they direct these patients? We should not always associate everything with corruption or bad intentions. A doctor has no alternative. A doctor's job is to look at this patient, see what he or she requires and write a prescription. It is the responsibility of the county government to buy and stock medicine in hospitals. There are issues which are for the doctors and others for the county governments. As far as I am concerned, when you look at both sides, they are all guilty.

As I said in the beginning, KEMSA is supposed to be dealing with counties. Some counties buy their supplies from KEMSA quarterly, who supply what they have. Counties then buy what they do not get from KEMSA from outside. It is sad that the national Government wants to keep everything. If you check the health budget for all the counties combined, they are given Kshs3 billion while the national Government's

Ministry of Health has Kshs96 billion. What will they do with that money? Why should they keep that money?

Counties send doctors for postgraduate training and pay their salary. When the doctors come back, they will want to be promoted, yet there is no money to do that. Something should be done. I am working on something, that when it comes to postgraduate training, the national Government should take care of doctors by paying for their training and salaries while undertaking it. When they qualify, they should send them to where they are required, and not just where they came from.

Yesterday, we were in Laikipia County. I do not know whether we were told the truth while there. We were told that 35 doctors were sent for postgraduate training by the Laikipia County Government. However, if all of them were to go back to Laikipia after their training, I do not know whether the county has the capacity to absorb all of them. What will then happen?

There is a lot of push and pull when it comes to this issue of health as a devolved function. Health is the most important devolved function, in my view. The Senate should make sure that instead of always saying this or that, they should try and support the counties when it comes to health, because this is our docket and it is what we are supposed to do.

Mr. Temporary Speaker, Sir, when you now talk about the Board, as Sen. Omogeni said earlier, it is mainly comprised of people from the national Government. We are now trying to add two out of the four that the Cabinet Secretary (CS) is supposed to appoint. The two that the CoGs is trying to appoint may not even go through the National Assembly. The Chief Executive Officer (CEO) of KEMSA is appointed by that Board through the CS and is responsible and answerable to the CS for Health. What happens? Everybody knows where their bread is buttered and they will always respond to the national Government instead of the county governments or the Senate, which is supposed to oversight and look into these issues.

Like I said earlier, when you look at devolution, the problem in Kenya now and the national Government wants to get--- I am sorry I might go off the mark sometimes. The way the Laikipia Branch of the Kenya Medical Practitioners, Pharmacists and Dentist' Union (KMPDU) do things is such that when the Ministry calls meetings, they also call the Union. The Union and the Ministry are in cahoots, trying to bring Health back to the national Government. However now, the counties and the people at the grassroots have realised that it is better when health is devolved.

Mr. Temporary Speaker, Sir, as the Senate and not a Committee, I think we should put our foot down and try to solve this issue. We know what happened to the Health Act and how it went behind our backs, was assented to and how other things are being done without the House being consulted. That is not the way to go.

Counties should ensure that most of their drugs are bought from KEMSA, as some of them do not do that. I am told that some of them just go to chemists and spend millions of shillings there. That is not the way to go, when they can easily buy from KEMSA. If not, there are other organisations such as Mission for Essential Drugs and Supplies (MEDS), which have proper drugs that are less expensive, instead of going to chemists or buying these drugs in an unorthodox manner.

Mr. Temporary Speaker, Sir, what we are supposed to do with counties is to work from the dispensary level, health centres, sub-county hospitals and referral hospitals. It is supposed to be done from the lower levels and come to the County Executive Committee Members (CECs) who give this order. If KEMSA cannot provide all the drugs requested, then the county government pays for what they have. If they can buy 60 or 70 per cent from KEMSA, it will also be functional, profitable and able to work properly. If we do not do these things in the formal way, and do it behind everybody's back and enrich ourselves, we will then have a problem.

When it comes to the personnel, we are talking of Universal Health Care (UHC) and other things, UHC cannot work without proper personnel. As one of the hon. Members said here earlier, the doctors, clinical officers, nurses and all the health staff should be taken care of well. If we remember around 2017, there was a Collective Bargaining Agreement (CBA) that was signed with the doctors, nurses and clinical officers. That money, which is about Kshs11 billion, is still outstanding to date. We have tried what we could, even with the Senate Committee on Health and the Committee on Finance and Budget. However, county governments cannot afford it, and the national Government does not want to help to iron out these issues. How will we manage the UHC we are talking of? All these things will fail, because the way I see it, people are not serious. How will the UHC function without personnel?

