

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 13th March, 2019

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

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

PRAYER

PAPERS LAID

REPORTS ON THE FINANCIAL STATEMENTS OF VARIOUS COUNTY EXECUTIVES

Sen. (Dr.) Langat: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Wednesday, 13th March, 2019:-

- (1) Report of the Auditor-General on the Financial Statement of the County Executive of Embu for the Year ended 30th June 2018;
- (2) Report of the Auditor-General on the Financial Statement of the County Executive of Nyeri for the Year ended 30th June 2018;
- (3) Report of the Auditor-General on the Financial Statement of the County Executive of Meru for the Year ended 30th June 2018;
- (4) Report of the Auditor-General on the Financial Statement of the County Executive of Kilifi for the Year ended 30th June 2018;
- (5) Report of the Auditor-General on the Financial Statement of the County Executive of Migori for the Year ended 30th June 2018;
- (6) Report of the Auditor-General on the Financial Statement of the County Executive of Kisii for the Year ended 30th June 2018;
- (7) Report of the Auditor-General on the Financial Statement of the County Executive of Marsabit for the Year ended 30th June 2018;
- (8) Report of the Auditor-General on the Financial Statement of the County Executive of Taita Taveta for the Year ended 30th June 2018;
- (9) Report of the Auditor-General on the Financial Statement of the County Executive of Kitui for the Year ended 30th June 2018;
- (10) Report of the Auditor-General on the Financial Statement of the County Executive of Tharaka Nithi for the Year ended 30th June 2018;

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- (11) Report of the Auditor-General on the Financial Statement of the County Executive of Isiolo for the Year ended 30th June 2018;
- (12) Report of the Auditor-General on the Financial Statement of the County Executive of Mombasa for the Year ended 30th June 2018;
- (13) Report of the Auditor-General on the Financial Statement of Nairobi City County Executive for the Year ended 30th June 2018;
- (14) Report of the Auditor-General on the Financial Statement of Kakamega County Executive for the Year ended 30th June 2018;
- (15) Report of the Auditor-General on the Financial Statement of Siaya County Executive for the Year ended 30th June 2018;
- (16) Report of the Auditor-General on the Financial Statement of Mandera County Executive for the Year ended 30th June 2018;
- (17) Report of the Auditor-General on the Financial Statement of Busia County Executive for the Year ended 30th June 2018;
- (18) Report of the Auditor-General on the Financial Statement of Tana River County Executive for the Year ended 30th June 2018;
- (19) Report of the Auditor-General on the Financial Statement of Bungoma County Executive for the Year ended 30th June 2018;
- (20) Report of the Auditor-General on the Financial Statement of Turkana County Executive for the Year ended 30th June 2018;
- (21) Report of the Auditor-General on the Financial Statement of Kisumu County Executive for the Year ended 30th June 2018;
- (22) Report of the Auditor-General on the Financial Statement of Trans Nzoia County Executive for the Year ended 30th June 2018;
- (23) Report of the Auditor-General on the Financial Statement of Lamu County Executive for the Year ended 30th June 2018;
- (24) Report of the Auditor-General on the Financial Statement of the County Executive of Kirinyaga for the Year ended 30th June 2018;
- (25) Report of the Auditor-General on the Financial Statement of the County Executive of Nyamira for the Year ended 30th June 2018;
- (26) Report of the Auditor-General on the Financial Statement of the County Executive of Samburu for the Year ended 30th June 2018; and
- (27) Report of the Auditor-General on the Financial Statement of the County Executive of Murang'a for the Year ended 30th June 2018.

Thank you, Mr. Speaker, Sir.

(Sen. (Dr.) Langat laid the documents on the Table)

NOTICE OF MOTION

RENAMING OF MURANG'A UNIVERSITY OF TECHNOLOGY
TO KENNETH MATIBA UNIVERSITY OF TECHNOLOGY

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

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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 Stanley 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 (KFF) from 1974-1978; 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 the 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 and democratization, to rename Murang'a University of Technology as Kenneth Matiba University of Technology.

STATEMENTS

EXPIRY OF DRUGS AT KEMSA WAREHOUSES

Sen. Cherargei: Mr. Speaker, Sir, I rise to request for a Statement on the expiry of drugs at the Kenya Medical Supplies Authority (KEMSA).

Mr. Speaker, Sir, pursuant to Standing Order No.48(1), I rise to seek a Statement from the Standing Committee on Health on the expiry of drugs at KEMSA warehouses. In the Statement, the Committee should:-

(1) Explain the circumstances under which KEMSA is currently holding drugs worth Kshs1.2 billion which have expired or are about to expire.

(2) State why KEMSA is storing drugs worth Kshs1 billion which have a shelf life of seven months, which is a short period as per pharmaceutical practices.

(3) State the reason why drugs are expiring in KEMSA warehouses while almost all public health facilities across the country are experiencing severe shortage of drugs; and,

(4) State the steps being taken by the Ministry of Health to address the issue of drugs expiring at KEMSA and the shortage of drugs in hospitals.

Mr. Speaker, Sir, I am fully aware that health is 98 per cent a devolved function; it is only around 2 per cent that is controlled by the National Government. This matter is so serious; it is no wonder we are treating funny diseases in this country because some of the pharmaceutical products have a short shelf life that, at times, they become a danger to the people of this country.

Mr. Speaker, Sir, I expect the committee to go into details and give this House a comprehensive report on how drugs are being supplied to counties. Even if you go to my village health centre, called Mosoriot Health Centre in Nandi and other 96 health facilities in Nandi County, you will find that they only have Panadol or they do not have drugs at all in the entire county, including Kapsabet County Referral Hospital.

Therefore, the big question is this; it appears as if the county purchases drugs on a quarterly basis, or even in two months' time; and I know that it is the same across other counties. For example, my county normally buys drugs worth Kshs70 million to Kshs80 million within three months. However, after one or two months, you are told that the only drug available is Panadol. This is despite the information that has come to light now, that most of the drugs that KEMSA is supplying sometimes have a short shelf life or are expired and, therefore, they endanger the lives and health of many Kenyans.

I expect the Committee to look into the matter of supply of the drugs and the expiry period for us not to endanger the lives of Kenyans. The reason as to why some lifestyle diseases and cancer are now becoming an issue of national concern is because KEMSA has willingly and negligently refused to perform its duty of ensuring that the drugs that are supplied to our health facilities, across the 47 counties, are vetted and checked.

This is happening even as the President implements the Big Four Agenda that includes Universal Health Care. KEMSA must tell the country what they are doing to ensure that the drugs that they supply to our county governments and the referral hospitals, run by the Ministry of Health and the national Government, meet the standards and regulations that have been provided.

I expect the Committee to provide this information because Kshs1.2 billion is not 'chicken change'; it is a lot of money. We expect correct and far reaching answers and KEMSA should be held accountable even if it means investigating them. The necessary investigative agencies such as the Ethics and Anti-Corruption Commission (EACC), the Director of Public Prosecution (DPP) and the Directorate of Criminal Investigations (DCI) should take cue and notes so as to ensure that this matter is put to rest.

Sen. (Dr.) Ali: Thank you, Mr. Speaker, Sir. I stand as a Member and the Vice Chairperson of the Committee on Health. With all due respect to the Hon. Senator for Nandi County, we had a meeting with KEMSA this morning on the same issue; the so called drugs that have expired. The fact of the matter is that there were no expired drugs.

The fact is that the board met last month and they agreed that there were some drugs worth Kshs1.2 billion which were at risk. By the time this thing was coming up last week, all those drugs had been supplied and no drugs expired.

However, we will ask them for more details but KEMSA is doing the best it can. Counties are the ones that apply for medicine from KEMSA, KEMSA supplies the medicine but the counties do not pay them. There are a lot of problems. KEMSA is complaining that counties do not pay and that the counties are buying medicine from other dealers instead of getting the drugs from them. However, we will ask them to give a comprehensive answer on everything that the Senator has asked.

Sen. Omogeni: Thank you, Mr. Speaker, Sir. I rise to first declare that I am a Member of the Committee on Health and salute our good friend, Sen. Cherargei, for having brought this matter to the attention of the House.

A healthy nation is a matter of national interest. This issue of KEMSA supplying medicine to all counties is a problem that we have all encountered in our counties. Last month, in my County of Nyamira, we had serious drug shortages in a number of hospitals. When we asked questions, the answer that we got was that KEMSA lacks the capacity to adequately supply medicine to 47 counties. It is a good thing that Sen. Cherargei has brought this matter to the attention of this House and the Committee on Health should do an in-depth investigation and come up with an answer as to whether KEMSA has the capacity to continue enjoying the kind of monopoly that it is enjoying in terms of supply of medicine.

Last year, the Committee on Health was investigating a scandal where a consignment of medicine was discovered somewhere in Parklands and it became a police matter. There are a number of issues surrounding the manner in which KEMSA is managed and its way of dealing with Kenyans, especially when it comes to ordering drugs whose shelf expiry date is very short. That is something that we should not wish away as Kenyans.

I do not understand why people will say that they have been given drugs, that are about to expire, for free by KEMSA when they are having a medical camp. The question is; why do we keep ordering drugs that are about to expire for us to give them out for medical camps? I plead that this matter gets the attention that it deserves from the Committee on Health and once we look at it, we should once more summon KEMSA then give a detailed report to the House.

I support the Statement.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I want to support the Statement by Sen. Cherargei, the distinguished Senator for Nandi County. I rise to ask the Vice Chairperson of the Committee to have an open mind. This is because he has already taken a position---

(Sen. (Dr.) Ali stood at his place)

The Speaker (Hon. Lusaka): Order, Member!

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

The Speaker (Hon. Lusaka): Order, Member! You are not on record. Take your seat. Proceed, Sen. Orengo.

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

(The Senators consulted loudly)

The Speaker (Hon. Lusaka): Order! Vice Chairperson. You are not on record. You are off record.

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

The Speaker (Hon. Lusaka): Order, Member! Take your seat. You are out of order. Proceed, Sen. Orengo.

(Laughter)

The Speaker (Hon. Lusaka): Order, Members. Proceed, Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, this was one of the most efficient reactions that I have seen in this Chamber on a matter which is very weighty. If you hear the comments made by the Member of the Committee, Senior Counsel, Sen. Omogeni, there is a genuine grievance and concern in the Statement that has been requested. I hope that the Committee on Health will take this matter seriously. This matter should not just be discussed in a meeting or over a cup of tea; this is a matter that demands a proper answer from the Committee.

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

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

Sen. (Dr.) Ali: Mr. Speaker, Sir, the Senate Minority Leader is insinuating a wrong thing. We did not have a cup of tea with these guys. We had a meeting this morning where we discussed this issue. That is what I relayed and I said that we are going to look into it. I also said that we will make sure that these things are done in a proper way. I do not want the Members to associate me with anything that is not right. That is because they are saying that I am behaving as if I am employed by KEMSA. I am not and I have no business with it.

(Laughter)

The Speaker (Hon. Lusaka): Order Member!

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

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

Sen. Wambua: Thank you, Mr. Speaker, Sir. Is the Senator for Wajir County in order to insinuate that there is a problem with tea being served when Committees of the Senate meet? That happens every time. I do not see anything wrong with being served tea because it is a standard procedure approved by the Parliamentary Service Commission

and every Member of this House who sits in any Committee is served tea, together with our guests. Is he in order?

Sen. Madzayo: Ahsante, Bw. Spika. Sen. (Dr.) Ali ni ndugu yangu na rafiki yangu. Tusiweze kuwa na sintofahamu kwa sababu hivyo ndivyo anavyo ongea akiwa kule anakotoka. Sio hasira ama kutukana mtu. Hiyo amesema ni sawasawa kabisa.

(Laughter)

Sen. Cherargei: Mr. Speaker, Sir, my good friend, the distinguished Sen. (Dr.) Ali, said that they had discussed. Is he insinuating that he was pre-emptive of my Statement or was he aware that this matter was going to come up before the House hence the reason as to why he has said that it was part of the agenda?

Sen. Kinyua: Ahsante sana, Bw. Spika. Ninataka kukubaliana na Naibu wa Mwenyekiti wa Kamati ya Afya kwa sababu ni ukweli ya kwamba tulikuwa na mkutano na tulijadilia maswala ambayo yametajwa hapa. Pia, amesema yakwamba tutazingatia mambo ambayo yametajwa hapa. Seneta wenzangu wanasema ya kwamba ni kama alikunywa chai na hakukua na mkutano ambao ulipaswa kufanyika.

Sio ukweli alivyosema Sen. Cherargei ya kwamba tulijua ya kwamba haya maneno yangefanyika. Tulijadiliana hayo mambo kwa sababu hayo ndiyo mambo ambayo tunayafuata na tunayatekeleza kama Kamati. Kwa hivyo, hatuwezi kusema ya kwamba Naibu wa Mwenyekiti alifanya jambo la makosa. Tulikuwa tukitekeleza kazi ambazo tunapaswa kutekeleza na tutaendelea kutekeleza kwa mjibu wa sheria zilizoko katika Katiba yetu.

The Senate Minority Leader (Sen. Orenge): Mr. Speaker, Sir, anytime is tea time except when you think otherwise. I do not think that should concern us. However, I hope that the issue addressed by Sen. Omogeni together with what was addressed by the distinguished Senator for Nandi County will be included in the report. Sen. Omogeni raised very weighty matters and I hope that the Committee can give us a report on those issues in two weeks.

I thought the Member was standing up as the Vice Chairperson to tell us when he was going to come up with a report. Instead, he gave us a report which we did not ask for and he neglected this one.

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

He is still talking.

(Laughter)

Sen. (Dr.) Langat: Thank you, Mr. Speaker, Sir. I want to support the Statement by Sen. Cherargei. I differ with Sen. (Dr.) Ali on the statement that some counties are delaying payments. There was a time when my County, Bomet County, paid three months in advance but the drugs were delayed for six months. That is a serious thing. I wish that the Committee is serious enough to investigate and find out the actual reasons instead of taking a cup of tea in the Committee and making a conclusion that the counties

are the ones that are delaying the payments. I would like them to extend the investigation to the counties. When they do that, they will establish that some counties have paid in advance but the drugs are not supplied.

When we go to the counties, we find people complaining that the painkillers are not even there. We should not be defensive; instead, we should conduct a research and find out the truth that should be tabled in this House.

The Speaker (Hon. Lusaka): Vice Chairperson, I think the Senators are just saying that a request for a Statement has been issued. Despite what you have said, approach it with an open mind, so that you give a comprehensive report on some of the issues that have already been raised. I think that is all that is being said here.

Sen. Wetangula.

Sen. Wetangula: Thank you, Mr. Speaker, Sir. I came in when the Senator for Wajir was talking like an Italian.

(Laughter)

We understand him. I was with him in one of the Parliaments in the “lower” House and he carried the distinction of being the loudest Member.

The Speaker (Hon. Lusaka): Sen. Ochillo-Ayacko, what is your intervention?

Sen. Ochillo-Ayacko: On a point of order, Mr. Speaker, Sir. Have you heard the distinguished senior Senator for Bungoma saying that Dr. Ali is talking like an Italian? Can he explain to the House how Italians talk?

(Laughter)

The Speaker (Hon. Lusaka): Sen. Wetangula.

Sen. Wetangula: Mr. Speaker, Sir, Italians talk figuratively. When an Italian is talking, his hands will be everywhere. That is exactly what the distinguished Senator was doing. If you have an Italian friend, he cannot whisper to you; he will easily have a punch on your face, because he talks with his hands all over.

This is a very important Statement from the distinguished Senator for Nandi. In the counties we come from, particularly rural counties, people are dying in their hundreds from very preventable ailments. People are dying of malaria, diarrhea, dysentery and small ailments simply because of the stranglehold on the supply and distribution of drugs by KEMSA.

Mr. Speaker Sir, if you are going to pass this matter to the Committee of Dr. Ali and his team, we need as this House to dismantle or devolve KEMSA. I would suggest two things. First, KEMSA should not be exclusively domiciled in Nairobi. When you order for drugs from Turkana, Siaya or wherever, they start procuring a transporter, and by the time the drugs reach there, the purpose for which they were ordered is gone. So, we need to devolve KEMSA to regions. Even if it is not in every county, they must have a meaningful go-down in various regions for quick delivery of drugs to hospitals.

Secondly, I think the Committee on Health, probably working with the Committee on Finance and Budget, should engage the national Government to give a

guarantee to KEMSA that when any county orders for drugs - because these are emergencies for the population - KEMSA is obligated to deliver with a guarantee from the national Government that the county government will pay. This will ensure that we do not have delayed deliveries.

More importantly, the Committee must also investigate the Jubilee honchos who have a stranglehold and monopoly of delivery of drugs to KEMSA. These are people who have made billions of shillings, and at an appropriate time, we will name them here. They are supplying drugs at prices that nobody controls and checks. They have a monopoly and brag about it. These are public resources for the people of Kenya and we will not as a House sit and watch a few people enriching themselves at the expense of everybody.

