

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 18<sup>th</sup> June, 2019

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

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

### PRAYER

### COMMUNICATIONS FROM THE CHAIR

#### VISITING DELEGATION FROM KAKAMEGA COUNTY ASSEMBLY

**The Speaker** (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of a visiting delegation from the Kakamega County Assembly House Business Committee and Speaker's Panel who are undertaking a two-day study visit and benchmarking in the Senate.

I request the hon. Members and staff from the said county assembly to stand when called out so that they may be acknowledged in the Senate tradition.

They are-

#### A. THE HOUSE BUSINESS COMMITTEE

- |    |                       |   |        |
|----|-----------------------|---|--------|
| 1. | Hon. Leylah Muhandale | - | Member |
| 2. | Hon. Dickson Ombayo   | - | Member |
| 3. | Hon. Evelyn Mwanzo    | - | Member |
| 4. | Hon. Willis Opuka     | - | Member |
| 5. | Hon. Geoffrey Ondiro  | - | Member |
| 6. | Hon. Sarah Watsula    | - | Member |

#### B. THE SPEAKER'S PANEL

- |    |                    |   |        |
|----|--------------------|---|--------|
| 1. | Hon. Evelyn Mwanzo | - | Member |
|----|--------------------|---|--------|

#### C. SECRETARIAT

- |    |                    |   |                 |
|----|--------------------|---|-----------------|
| 1. | Mr. Laban Atemba   | - | Ag. Clerk       |
| 2. | Mr. John Simwa     | - | Deputy Clerk    |
| 3. | Mr. Felix Juma     | - | Clerk Assistant |
| 4. | Mr. Nicholas Anywa | - | Principal Clerk |
| 5. | Ms. Anne Muleshe   | - | Clerk Assistant |

- |    |                    |   |                 |
|----|--------------------|---|-----------------|
| 6. | Ms. Everlyn Juma   | - | Clerk Assistant |
| 7. | Ms. Grace Wekesa   | - | Hansard Editor  |
| 8. | Ms. Phylis Ongale  | - | Hansard Editor  |
| 9. | Mr. Patrick Litaba | - | Serjent-at-Arms |

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)*

Hon. Senators, I have another communication to make before I allow you to comment.

VISITING DELEGATION FROM RIOMEGO SDA  
MIXED PRIMARY SCHOOL, NYAMIRA COUNTY

Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Riomego SDA Mixed Primary School in Nyamira County.

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

I thank you.

*(Applause)*

Kindly, proceed, Sen. Shiyonga.

**Sen. Shiyonga:** Mr. Speaker, Sir, I thank you for giving me the opportunity to join you in welcoming the Kakamega County Assembly House Business Committee as well as students from Riomego SDA Mixed Primary School. The Members from Kakamega County Assembly should feel welcomed because I appreciate their presence here. I come from Kakamega County so I am proud to see you here.

I know that there is so much for the Members from Kakamega County Assembly to learn and implement. Our role as the Senate is to support the County Assembly to deliver and do much for our county. People of Kakamega County; the County of *Mulembe*, expect much from their county assembly.

Mr. Speaker, Sir, I hope that the students are going to enjoy their stay here. I believe that they are going to learn from us so that when they grow up, some of them can become Senators. We were also once primary school pupils so we pray that in future, many of them end up in Parliament as Members or in other arms of the Government.

I thank you.

**Sen. Were:** Mr. Speaker, Sir, I join my colleagues in welcoming Kakamega County Assembly House Business Committee and Speaker's Panel. I also welcome the students from Riomego SDA Mixed Primary School. I hope that the Senate gives them hope that it is possible for them to be part of the leadership of this country.

I would like to remind the MCAs from Kakamega that they have a bigger role to play in the functions of devolution especially in their oversight role. They are our eyes at the county before matters are brought before the Senate. The MCAs should therefore take their work seriously and play their role effectively. As I have said before in this House, when the county assemblies do their work well, they make our job easier.

I thank you.

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, I thank you for giving me an opportunity to join you in welcoming the students from Riomego SDA Mixed Primary School to this House. I would also like to welcome the MCAs from Kakamega County.