The four counties where the UHC is being piloted are being given around Kshs760 million. Sixty or 70 per cent of this amount is supposed to go to KEMSA, while 30 per cent is supposed to go to the counties. However, when you ask around, you hear a lot of funny stories. These issues are not straight and we need to do more. We, as the Senate, should put our foot down to support counties, devolution and health.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Proceed, Sen. (Prof.) Ongeru.

Sen. (Prof.) Ongeru: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute the Bill before us, which I think is a most important piece of legislation.

During my time as a professional, KEMSA was set up to rationalise and ensure that procurement of drugs and medical equipment was synchronised. It was so that we do not have this everyday language of shortages when people appeared in any health facility, be it a dispensary, health centre, district hospital or national referral hospital. This is because one of the most problematic issues at that time was the lack of drugs in all these peripheral centres. This was one of the reasons why there was tremendous motivation, during the Constitution making process, when people felt that they were excluded from the health packages that were being rolled out to districts – now called counties – at that time. They needed a devolved system where they wanted health and agriculture to be devolved fully to the county governments.

Mr. Temporary Speaker, Sir, when you devolve, you must be aware that you not only devolve the system, but the expertise that is inherent in that system. Why do we talk of this KEMSA Bill being amended? I thank Sen. Seneta for bringing up the amendments. It is, first of all, to leverage and maximise the efficiencies that are related to mass procurement. Through that process, we must also create the economies of scale, so that a drug which, when procured singly, becomes more expensive, can be obtained with

a big discount when we use this mass procurement. This discount must be passed on to the county governments. That was the essence of creating KEMSA.

The other essence of creating KEMSA is that there is a plethora of drugs being peddled by peddlers all over the place, with a very sweet language of trying to carry out and tell you that the drug is efficacious or suitable for a particular condition of illness or disease. Kenyans have fallen victim of these quacks who go around bringing these types of drugs to the market, telling them that drugs can cure a particular disease here and there. What is the net effect of that exercise?

They have now developed resistance to particular bacterial infections. Therefore, treating chronic illnesses that have developed resistance to basic drugs that are useful and essential in the market has now become a major problem. That is why you are having so much of this chronicity of illnesses within the society and people do not get better sooner or later. That is one of the problems.

Getting KEMSA to be in charge of procurement of drugs and medical equipment was to assess the efficacy and the molecule which would drive, at the minimum dose, to treat a particular disease and cure it on the prescribed days. This could be one week or ten days, whatever the prescription from qualified doctors. That is the essence of ensuring that KEMSA gives that expertise of efficacy to be able to supply these drugs.

Secondly, KEMSA was set up to impart safety. You can have a drug produced, but is it safe? Is the drug manufactured by properly registered pharmaceutical industries or they are from the side *kiosks* and the patients fall victims of these drugs? It is important that the element of safety is factored in. Then there was the question of quality. I have talked about efficacy – whether it is enough dosage – safety and affordability of that drug. These are the elements that this Bill is seeking to transfer to the county governments because they are the people in charge of health at the county level. Unless we are careful, we may pass on a monster and create a bigger one than what we started with. I am bringing up all these elements to the fore so that we can see where we stand.

Mr. Temporary Speaker, Sir, the fourth element is very critical. These drugs must be available and distributed on a timely fashion. I will invite you to go to your county or to my county, in Kisii. When you ask a simple question to the county executive with regard to where they have ordered their drugs from, they will say that they are from KEMSA. This sounds fine. When you ask where the packages of the drugs are, they will show you. Take an extra interest to open up those boxes; they do not contain the very basic, essential drugs necessary and important for running the health institutions at the peripheral levels. The bulk of those procured boxes you see there are condoms. I am not castigating condoms, but that is what you get; which is simple equipment that is used for socialization.

Mr. Temporary Speaker, Sir, I am worried because people are being told that there are medical supplies from KEMSA. Since they have been made to believe in KEMSA, they say that they have adequate supplies, which will be delivered to our health centres and dispensaries. Unfortunately, they are not there. As a medical professor, my major interest would be whether we have the essentials in that kit, like the immunization packages through the cold storage.