Mr. Speaker, Sir, you can understand the frustration of the Vice-Chairperson of the Committee. They are like castrated bulls; there is nothing they can do.

(Laughter)

The Speaker (Hon. Lusaka): Sen. Mary Yiane Seneta.

Sen. Seneta: Thank you, Mr. Speaker, Sir, for giving me a chance to add my voice on this important Motion. From the outset, I want to congratulate Sen. Cherargei for having thought of this important aspect of health in our counties.

I want to agree with him that there is need for the Committee on Health to investigate, first, the quality of drugs that are going to our county health facilities. There is also need to look at the quantities supplied versus standards and prices.

Mr. Speaker, Sir, as I speak, there is information going round in the social media about substandard products, which are being sold to our girls and women. The *Always* sanitary towels we buy for our girls are not even safe; they are substandard.

We may not even need an answer here. The Vice-Chairperson was giving an answer in the wrong place. This is because we want thorough investigations on KEMSA. We would also wish to hear them, having done investigation and visited our county facilities, to ascertain the information that Sen. Cherargei is raising here. We do not want an answer from him here. We also do not want KEMSA to come here to answer to a Statement that has not been sought. Therefore, the answer he is giving us here is one that we did not seek for.

I urge the Committee to take its time. We are assisting this Committee by giving them information that they need to get and investigate for the sake of our counties

I beg to support.

The Speaker (Hon. Lusaka): Sen. Mutula Kilonzo Jnr. and we will end it there because it is becoming repetitive and we are already beyond our time.

Sen. Mutula Kilonzo Jnr.: Thank you Mr. Speaker, Sir. By the time they unearth this scandal, they will discover that the supplier of drugs is actually a governor, who is known.

(An hon. Senator spoke off record)

Yes, it is a Jubilee Governor who is supplying medicine. He has run out of money---

Hon. Senators: Name him!

Sen. Mutula Kilonzo Jnr.: Not now! That is why we are giving you work to do. He has run out of capacity to deliver this medicine, but it is a serious issue. This is because at the advent of devolution, the honchos that Sen. Wetangula is talking about pretended that counties have no capacity to purchase and deliver drugs. Therefore, when we talk about of devolution of the function of health, 7 per cent is these cartels about supply of drugs.

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

Sen. Farhiya: On a point of order, Mr. Speaker, Sir. Is the Senator for Makueni in order to say that there is a Jubilee governor who is supplying the medicine? Given that there are 29 Jubilee governors in the country, are all of them guilty? If it is one, then name him.

An hon. Senator: They are 27.

Sen. Farhiya: They are 27; my apologies. I am talking about the Jubilee governors.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I should have been very clear that there are reports that it is a Jubilee governor, and that is why we are asking the Committee to take this matter seriously. Everything is known but we pretend we do not know. We investigate and pretend we are investigating those sorts of things, but the problem is known. Sometimes I wonder the wisdom of having even people who practice medicine in the Committee on Health. In my view, they are conflicted.

Sen. Madzayo: Hoja ya nidhamu, Bw. Spika. Hili ni Bunge ambalo tunaweka stakabadhi ya yote yanayosemwa hapa. Itakuwa hatari kubwa kwa mmoja wetu hapa kusema kwamba kuna mmoja wa magavana---

An hon. Senator: Wa chama cha Jubilee!

Sen. Madzayo: Bw. Spika, yuko chama fulani ambacho amekitaja hapa; cha Jubilee, ambaye ameshindwa kutekeleza vile anavyotakikana kupeleka madawa katika hospitali. Hiyo hoja ni muhimu sana na itakuwa matusi kwa Wakenya ikiwa hatuwezi kuambiwa ni gavana yupi.

An Hon. Senator: Ni nani huyo?

Sen. Madzayo: Ni nani huyo? Hilo ndilo swali tunalotaka kuuliza. Ni nani huyo? Atoboe hapa hapa.

An Hon. Senator: Toboa!

Sen. Madzayo: Aseme hapa ili tupate kujua kinaga ubaga.

The Speaker (Hon. Lusaka): Sen. Mutula Kilonzo Jnr., you may need to substantiate. That is what the Senators are asking for.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, but it is not a statement of fact under the Standing Orders. I just said it is reported. That Statement was crafted very carefully. However, if the Committee is serious, they will discover who this person is and it is not a person who sells tomatoes. They will find out.

The point that I am making is that this allegation, and some of these things, Sen. Wetangula pointed out, that even on the expiry of drugs, do we even know the drugs that

come into the country and is the Kenya Bureau of Standards (KEBS) certifying that these drugs are fit for human use? As Sen. Seneta says, even some of this medicine is substandard.

This country is in a crisis. The health function is in a crisis. The Committee on Health is also in a crisis of its own.

(Laughter)

If they do not stand up and defend this function---

Sen. Kinyua: On a point of order, Mr. Speaker, Sir. I just want to inform the good Senator of Makueni County that it is not KEBS that certifies medicine, but Pharmacy and Poisons Board (PPB).

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, yes, for non-pharmaceuticals. Sorry, the good nurse and Senator is right.

Mr. Speaker, Sir, from what we have heard in this Senate, good wisdom will dictate that, in fact, the Committee on devolution gets involved, together with the Committee on Health. Sen. Cherargei has set a good precedent where tri-party committees have gone into a matter that is cross-cutting, so that we can capacitate the Committee on Health. Where they are incapacitated or conflicted, we can get this information for the benefit of ordinary *mwananchi*.

Sen. (Dr.) Ali: On a point of order, Mr. Speaker, Sir. This is the second time that he saying that the Committee on Health is conflicted. The Committee on Health is not conflicted because we have no business with Kenya Medical Supplies Authority (KEMSA). We do not do business with KEMSA. When you say the Committee is conflicted because the medical people---. It is not right. How are we conflicted?

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

Sen. (Dr.) Ali: How are we conflicted?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, the Vice Chairperson knows.

The Speaker (Hon. Lusaka): Senator, put off your microphone. You put it on when you are not talking and when you talk you put it off.

(Laughter)

Sen. Mutula Kilonzo Jnr.: It is called the “Italian job”.

(Laughter)

Sen. Wetangula: On a point of information, Mr. Speaker, Sir. I wish to inform the distinguished Senator for Makueni County, that perhaps the Vice Chairperson of the Committee on Health is the only stranger in Jerusalem.

(Laughter)

I know and I am prohibited by the Standing Orders to name, that one of the key Members of that Committee is a transporter for KEMSA.

Hon. Senators: Serious! Serious allegations!

Sen. Mutula Kilonzo Jnr.: I warned you but it is okay. *Endelea tu.*

(Laughter)

Do not provoke this thing.

Sen. (Dr.) Langat: On a point of order, Mr. Speaker, Sir. May I just say that the way the Vice Chairperson behaves shows very well that we are headed nowhere if this is the Committee that will investigate this matter. The Committee is sick and cannot investigate this issue on health. I suggest formation of an *ad hoc* committee to assist us on this matter.

An hon. Senator: I think so.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, my proposal was that in view of the seriousness of this matter and for purposes of this Senate and good order, we capacitate the Committee on Health. You order that we have at least two more Committees so that we can resolve the conflicts that all of us know are in the Committee on Health.

The Speaker (Hon. Lusaka): Sen. (Dr.) Kabaka, I will give you the last chance on this.

Sen. (Dr.) Kabaka: Thank you, Mr. Speaker, Sir, for giving me this opportunity. I will be very brief in this regard. I am not supporting and I will never support KEMSA's misgivings or misdoings. However, whereas other counties complain of delays in supply of medicine, the case of Machakos County is the opposite. It is very interesting that drugs are supplied but once they land in Machakos Level 5 Hospital, they are stolen. It is a big shame. They are stolen by certain people whom I will not name.

Sen. Cherargei: On a point of order, Mr. Speaker, Sir. Thank you, my distinguished Senator. I have observed the behaviour of members of the Committee on Health, and it is shocking. They are now behaving in a manner likely to suggest that my request for a Statement is headed to doom. So, I request that this Statement should not be referred to the Committee on Health with all due respect because the behaviour---

The Speaker (Hon. Lusaka): Order, Sen. Cherargei!

(Laughter)

That is the prerogative of the Speaker. You will not usurp my powers.

Sen. (Dr.) Kabaka, continue.

Sen. (Dr.) Kabaka: Thank you, Mr. Speaker, Sir. I think it is high time KEMSA accounted for every penny in this country.

I was saying, ironically, we have a problem in Machakos County. Once we have some medicine supplied by KEMSA, it is stolen instantly. The good Governor of Machakos County is on record having castigated those---

Sen. Ochillo-Ayacko: On a point of order, Mr. Speaker, Sir. I have been sitted here hearing Senators mention things that border on criminality but failing to mention names of people involved. Would I be in order to ask the Senator for Machakos County to give us the names of these people who are involved in criminal activities in Machakos County?

Sen. (Dr.) Kabaka: Thank you, Mr. Speaker, Sir. In response to the Senator for Migori County, Sen. Ochillo-Ayacko, I wish to say that it is within public domain that these people have been arrested. I do not have the record but it went viral that these people were caught having stolen a lot of medicine worth millions of Kenya Shillings. I think it is in the safe hands of the prosecution and the names of those people should be known soon.

The Speaker (Hon. Lusaka): Hon. Senators, I want to commit this to the Committee on Health to work on it and give us a report.

(Laughter)

Let us not cast aspersions on our own committees. Let us give them an opportunity to present a report. It is the report that will inform their competence or otherwise.

Hon. Senators, I have two communications to make.

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION FROM GILGIL HILLS SENIOR SECONDARY SCHOOL, NAKURU COUNTY

The Speaker (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Gilgil Hills Senior School in Nakuru 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.

(Applause)

VISITING DELEGATION FROM UTAFITI DEB PRIMARY SCHOOL, MAKUENI COUNTY

The Speaker (Hon. Lusaka): Hon. Senators, I would also like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Utafiti DEB Primary 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.

(Applause)

Let us have the next Statement by Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, before I seek for the statement, allow me to also welcome the delegations from Gilgil and Makueni.

STATEMENTS

DEATH OF 157 PEOPLE IN ETHIOPIAN AIRLINE CRASH

Mr. Speaker, Sir, pursuant to Standing Order No.47(1), I rise to make a statement on an issue of topical and national concern regarding the air accident involving an Ethiopian Airlines Aircraft, Boeing 737 Max 8 (ET 302) flight ET 302.

As you are all aware, on Sunday, 10th March, 2019, a Boeing 737 Max 8 Aircraft belonging to Ethiopian Airlines crashed killing 157 people on board. Out of this number were 32 Kenyans, 18 Canadians, 9 Ethiopians, 8 Chinese, 8 Italians, 8 US citizens, 7 British citizens, 7 French citizens, 6 Egypt citizens, 5 Netherlands, 4 UN passport holders, 4 Indians, 3 Russians, 2 Moroccans, 2 Israelis, 1 Belgian, 1 Ugandan, 1 Yemeni, 1 Sudanese, 1 Togolese, 1 Mozambican and 1 Norwegian, which fact has now been confirmed.

First, I wish to convey my heartfelt condolences to the families and relatives of all persons who lost their loved ones in the tragic incident.

Mr. Speaker Sir, late last year, on Monday October 29, a Lion Airlines Plane of the same model plunged into the Java Sea 13 minutes after takeoff from Jakarta Airport in Indonesia, killing all the 189 passengers on board. The Lion Air plane was also new and reports are drawing similarities between this accident and the Lion Air Flight 610. In view of these two incidents, one wonders whether the fact that both disasters involved the same aircraft model is a mere coincidence.

The statistics are disturbing for this new model Boeing's 737 Max 8 having brand-new aircrafts that have gone down twice in a year claiming 346 lives in total. Following last October's Lion Air crash in Indonesia, investigators said the pilots had appeared to struggle with an automated system designed to keep the plane from stalling, a new feature of the jet. Preliminary findings suggested that the anti-stall system repeatedly forced the plane's nose down, despite efforts by pilots to correct this.

There are about 350 of the 737 MAX 8 planes currently in service around the world and some countries and airlines have opted to ground the planes in the wake of the Sunday crash including, Singapore, China, Indonesia, South Korea, Mongolia, Ethiopian Airlines, Comair, Brazilian Airline Gor, Mexican Airline Aeromexico, United States of America, Russia, Turkey, Italy, Iceland, Norway, Dubai and Oman, while others are continuing to fly the aircraft pending an investigation into the crash and possible guidance from Boeing Corporation itself.

Worthy of noting, the US Federal Aviation Administration on Monday 11th March, 2019, issued a "continued airworthiness notification to the international community for Boeing 737 Max operators." The notification essentially said that US regulators think the aircraft are safe to operate but that the agency will take additional action if it receives information indicating otherwise.

I therefore wish to take this opportunity to appeal to the Kenya Civil Aviation Authority (KCAA) to liaise with the Federal Aviation Administration for quick

investigations to be carried out to determine the cause of the crash and ensure to the world the safety of using the Boeing 737 Max aircrafts.

I thank you.

Sen. Mwaura: Mr. Speaker, Sir, rise to the support the Statement by Sen. Mutula Kilonzo Jnr. ---

Sen. Khaniri: Point of Order!

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

Sen. Khaniri: Mr. Speaker, Sir, that was a terrible tragedy for this country. In other jurisdictions where their citizens were affected, flags are flown half-mast and days of mourning have been declared. Since this is the first time that we are discussing the same in the Senate of the Republic of Kenya, I think it will be in order for the Senate to observe a minute of silence, led by the Speaker, in honour of our citizens who perished in that particular tragedy.

The Speaker (Hon. Lusaka): I was going to direct that at the end of it. We will observe a minute silence after the contributions.

Go on, Sen. Mwaura.

Sen. Mwaura: Mr. Speaker, Sir I support the Statement by Sen. Mutula Kilonzo Jnr. Many Kenyans died as a result of the tragedy. I have lost one of my professors at Kenyatta University, Prof. Agnes Gathumbi. I also lost some people that I used to engage with at Kenya Airports Authority (KAA) on the issue of employment of youth with disabilities. We had Brigadier George Kahugi and the Ag. Human Resource Manager, Ms. Juliet. All of them are people who served this country in a distinguished way. There are many others that we have lost but Kenya has borne the biggest brunt with regard to the tragedy.

As we know very well, there are issues with Kenya Airways and the competition from the Ethiopian Airlines because Ethiopian Airlines seems to be taking over the airspaces within Africa and beyond. We in Kenya need to be quite careful because sometimes when we procure some of the aircrafts or other related equipment, people are not very keen on doing due diligence with regards to their own safety.

It is not by conjecture or coincidence that many countries have, in quick succession, gone ahead to ban the use of the Boeing 737 aircrafts that are manufactured in Charleston in South Carolina where Sen. Mutula Kilonzo Jnr., I, and others visited last year. Therefore, the USA, obviously has got every reason to protect its own indigenous company because that is the only way countries do, the same manner the Italian Government is protecting the companies involved in Arror and Kimwarer dams. I do not know whether it is the same thing happening regarding the stories we are hearing about Kenya Medical Supplies Authority (KEMSA).

It is a matter of fact that if countries such as Singapore, Malaysia, the whole of the European Union and others that you can mention have gone ahead to terminate contracts with Boeing Corporation because of the type of aircrafts, then it is only fair that we should have a proper investigation. Since Kenya is affected, we need to be issued with the Statement. We need to know whether there are similar jets that operate within our airspace, so that we do not end up with a similar calamity just because there is a lot of negligence. Obviously, it appears not necessarily a question of human error because you

cannot explain how a plane can crash within six minutes upon takeoff because that is not enough time even to return back to the runway.

Like Sen. Khaniri has said, may all the departed souls rest in peace. I also condole with the families that were affected.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I thank the Senator for Makueni, Sen. Mutula Kilonzo Jnr., for making this Statement. This is a tragedy that has happened in the Continent of Africa which is our region. I wish to join Sen. Mutula Kilonzo Jnr. in expressing my own condolences.

However, the Government of Kenya has not taken a position on this matter. There are three positions that countries are taking all over the world. One, is to ground the aircrafts if there are airlines within those territories that are using this particular aircraft. Two, is to stop any orders of contracts in regard to any manufacture targeting particular countries or airlines. There are some countries which have banned the use of their airspaces by this particular aircraft. Therefore, in Kenya, we should ban them from our airspace because the rest of the world is doing it.

For example, in Singapore, they have banned this aircraft from their airspace yet the accident happened in Africa. This is for abundant caution because there are may be other airlines which may fly into Kenya, take-off safely from wherever there are coming from and then crash in the Kenyan territory.

Mr. Speaker, Sir, until a full investigation is carried out, the Government of Kenya should express itself on this particular matter. We, as Kenyans, have suffered from quite a number of these crashes, for example, in Cameroon and Ivory Coast, although those were different aircrafts.