If you do timely immunization, take care of nutritional requirements of growing children in the society and the environment under which people are staying that is what I call public health; which is preventative and promotive healthcare. That should be the major functions, where major resources must be spent by county governments. This would reduce the disease burden by more 50 per cent. This means that you will also reduce the bed occupancy in hospitals, because bed occupancy is curative medicine. When you have more people in the hospitals, you incur more costs and expenses than is required.

I, therefore, urge the county governments, through the COG, that they must request for a bigger stake in KEMSA representation. If we have a weak representation, we will not get the kind of services that I have enumerated above. We will be told, “Yes, we will send you your kit,” but when it comes, it is incomplete.

Mr. Temporary Speaker, Sir, the fifth headache that I would like to call upon the county governments to be aware of, is that some of these drugs have been procured by fellows who do not care to look at the shelf-life or the expiry dates. Some of the suppliers push drugs to KEMSA in the name of being efficacious, but the shelf-life is about six months. They then do bulk supplies to all counties, who have no clue about the kind of supplies they are getting from KEMSA. They do not look at the lifespan of those drugs.

When you go to the county health sector, you are told that they have plenty of drugs. However, if you open them, the bulk of them are expired. The bulk of them are those drugs which are not being used in that area frequently. What is the point of supplying malaria drugs to areas where the disease is not rampant? We all know that the epicenter of malaria is in particular regions. Obviously, they will expire.

We have a classical case. I was pained the other day when I saw a mother crying, simply because there was no anti-snake venom in Kitui. It is a very sad story, when we know that you are likely to find snakes in the Arid and Semi-Arid Land (ASAL) areas. I have worked in Wajir as a medical officer and one of the biggest enemies during hot periods are snakes. You will find them even on your bed. They look for coolness and drinking water in the houses. If you are not careful, they will inject that venom in you, and you will be dead. One of the most essential kits that must be available in all the ASAL areas where snakes are rampant is the anti-snake venom. Unfortunately, you will find it in areas where there are no snakes, and we end up losing people in the areas with snakes.

The KEMSA should be acquainted with the medical geographical survey of disease patterns. There are other diseases like *Schistosomiasis* in cesspools in Ukambani and in other areas. We have sleeping sickness in Lambwe Valley. Therefore, they should do a demarcation, where you find some of the conditions are rampant and spread out the necessary drugs and supplies. This will enable them to match the medical conditions prevalent and important in that area so that they do not run short of supplies. That is why the county governments have to resort to *ad hoc* purchases of these drugs from the shelves.

Mr. Temporary Speaker, Sir, this Bill is more than what you see written here. If we go wrong in the procurement of these drugs and medical equipment, then we are done.

Mr. Temporary Speaker, Sir, sometimes in developed economies, drugs may run their course and expire. There is rewiring or rewinding, and there are certain pharmaceutical industries that can rewind those drugs. We have also become victims of intellectual property drugs. They are 10 times more expensive than the generic drugs. Generic does not mean that they do not have potency, efficacy or are not good quality drugs.

Mr. Temporary Speaker, Sir, I feel that I want to enrich this debate when my time is almost up. Please add me some minutes. This is such an important topic that I think we are richer in this debate than just glossing over it.

You can rewind those drugs and get a life out of them to make them important, critical and efficacious. For example, when I was the Minister for Health, we had the HIV epidemic at a prevalence rate of 14 per cent. The patented drugs were out of this world in terms of cost. It costed USD1,000 to treat a patient and nobody could afford them. I, therefore, looked at the World Trade Organisation (WTO) treaties and agreements, and in particular the agreement which said that if you have an emergency in a country, you can declare it as such; then that will allow you to import generic drugs. I made a request and Parliament held a session in Mombasa, whereby the only agenda was the HIV pandemic in this country. The average prevalence was 14 per cent then. By the time we reached there, people were asking, "What should we do?" I told them that, one, let us amend the law and go through Article Six of the WTO, Trade Related Activities and import the generic drugs from Brazil, India and Cuba. In fact, Cuba was producing the molecules of HIV/AIDS. We even produce them, and these are the ones which are being brought from there. The prices then dropped from USD1,000 to USD200 and, today, I think they are below USD100. That is why you must study the market of drugs and see whether they have run their course of 10 or 15 years, depending on what potency they had given that drug. You then go for cheaper, but more efficacious drugs that will help our populations.

Mr. Temporary Speaker, Sir, if we allow county governments to partner with the national Government, it must then be precedent upon this that the county governments should have a bigger say through this Bill. If need be, further amendments should be done so that they have a bigger say because they are greatest consumer. I say so because I know that the national Government though the Ministry of Health today is only in charge of policy, infectious diseases, pandemics, control of infectious diseases and also control of the referral hospitals. These include the Kenyatta National Hospital (KNH), the Moi Teaching and Referral Hospital (MTRH) and I hear that the third one is in Nyeri County Hospital in Othaya. Then, of course, there are the infectious diseases hospitals. That is all they have. Therefore, where is this budget going?

The next step that we must take, as the Senate, is to ensure that the national Government gives the bulk of resources to county governments to take care of health facilities. That is the way we should go. I have no quarrel with these amendments that when we tied up, the two members who are going to KEMSA should be able to take care of these arrangements. Finally, when this is agreed upon, this Bill should be scrutinized further to ensure that all those arraignments, particularly the human---

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. (Prof.) Onger, I add you five minutes.

Sen. (Prof.) Ongeri: Thank you, Mr. Temporary Speaker, Sir. I know that one of the most pernicious headache is human resources in county governments. Human resource in county governments is becoming a problem and the county governments do not know how to handle it. Some have gone for the easy way – applying *carte blanche* dismissal. That does not solve the labour relations problems. These are specialised people whom you must give a hearing. You must listen to their wants and problems and try and accommodate them.

As we expand the Level 5 institutions in county governments, we must bear in mind that all county governments are potentially Level 5 hospitals. With Level 5 hospitals and the kind of specification we have in treatment and equipment which are being supplied to these hospitals, you need experts to run these machines. How can you expect experts to run those machines and you pay them peanuts, and you have not recognised their working hours, facilities and what they need to do?

Mr. Temporary Speaker, Sir, there was a time when I was an intern at the KNH, which was then called The King George VI Hospital. We were about 10 African doctors, and the rest were white people. We never had time to sleep because we worked for 24 hours, and we were devoted to that work. How do we get our doctors to become devoted to their work and to work jealously for our own people, patients, parents, sisters and brothers and Kenyans at large? Kenyans are suffering, particularly with the disease burden. We have cancer as a big scourge in this country. The cost and management of cancer throughout the country is enormous. All of you are privy to the realisation that you are being called upon for fund raising for cancer patients, either in or outside the country.

There is no point going to check somebody with cancer when it is at stage four, which is too late. No amount of money will help that person. Now that the prevalence of cancer is much higher than what we had anticipated, if we had proper screening facilities in our hospitals and clinics, and we put these as part of our priority, then we would be able to fight cancer. This is why I said the medical supply kitty should cater for testing and screening facilities in our hospitals so that when we screen, we can then be able to detect some of these complicated diseases at an early stage. If we are able to detect them, then we can offer treatment on a timely basis and save lives.

Mr. Temporary Speaker, Sir, I support this Bill with a few provisos, that when it comes to the COG being represented in KEMSA, they should demand a bigger voice and, if need be, the Chief Officer (CO). Secondly, when it comes to the division of revenue, we want to see a situation whereby some of these delegated or devolved functions – like health, agriculture and other areas – should have a bigger cake sliced off from the national Government. In fact, I do not know why we are even arguing about the Kshs327 billion; it should be much higher than that.

[The Temporary Speaker (Sen.(Dr.) Lelegwe left the Chair]

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

All these complications we are inviting ourselves to, is because we have not been given proper preventive and promotive health care in our institutions.

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

Sen. Farhiya: Thank you, Madam Temporary Speaker, for allowing me to support this Bill. I also wish to thank Sen. Seneta for bringing this timely Bill. As you are aware, as per Section 96 of the Constitution, the role of the Senate is to protect counties. Therefore, the Kenya Medical Supplies Authority (Amendment) Bill speaks to that. Sen. Seneta is performing her role in terms of ensuring that counties are well represented.

Madam Temporary Speaker, Clause 4 of the Bill has a provision which allows county governments to enter into partnership with KEMSA for appropriate supply of drugs and medical supplies. I have a problem with Clause 5 of the Bill in terms of the Board. This is because we have provided two slots for counties out of nine slots, which is few for them. For example, there are three Principal Secretaries (PSs), who are sitting on this board. I have a problem with that because all these people represent the national Government. Only two should be enough; for example, one of them should be for finance to deal with the financing of the functions of the board. Why do we need another PS for Devolution? In my view, we do not need that. Let us replace another position for county governments.