At one time, we lost an Isapellos aircraft in Addis Ababa more than 40 years ago. Therefore, it is a matter which we cannot take idly because Nairobi could be used as a hub by airlines which want to get as close to Asia to ferry their passengers to countries where these aircrafts have been banned. Therefore, whereas this was a personal Statement, I hope the Government of Kenya will take a position.

Luckily, Kenya Airways (KQ) does not run these aircrafts. However, we need to take these three positions. Since KQ is also using Boeing, next year, you may find that one of these cartels have managed to purchase one of these aircrafts which have been grounded. So, the Government of Kenya needs to express itself on this matter.

The Speaker (Hon. Lusaka): I see a lot of interest. Therefore, I will give the remaining Senators, three minutes.

Proceed, Sen. Halake.

Sen. Halake: Thank you, Mr. Speaker, Sir. I support this Statement and thank the Senator for Makueni for bringing it. It is sad that we lost 32 Kenyans and other world citizens. The fact that the aircraft was heading to our capital city, we were on the headlines around the world for the wrong reasons. However, we pray for the families and look forward to a time when African airspace will be more secure than it is today.

I was listening to Cable News Network (CNN) the other day where they were listing airlines that have never had any accidents. They kept repeating how some of the safest airspaces are in Europe and North America. Therefore, as a Government, we need to make sure that our airspaces are safe. The fact that there is concern that the accident

was caused by a technical fault on the Boeing is worrying because as Sen. Orengo has said, KQ also operate Boeings.

That said, I condole with the families who lost their loved ones and wish them strength as they deal with this. As a country, we need to be careful and ensure that our airspace and aircrafts are beyond reproach so that our continent does not get backlash or branded as unsafe airspace.

Sen. Wetangula: Thank you, Mr. Speaker, Sir. I also join in supporting the Statement and wish that we send our collective condolences to the families of our compatriots and other world citizens who lost their lives in this tragedy.

Mr. Speaker, Sir, air transport is the quickest and for many years, the safest in our travels. However, when it does happen like it did, we realise how fragile air travel is. This is because if passengers crash in a vehicle, chances of having survivors are much high that of a plane coming down from the skies.

Mr. Speaker, Sir, we have seen other comparable technologies, for example, Toyota, BMW and Mercedes Benz, recall million of cars from the market to confirm that the technology in them and any defects detected are not systemic in all the brands of that nature.

Mr. Speaker, Sir, we are particularly vulnerable because our airline, KQ, is in the usual habit of leasing aircrafts as many airlines do; they are not the only ones. However, some of these aircrafts are normally those that have almost exhausted their lifeline then they are leased for local routes. Therefore, we are as vulnerable as any other.

I heard on British Broadcasting Corporation (BBC) yesterday that the European Union (EU) turned away a plane from Turkey that was headed to one of their capitals. That is caution.

I call upon the American Government and its industries not to rush to blindly say that Boeing has no problems. It is good for them to investigate and see whether the Boeing 737 Max has any manufacturer's defects that would have led to the downing of the aircraft. This is because Ethiopian Airline is an extremely successful airline.

I heard Sen. Mwaura say that it is becoming the most dominant. It is not becoming, it is actually the most dominant airline on the continent of Africa. It does a wonderful job in carrying people from one end to the other. We want to see that it is safe.

Mr. Speaker, Sir, I join Sen. Khaniri in asking that we observe a minute of silence. I also urge our Government to pronounce itself because the 157 people who died on this aircraft were headed to Nairobi. So, they would have touched down on our soils before they sojourned anywhere else. The Government should have declared a day of national mourning, flown our flags half-mast for a day or two and made a bold and categorical statement in support of the families of those who have lost their loved ones. This has not been done but it is not too late. We urge the Government to do exactly this to show that they feel with the rest of the world for this terrible tragedy that occurred on Sunday morning in Addis Ababa.

Mr. Speaker, Sir, many of us have taken flights from Addis at that time. It is the most convenient flight. It leaves Addis at 8.30 a. m and lands in Nairobi at 10.30 a.m.. Many Kenyans like to use it because it is not too early or too late. They arrive in Nairobi

in good time and go about their business, especially if it is a working day. So, anyone of us who connect through Addis Ababa could have been on that flight. Therefore, we feel for those who have lost their lives.

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, I join my colleagues in supporting the Statement by Sen. Mutula Kilonzo Jnr.

Mr. Speaker, Sir, air transport as he has said, is one of the fastest. In air transport, the mistakes made can be disastrous. I am surprised that the Federal Aviation Administration of the United States of America (USA) has declared Boeing 737 Max as safe. That is very reckless because two of the planes have crashed in the last five months. Over 2000 of the planes have been grounded. It is unfortunate that the country that hosts the manufacturers, the Boeing Seattle and South Carolina have said it is safe and they are not withdrawing.

As a country, we should declare our air space not permissible for those aircrafts to fly in. We travel all over the world, we join other countries in condemning and also asking the Americans to also ban the use of those planes until they are investigated. Boeings are supposed to be one of the best planes. I have gone to Seattle several times when I was in the Committee of Transport in the National Assembly. Apparently their planes are becoming very popular and many people board them. I think it is time we sat back---

Mr. Speaker, Sir, having said that, today, I saw a 411 message that Somalia has banned some Antonov planes that fly to their country because they are very unsafe. There are lot of jungle planes all over the place. The other day at the Jomo Kenyatta International Airport (JKIA), two planes crashed unto one another on the runway. Those are mistakes we cannot make.

We must also ask the Kenya Civil Aviation Authority (KCAA) and the Kenya Airways to take air safety very seriously. The Ministry of Transport must also assure us that our airspace will not be open to those planes to fly.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Proceed Sen. Faki.

Sen. Faki: Asante, Bw. Spika, kwa kunipa fursa hii kuchangia taarifa ya Seneta wa Makeni, Sen. Mutula Kilonzo Jnr. Kwa niaba ya watu wa Kaunti ya Mombasa, nachukua fursa hii kwanza kutuma rambirambi zangu za dhati kwa wote waliofiwa akiwamo rubani wa ndege hiyo ambaye alikuwa ni kijana ambaye mamake anatoka katika Kaunti ya Mombasa.

Kwa hakika sisi watu wa Kaunti ya Mombasa, tumesikitishwa sana na ajali hiyo ambayo iliwachukua watu wengi katika nchi yetu ya Kenya ambao ni thelathini na wawili. Kenya ndiyo nchi ambayo ilipata hasara kubwa kuliko zingine zote.

Bw. Spika, ndege iliyoanguka ni ndege ambazo huja hapa Kenya kwa sababu tuliwahi kusafiria ndege kama hiyo kuelekea Turkey mwaka jana. Boeing 737 Max 8 ni ndege ambayo inaingia Kenya na kutoka. Kwa hivyo kama vile nchi zingine katika Afrika na ulimwenguni kwa jumla zimeweza kuzipiga marufuku kwa sasa ndege hizo kupaa katika anga yake, sisi pia kama Kenya, inafaa tuchukue hatua kama hiyo kwa sababu usalama ni jambo muhimu sana kwa wasafiri wa ndege na wale ambao wako chini kwa sababu hatuwezi kujua ndege hiyo inaweza kuanguka wapi.

Namuunga mkono Sen. Wetangula kwa kusema kuwa sisi kama wakenya ambao tumepoteza watu thelathini na wawili, ilikuwa wakati mwafaka kuonyesha huzuni yetu kwa kuamrisha kwamba bendera zetu zipeperushwe nusu mlingoti au tutenge siku moja ya kuomboleza.

Asante sana, Bw. Spika.

Sen. (Rev.) Waqo: Thank you, Mr. Speaker, Sir. I also add my voice to this very important Statement as I also send my condolences to all the families that are affected.

It is a very sad thing that has happened and many Kenyans are affected. However, we have not seen the Government giving a lot of attention to this. I know the Ministry of Transport has done something but I think it is high time for us to say that, as a nation, we need to do more. I join my colleagues who have suggested that, as a nation, we need to have a day to mourn and also fly our flag at half-mast so that we can remember and even show the families affected that we are together in this tragedy.

Mr. Speaker, Sir, I saw an old man who lost his wife, daughter and two grandchildren, looking very desperate. There are many who have lost their spouses and children. Many people are feeling the pain. It is good for us, as a nation, to stand with them and also make sure that we create that sensitivity. This is because sometimes when the media reports they are not sensitive on the effect of whatever is on the media.

Mr. Speaker, Sir, my suggestion is that media people should also be sensitive on the news and images that they release and some of the words they use that have a lot of effect on the affected families.

I also suggest that proper investigations should be done to establish the cause of this tragedy and also that all the planes within Kenya and for anything that happens within our country, proper investigation be done so that we can prevent some of these, if possible.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Proceed Sen. Madzayo.

Sen. Madzayo: Asante sana, Bw. Spika kwa kunipa nafasi hii. Pia, nataka kuunga mkono taarifa ambayo imetolewa na Sen. Mutula Kilonzo Jnr.

Kwanza, natoa rambirambi kwa familia za watu wote ambao waliathiriwa na ajali hiyo ya ndege. Kuna Wakenya na watu wengine kutoka mataifa mbalimbali ambao walipoteza wapendwa wao katika ajali hiyo ya ndege.

Kadiri ya vile tunavyoelewa ni kwamba ndege za Boeing zimeweza kupigwa marufuku kutua katika viwanja vya maeneo ya Uropa. Hii ni kumaanisha ya kwamba kule wameona kuna sintofahamu kidogo katika ndege hizo.

Bw. Spika, kwa hivyo ingekuwa muhimu sisi kama Wakenya ambao tulipata madhara makubwa--- Nafikiria katika ndege hii waliopoteza watu wengi zaidi ulimwenguni ilikuwa ni Wakenya. Hii ni kwasababu walikuwa wanatarajia kufika nyumbani salama salimini kuungana na wapendwa wao.

Kwa sababu hiyo, ingekuwa muhimu sana kama nchi yetu pia ingechukua hatua hiyo kama ilivyochukuliwa na nchi za Ulaya ya kwamba ndege yenye muundo huo wa Boeing 737 Max 8 ipigwe marufuku kupita katika anga ya nchi yetu. Inafaa wasubiri mpaka tupate taarifa kutoka kwa wale Boeing wenyewe kwamba wamefanya uchunguzi

na wamerekebisha pale ambapo panafanya ndege hizi wakati zimepaa kupoteza mwelekeo, kuanguka na kuleta maafa haya.

Mwisho ni kwamba kwa ababu tumepoteza Wakenya wengi, familia nyingi hivi sasa wanaomboleza. Kuna familia moja ambayo imepoteza watu watano katika ajali hiyo wakiwemo dada wawili na watoto wao wa kike watatu. Familia hizo sasa zitazika watu watano ambao ni wengi sana.

Bw. Spika, ni jambo la kusikitisha. Ningependa sana ikiwa taifa letu la Kenya litatambua---

(Sen. Madzayo's microphone went off)

The Speaker (Hon. Lusaka): Hon Senators because of time, I know there is a lot of interest, but we have to stop there.

(Sen. Madzayo remained on his feet.)

Order! Member.

Hon. Senators, on my behalf and on behalf of the Senate, I also wish to convey our sincere condolences to the families of all those who perished in that tragedy and ask that we stand and observe one-minute of silence.

(Hon. Senators stood up in their places and observed a minute of silence)

I thank you.

COMMUNICATION FROM THE CHAIR

NULLIFICATION OF DIVISION ON NATIONAL ASSEMBLY AMENDMENTS TO BILLS

The Speaker (Hon. Lusaka): Hon. Senators, as you may be aware, the Warehouse Receipts System Bill (Senate Bills No.10 of 2017) and the Assumption of Office of the County Governor Bill (Senate Bills No. 1 of 2018) were listed on the Order Paper for yesterday, Tuesday, 12th March, 2019, at the Committee of the Whole Stage; more specifically for consideration of National Assembly amendments to the two Bills. When the Orders were reached, the House proceeded to the Committee of the Whole to canvass the National Assembly amendments. As has been the practice, after canvassing the amendments, the House proceeded to a Division.

However, on closer scrutiny of numbers and Senators present in the House, I have established that there was no quorum, as stipulated in Article 121 of the Constitution, read together with Standing Order 35 of the Senate Standing Orders. For clarity, Article 121 of the Constitution states as follows-

“The quorum of Parliament shall be—

(a) fifty members, in the case of the National Assembly; or

(b) fifteen members, in the case of the Senate.”

Hon. Senators, as you are aware, Article 123(4) of the Constitution, read together with Standing Order 78 of the Senate, sets out the threshold for passage of a Bill in the Senate, and I quote:-

“Except as provided otherwise in this Constitution, in any matter in the Senate affecting counties—

(a) each county delegation shall have one vote to be cast on behalf of the county by the head of the county delegation or, in the absence of the head of the delegation, by another member of the delegation designated by the head of the delegation;

(b) the person who votes on behalf of a delegation shall determine whether or not to vote in support of, or against, the matter, after consulting the other members of the delegation; and

(c) the matter is carried only if it is supported by a majority of all the delegations.”

Hon. Senators, pursuant to Article 121 of the Constitution, read together with Standing Order 37, for the Senate to proceed to a Division on a Bill or a Motion affecting counties, there must be a quorum, which is 15 Senators. However, you need a majority of all delegations, which is 24 delegations to pass a Bill or Motion affecting counties.

Hon. Senators, Standing Order 85 states that, and I quote:-

“In case of a technical failure, confusion or error occurring in the course of an electronic or a roll call vote concerning the numbers or names recorded, which cannot otherwise be corrected, the Speaker shall direct the Senate to proceed to another round of electronic voting or to another roll call vote.”

Noting that the required threshold of 15 Senators was not attained, I direct that pursuant to the provisions of Standing Order 85, the Divisions on the National Assembly amendments on the Warehouse Receipts System Bill (Senate Bills No.10 of 2017) and the Assumption of Office of the County Governor Bill (Senate Bills No.1 of 2018) be nullified and the record of the purported voting be expunged from the House records. I further direct that the two Bills be listed in the Order Paper for tomorrow, Thursday 14th March, 2019, for the Senate to proceed to another round of electronic voting on the Bills.

I thank you.

(Applause)

Hon. Senators, let us have the next Statement from Sen. Khaniri.

Sen. Khaniri: Mr. Speaker, Sir, I want to thank you for according me this opportunity to issue this Statement. I know it was not listed for today, but you have gone out of your way to allow me to do it today.

STATEMENT

INCREASED INSECURITY IN VIHIGA COUNTY

Mr. Speaker, Sir, pursuant to Standing Order 47(1), I rise to make a statement on a matter of county-wide concern on the increased insecurity in Vihiga County and, in particular, the killings in Kilingili Market.

Mr. Speaker, Sir, insecurity is increasing at an alarming rate in Vihiga County. Not a single week passes by without incidents of robbery, burglary, violence and even murder being reported. The latest incident occurred on the night of Saturday, 2nd March, 2019, when five night watchmen were executed in cold blood, and two others left with life threatening head injuries in the dead of the night by an alleged marauding gang.

Mr. Speaker, Sir, first, I wish to extend my sincere condolences on my behalf and that of my family, as well as on behalf of the people of Vihiga County to the families and friends that lost their loved ones in the heinous act. These are people who have left behind widows, children and grandchildren who demand and expect answers and justice from the Government.

Mr. Speaker, Sir, the families and the community have rightly blamed the police from Kilingili Police Station, which is a few meters from the crime scene, for the deaths. According to some of the family members of the deceased, the police were informed of the impending attack, yet they never bothered to investigate the threats. During the incident, when the night guards raised alarm of the attack, the police never responded, claiming that the incident was happening in Kakamega County, which is not within their area of jurisdiction. I, therefore, wonder what happened to the police motto, "*Utumishi kwa Wote*".

Mr. Speaker, Sir, I am very disappointed with the police in general, and specifically those in Kilingili Police Station. The Police Service in Kenya is alleged to be the biggest abuser of human rights. Evidence of extra judicial killings, abuse of office, brutal control of protesters, bribery, promoting illicit brews, human trafficking among others, always end up at the doorsteps of the police. Notably, the police appeared to be so efficient when it comes to---

(Sen. Khaniri's microphone went off)

I am sorry, Mr. Speaker, Sir; I will repeat that statement. Notably, the police appear to be efficient when it comes to misconduct, but fail miserably in providing security for Kenyans.

Mr. Speaker, Sir, on 16th February, 2016, I requested in this House a Statement concerning the shooting of demonstrators by police from the same police station, but no action was taken. When the Chairman came to respond, he said an inquest had been opened; he gave us the file number and, up to now from 2016, we have not heard anything with regard to that---

(Sen. Khaniri's microphone went off)

Mr. Speaker, Sir, in light of the above, I would have expected a more punitive approach than just mere transfers of the police officers involved. This definitely warrants urgent action by the Inspector-General of Police (IGP). The increased insecurity has subjected people from my county to live with their cattle in their houses, but some still get stolen because house break-ins and robbery are a daily occurrence. The current re-emergence of gangs that recruit young boys and girls into crime calls for urgent resolute action by the Cabinet Secretary (CS) for Interior and Coordination of National Government.