Madam Temporary Speaker, in Clause 5(4) on the composition of the Board, we must have a procurement specialist, a person from the KMPDU, and another person who has the knowledge of commerce and finance. We should limit the number of people so that they are members of a professional body that cover those laws. For example, in procurement and supply, there is the Kenya Institute of Supply Management (KISM). We also have the Pharmacy and Poisons Board and for finance, there is the Institute of Certified Public Accountants in Kenya (ICPAK). I insist that members to this Board must belong to a professional body, because the professional bodies regulate their own membership. Therefore, if a member is not able to perform like they ought to, they are disciplined by their professional body. Therefore, we should not have people who are specialists and are not members of any professional body. This is because in case of an issue, we have no mechanism of following up.

I agree with Sen. (Prof.) Ongeru that when procurement is done in bulk, there is economy of scale. What often happens is that most Government-run entities are much more expensive, despite the fact that if they procure in bulk, they should benefit from economies of scale. However, due to corruption, the benefits of the economy of scale are never harvested by the people of this country. At times, value for money is not taken into consideration.

Madam Temporary Speaker, the Board is composed of nine members, but I believe that four members should come from counties. This is because health is 100 per cent devolved, and all the medical supplies that are supplied by KEMSA are for counties.

The Temporary Speaker (Sen. Pareno): So, are you proposing an amendment on the composition of the Board?

Sen. Farhiya: Yes, Madam Temporary Speaker.

The Temporary Speaker (Sen. Pareno): Then you need to find a way to put across that amendment.

Sen. Farhiya: Thank you, Madam Temporary Speaker. I appreciate your comment. I am proposing an amendment and justifying why the amendment is necessary.

Madam Temporary Speaker, KEMSA having a presence in counties is one of the things that should be canvassed. This is because they are currently based in Nairobi. I like the proposal that they supply medicine stocks to last six months. We urge the counties to plan ahead. However, if the Authority that is essential for continuous supply to county governments is based in Nairobi, then they are not extremely useful to counties. This is another issue that needs to be looked at. I am not a health expert, but that will strengthen this amendment.

Madam Temporary Speaker, I also want us to discuss the issue of regulations. If we leave the regulation open-ended, the CS might not be in a hurry to make regulations for this important amendment. Therefore, I propose that they bring the amendments within one year, which should be included on the regulations under Section 21 of this Bill.

Madam Temporary Speaker, this is a timely Bill that is friendly to counties. In the spirit of the Constitution, health is devolved; so, functions and legislations should follow to ensure that, that is achieved. Section 19(f), on the manner of discharge of functions, states that in discharging its functions under this Act, the Authority shall put into place measures to ensure-

“application of sound commercial principles in the procurement, storage and distribution of drugs and other medical supplies.”

Sometimes we make brilliant laws. I share my fears with Sen. (Dr.) Ali, that sometimes we make good legislations which are changed in the other House. However, they have no better ideas to improve the Bill.

The other problem that we have in this country is that we have good laws, but we do not implement them. Therefore, there is need to have a Committee on Implementation to make sure that resolutions that we pass are followed.

We come up with good resolutions, but there is nobody to ensure that they are implemented. Sometimes governors do things without caring about integrity. They break the law with impunity and there is nobody to ensure that the laws are followed because there are no consequences.

Madam Temporary Speaker, this is a timely Bill and I support it.

Thank you for allowing me to contribute on it.

Sen. Shiyonga: Thank you, Madam Temporary Speaker, for giving me this opportunity to support this Bill sponsored by Sen. Seneta. As my colleagues have said, this Bill is timely. It needs a lot of scrutiny because it touches on the lives of our people, especially when it comes to the UHC, which is one of the Big Four Agenda that we need to achieve. That is what the President wants Kenyans to enable him achieve during his second term.

Madam Temporary Speaker, KEMSA has had many challenges in the past. Before I talk about the challenges, there is need to harmonise the procurement process of drugs and other medical supplies. There is also need to enhance control of stocks, facilitate the supply chain of medical equipment and other products. They also need to standardise drugs, ensure proper monitoring and evaluation, especially in the health sector and properly deal with transparency in supply of drugs; not forgetting safeguarding of drugs to be consumed by the citizens of Kenya. However, we have had apathy in the

management of the same since devolution. UHC cannot be achieved when we have a push and pull, and that is why I said this Bill is timely. This is because it will ensure decentralisation of health functions to the county governments, because the national Government is fighting for superiority.

This Bill seeks to ensure collaboration between KEMSA and the county governments. What else do we need? Apart from power, we have concentrated funds that need to go to the county governments at the national level. That is killing devolution and, consequently, killing our own citizens because functions cannot be carried out.

We had the Division of Revenue Bill, which seems to have collapsed. If it is passed, it might give some hope to Kenyans and county governments. In Clause 4(e), this Bill seeks to ensure that the KEMSA supports county governments to establish and maintain appropriate supply chain systems for drugs and medical supplies. I worked with the Ministry of Health for over 25 years, and I know what it means to have a transparent supply chain system during procurement of drugs. This Bill seeks to ensure standardization of processes, quality equipment, drugs and intended services to the population. If this is ensured, then we will achieve what it is intended through partnership. There is also need to have consultation between the national Government and county governments when it comes to matters of health.

Madam Temporary Speaker, according to the Statement of the Objects and Reasons for the Bill, Clause 6 of the Bill proposes to amend Section 19 of the Act to provide further responsibility to the Authority to ensure that the Authority consults the county governments prior to procuring drugs for them. That will save our counties from being forced to procure drugs, because the KEMSA has been forcing counties to receive drugs and unnecessary equipment. That is something we have been talking about since the beginning of this Parliament, and it will be cured if there is consultation.

Drugs should be procured according to the requirements. You do not have to force health facilities to have medicine or any equipment they do not require. There should be consultation to understand the needs of a particular county before forcing them to procure equipment and drugs. KEMSA might have been facilitating the country as a whole when it comes to procurement of drugs, but our county governments are still struggling with how to come up with structured ways of dealing with matters of health. That is why there are many strikes in the counties. As much as we want the KEMSA to ensure that health care services are enhanced, let the county governments also take responsibility and be ready to assist their citizens, because representation and inclusion should be of value to the people, especially those who receive the services. Procurement should not be done to enrich a few people in the county governments. When people hear about procurement in our country, they always think about fattening their pockets. County governments need to understand that in as much as we are pushing for this, they should not procure what is not necessary for the people.

Madam Temporary Speaker, KEMSA had many challenges even before the promulgation of the Constitution 2010. It is time we ensured that devolution of functions is carried out by entities that are responsible. One of the functions is health. Systems that are transparent should be monitored.

It is only through this Bill, with the inclusion of the amendments proposed by my colleagues, that will be able to enhance the UHC. The kits that will be procured through KEMSA should have the necessary equipment and medicine needed in specific regions. We should have things such as the Rapid Test Kit and essential drugs. We should not have unnecessary medicine because someone wants to make money out of it.

Madam Temporary Speaker, I beg to support.

Sen. (Dr.) Milgo: Thank you, Madam Temporary Speaker, for giving me this chance to contribute to this Bill. It has come at the right time, when we have devolved units. If we pass this Bill, it will align KEMSA with the requirements of the counties. It is not good that health, a devolved function, is being controlled by the national Government. That is why KEMSA is still supplying medical equipment and drugs to the counties without regard of the necessary requirements. This has caused suffering to the health units in the counties, because KEMSA either delays to supply the drugs, or they supply expired drugs to the medical facilities. The expired drugs become a challenge to the counties because they are poisonous and cannot be used to treat diseases. Those drugs could also be the reason why we have illnesses such as cancer.

Madam Temporary Speaker, it is unfortunate that we do have medical equipment that was procured by KEMSA, but they have not been put to use. Consequently, they are collecting dust because the Authority procured equipment that is not required by those counties. We also have cases where counties do not have staff who know how to use the equipment.

Madam Temporary Speaker, Clause 5 of this Bill proposes for the representation of the CoG in the Board of this Authority, although I think there should have been more than two representatives from the CoG because they have a major interest in the Authority. Those representatives will be the voice of the counties and they will help in the procurement process. The medicine procured by KEMSA is usually very expensive, but when we allow the counties to deal with the procurement entities, they will be in a position to negotiate based on their abilities.

The CoG should also be allowed to take part in the nomination of the Board members, other than having the national Government doing it alone. That is because the CoG will ensure that they nominate people who will serve them well. Decisions made in the Board affect the counties. Therefore, if KEMSA is left to procure on its own, it ends up being prone to corruption. That is why our people are still seeking for medical attention at the KNH and other national medical facilities.