Mr. Speaker, Sir, it is alleged that the killings at the Kilingili Market were committed by members of a dreaded gang named “42 Brothers.” It is appalling that one of the accused suspects in the attack is a young boy who is still in school. These gangs are all over the country and they include *Gaza*, *Mungiki*, *Wakali Wao*, *China Squad*, *Confirm Group*, amongst many others. These gangs are just too many and are found in every part of the country, which demands urgent action.

Mr., Speaker, Sir, the national Government, in conjunction with the county governments, should speed up the rural electrification project and ensure that all markets have lights. This will not only spur economic activities, but also improve security. It is unfortunate that the whole of Kilingili Market, which is on the border of Kakamega and Vihiga counties, neither has street lights nor light masts. This should be corrected immediately

Lastly, Mr. Speaker, Sir, we should be honest with ourselves and accept that insecurity is a challenge in the country today. I, therefore, wish to bring this matter to the attention of the Senate, and appeal to the national Government and even the county government to consider providing benevolence funds to the affected families in Kilingili and ensure that the perpetrators are brought to book.

Thank you, Mr. Speaker, Sir.

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

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

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. I am sure the Committee concerned has noted and will take the necessary action in accordance with the new Standing Orders.

Sen Ochillo-Ayacko, is one minute enough?

Sen. Ochillo-Ayacko: Nearly enough, Mr. Deputy Speaker, Sir.

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

Sen. Ochillo-Ayacko: Thank you, Mr. Deputy Speaker, Sir. I want to thank my very good friend, Sen. Khaniri, for raising this matter. I want to confess that we went to the same primary school and so, we are very good friends; and were in this House before.

Wanton killing and reckless vengeance by members of the public is prevalent in very many areas. In a ward called Kamagambo East in Migori County, five people were killed by irate mobs, allegedly for practicing witchcraft. That happened about two weeks

ago. These were very poor people and they were buried last week. This happens because the police or law enforcement agencies do not take action. Therefore, members of the public become desperate and seek revenge, which should be done by God because God says: "Vengeance is mine."

Mr. Deputy Speaker, Sir, I want to urge all of us, as Senators, and particularly Government law enforcement agencies, to ensure that they act promptly and deal with criminally intended activities, so that such gangs do not invite vengeance by people who feel that justice will not be applied in matters that they complain about.

Thank you Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Abshiro, not more than two minutes.

Sen. Halake: Thank you Mr. Deputy Speaker Sir. I come from northern Kenya and should be given more minutes. I have been---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! Under what Standing Order?

(Laughter)

Sen. Halake: Mr. Deputy Speaker, Sir, on a light note, under the Standing Order that northern Kenya is affected by insecurity more than any part of this country, but I thank you for your consideration.

First of all, I rise to support Sen. Khaniri who has brought this Statement. I am saddened because those of us from northern Kenya used to say that we come to Kenya so that we can get some security and sleep nicely, but now, it looks like the rest of Kenya is catching up very well with northern Kenya, and that is not a good sign.

Now to get to the point, in places like Isiolo killings are a daily occurrence, and I am not saying that, that makes it right. But the fact that it---

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

Sen. Wambua: Mr. Deputy Speaker, Sir, did you hear the Sen. Halake insinuating that the people of northern Kenya come to Kenya? Is northern Kenya not part of Kenya?

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

Sen. Halake: Thank you Mr. Deputy Speaker, Sir. It is a known fact that for a long time the people of northern Kenya said they did not belong to Kenya on account of insecurity. I am just trying to make a link that it is very sad that the entire country is catching up on this sad situation.

The Deputy Speaker (Sen. (Prof.) Kindiki): Are they from northern Kenya or from the Kenya of the North?

Sen. Halake: Mr. Deputy Speaker, Sir, sometimes we are confused as to where we are from.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): You have withdrawn the remarks, anyway.

Sen. Halake: I have withdrawn the remarks.

The Deputy Speaker (Sen. (Prof.) Kindiki): Please, conclude. You have one more minute.

Sen. Halake: Thank you, Mr. Deputy Speaker, Sir. The issue of insecurity is saddening and worrying because the centre of any democracy is the rule of law. It seems like there is such a huge breakdown of the rule of law in our country, even in places that we had thought had law and order. I watch news and see the trend; that these killings are happening very close to police posts. In fact, the media always reports that it is 400 metres or 500 metres from the police posts. What is going on? Is it that the police are part of this? Questions linger.

As I condole with the families of Kilingili, I would like to say that these killings in Kilingili could be in any part. It could be in Kambi Odha of Isiolo, and Sen. Ochillo-Ayacko has just described his own. Something needs to be done and it is about time that the relevant Committee gets to the bottom of this breakdown of the rule of law in our country. We cannot preside over that kind of unfortunate situation. These extrajudicial killings are becoming scary. I will not go through the list because it was read.

Mr. Deputy Speaker, Sir, I support and I stand with the families. I condole with them and can relate with them. Please, let us get to the bottom of this.

I thank you.

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

Sen. Wetangula: Thank You, Mr. Deputy Speaker, Sir. I support the Statement. How I wish Sen. Khaniri had, in fact, moved a Motion of Adjournment, so that we can also encompass other criminal activities that have been going on all over the country.

The saddest thing is that almost all the watchmen butchered by this criminal gang are above 60 years. Secondly, nothing was stolen from them. Three, they were killed 50 metres away from the police post. To kill brutally five people and being security guards, they must have been carrying some form of weapons, crude or otherwise. There must have been a commotion. Did the police not hear this?

You may recall in the previous governments, under the watch of the late Hon. John Michuki and the late Hon. (Prof.) George Saitoti, they brought to Parliament Motions and proscribed criminal gangs. There was *Angola-Musumbiji*, *Sungusungu*, *Bagdad* boys, *Mungiki*, *Chinkororo*, *Amachuma et cetera*. All these were proscribed through this Parliament. We heard this morning from the Senator for Migori that there is another one that has popped out in his county called *Sangwenya*, and many others.

I want to urge the Committee on National Security, Defence and Foreign Relations to liaise with the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government and urge him to bring to Parliament an instrument to ban these criminal gangs, and deal with them in accordance with the law and make them feel the full weight of the law.

Mr. Deputy Speaker, Sir, you can imagine a 60 year old man, who is working as a watchman to struggle to take his children to school, feed his family and make ends meet. Then, senseless killers come with crude weapons and slash him to death. This is why even as a senior lawyer I have never supported the idea of removing the death penalty from our books. This is because there are certain situations such as this---- When you

catch up with the person who walked into Dusit D2 Hotel, Westgate, Kilingili Market and senselessly butchered people, that person does not deserve, if found guilty, to burden the State with looking after him, feeding and giving him security. They deserve to go to the electric chair, and this is done in other jurisdictions.

Some of these criminals are even running ‘governments’ within the Government. They collect taxes from *wananchi*. When you go to matatu termini they are the ones who are responsible and make millions of shillings under the watch of the Government. We have a social contract with the Government, as citizens that we do not look after our security, we surrender it to you as Government to look after our security and you must do it.

Thank you.

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

Sen. Nyamunga: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. Just before I make any comments on the question that has been put forward by our senior Senator from Vihiga, it is also very important to support what Sen. Abshiro has just said that in Kenya, sometimes you are forced to ask if you are actually from Kenya or you are part of Kenya. It is not only in terms of security but even in terms of development.

There are places in this country you may be forced to ask if you are actually this country. For example, areas like Turkana, West Pokot, and many others that have been left behind. So I think this Jubilee Government should always be put on the spot to answer so many questions. Apart from the issue of security, they should also be answering issues to do with development.

But now on the security statement; in Kenya, it is not only---

(Sen. Milgo interjected)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order. Sen. Milgo, did you say order or point of order?

(Laughter)

Sen. (Dr.) Milgo: Point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): That one is allowed. What is it? I thought you had said order.

Sen. (Dr.) Milgo: Thank you, Mr. Deputy Speaker, Sir. Is Sen. Nyamunga in order to say; ‘this Jubilee Government’? A few minutes ago we were talking about serial killings and we even complained about police. I am not sure that all the police or rather all security come from the Jubilee Government. Those who are supposed to take responsibility must take responsibility irrespective of whether they come from Jubilee Government.

Thank you.

Sen. Nyamunga: Mr. Deputy Speaker, Sir, right now---

The Deputy Speaker (Sen. (Prof.) Kindiki): Is there another government?

Sen. Nyamunga: Mr. Deputy Speaker, Sir, right now the Government in place is a Jubilee Government. Corruption has never been devolved to county governments, it still remains with the national Government and that is the Jubilee Government. They must take care of all Kenyans not only in terms of security, but also development. Kenya is divided into two states; one for the people with wealth and another state for people without.

On the issue of security, the policemen should be very sensitive because when you talk of security, in our homes alone, there is a lot of insecurity, for example, the way our women are being treated even by our own members of the same family. When we talk of security, it is both husbands and wives. We have had issues where it is either the wife or the man taking the law into their hands and even killing some members of their families.

Security is a very important matter and it is upon the Government to make sure that there is security everywhere, not only outside but even in or homes.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Sen. Kinyua, you may proceed.

Sen. Kinyua: Asante sana, Bw. Naibu Spika kwa kunipa fursa hii. Kwanza kabisa ninataka kumshukuru Sen. Khaniri, kwa Statement ambayo ameleta. Ningependa kusema kwamba mimi nikiangalia kwa marefu na mapana mambo haya yameangaziwa vizuri; yote ni ukweli mtupu. Kenya kumekuwa na vikundi vingi na kwanza kabisa ninataka kutuma risala zangu za rambirambi kwa wale waliovamiwa pale Kililingili. Ninasema, pole sana kwao.

Lakini ukiangalia Kenya kuna vikundi vingi kama vile *Mungiki*, *Chinkororo* na vinginevyo. Vikundi hivi vimekuwa vikiongezeka sana kwa sababu ya ukosefu wa kazi kwa vijana wetu. Ninataka kukemea hivi vikundi kwa sababau ukitembea, kwa mfano, kule Laikipia, utapata kuna vikundi vingi, hasa kikundi cha *Mungiki*.

Kuna jambo ambalo linanitia hofu, kwa sababu, unapata kwamba, wale ambao wanasemekana wanaongoza hivi vikundi, wakati wa uchaguzi tunaitishwa stakabadhi ili kuonyesha kwamba tumehitimu kusimama. Unapata kwamba wagombeaji viti wengine ni washukiwa au ni viongozi wa hivi vikundi. Kwa hivyo, ninaona Serikali haijajitolea kabisa kupambana na hivi vikundi.

Askari wamezembea katika kazi zao kwa sababu watu wanaibiwa, wananajisiwa, watoto wanalaitiwa ilhali ni karibu na vituo vya maafisa wa usalama. Maafisa wa usalama wenyewe wanaonekeni kuzembea katika kazi yao. Ikiripotiwa unasikia wakisema ya kwamba, unapaswa uwashike wale watu; uwaletete. Unashindwa kazi yao ni ipi. Kazi yao ni kuketi pale kungoja, lakini kukiskika mahali watu wamekunywa pombe, wanataka kuenda pale kuitisha mlungula, lakini wanahitajika kupigana na hawa wakora, askari wenyewe hawapatikani.

Kwa hivyo ningepomba, Serakali yetu ya Jubilee - amabayo nimeskia ikikashifiwa - tufanye kazi tukiwa kitu kimoja kwa sababu kuna yale mapatano. Kama kuna ufidiaji, sisi sote tuwe pamoja. Kwa hivyo, ni vizuri tuungane tufanye kazi tukiwa pamoja na tuwache kukemea wenzetu kwa sababu utengano ni udhaifu.

Nikiwa kama Mwenyekiti wa Ugatuzi, nimeskia Sen. Nyamunga akisema kwamba, ufisadi bado uko katika Serikali kuu, lakini ninataka kumwambia kwamba, akitembea pale katika kaunti, kuna ufisadi si haba.

Asante.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you. We need to conclude this. The list I have here would take us to the end of the day if everybody spoke.

COMMUNICATION FROM THE CHAIR

MEETING BETWEEN THE DEVOLUTION CS AND THE COMMITTEE ON DEVOLVED GOVERNMENTS

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, I would like to communicate that the Cabinet Secretary for Devolution will be appearing before the Committee on Devolved Governments and Intergovernmental Relations of the Senate, tomorrow in this chamber at 11.00 a.m.

The issues which have been communicated to the CS to deal with include the Solai dam and a few other agenda.

Nothing prevents any other Senator who has an interest or would want to ask the CS to respond to some of these things to attend. Tomorrow 11.00 a.m., in this Chamber, the Cabinet Secretary for Devolution will be here. You can attend as a friend of the Committee on Devolved Governments and Intergovernmental Relations if you are not a Member of that Committee.

Very well. We will defer a number of items in today's Order Paper. We will defer Order No. 8, unless the Mover wants us to ring the bell but from the look of things, I do not think the bell can rescue the Mover; it would be an act of futility. So Order No. 8 is deferred. The same case applies to Order No. 9, 10, 11, 12, and 13. So we will proceed from Order No. 14 and if time allows at the end of Order No. 14, we will move to Order No. 18.

BILLS

Second Reading

THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILLS NO 27 OF 2018)

(Bill deferred)

Second Reading

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

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(Bill deferred)

Second Reading

THE PUBLIC PARTICIPATION BILL
(SENATE BILLS NO.4 OF 2018)

(Bill deferred)

Second Reading

THE IMPEACHMENT PROCEDURE BILL
(SENATE BILLS NO.15 OF 2018)

(Bill deferred)

Second Reading

THE DATA PROTECTION BILL
(SENATE BILLS NO.16 OF 2018)

(Bill deferred)

Second Reading

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

(Bill deferred)

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

Second reading

THE COUNTY STATUTORY INSTRUMENTS BILL
(SENATE BILLS NO.21 OF 2018)

(Sen. Farhiya on 12.3.2019)

(Resumption of debate interrupted on 12.3.2019)

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Faki, you had concluded your contribution, is that so?

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

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Sen. Cherargei, you have the Floor.

Sen. Cherargei: Thank you, Mr. Deputy Speaker, Sir. I want to congratulate the Committee on Delegated Legislation for this wonderful Bill. But before I move, allow me to condole with the people of Vihiga County through my neighbour, Sen. Khaniri, for that unfortunate incident. We stand together in solidarity and I am watching and keenly following the unfortunate events because they are my neighbours. I know if there are security lapses in that county, it will definitely affect Nandi.

Mr. Temporary Speaker, Sir, I condole with the family. Even as the Inspector General (IG) of Police Joseph Boinett exits the stage, we hope the police reforms that we are still following up should be followed. In Nandi County, one year ago, we had such rampant incidences. However, when there were some changes in the investigating officers, among other things, and there were significant improvements of security, but you realize that the enemy is within. Therefore, I hope that issue of Vihiga County needs to be resolved so that the families can get justice.

As the Chair of the Committee on Justice, Legal Affairs and Human Rights, I want to assure Sen. Khaniri that if he needs the support of my Committee, where human rights is one of our key concern, we will be more than willing to ensure we that the police are held to account and they do their work because we pay them to do that work.

Mr. Deputy Speaker, Sir, I thank the delegated legislation committee. Yesterday, I was to make my few comments on this Bill because it is straight forward. Last week, many people attended the Sixth Devolution Conference in Kirinyaga County. Unfortunately, I did not make it because I was away on official duties. We agree that devolution is growing and as it grows, we should come up with legislations on how to make sure that devolution, as envisaged under Article 174 of the Constitution, gets the real intended purpose of the letter and spirit. We want devolution to work for our people in Nandi County all the way to Mombasa, Busia, Mandera, and Turkana, because it is important.

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

(The Temporary Speaker (Sen. Nyamunga) in the Chair)

Madam Temporary Speaker, even as we went for the Sixth Devolution Conference, I have seen many people saying that we need to review on how that Conference should be held. Secondly, there are so many proposals. Even as we head to the Legislative Summit, these are some of the laws that will enrich and allow our county assemblies to operate. We are building up some of these laws to ensure that we enrich devolution in some sense and allow the county assemblies to get the guiding principle in terms of their guiding policy and legislative agenda in the 47 county assemblies.

That is why last time, the Senate ensured that the county assemblies have autonomy in running their affairs. We want county assemblies, whose bigger brother is the Senate, to function effectively and efficiently. In as much as we are giving them

autonomy of running resources and many other affairs, we need to ensure that we have legislative proposals or laws that are in place to enrich devolution. Therefore, even as we assist in enriching devolution, we want to see practical results at the grassroots level.

Madam Temporary Speaker, there is a problem either with the Senate, the national Government or county governments, because what I saw in the Sixth Devolution Conference in Kirinyaga County is not an inspiration to most of the Kenyans across the country. It seems people are confusing devolution conference with a cultural event. Most of the things that you saw being either repackaging of sand, display of calabashes, wearing skins, issues of booths, and I cannot say bedroom but the ultra-modern sitting room arrangement in most of the stands, it is very unfortunate.

So, even as we come up with serious legislations to enrich devolution such as this, we should also be aware that Kenyans want development. I wish I would have seen my county, displaying how many kilometers of road they have graded, culverts they have installed, health facilities that are functional, development they have done like the way Makueni County are doing that will have value addition.

Madam Temporary Speaker, we are neighbors, you know very well that my county relies on agriculture. Maybe, they would have brought milk or flour that has been manufactured in Nandi County. Those are things that we need a pragmatic shift from. We need a shift from the old thinking that the devolution conference is a cultural conference. It should be a development conference where counties like Kisumu County should display fish that is packaged in Kisumu. The way your popular slogan is. Those are some of the things --- but our governors were busy displaying archaic and cultural things, carrying around *mursik* that is not part of development. This was not a circumcision ceremony where you are bringing cultural issues.

(Laughter)

I am so embarrassed by my own county because I was shocked. Some of those things are not supposed to be displayed in front of the camera because you can turn blind or some other things which I do not want to say in the Floor of the House can follow you.

(Laughter)

So, I agree that we might have a few areas that such laws will come in place and assist. I want to make a few remarks because I want my colleagues to add to this.

I will just go to Clause 5 that says “Before a regulation-making authority makes statutory instruments and in particular where the proposal is likely to have direct effect on business or strict competition, the regulation-making authority shall consult with persons who are likely to be affected by the proposed amendment and shall invite members of the public to give their views on the instrument within a prescribed period and in a manner to be determined by the Committee.”

Madam Temporary Speaker, we always say public participation, consult the necessary stakeholders and the beautiful thing, and I think the many critical decisions,

judgment or legal jurisprudence that has been made in our courts is because of public participation.

Madam Temporary Speaker, Clause 5 incompulutes the spirit and substance and the letter of Article 10 on the aspect of public participation. Therefore, I agree that such decisions that are made, especially in consultation before making statutory instruments, is very important. Ignorance of the law is no excuse but we should make sure that we do proper procedures such that we do not face legal challenges after passage of such laws, regulations or even statutory instruments and principles. Therefore they must be looked at. Consultation is very important and I think the drafters of the Bill, the Committee, has just used another word. It should just be public participation. It is captured in the spirit of Article 174 on the issue of devolution.

Clause 5(3) (a) says: “involve notification and write an article by advertisement of bodies”. These are the things that The County Government Act has captured on how we should ensure before doing anything, it should be publicized, we should even use traditional media, advertisements and all the necessary media. Counties are not aware that they can even have community radios. I have not seen any county use local radio stations. If you want to promote public participation, you should even---

The Communication Authority of Kenya (CAK) does not have much power than the Constitution that has been allocated by Fourth Schedule on the functions of county governments. One of them has been given power to have community radios. I hope counties are watching and listening that they should ensure they factor in such, so that they can ensure they have community radios.

Madam Temporary Speaker, let me move quickly to Clause 7. I had a few comments because this is a straight forward Bill. It says that contents of regulatory impact assessment and precise language---legal language sometimes has legal Jargon or any professional language, sometimes even how doctors talk and write should be direct and precise. In Clause 7(1) (a), they have said “ a statement of the objectives of the proposed statutory instrument and the reasons for its proposed enactment.” Those are very important statements.

Madam Temporary Speaker, Clause 7(1)(c) says:-

“A statement of other practicable means of achieving the objectives, including other regulatory as well as non-regulatory options.”

This is because we cannot put everything in writing or in law.

The Clause goes on to talk of an assessment of the costs and benefits or the proposed statutory rule and the reasons why other means are not appropriate. I think it is just trying to ensure that it is guiding, such that the people who are working on these statutory documents use it as a guiding principle. Kenyans are very good people who are ingenious and sharp, and if you do not guide them to go this or that way, they will create their own things. Therefore, it is very important that when you say, “Contents of regulatory impact assessment” and even the cost and benefits--- It says, the regulation making authority shall in preparing an impact Statement obtain independent advice. I wanted to emphasize on that.

I have read the Bill, but I know that we will come to amendments. Clause 7(3) says:-

“The regulation-making authority shall, in preparing a regulatory impact statement, obtain independent advice as to the adequacy of the regulatory impact statement and of the assessment included in the regulatory impact Statement in accordance with the guidelines.”

Therefore, the big question is this. You know that corruption is systemic; and it sometimes comes through the system. When you ask counties to look for somebody to give you independent advice, they are very good. That is why when you look at the proposed law on the creation of the Office of the County Attorney, we are trying to ensure that--- We have various counties, like Nairobi City County, whose biggest pending bills is on legal advice. The reason we want to come up with the Bill on the county attorneys across the 47 counties is because we think it is much cheaper to have a county attorney on the payroll being salaried than having to outsource that service.

Madam Temporary Speaker, if you are getting independent advice, it will mean that you must consult, advertise and procure. We are aware that when you procure an independent or a private entity, the cost of providing that advice is not small. I do not want to cast aspersions, but Kenyans are aware that when you go to private hospitals and a doctor only asks you: “How are you feeling today;” you might be billed even Kshs5,000 at the end of the day. I agree that there should be independent advice, but let us use bodies like the Kenya Law Reform Commission (KLRC) and other statutory bodies that are in place. This is so that that if maybe a county government needs advice on these statutory regulations that we are putting in place, they can easily talk to the KLRC and other bodies in the legal profession.

Madam Temporary Speaker, I agree with Clause 7, on the notification of regulatory statements; that it is the same thing of public participation. It just says that the notice shall include this and that; it shall include a brief statement of policy objectives sought to be achieved by the proposed legislation; state whether the copy or the copies of the data may be obtained or inspected. In the spirit of article 35 and 34 of the Constitution; and media freedom and access to information, because we now have the Access to Information Act---. These are the things the Bill was trying to take care of. With Kenyans, we must be prescriptive and tell them what to do. If you do not do that, they are likely to run or veer off, because there can be people who are rogue. I know that we have many people who are good, but there also those who are rogue in some of these things. Therefore, I agree with the notification.

Madam Temporary Speaker, Clause 8(1) says:

“A regulation making authority that intends to prepare a regulatory impact statement shall notify the residents of the county, of the intended preparations, by notice in the Gazette, County Gazette and in a newspaper of wide circulation within the county”

Notification of regulatory
impact statements.

That is why I was telling counties that they now have the powers, now that they do not know; they can use community radios and their local media. We thank God that the media space is now open and almost every region in this country has a radio that is run by private companies. It, therefore, makes it easy.

Madam Temporary Speaker, there is a Bill that is being sponsored by Sen. Were – I stand corrected if I am wrong – on the issue of the County Printer. We now want to make work easier, because if, for example, Elgeyo-Marakwet County Assembly wants to put a gazette notice maybe on the laws that they are passing, they must come to the national Government Printer. The same is true for all other counties, all the way from Kisumu, Nandi to Mandera. Therefore, when the county printer is available and when we have the county gazette, it will even be more accessible.

Madam Temporary Speaker, even for Members of Parliament (MPs) and Senators, it is not easy to get the Kenya Gazette. You can, therefore, imagine somebody in Riat, which is somewhere in Kisumu; or in Homa Bay, where my good brother, Sen. M. Kajwang' comes from; or somewhere in Rusinga Islands. The Kenya *Gazette* notice can get there, but if it was somewhere in Homa Bay, it is better. We know that our citizens are sharp and if they are interested in a matter, they will go to Kisumu City to get a copy. In fact, sometimes we blame our counties for not doing effective public participation, but they do not exploit opportunities that the law has given them. Therefore, the notice is very important.

Let me finish with Clause 10, on the Scrutiny of Statutory Instruments by a County Assembly. I agree that we are trying as much as possible to build the capacity of the county assemblies so that they do not become appendices or a rubber stamp of the county executive. We were told by Sen. Faki that the Mombasa County Assembly is facing closure simply because – according to the information that we are getting – of the fight between the County Executive and the County Assembly. The County Executive wants them to rubberstamp, and the County Assembly told them, “No, you are over reaching your mandate.”

Therefore, Madam Temporary Speaker, we are giving powers to the county assembly to have that capacity and autonomy, it is because they are playing an oversight role. They are the ones who are at the grassroots level to ensure the effectiveness of oversight. However, the Governors are so smart that they have turned the Members of County Assembly (MCAs) into their Public Relation Officers (PROs) by saying, “I will come and do this or that project.” They should, instead, be interrogating these governors but, unfortunately, that is what the governors are doing. That is why we want to ensure that we build their capacity. Therefore, we believe in the capacity of the county assembly to scrutinize, but they must also be serious in terms of anything. They say every statutory instrument made after---

(The amber light on the timer went off)

I can see that my time is almost up. The Bill says that:-

“Every statutory instrument made after the commencement of this Act shall stand referred to the Committee or any other that may be established for the purpose of reviewing and scrutiny of statutory instruments.”

This is key. They have also spoken about relevant considerations, and this is also guiding the county assemblies. Therefore, county assemblies must ensure that when they are scrutinising these statutory instruments, they must be keen.

Madam Temporary Speaker, as I conclude, I remember that even in my own county, there is a time when the MCAs rejected passage of supplementary budget proposals. It subsequently became a huge confrontation between the county government and the county assembly because the former wanted the latter to rubberstamp its proposals. I hope that when it comes to statutory instruments that will involve county executives, they should not fear anything.

Even Proverbs 28 says, “The wicked flee when no man pursueth: but the righteous are bold as a lion.” That is how I want to encourage our MCAs, because they are sometimes intimidated by governors until they cannot do anything. We, therefore, need to give them power.

Madam Temporary Speaker, I know that my time is up. I beg to support this Bill and look forward, during the amendments stage, to bring more amendments so that we can make sure that devolution works in both the spirit and letter of article 174 of the Constitution. I look forward, in the future, that the Devolution Conference should not be turned into a cultural event; but into a development event where we share real ideas on how to better the lives of our people across our country.

Thank you, Madam Temporary Speaker.

Sen. (Dr.) Milgo: Thank you, Madam Temporary Speaker, for giving me this chance to contribute to this Bill. It is long overdue because it is about issues of statutory instruments in the counties. For many years, our counties have been operating without proper guidelines. This Bill provides a legal mechanism for them to scrutinise statutory instruments.

Clause 4 guides the MCAs on what is required of them. It encourage adherence to standards in drafting statutory instruments to ensure effectiveness. This cause speaks to issues of enhancing public participation. Public participation in making laws in the counties has posed a great challenge. I am glad this Bill enhances public participation in statutory instruments in counties.

Clause 5 of the Bill provides timelines for public participation. Through public participation, members of the public makes their contributions and enrich any statutory instrument. For example, if it is a matter of legal fees or economic resources, the views of members of the public are taken into consideration. Therefore, this Bill will enhance resource management as well as accountability in the counties.

Part III of this Bill is about Regulatory Impact Statements. For example, Clause 7(2) states that-

“The assessment of the costs and benefits shall include an assessment of the economic, environmental and social impact and the likely administrative and compliance costs including resource allocation costs.”

In any case, constituents of a particular county such as business people will know how they will be affected by whatever will be proposed. People will also know how their environment will be affected.

Clause 8 says proposals by county residents will be taken on board and members of public will know objectives of any statutory instrument.

Part IV of the Bill is about Scrutiny of Statutory Instruments by a county assembly. It is provided for seven sitting days for scrutiny of a statutory instrument before a county assembly. There will be sufficient time for proper scrutiny and input. So, by the time a statutory instrument is implemented, it will have the support of all the people in a county. Therefore, apart from enhancing accountability, it will increase and enhance proper management of resources in the counties.

The second last part of this Bill is about general provisions. It provides timelines when a statutory instrument shall be put in use. It provides for what should happen before the expiry of a particular statutory instrument, so that there is no gap between one statutory instrument and the next. That will ensure that people prepares the next statutory instrument before the previous one lapses.

Madam Temporary Speaker, I thank the Committee for coming up with such a wonderful Bill. As I said in the beginning, this Bill speak to many issues affecting our counties. For example, a few minutes ago, Sen. Cheragei spoke about cases of divisions when it comes to supplementary budgets. We cannot blame MCAs because it is because of lack of understanding. However, if we enact this Bill into the Act, there will be legal instrument to guide them on what to do.

With those few remarks, Madam Temporary Speaker, I beg to support this very important Bill.

The Temporary Speaker (Sen. Nyamunga): Fair enough. Let us listen to Sen. (Rev.) Waqo.

Sen. (Rev.) Waqo: Madam Temporary Speaker, I stand to support The County Statutory Instruments Bill (Senate Bills No.21 of 2018). I congratulate the Committee for coming up with such a relevant Bill that will help county assemblies.

As I was reading through the Bill, I realized its object is to provide a comprehensive framework for the making, scrutiny, publication and operation of statutory instruments. As we know, subsidiary legislation is key in the running of county governments.

We all know very well that the role of the Senate is to oversight our counties. We also know well that most of the times, county assemblies suffer in the hands of the county executives. By providing such a framework, we will be helping county assemblies to do their work more effectively. In fact, by passing this legislation, we will be empowering them.

As I was reading through the Bill, I also realized that the Act will also apply to every statutory instrument made directly or indirectly under any Act of county assembly. Right now, there is a gap. Counties have been suffering a lot because there was no any framework to guide them. So, this Bill seeks to provide a legal mechanism by which county assemblies will scrutinise statutory instruments. Looking at the clauses in this Bill, we can clearly see it will obviously enhance the work of county assemblies.

When I was looking at this Bill, I wanted to understand the meaning of statutory instruments. It has been stated that statutory instruments means any rule, order, regulation, direction, form, tariff of costs or fees, letters, patent, commission, warrant, proclamation, resolution, guideline or other statutory instrument issued, made or established in the execution of a power conferred by or under an Act of a County Assembly under which that statutory instrument or subsidiary legislation is expressly authorized to be issued.

Madam Temporary Speaker, through this Bill, we will promote high standards in the drafting of statutory instruments to ensure that they have legal effectiveness, clarity and intelligibility to the anticipated users.

Madam Temporary Speaker, our counties suffer a lot because most of the time MCAs are not able to do their work diligently. As I said, there is conflict between the executive and the county assembly where most of the time, the executive wants to use them as a rubber stamp. Therefore, when we give them this, they will be able to do their work without any problem.

Madam Temporary Speaker, through this Bill, we will enhance public participation in the making of the statutory instrument. Public participation, as we all know, is very important. Many Kenyans are looking forward to it because it is the only way they can air their views, ideas and tell the county governments, or the leadership, what they want and stand for. I support this Bill and pray that it will be implemented.

Madam Temporary Speaker, Clause 5(1)(b) in part II on Consultation before making statutory instruments, states that:

“The regulation-making authority shall consult with persons who are likely to be affected by the proposed instrument and shall invite members of the public to give their views on the instrument within a prescribed period and in a manner to be determined by the Committee”

This is a very important area. This is because when interested or affected people are invited, they will be able to air their views, raise their concerns, play their part in what is happening and also own the entire process. In a way, this takes care of the common *mwananchi*. Therefore, it is important and will help the people on the ground to do their work effectively.

In the same part II, Clause 5 (2) (b) states that:

“In determining whether a regulation-making authority has undertaken consultations under subsection (1), regard shall be heard to the extent to which the consultation-

(b) ensured that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on the proposed content of the statutory instrument”

This means that a lot of consideration will be put in place on behalf of the affected persons so that within that timeframe, they will do everything in writing or appear before the Committee and also say how much that affects them and how the problem can be solved.

Clause 3 (b) which has really excited me states that:-

“Without limiting by implication the form that consultation referred to in subsection (1) might take, the consultation shall-

(b) invites submissions to be made by specified date or invite participation in public hearings to be held concerning the proposed instrument”

Madam Temporary Speaker, this means that this particular Bill will take care of everything and that in all the 47 counties there will be uniformity in practice when it comes to this particular area of statutory instrument.

Madam Temporary Speaker, part IV under Scrutiny of Statutory Instruments by County Assemblies, Clause 10(1) states that:

“Every regulation-making authority shall within seven sitting days after the publication of the statutory instrument transmit a copy of the statutory instrument to the clerk of the county assembly for tabling before the county assembly.”

This clearly means that there will be accountability and no wastage of time. Once they have gone through the other processes, everything will follow systematically.

Clause 12 states that:-

“The Committee shall, in scrutinizing a statutory instrument, be guided by the principles of good governance and the rule of the law and shall consider whether the statutory instrument-

(b) infringes on the fundamental rights and freedoms of the public”

Madam Temporary Speaker, Sir, this clearly shows, as I have said, the Bill will protect and take care of the people that we serve.