Madam Temporary Speaker, Clause 6 proposes to amend Section 19 of the Act, and it seeks to obligate the Authority to ensure that-

“There is consultation and proper identification of the needs of the county government prior to such procurement.”

That will go a long way in ensuring that the county governments have a say in the authority, and that they are able to deal with health units in a better way.

Our people will be safe if we pass this Bill. Our counties are now controlling Level 1 to Level 5 facilities. In my County, the Longisa County Referral Hospital is supposed to be the largest hospital, but it lacks certain drugs and facilities. Consequently, our people end up going all the way to the KNH and Moi Teaching and Referral Hospital

(MTRH). We have patients from humble backgrounds who cannot afford the medication in those facilities or even the transportation cost. Devolution was supposed to take the services to the door steps of the people within the counties, and it should do that.

When this Bill is assented to, the people in our counties will be saved the nightmare of seeking for medical treatment elsewhere. When the CS controls KEMSA, he at times proposes regulations that do not augur well with the counties. This Bill will now require the CS to consult the CoG so as to ensure that the county devolution units are catered for, as captured in Clause 7 of this Bill.

This Bill is important, especially at this moment when our Government is interested in the UHC. For the UHC to succeed, the supply of medical equipment and the management of the Authority have to be streamlined for it to facilitate the medical supplies and the services that are offered to the people in the counties.

The Temporary Speaker (Sen. Pareno): I see no further requests. I am informed that the Mover of this Bill, Sen. Seneta, is on official duties outside the country. I, therefore, defer the reply to another date.

(Reply to the Bill deferred)

Hon. Senators, I have done some consultation. I am informed that the rest of the Business of the day – that is Order Numbers 11 to 19 may not be processed today because for various reasons, the Movers are not available. I, therefore, defer the Orders.

BILLS

Second Reading

THE COUNTY HALL OF FAME BILL
(SENATE BILLS NO. 39 OF 2018)

(Bill deferred)

Second Reading

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL
(SENATE BILLS NO. 1 OF 2019)

(Bill deferred)

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL
(SENATE BILLS NO. 2 OF 2019)

(Bill deferred)

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*Second Reading*THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL
(SENATE BILLS NO. 3 OF 2019)*(Bill deferred)*
*Second Reading*THE CONTROL OF STRAY DOGS BILL
(SENATE BILLS NO. 4 OF 2019)*(Bill deferred)***MOTION**RENAMING OF MURANG'A UNIVERSITY OF TECHNOLOGY
TO KENNETH MATIBA UNIVERSITY OF TECHNOLOGY

THAT, AWARE THAT, Murang'a University of Technology (MUT) is a Chartered University established under Section 13 of the Universities Act, 2012, and is positioning itself to develop a distinctive profile as a progressive and international Technical University, growing its enrolment strategically;

FURTHER AWARE that the University is located in Murang'a County, the home County of the late politician Kenneth Njindo Matiba, who died a patriotic and political hero, with numerous achievements spanning four decades;

NOTING THAT, the late Matiba was a prolific industrialist in the hospitality and education sector, and an accomplished public servant having served as the first indigenous African Permanent Secretary for Education in 1963; Permanent Secretary for Commerce; Chairperson of the Kenya Football Federation from 1974-78; a member of parliament for Kiharu constituency; Cabinet Minister for Health; Culture & Social Services; and Transport & Communications;

FURTHER NOTING THAT, the late Matiba was part of the opposition alliance that led the liberation struggle for the restoration of multi-party democracy through the Forum for the Restoration of Democracy (FORD), later founding FORD-Asili under which he ran for presidency in 1992 general election;

COGNIZANT that under the Heroes Act, 2014, the state is obliged to confer recognition to the late statesman for his cardinal contributions to the political and economic growth of this country;

FURTHER COGNIZANT that other patriotic Kenyans like Jomo Kenyatta, Daniel arap Moi, Masinde Muliro, Dedan Kimathi and Jaramogi Oginga Odinga have been accorded such recognition;

NOW THEREFORE, the Senate urges the National Government in remembrance of Matiba's contribution to our Nation, to rename Murang'a University of Technology to Kenneth Matiba University of Technology.