This is a Bill that we, as the Senate, need to support. Once it is implemented, there will be uniformity in our country. We will have enhanced the capacity of our county assemblies and given them enough power to exercise what they are called to do. As they serve the people, they will exercise their powers and stand firm without being manipulated by anybody.

With those few remarks, I support the Bill.

Sen. M. Kajwang’: Thank you, Madam Temporary Speaker. I rise to support this Bill that has been brought before this House by the Chairperson of the Committee on Delegated Legislation, Sen. Samuel Poghio.

Madam Temporary Speaker, county assemblies are the most important cog in the wheel of devolution. That is why Article 176 (1) of the Constitution says:

“There shall be a county government for each county consisting of a county assembly and a county executive”.

As Sen. Orenge keeps reminding us, it was deliberately constructed in that manner to show that county assemblies are the ones that represent the will of the people in counties. If there was any ordering, county assemblies would be more important or superior to county executive. However, we all agree that there are at the same level because they are different arms of Government.

This is also why Article 185(1) goes ahead to say that:

“The legislative authority of a county shall be vested in, and exercised by, its county assemblies”.

Madam Temporary Speaker, statutory instruments are means of making law. Law is made from Bills that have been passed by the assemblies. They can come up with bylaws, circulars or regulations. The absence of Statutory Instruments Act or law for county assemblies has created a gap where county executives have been doing crazy things without consulting the people and the county assemblies.

Madam Temporary Speaker, to further reinforce my argument that county assemblies are important, I dare say more important than the Senate, to an extent, in making sure that devolution succeeds in the counties. They have functions that the Senate does not enjoy. For example, county assemblies are involved in the budgeting process. Right now, each and every county assembly is doing public participation and hearings on County Fiscal Strategy Papers (CFSP). As the Senate, we are sitting in Nairobi waiting to pass the Division of Revenue Act and County Allocation of Revenue Act while county assemblies are on the ground talking to people and getting their views on the budget.

County assemblies are involved in appointments. They are the ones who appoint the County Executive Committees (CECs). They can hire and fire. They are the ones who endorse or approve County Public Service Boards (CPSBs). They also exercise financial and operational oversight. They can also impeach the governors. That is why if we want devolution to succeed, the Senate must invest a lot of its time to make sure the county assemblies are strong, empowered, financed and supported by legislation to ensure that the objectives of devolution are achieved.

Madam Temporary Speaker, we have seen interesting circulars, notices, proclamations and by-laws from the counties. There are some, for example, in Murang'a County where they came up with a programme called *tafuta tumbili*, which in English means 'look for the monkeys.' In that programme, they targeted to look for 10,000 monkeys that were messing up with people's crops. There was a financial aspect to that.

That kind of a proclamation needs to be subjected to county assembly verification. This is because if you look at the definition of statutory instruments in this Bill, it includes proclamations made by people who have been given certain powers by legislation in those counties.

Madam Temporary Speaker, when we went to Kakamega County two or three years ago, there was a proposal - I think this was in the Finance Bill that was before the assembly - to tax anybody who owned chicken. In that county if you do not own chicken, you are considered a foreigner. There was supposed to be huge tax for the owners of chicken, livestock and trucks bringing sugar, which is the bedrock of the economy of that region. There was also a tax on private funerals.

These are things that the executive cannot sit in a corner and decide on without having some element of public participation and participation of the people who have been elected by the public to represent their interests.

Even in Nairobi, there are by-laws that run this city. In my reading of statutory instruments, a by-law would qualify for each of those regulations that should be brought before the assembly. Nairobi has very interesting by-laws. I want to challenge the County Assembly of Nairobi County that once they pass this and it becomes an Act of Parliament, they should subject it by the by-laws, proclamations by the governor and the executive to Parliamentary or assembly for review and ratification.

Madam Temporary Speaker, even as we talk of a statutory instruments law for county assemblies, we know that at the national Parliament, we have a problem. The Statutory Instruments Act that governs the national Legislature – the Senate and the National Assembly - has a lot of friction. I was in the last Parliament and we saw a situation where the Senate approves a statutory instrument and the National Assembly rejects it. Then, the question was: What next?

I remember in the wisdom of the Chair and both Houses, we said that, that then should trigger mediation. The common understanding of mediation is when both Houses pass different versions of Bills. What about statutory instruments? Unfortunately, when a mediation team was set up to fine-tune and harmonise the thoughts of both Houses on a particular statutory instrument, one House decided not to show up.

Unfortunately, we do not have any legislation or procedures to help the nation when one House decides to abdicate its duty. That was the collapse of that statutory instrument.

We need to make sure that we fix some of those issues at the national legislature. County assemblies will be lucky enough because they are unicameral, but the bicameralism we have at the national level can trigger a lot of conflict. As we legislate for the counties, let us make sure that we have taken care of our interests. If we do not do so, then we will have situation where it will depend on the mood of either House for a statutory instrument to be passed.

Madam Temporary Speaker, also in the opinion of the Supreme Court of Kenya, virtually anything and everything in this Republic concerns counties. It is difficult to draw a line on statutory instruments that would be treated by the National Assembly and the Senate. However, it is still possible, by reviewing that Act, to come up with a definition that will not encourage acrimony, conflict and competition; that will guide us going into the future and say that these kinds of instruments that can be dealt with by the National Assembly exclusively, others by both Houses and some exclusively by the Senate.

As we go to the Legislative Summit in the wonderful City of Kisumu, I hope the organisers will not put us in the Big Four Agenda straight jacket. We went to Kirinyaga County to discuss the Big Four Agenda, which is a national Government initiative. We need now to go back to the Constitution. Whenever we sit down in a devolution conference or legislative conference we need to go back to the Fourth Schedule of the Constitution and focus on the function that have been allocated to the Senate and county assemblies. That way, we will make sense.

If we go there to talk about the Big Four Agenda and projects where we do not even have a budget line, it will not augur well for us. If we continue complaining that the national Government is implementing projects without our involvement and participation, we will spend an entire week in Kisumu City lamenting rather than coming up with solutions.

Madam Temporary Speaker, my understanding of devolution is that it does not stop with county assemblies and end with governors and the Senate. When we go for the Legislative Summit, I dare propose that this time we need to involve our brothers and sisters from the National Assembly. This is because, at the end of the day, it is a

Legislative Summit. We all have a legislative duty. It should not be an exclusive preserve of county assemblies and the Senate.

I also hope that governors will show up because they have the tendency of thinking that matters to do with legislation are beneath them. Therefore, they stay away from legislative summits. The manner in which we honoured the entire nation and the devolution space by going to Kirinyaga in our numbers from day one to the last day, we expect that governors will also be humble and civil enough to sit down, so that we look at the success of devolution, or the challenges that come as a result of legislation.

Madam Temporary Speaker, if we are going to support county assemblies, then a number of things must happen. However, it must start with each of us. I chair the County Public Accounts and Investment Committee (CPAIC) that relies a lot on county assemblies. That Committee of the Senate can never be successful if county assembly public accounts committees are not.

Here we are in Nairobi trying to make a determination on audited accounts for the Financial Year 2017/2018 and yet, there are counties that have never tabled a single report before the House since their inauguration in 2013. How then will Senate be wiser than county assemblies, yet they are the people with a view of the ground?

When we look at a county such as Migori and are told that over Kshs2 billion has been fleeced by certain persons, the question is: Where was the county assembly when that was happening? If we look at a county such as Samburu and there are allegations that the governor could have disappeared with Kshs2.5 billion. These are allegations. I am not saying he did, but just what has been reported. Where was county assembly when all this was going on?

Madam Temporary Speaker, when we look at all the reports of the Auditor-General brings before us, we can clearly see that there is a systematic failure, not just at the county executive level, but the county assembly level. Today we tabled more than 20 reports for the Financial Year 2017/18. Yesterday, 14 reports were tabled for the same period. The Constitution requires us to consider and adopt them within three months. The word is 'shall'.

This House has been engaged in an illegality by looking at reports beyond the three months. If the Constitution says that Parliament shall consider and adopt within three months, what business do my Committee and colleagues have to be discussing reports for Financial Years 2013 to 2018? We want to take a different perspective to this matter and ask ourselves what the Constitution requires of us. It is possible for us to adopt the reports that were tabled today within three months.

The Public Audit Act, Part 6, goes ahead and says:-

“That within three months after Parliament has adopted the Auditor-General’s report, every Accounting Officer and responsible person, shall report back to Parliament on measures taken to mitigate the risks identified by the Auditor-General.”

Madam Temporary Speaker, what we need to be engaging is an exercise after adoption, rather than a strenuous exercise before adoption, that then keeps us looking at receipts and imprests for two, or three years. That is the kind of perspective we want to adopt as Senate. It is the kind of perspective we want to encourage the county assemblies

to adopt, so that by the end of this year, all of the 47 county assemblies and the Senate shall be current.

Madam Temporary Speaker, if we took that approach, it has financial benefits for our county governments. This is because the Division of Revenue is based on the last audited accounts as adopted by Parliament. It is an illegality for us to be considering Division of Revenue on accounts of Financial Year 2014/2015. It must be on the basis of Financial Year 2017/2018. The Constitution says, “shall within three months”.

We expect that the national accounts shall be adopted within three months whether the committee reports back or not. As a result, the basis of revenue share will move from the numbers that the national Treasury wants us to use for Financial Year 2014/2015, and move to the numbers of Financial Year, 2017/2018, which is Kshs2 trillion as opposed to over Kshs1 trillion that we have been using for the Division of Revenue. So, everyone benefits out of this

Madam Temporary Speaker, these are some of the issues that when we go for the Legislative Conference we will be sharing. My Committee is also organizing a meeting of Chairpersons of Public Accounts and Investments Committees from all the 47 counties, so that we can look into that. I do hope that, by that time, the Statutory Instruments Act for County Governments will be in place, so that we can also reflect on the role, scrutiny and public participation of statutory instruments, how that can be reinforced and how that can be enhanced to ensure that resources and counties are not pilfered and that there is efficiency in counties.

In addition, the three risks to devolution – corruption, incompetence and the national Government – are fairly addressed through primary and subsidiary legislation.

I support.

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

Sen. Halake: Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute to this important Bill. I would like to congratulate the Committee on Delegated Legislation for coming up with it. Looking through this Bill and knowing that the weakest link in devolution is actually implementation of legislation. Even as much as we need to legislate, implementation has been a major gap in devolution.

What causes these gaps is lack of the right instruments that would link themselves to people take action. With this Bill, I see a future where our county assemblies will have the right tools and instruments to execute and for the executive arm of county government to implement the legislation.

Madam Temporary Speaker, as it has been alluded to by many of hon. Members, a country is as strong as its institutions. As Senate, let us remind ourselves of the role of the Senate under Article 96 of our Constitution –

“The Senate represents the counties, and serves to protect the interests of the counties and their governments.”

I cannot think of a better Bill that protects the counties, given that as we have heard, there are a lot of gaps with regard to some of the statutory instruments that would

enable counties or their governments, both at the legislative and executive arm, to execute and apply legislation that exists both at national and county levels.

Madam Temporary Speaker, we are told in this legislation that it cascades what is there at the national level. Even though what is available at the national level may need a bit of amendment to ensure that statutory instruments are a shared responsibility by the bicameral Parliament, as Sen. M. Kajwang has suggested. However, at least there should be a framework in place at the national level, which does not exist at the county level. This Bill lends itself to that and ensures that, that is done.

Even though sometimes we do not want things to be prescriptive, this Bill has defined very well what constitutes statutory instruments.

“Statutory instrument” means any rule, order, regulation direction, form, tariff of costs or fees, letters, patent, commissions, warrant, proclamation resolution, guideline or any other statutory instruments issued, made or established in the execution of power conferred by, or under an Act of a County Assembly, under which that statutory instrument, or subsidiary legislation is expressly authorized to be issued.”

These statutory instruments are means by which counties cannot only execute, but can get revenues from their resources. We all know our own resources has been a major issue whereby counties are acting as departments of national Government. The day we do not get disbursements from the national Government, the counties come to a standstill.

Through this legislation, counties should be able to have instruments and tools to use, even for own resource mobilization or own revenue generation through regulation on tariffs, costs on fees, patents and commissions. This Bill is very important. It not only enables execution at the county level of implementation of some of the legislation, but it breaks it down to what can be done on daily basis by the executive and others to make sure that our counties are functioning units at the county levels.

Madam Temporary Speaker, again, the provisions that are very well taken care of in terms of how the regulation making authorities would do this. There are robust public participation provisions that have been given. Therefore, bringing decision making down to the lowest level and in the frontline of service provision. That way, our authorities to which the statutory instruments will be delegated, will have a framework within which to conduct public participation so that the regulations are fully made through expressed participation of the people that will be impacted by them.

I also like the idea around – I think it is a very good idea that, perhaps, most laws should adopt – is the issue around the impact statement. Sometimes, we find that we go and legislate, make regulations or do policy frameworks, that have such undesired consequences because we have not thought through what that means for the people that would be affected by these laws.

This Bill does look at this and makes sure that the people that are affected are, not only included in the process, but also the impact of some of these regulations and statutory instruments, have been looked at and considered. If a mechanism has been put in place to ensure that should there be risks around undesired consequences, then there is a provision for revoking whatever that would affect our people adversely.

The Bill not only does cascade, but it also provides our county assemblies a tool for oversight as well. If in the process of the statutory instrument making, they have the opportunity to oversight, scrutinize the regulations and statutory instruments and to make sure that it is right and fit for the purpose. In fact, it gives them tangible tools to use to oversight the executive and to make sure that their role is not just limited to law making, but also representation is guaranteed. That way, the counties and their assemblies, will be strengthened and be relevant, both in the world of economic development and not just legislation.

This Bill is important because it strengthens the county assemblies, which is a reflection of us, as Senators. We find also that in the Senate, we are sometimes dealing with very mundane issues that should have been taken care of at the primary oversight level. In my opinion, this Bill will definitely make sure that a lot of the primary oversight roles will be taken care of at that primary level.

Therefore, for this House to come up with this legislation, it is very beneficial to us, even as Senators, because then, we can now deal with higher level, secondary oversight as opposed to dealing with basic and primary level oversight in the counties.

Madam Temporary Speaker, the only concern I have and, perhaps, may be the Vice Chairperson of the Committee, Sen. Farhiya, could look at is some of the timelines. It says within seven days. I am wondering knowing what the legislative process can be, especially where we require certain public participation, scrutiny of the assembly and with all the competing priorities - not to say that this is not a priority - we may wish to relook at some of the timelines.

I have read somewhere where it says it should be within seven days. As I was reading, I wondered if a seven day timeline is a reasonable amount of time. We do not set up ourselves for failure knowing just how much there needs to be done both at county and different levels.

There was also one concern under Clause 8(1) where it says:

“A regulation making authority that intends to prepare a regulatory impact statement shall notify the residents of the county, of the intended, preparations, by notice in the Gazette, County Gazette and in a newspaper of wider circulation within the country.”

Madam Temporary Speaker, I am thinking that is a bit too prescriptive. Perhaps, we could allow counties to use the best channels of communication for that county as opposed to prescribing exactly what to use. If a county is better at may be snail mail or county knows that it is through community radio that they can reach their residents or a nomadic community may be using other means of communication, then, we do not talk of this and have it too prescriptive to beat the purpose for which, perhaps, the communications was intended.

Madam Temporary Speaker, I do not want to belabour the importance of this Bill. It strengthens and protects counties. However, counties are not there in themselves for the sake of being there, they are there to serve. This Bill will make sure that it breaks down some of the legislation into statutory instruments that can be used on a daily basis for revenue collection and for all aspects of execution of some of the legislation. It must ensure that a county government run as a government that has economic impacts for its

people and serving the people who generates revenues. Therefore, it is sustainable and will be there to serve the people in future.

As I support this Bill, I can attest to the fact that it lends itself to a lot of provisions in the Constitution from public participation to service to giving the people the power to manage their affairs. However, it is also giving them the tools to do so in a manner that is within a framework of statutory instruments.

Madam Temporary Speaker, with those few remarks I would like to support this Bill and look forward to this House legislating county empowering, county strengthening, and institutional strengthening Bills of this nature. When we move to more strategic things like the overall primary level execution, primary level oversight, legislation is taken care of at the county level and we have truly strong governments at both national and county levels.

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

The Temporary Speaker (Sen. Nyamunga): Very well, Senator. Sen. (Dr) Musuruve.

Sen. (Dr.) Musuruve: Thank you, Madam Temporary Speaker.

(Sen. (Dr.) Musuruve spoke off record)

This Bill is important because it is helping us to ensure that devolution is effective. When you look at the core mandate of the Senate is to represent the counties and protect the interest of the county governments. Therefore, there is need to strengthen the county assembly and ensure that it is strong, that even MCAs are confident enough to execute their mandate.

Statutory Instruments are very important because they are an avenue or vehicles through which laws are made. When laws are made in a county, they are good because they regulate even the behaviour of people in the office. Through laws, it is possible to come up with a law that will help counties develop themselves, look at ways in which they can collect revenue and serve the people that they are made to serve.

These are issues that are core in the Senate. This is because through counties, it is possible to reach the people on the ground. That is the essence of devolution to ensure that people on the ground have the powers to do whatever they so wish with regard to decisions that pertain to them.

This Bill states clearly that a report has to be laid in the county assembly concerning a statutory instrument. The county assemblies have to scrutinize the report to decide whether it is okay or void. If they say it is void, then it means that statutory instruments do not work or they will not be implementable. Sound statutory instruments will empower county assemblies to do their work effectively.

I am also happy because clauses of this Bill are clear and not ambiguous. Sometimes when language is ambiguous, it confuses people to an extent of them thinking those instruments will eventually not work for them. This Bill says clearly that the language needs to be clear. If the language is clear and unambiguous, then it is possible for people to know and understand the objects of the instrument. They need to know what the benefits and demerits of the instruments are.

This clarity is very important because if you affirm to something that you are not sure of, then that will eventually not work for the people. This Bill cuts across all counties. There will be uniformity with regards to the statutory instruments in all the 47 counties.

I am also happy about Part III of this Bill that comes out clearly to talk about consultations which is very important. Consultation is the essence of devolution. When people are informed about what is happening, and asked to give opinions about a certain instrument, then this is very good. This is because people will be affirming to something that they understand and have prior information about it. If an instrument is operationalised and people do not know about it, at the end of the day, they will complain when they do an appraisal. Therefore, when there is consultation from the beneficiaries of the instrument, it will work for them. This will be good for devolution.

Madam Temporary Speaker, apart from the affected persons, it also talks about expert advice. This means that when coming up with an instrument, not just anybody can add to it. There has to be experts working on the instrument. The fact that advertisements will be there is a strong point. This is because there are situations, even in counties, where you find that many things just happen and people are not aware. For instance, issuing of tenders. If tenders are just given in counties without being advertised, it retrogresses devolution. There is need to advertise in terms of whatever instruments, so that the right expertise come on board and people are notified about them. If this is done, our people will be very comfortable and happy.

Madam Temporary Speaker, these adverts should be in the mainstream media and not hidden somewhere or just in county media. These adverts should be in the mainstream newspapers, electronic media, in addition to the chief's *barazas*, so that everybody is made aware of them. That way, no one will say, "I was not aware of this opportunity; I would have applied." Everyone should be given an equal opportunity to apply. If they merit, then they can go ahead and do whatever it is that the advert intended to.

Madam Temporary Speaker, I support this Bill because it empowers the county assemblies. Our county assemblies need to be empowered and strengthened for the purpose of ensuring that we are implementing devolution, which we must defend. It is constitutional that we want devolution to work. For that to happen, we have to ensure that the people who are directly in touch with the constituents are strengthened. Once they are strengthened, then the people will see that they actually have the powers in terms of decision making, laws and anything that affects them.

I beg to support.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators that brings us to the end of the debate on the Bill that is before the Senate. I would like to now call upon the Mover to reply.

Sen. Farhiya: Thank you, Madam Temporary Speaker, for giving me the opportunity to reply to The County Statutory Instrument (Senate Bills No.21 of 2018).

Madam Temporary Speaker, I wish to thank all the Senators who have contributed to this Bill; starting with Sen. Faki, who is a Member of our Committee; Sen. Cherargei, who has also contributed extensively; Sen. Milgo and Sen. Waqo.

I would also like to thank Sen. M. Kajwang for also suggesting some amendments in terms of the parent Act for the House, which is the Statutory Instruments Bill of 2013. He has proposed that it be amended so that if there is a procedural issue regarding mediation, then this House brings a solution to that stalemate.

I would also like to thank Sen. Halake who also talked about timelines in terms of the short timeline needed for the turn-around of executing this Bill.

I also thank Sen. (Dr.) Musuruve for contributing; I really appreciate her contribution.

Madam Temporary Speaker, I would like to ask Senators to also bring amendments to the Bill for the Committee to consider in terms of improving it. This is still open. These amendments shall be brought before this House for deliberation.

Madam Temporary Speaker, the role of this House is to protect counties, and because of that, I have no doubt that this House will pass this Bill. I also wish to ask our sister House, given the simplicity and importance of this Bill – in terms of what difference it would make to the county assemblies in their role of oversight and ensuring that they oversight the executive – to expedite its passing as well. This is because that is what will make a difference for the Committees of Delegated Legislation in the county assemblies.

Madam Temporary Speaker, the Committee on Delegated Legislation of this House had an opportunity to visit some of the county assemblies. We noted that the narrative that is out there. They do not have any framework. To them, this is just another Committee just to fill up the numbers. For us to move out from that position to a position where these MCAs have a legal framework, we must pass this Bill. This is a great opportunity for both Houses to ensure that this Bill is passed.

Madam Temporary Speaker, given that---

(Loud consultations)

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, even if we need to consult, it should be done in low tones because we are in the middle of a very important Bill.

You may continue, Senator.

Sen. Farhiya: Madam Temporary Speaker, given the great passion and the level of knowledge in terms of this issue, and considering how weighty it is, it has been canvassed very well by different Senators. Therefore, not only should we expedite its passing, but I want to be on record in this House as requesting our sister House not to delay it. It is a timely Bill. It is an idea whose time has come.

It is something that will make a difference, not only for the Committees on Delegated Legislation in the county assemblies, but also in terms of the executives, to ensure that they also know the rules of making those regulations. This Bill gives them a benchmark of what to consider when they want to make those regulations. This Bill also supports the executives, not only the county assembly.

Madam Temporary Speaker, I beg to move that the putting of the question be deferred to tomorrow pursuant to---

The Temporary Speaker (Sen. Nyamunga): You beg to request that the putting of the question?

Sen. Farhiya: Yes, Madam Temporary Speaker. I beg to request that putting of the question be deferred to tomorrow pursuant to Standing Order 61(3).

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): I direct that putting of the Question should be listed tomorrow. We, therefore, defer putting of the question until tomorrow.

(Putting of the Question on the Bill deferred)

The Temporary Speaker (Sen. Nyamunga): Next Order.

Second Reading

THE DETERMINATION OF THE NATURE OF BILLS
(PROCEDURE) BILL (SENATE BILLS NO. 30 OF 2018)

The Temporary Speaker (Sen. Nyamunga): Order No.15 is also deferred

(Bill deferred)

Second Reading

THE NATURAL RESOURCES (BENEFIT SHARING)
BILL (SENATE BILLS NO 31 OF 2018)

The Temporary Speaker (Sen. Nyamunga): Order No.16 is also deferred.

(Bill deferred)

Next Order!

Second Reading

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

The Temporary Speaker (Sen. Nyamunga): There is a request that this Bill should be deferred to next week. It is, therefore, deferred to next week, according to the request that we have.

(Bill deferred)

Next Order!

Second Reading

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

Sen. Cheruiyot: Thank you, Madam Temporary Speaker. I beg to move that The Tea Bill (Senate Bills No. 36 of 2018) be now read a Second Time.

Madam Temporary Speaker, this is a very important Bill to us who come from the tea growing counties. It is a great moment of honour for us to get this opportunity. I would wish to give a brief history of how we got ourselves here. Before the drafting of this Bill, I moved a Motion in this Chamber, where I requested that Senate allows a few of us, Senators, who come from tea growing counties to form a select Committee to keenly look into the challenges that continue to face tea farmers in our country, especially the small-scale tea farmers, the bulk of whom many of us represent in this House.

On many occasions, if you come from a county like mine, it is impossible to address a campaign meeting, during the time that you are seeking for leadership and the opportunity to serve in this House, without giving them a plan of what you intend to do with the tea sector.

First of all, I would wish to appreciate the Senate for this great opportunity that they gave us. It is not very usual that our colleagues get to agree with us, especially the magnanimity that came from our colleagues that serve in the Committee on Agriculture, Livestock, and Fisheries. They would otherwise have said that since this sector falls within their purview, the matter should rest until the day that they find time to sort it. However, they agreed with us. I would even wish to single out the Chairperson of that Committee, who is among the nine Senators that served with us in the select Committee.

The select Committee had two mandates. One was to give a legislative proposal to this House on how the challenges in the tea sector will be addressed. The second mandate was to table before this House a report documenting the challenges that are faced by farmers in the tea sector. The report is ready as well; we are still polishing and making a few changes before tabling it in this House for adoption as a report.

Madam Temporary Speaker, I would wish to report that there is good progress on that front as well. I would wish to just give this House highlights of what it is that is contained in The Tea Bill (Senate Bills No.36 of 2018). This Committee that was formed did engage all the major stakeholders in the tea sector to understand the challenges that the sector continues to face. We listened even to the Government through the Ministry of Agriculture and the conglomeration of different Government departments that look into the different crops in our country. We heard their presentation as well.

We also listened to the Kenya Tea Development Agency (KTDA), who are the largest tea managing agency in our country and East African Tea Traders Association (EATTA), the body that manages the East African tea auction in Mombasa. We had an opportunity to listen to them and share with us the challenges.

We listened to Tea Research Foundation, which is one of the very important institutions where for the last 50 or 60 years, tea farming as a business was sustained by the good work that was done by these Government institutions. They would do proper

research in terms of the viability of different clones of tea and advise farmers for a particular type of soil, this is the kind of tea clone that they are supposed to plant, so that they enjoy maximum yield. They would even do market survey as well and advise the country.

Tea is a global business and given the things that are happening world over, you do not want to find yourselves exposed. When you have a good research arm, they should be able to inform you what to do. If Iran, which is one of our strongest tea market, close the door on us or give us sanctions as they have given in the last few days in terms of pricing, where else can we sell our tea?

The unfortunate thing is that, you will get to read in the report that we will present before this House, and get to realize that after the amalgamation of different crops to form, under the armpit of one Government agencies, research was completely left behind. For the last five or six years, the only thing that the Tea Research Institute has been doing is to receive salaries from their Exchequer. There is absolutely nothing with regards to the work that they are supposed to do. As I said, we had the opportunity to listen to them.

Madam Temporary Speaker, one of the cardinal principles of this Constitution 2010 is that it places the public right at the heart of decision making. For every public officer, including even State officers like us, many of our decisions if not all, are supposed to be in tune with the feelings of our people. This is because the public sovereignty belongs to the people of Kenya. We knew about these challenges because for many of us farming of tea is what we grew up doing either at subsistence level or assisting our parents.

It was important that we visited different counties and listened to members of the public speak and share with us, as their leaders, their frustrations and challenges they have continued to face over the years. We visited Kisii, Bomet, Kericho, Murang'a, Embu, Meru, and Nyeri. We listened to different farmers whose dreams have been shattered. All they kept on reminding us is that if we do not find solution in the Senate, then they could as well uproot the tea and forget about it.

Madam Temporary Speaker, this will be very catastrophic because tea is the leading foreign exchange earner, perhaps, only second in the last two or three years after Foreign Direct Investment (FDI) that is being sent by our sons and daughters who are doing business abroad. Therefore, if this industry is not properly looked into, we are staring at a major catastrophe as a country. We cannot continue to run the tea business as we are doing currently. Therefore, we listened to the farmers and the challenges that they shared with us.

Madam Temporary Speaker, just for statistical purposes, the economies of at least 14 counties, out of 47, are directly dependent on tea as a business. If we allow in the next three or four years for things to be as they are right now, where we do not have farmers planting any new crop, it will not make sense. If you do not have a huge tract of land, it does not make sense to plant tea in your one or two acres. Fourteen counties are staring at an economic crash if we do not solve this issue.

Madam Temporary Speaker, after several meetings, it was clear that the tea industry faces serious internal and external threats. It was at this point that the Committee was of the view that there was need to come up with a Bill to try and address all the

challenges that we listened to. Having listened to the marketers, buyers, tea managing agencies, farmers themselves and owners of factories, both public and private, we, as a Committee, retreated and drafted The Tea Bill (Senate Bills No. 36 of 2018). That is the Bill that we are presenting before this House.

Madam Temporary Speaker, one of the biggest blunders that ever happened in this country – as I have pointed out earlier – is the amalgamation of the different crops to be managed under one ambit of the Government; or one directorate known as the Agriculture and Food Authority (AFA).

For the record, when the Cabinet Secretary (CS) for Agriculture, Livestock and Fisheries, Hon. Kiunjuri, appeared before the Senate Committee, he too confessed and said:

“Unfortunately, we can only operate under that which you have given us, as Parliament, and it is within your powers as the Legislature to undo that which was done.”

For the record, since the AFA came into place, there has never been a substantial director. You can imagine how Government operates. We are a country that prides ourselves in saying that agriculture is the backbone of our economy, yet for the one body that is supposed to take care of all the crops in the country, for six years, the people that have occupied that office have all been in acting capacity. It is a shame and embarrassing.

Madam Temporary Speaker, for those of us who have the interest of tea farmers in our hearts, while you are trying to sort out your issues with sugar, cotton, sorghum and the rest, please, get us out of this place. For many years, tea used to be properly managed. In fact, the offices that AFA continues to use are the offices of the former Tea Board of Kenya (TBK). That tells you how well this crop was managed and how well it was doing.

Unfortunately, when we were put together with the rest of the crops in the industry, we ended up suffering together with them. All the inefficiencies and corruption and mismanagement that was in the other sector was again brought to the tea sector.

Madam Temporary Speaker, the radical departure in terms of management of the tea sector that this particular Bill proposes is to get tea as a crop out of the ambit of AFA. Whether there will be a decision later to fold and have different bodies manage themselves that will be a decision for another time. As that is being made, we want to rescue out team farmers.

We propose that we get tea out of the ambit of AFA and it be managed by what we are now proposing to be the Tea Regulatory Authority of Kenya (TRAK). It is a regulatory body. This is another key highlight proposed in this Bill. We, as Senators, are the custodians of devolution. In our legislative work we are supposed to investigate and ensure that in all the decisions that we are making, at the end of the day, we are promoting the culture of devolving power from the central down to the grassroots level.

Madam Temporary Speaker, the management of tea as a sector; we have proposed in this particular Bill that the bulk of the directors who will serve in this TRAK, be nominated by the Council of Governors (CoG). We pick out of the top seven tea producing counties as per the records that the Kenya National Bureau of Statistics, each county nominates a single director to serve in the TRAK. It will, therefore, be impossible for my Governor in Kericho County to tell members of the public – the people who put

him in office – that his hands are tied on matters to do with tea. He will have to be accountable and say: “I nominated person “x” to represent you at the TRAK. This is what they are proposing in this Bill.

That is a radical departure from many of the laws that we are doing in the House. Sometimes I feel wounded as a defender of devolution when we pass Bills that clearly claw back on the gains of devolution. When we propose a regulatory authority and then give the CS power to nominate seven out of 10 members. What are we doing? It is important that it be known that this House takes premium on devolving of---

(Sen. Cheruiyot coughed)

Sorry, Madam Temporary Speaker. I think I will be fine.
Sorry for that interruption. That shows how passionate I am about this Bill.

The point that I was making is that we, as a House, must place a great premium on devolving power. It should be seen in our legislative work, that we, as a House, are aware of the fact that people want power to be closer to them.

If you have a director nominated, say from Kisumu, Migori or whichever county, as a people, we should visit him. Each and every time there is a challenge in the sector that they head, we should walk to their office or home and ask them what they are doing about the challenges. For example, there is one challenge that tea farmers continue to face.

In 2000, the Government, through a legal notice, converted a parastatal then known as Kenya Tea Development Authority (KTDA) into an agency. It gave them the power and that was a brilliant idea. It was a brilliant idea in the sense that all the parastatals that used to manage certain crops such as Coffee Board of Kenya are now former shells of themselves. The same applies to Pyrethrum Board of Kenya.

All the parastatals that used to manage different crops collapsed, but the tea sector survived thanks to that particular legal notice. This is something that we grappled with as a Committee because we realized that one of the things we cannot do is to undo a legal notice through legislation. Despite the fact that the directors who are in office represent hundreds of thousands of farmers and, perhaps, their decisions affect the economies and livelihoods of millions of Kenyans, they are still under the cover of The Companies Act. The Government can do very little in terms of interference with the operations of the private company.

Madam Temporary Speaker, the reason we are proposing a regulatory authority is because it will do the work of the regulator. For example, it will propose what happens when tea is sold at the East African Tea Trade Association (EATTA). They could also state what should happen with that money and who should keep it. When you see industries thriving in this country, it is because of a strong regulator. A regulator that has put in place regulations that protect the public. They ensure that innocent men and women that vote for us are not taken advantage of.

In many occasions, we cannot compare a tea farmer to a herder who runs a dairy business. This is because instead of a milk company paying him directly, because he is the owner of the cow that produces milk, they pay the owner of the company that gave

the feeds, the transporter and young men that they employ to take care of your cows. Whatever little that is left is given to you as a farmer.