(Motion deferred)

MOTION

CREATION OF SUPPORT SERVICES FOR THE DISCIPLINED FORCES AND THEIR FAMILIES

THAT, APPRECIATING the commitment and sacrifice by members of the disciplined forces in protecting our country from both internal and external aggression;

AWARE of the risky and stressful environment that the officers are exposed to daily in the line of duty, combined with the increased terrorism threats at home, and abroad;

NOTING that members of the disciplined forces, and by extension, their families are exposed to traumatic incidents both at home and abroad that manifest as living in constant fear, debilitating depression, nightmares, crippling anxiety and thoughts of suicide commonly referred to as Post Traumatic Stress Disorder (PTSD) leaving them exposed to the stigma of society and unable to care for themselves and their families the way they could before;

RECOGNIZING that there is no structured national comprehensive program for posttraumatic stress counselling either for active or returning soldiers and their families;

NOW THEREFORE the Senate calls upon the Ministry of Interior and Co-ordination of National Government, in partnership with the Ministry of Defence, to establish counselling and support centres in all premises housing disciplined forces, and provide mandatory counselling to all service personnel and the families of those currently serving, and those who may have been killed in the line of duty.

(Motion deferred)

MOTION

WAIVER OF INTEREST ON HELB LOANS FOR GRADUATES

THAT, AWARE THAT the Higher Education Loans Board (HELB) has, for over the last two decades, become the leading financier of higher education in Kenya whose mandate is to source funds and lend them as affordable loans, bursaries and scholarship to students pursuing higher education in recognized institution;

COGNIZANT THAT, the Ministry of Education announced that the government has lost Kshs7.2 billion through people defaulting payment on loans issued by HELB translating to 74,692 graduates who have defaulted the loans payment;

NOTING THAT, measures were taken to enhance the HELB loan recovery process which included a six month waiver of accumulated interest and penalties, and working with law enforcement officers to make sure the defaulters who are employed payback the loans;

CONCERNED THAT, there are graduates from institutions of higher learning who have not been gainfully employed for many years after graduation, and are therefore burdened with loans that have accumulated interest and penalties that they have no means to repay;

FURTHER CONCERNED THAT, when beneficiaries fail to remit their monthly instalments for more than three months, HELB reports them to the Credit Reference Bureaus (CRB) preventing them from accessing loan facilities with any financial institution in Kenya, accessing employment opportunities in the government and major private and publicly listed companies and the loan guarantors are pursued and forced to service the HELB loan;

NOW THEREFORE, the Senate recommends that the Ministry of Education and HELB –

1. Institutes a six (6) month full waiver of all the interest and penalties accrued, including the lifting of Credit Reference Bureau blacklisting, for defaulters who are willing to repay their loans in entirety, within the six (6) month period; and
2. Embarks on a forty-five (45) day sensitization exercise preceding the waiver, not later than ninety (90) days after the passage of this motion.

(Motion deferred)

MOTION**IMPROVING ALLOCATION OF RESEARCH FUNDS TO
INSTITUTIONS OF HIGHER LEARNING**

THAT, AWARE THAT early childhood education and village polytechnics are a function of the County Governments; Secondary schools, Universities, Tertiary institutions and other institutions of research are a function of the National Government under the Fourth Schedule of the Constitution;

FURTHER AWARE THAT, institutions of higher learning have two basic functions, teaching and conducting research;

CONCERNED THAT, such institutions largely concentrate on “teaching” rather than “research”, as a method of enhancing and imparting the practical application of skills, attitude and knowledge by learners;

NOTING THAT, funds allocated towards community and development oriented academic research are neither sustainable nor adequate;

ACKNOWLEDGING THAT, various national policies on research and innovation are available, but fragmentation in the sector has short-changed the vision of a progressive national research agenda, thereby emboldening low science culture among the population, low global competitiveness ranking, inadequate funding, and poor linkages between academic research and commercial industry;

NOW THEREFORE, the Senate urgently calls upon the Ministry of Education, Science and Technology:

(i) To provide a comprehensive report from all institutions of higher learning on the status and performance of Research & Innovation Programs in the Country;

(ii) Re-assess Sector Policies, and Develop new work-plans towards:

a. Improving allocation of funds for Academic as well as Sustainable Community Based Research to public institutions of higher learning.

b. Providing subsidies, and frameworks for partnerships between public and private institutions of higher learning to enable collaboration and better organization in research and innovations for community/county development Projects.

(Motion deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Pareno): Hon. Senators, there being no other business for the day, it is now time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Wednesday, 3rd July, 2019 at 2.30 p.m.

The Senate rose at 6.10 p.m.