That is the unfortunate bit because every nine days, tea that is sold at the Mombasa Tea Auction is paid for. Unfortunately, the farmer receives only 30 to 40 per cent of the money after 30 days. They receive the rest only at the end of the year without proper explanation as to where the money was for over 300 days. That is someone's money paid for the tea that they supply to different tea factories.

However, as a farmer, you are not told whether that money is. Even if it was idle in a bank account, I believe that it earns interest for the investment that it is put into. It is unfortunate that somebody takes the money that belongs to the farmers, goes on and trade with it. After six months, they make their millions then return to the farmers.

If you look at the people who are taken advantage of, they have no other request other than to ask the representatives of the people to set in place a strong regulator who will set regulations on how to manage the tea industry and propose on what they think about the particular industry. That, at the end of the nine days, it should either pay farmers or seek their consent on whether to keep their money for 21 more days. At the time, they return it to them, they would have made "x", "y" and "z" amount of money. The Kenya Tea Development Agency (KTDA) as an institution will feature prominently in our report.

Madam Temporary Speaker, my grandmother who is a shareholder in the tea factory that is closer to our home has no idea that the company that she has been taking tea for the last 30, 40, or 50 years has a very huge buildings that racks in billions in terms of rental income. For example, the different companies such as brokerage firms and fertilizer companies that brings in billions of shillings. However, if you read her monthly income statement from the tea factory, there is nothing that shows her the profit that come from the subsidiaries created out of her own sweat.

It is a pity that we have allowed strong economic institutions to take advantage of our farmers without giving them recourse. That is one of the strongest proposals that we are giving in this particular Bill. We want to have a regulator who will even the field.

Madam Temporary Speaker, multinationals feature prominently at the tea auction. If you go to the village where I come from, the multinationals that operate within our county pick 70 to 80 per cent of their tea *via* machines. Therefore, the quality of the tea leaves that they pick cannot be compared to the ones that have been picked via hands by the farmers. The one that is picked by farmers is of a way greater quality.

When this tea is finally delivered at the auction, part of the people who lead in term of paying this particular crop from the farmers are the multinationals. They buy the tea to blend it with theirs which they know is of a lower quality. However, because they have so much economic muscle, they are able to sit and decide what the price will be. Unfortunately, East African Tea Trade Association (EATTA), the body that manages our auction in Mombasa has refused to go electronic despite the fact that all the rest of the global tea auction centres moved from the manual auction more than 15 years ago.

I dare say that the kind of auction that happens in Mombasa is not an auction; it is a predetermined process where three to five people sit at a hotel in London and determine how much they are buying Kenyan tea today as we sit here. It is unfortunate.

It is only *via* an electronic auction process where the competing company cannot place in Kshs3.00 or Kshs3.50 per kilogramme. However, so long as we can sit, agree and say that for today, we feel like we should not pay more Kshs2 per kilogramme, they can determine this. It is only through a strong regulator as it is being proposed in this particular Bill that we will even the rules and issue a directive and say, for example, from today, anybody that wants to carry out auction business in Kenya must set up an electronic auction as a way of doing business.

Madam Temporary Speaker, in the past, the Tea Board of Kenya used to sponsor many research activities, look for the market and provide agricultural extension services to our farmers. Those days, our farmers were able to earn the maximum from this crop. Unfortunately, as I speak right now, our farmers do not enjoy these kinds of services. In many of our embassies, we do not have tea representatives, yet it is a well-known fact globally that our tea ranks with the very best. However, because of how Government is disorganised, nobody gets to sell these ideas out there.

Madam Temporary Speaker, another concern is that although agriculture is a devolved function, the tea sector has not quite been devolved as such. The delineation between the role of county and the national Government is still not clear. Therefore, it is only through a strong regulator as we are proposing that we will be able to set out the rules of the game and say the much that the Ministry will do and what will be expected of county governments. This is because county governments are among the leading beneficiaries in terms of cess and other benefits they continue to draw from our tea farmers.

As I draw to a close, you will remember that on many occasions, I have spoken before this House when we have had Bills brought before us. I remember the first point I ever made along this line of argument was when we were passing the World Anti-Doping Agency (WADA) Bill in the last Parliament--- If you remember that Bill that we were supposed to domesticate in the country so that our athletes could participate in the then coming World Championship.

In what had been brought to this House, we were being asked that the local agency in Kenya for WADA have their headquarters here in Nairobi. During my contribution, I asked: “What is our interest as legislators to pass a Bill that ensures that every time, all our athletes are having drug-related challenges and have to be tested have to travel all the way from high altitude areas where they train such as Eldoret, Nandi and Kapsabet? Does it make economic sense to have such an agency operate from Nairobi?”

Since we know that Eldoret is the city that is central to many of the athletes who fly our flag internationally, the agency should have been domesticated there. I lost the argument at that time. However, I made a decision that every time that I sponsor a Bill in this House, that speaks to my earlier point about the need to devolve power and take services closer to the people who vote for us, I will always defend it to the end.

In this Bill, we are proposing that the headquarters for the Authority be out of Nairobi. Since tea is centrally grown in the west and the east of the Rift Valley, let them have a single headquarters one at a central point such as Kericho that will cater for the entire region from Nandi, Bomet, Kisii and Nyamira counties. They should also have one sub-headquarters that will take care of the west of the Rift that will be in charge of the

whole region of Embu, Meru, Nyeri and Murang'a. We need to ensure that our farmers do not have to go through the trouble of having to come to Nairobi to seek for services.

What are we devolving if each time we are bringing legislative proposals to this House, we want every authority to be domiciled in Nairobi? That proposal has been put into this Bill. I will be willing to listen to responses from my colleagues on what they think about this proposal.

There are many other issues. However, in the interest of time, with those few remarks, I beg to move and call upon Sen. Cherargei of Nandi County to second.

Sen. Cherargei: Madam Temporary Speaker, I rise to second this important Bill by the distinguished Senator for Kericho County, Sen. Cheruiyot. He has done excellently in terms of giving out the background of what ails the tea sector.

Madam Temporary Speaker, from the onset, the tea sector has been left at the expense of a liturgy and cartels who ensure that farmers, anywhere you go – from Bomet, Kericho, Nandi or even the former central province, among other areas that grow tea – there are always complains.

Madam Temporary Speaker, as Sen. Cheruiyot has said clearly, we rely on tea. Out of the six sub counties in Nandi County; Tinderet, Nandi Hills – which hosts the major multinational companies, and since you are the neighbour, you are aware of this – Emgwen, Aldai, Mosop and Chesumei; almost the entire of Nandi County grows tea and rely heavily on it.

It is good that Sen. Cheruiyot has tried to elaborate about the ownership, profits and many other things that some of these multinational companies have invested in terms of shareholding in the tea sector. However, the only thing that you will hear farmers complaining about are the bonuses, because it is something they know. However, when you talk about the investments that come in, among other things, it is unfortunate.

Madam Temporary Speaker, there are also many other things that tea farmers complain about, amongst which is that they do not have a voice in terms of the decisions made. This is especially by the Kenya Tea Development Authority (KTDA), which is one of the key authorities that regulates a lot of the happenings within the tea sector.

Madam Temporary Speaker, in the spirit of Article 174 and in the spirit of devolution, I would have wished the headquarters to be in Nandi. However, because Kericho grows more tea, has most of the multinational companies and over 90 per cent of the country relies heavily on tea; it would be prudent to devolve some of these things to go where the real action happens. Some of us fully support him when he said that Kericho should be the headquarters of this authority because that is where the action is. Doing that will make it convenient for farmers in terms of managing their affairs.

Why should somebody come and stay in air conditioned office here in Nairobi and make blanket decisions without going and listening to what the tea farmers are complaining about? For example, in that region, it will be convenient for Nandi because it is nearer Bomet and many other areas that grow tea. Now that most areas, including Elgeyo Marakwet County – where the Senate Majority Leader comes from – also grows tea. If we have it in Kericho, it will be very important because it will be nearer to ensure that we move forward.

Madam Temporary Speaker, we look forward in the future, even as we struggle to devolve even maize – because we plant both maize and tea – to have the headquarters maybe in Eldoret. We should also have Kenya Cooperatives Creameries (KCC) Headquarters in Elgeyo Marakwet so that we avoid the clogging that we experience here in Nairobi because the real action and the spirit of devolution happens there.

In terms of the functions of the authority, I agree entirely with most of it. Agriculture is fully devolved. When the Cabinet Secretary comes in, I agree with the Mover of the Motion that he should not have a free hand in terms of nominating people or making appointments to the authority. He should have limited powers in terms of the registration, regulation and operations of tea growers and processors.

The tea sector is a serious business. Some of us who grow it in tea growing areas, know it is important that we regulate it. This is because there is cut throat competition; you will see somebody opening a factory in point “a” and before you know it, there is another one in point “b”. This lead the current cut throat competition. Therefore, it is important for us to register the operations of tea growers, processors and tea dealers; licensed managing factories and their agents.

Sometimes somebody comes and puts up a tea factory and before you know it, he is encouraging people to grow tea. This is also an issue in the coffee sector. Before you license a factory, minimum requirements should have been complied with, including Corporate Social Responsibility (CSR) and an agreement with local community from where these resources are being drawn from.

Licensing tea dealers is very important. This is because there are people who sit in London and imagine that they can buy our tea at the price they want. There are people who are stretching themselves in the wide beaches of Mombasa, waiting like predators, reap maximum from our tea. The least person who benefits on the food chain is the tea farmer. There are people whose business is brokerage. They just exploit tea farmers in Mombasa.

Tea is one of the highly taxed products, with almost 37 forms of taxation. There is even a matter in court – I do not know whether it has been disposed of - where the County Government of Mombasa did not want to add another levy on the tea because it a gateway of exporting our tea in this Republic.

Over taxation has ensured that farmers do not get value for what they work hard for. Farmers get injured and face many other challenges. Small-scale farmers and people who work in the tea sector get injured during pruning and so on. This licensing will weed out the rogue ‘tenderpreneurs’, brokers and other cartels that exploit tea farmers at any given time.

The other important point I want to add is on provision of advisory services on tea production and quality enhancement. That is very crucial because there was introduction of purple tea. Many people are not happy because they do not know what purple tea can do. Therefore, we need to do more research.

The Government and the law had an intention to have research institutions in this country, for example, KEMRI, KEFRI, among others. They are supposed to research and assist farmers to improve on the quality of production. This crop is giving us the highest

revenue, but we are facing stiff competition from other countries in the world that grow tea, like Ethiopia, Brazil, among others. Therefore, we must enhance our quality.

When you go to a tea growing area like Kisii, land is becoming smaller and it is no longer productive. As the land is being used for other development than growing tea, we should also work on research to grow tea of higher quality tea. Whenever we travel across the world and get tea that originates from Kenya, we feel at home, and as they say: “Every time is tea time.”

Advisory services are very crucial in tea production. That is why even in other agricultural activities we need extension officers. I hope that when this Bill is enacted, counties will try and domesticate this provision and ensure that that we have higher extension officers to provide Artificial Insemination (AI) services and give advice on issues of maize and coffee production.

Madam, Temporary Speaker, your county and mine grow sugarcane. Through the Kenya Privatization Commission, we are trying to have a bipartisan approach on how to ensure that the problems facing sugarcane farmers are addressed. Therefore, we do not expect the Cabinet Secretary at the national level to create a way of ensuring advisory services to the tea farmers. We hope the counties are listening and keen on this matter.

Research is very key. We should even do mapping of soil samples, such that farmers who want to grow purple tea and the ordinary tea may know what to grow. Farmers even in my own county, for example, should have somebody to tell them the type of soil that is best for growing purple tea; be it loam soil, red soil or clay soil. We need this research to be done extensively such that we know the acidity is required.

Madam Temporary Speaker, let me now address myself to the composition of the board of the authority. This is where I want to thank Sen. Cheruiyot for keenly looking into this. This is because everywhere you go, whether a farmers’ meeting, outgrowers’ meeting or tea farmers, the only issue they insist on is, “we do not have a voice, we want to have a voice, and we want to be heard.” Because the way the Kenya Tea Development Agency is composed, does not give a proper voice to farmers.

In the spirit of the new dispensation of prioritising the opinion and public participation, we should ensure that it has many people like a chairperson appointed by the President or the Permanent Secretary (PS), and the seven persons appointed by the Council of Governors (CoG) representing the top seven tea-growing counties. It would be very important, because now we have statistics. We might review at some point because other counties are picking up growing of tea.

With the debate of diversification, other counties might decide to diversify to something else in terms of crop diversification and production. It is something we will tier and ensure the law regulates time to time, so that we use statistics such that when these people are nominated by the CoG, they are very important. The largest number of tea growers will give voice to farmers and ensure that it is going.

I want to go straight to Clause 8 on the powers of the board. They enter contracts, manage and control assets of the authority and that is why you find farmers even do not know the property they own. There is one example in Nandi Sub-County that farmers have been able to manage their own assets. They have assets in Nandi Town. They are doing serious investments in that town.

We have seen allegations of the National Social Security Fund (NSSF) and National Housing Corporation. There are allegations facing the famous Ekeza Sacco where people are investing on behalf of others yet they themselves do not disclose and do not manage properly. They take advantage because an average age of a Kenyan farmer, according to the statistics that have been provided by the International Monetary Fund (IMF), the World Bank, and other institutions like the African Development Bank, it is between 60 to 66 years.

These tea farmers. Most of them stay in villages and they are taken advantage of by some cartels. They can come and maybe use balance sheets, statements of accounts, the annual general meeting and maybe the people do not understand the procedures the way we understand them as provided by the Companies Act. It is very important that when we manage, control and administer the assets of the authority, these investments should be relooked at and ensure we go forward.

(The amber light went on)

I do not know whether we want to adjourn or my time is almost up.

I am also passionate about this thing because these are some of the issues, the way Sen. Aaron Cheruiyot is passionate about them. I am almost crying because these are the problems that when you walk anywhere in your county, the issue is bonus. We do not have a voice, the poorest farmers are tea farmers. Therefore, I am so passionate about it in these issues.

Let me move quickly to Clause 17. It says every tea grower shall register with a processor and this will allow for data and statistics such that when we are reviewing the statistics---

I know there is the famous Huduma Number that is ongoing. Anyway, we are still yet to get what this Huduma Number will be. For example, we want to centralise the registration of tea with a processor, the name of the grower, the location, size and parcel number of the land where the tea grows and the variety.

These are some of the things that we are also trying to introduce in the issue of delivering maize to the National Cereals and Produce Board (NCPB). Farmers are being asked to bring title deeds, letters from village elder and the chief, the parcel number and its location.

It is very important that we have such register so that even when we are selecting the seven top tea growing areas and we ensure that we get the right people. We must ensure that a person shall not export, import, market or process tea unless he has applied for a license from the authority. You will find people opening some funny *kiosks*, they process tea in a very *kienyeji* way, repackage and call it, for example, Kericho Tea or Nandi Tea, yet the licensing has not been provided to the them.

Madam Temporary Speaker, some of these brokers who are in Mombasa stretching their muscles in order to ensure that they take care of the sand and moonlighting, among other things, they just decide to export and import because they have connections. Our farmers in Kericho, Nandi, Bomet, and Nyeri, among other areas, can even have the ability of applying for the license and export and import. I am sure they

can process their produce and export. This will allow our farmers to apply for licensing and get an opportunity to export.

We will have to enhance the punishment because most of these, I hope the Mover of the Motion is listening, cartels that is the tea brokers and stretchers of muscles in Mombasa, two years is a bit less harsh punishment. We should enhance this punishment so that they know when you have to apply licensing, you should have the correct and information.

Madam Temporary Speaker, Clause 20 speaks about dissemination of market information. The authority shall carry out market research and disseminate information to processors and dealers. This is very important so that in the spirit of Article 10 on public participation and Articles 34 and 35 on media freedom of the Constitution in terms of access to information. This should be provided so that even as governors, national Government, authority, and farmers plan themselves, they must ensure that this is captured properly.

Madam Temporary Speaker, I do not know if the time is almost spent.

On Clause 23 on the disclosure of shareholders, I want to agree that some of these companies are wrongly constituted. The illiteracy level of the old women of 80 years and the farmers of, as I have said, of the average age. This disclosure is now mandatory so that in terms of shareholders and many other people that---

Clause 24 talks about the annual report and publication. I hope that we will try and look so that we can do an oversight of some of these publications. It also states that the financial year shall be the period of twelve months ending on 30th June in each financial year. These annual reports should be published and ensure that we provide for---

(The Red timer went off)

Madam Temporary Speaker, can you add me maybe two more minutes or the time is spent?

The Temporary Speaker (Sen. Nyamunga): Your time is up!

Sen. Cherargei: Okay. Madam Temporary Speaker, I beg to second.

(Question proposed)

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, time is spent and the next time the Bill is listed, we will give priority to Sen. Farhiya and Sen. Wetangula.

ADJOURNMENT

Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the House. The Senate, therefore, stands adjourned until Thursday, 14th March 2019, at 2:30 p.m.

The Senate rose at 6.30 p.m.