It is good for students to come here and interact with us to see exactly what happens in the House. We would like students to learn from us because we want to mentor them. I commend the schools that allow their students to come and learn from us because we are transformative leaders so we would like them to learn from our example.

Mr. Speaker, Sir, I am from Kakamega County so I join you in welcoming the Kakamega County Assembly House Business Committee and Speaker's Panel. I commend the MCAs because of the track record of development in Kakamega County. Were it not for them, I do not think Kakamega County would be where it is.

Kakamega County is one of the best counties in terms of health policies. It is delivering on health services. The Governor has done a commendable job in roads and street lighting. Kakamega County is on top of everything. Kakamega County makes the Senate proud. They give us a reason to say that devolution is working. If you visit Kakamega County, you will see good roads and health care programmes. The maternal death rate has reduced to a minimum. Many counties can learn from Kakamega County where devolution is working. I am proud of them. Bravo.

Mr. Speaker, Sir, I am happy to see the MCAs from Kakamega here. They are gender sensitive because I can see that men and women are represented equally. I can see that they are even smiling because they are happy to interact with us. That is what we want as the Senate.

**The Speaker** (Hon. Lusaka): Order, Senator! Kindly speak through the Chair. Address the Chair, not the visitors.

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, I am sorry but I am happy that they have come to interact with the Senate. The role of the Senate is to represent the interest of the counties. It is meaningful when the county assemblies come to engage with us here.

I thank you for giving me an opportunity to welcome the visiting delegations to this House.

**The Speaker** (Hon. Lusaka): Next order.

## PETITION

### CHALLENGES FACING SMALL-SCALE TEA FARMERS IN THE KTDA

**The Speaker** (Hon. Lusaka): Hon. Senators, Pursuant to Standing Orders 226 (1) (a), and 230(2) (b), I hereby report to the Senate that a petition has been submitted,

through the Office of the Clerk, by Mr. Isaac Mwangi Mugo, a small scale tea farmer in Kangaita Tea Factory, Kirinyaga County.

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

‘Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.’

Hon. Senators, the salient issue raised in the said petition are-

(a) Small scale tea growers in Kenya are calling for the review of the election laws for directorship and committee members for the Kenya Tea Development Agency in all the factories in the country.

(i) THAT, the KTDA laws provide that voting in elections is based on the shareholding rather than one man one vote thus disadvantaging the peasant farmers yet the issues deliberated on affect all farmers.

(ii) THAT, the current voting system denies small scale farmers the opportunity to serve in the management of factories.

(iii) THAT, there should be equal voting rights in the election of directors and committee members

(b) Small scale tea growers have been pushing for changes in the election laws including proposing for changes in the election laws including proposing a more gender balanced approach

(i) THAT, the KTDA directors have ensured that powers remain within few large scale farmers.

(ii) THAT, decisions are made to benefit the large scale farmers only such as introducing plucking machines which will disenfranchise the casual workers.

(iii) THAT, the cost of fertilizer is high yet the quality is low thus lowering tea produce per stem.

(iv) FURTHER, the tea payment is too low due to bad management from the directors.

(v) THAT, legislation should be enacted to protect the tea industry and farmers.

(vi) THAT, the term of the directors should not exceed two terms in one tea factory.

(vii) THAT, any candidate vying for the position of director should have at least a Form Four certificate

Consequently the petitioner pray the Senate hear and considers the petition and-

(a) comes up with legislation on how the KTDA should conduct its affairs and protect the tea farmers from poor payments;

(b) directs the Ministry of Agriculture, Livestock and Fisheries to review the price of fertilizer and quality;

(c) directs the Auditor-General to conduct a lifestyle audit exercise on the present directors, and;

(d) any other measure that the senate deems fit to streamline and improve the tea industry.

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

Kindly proceed, Sen. Cheruiyot.

**Sen. Cheruiyot:** Mr. Speaker, Sir, I thank you for giving me this chance as the foremost defender of the interests of tea farmers in this House. I would have taken great offence had you allowed people like Sen. Murkomen who do not know how a tea bush looks like to make comments on this particular issue.

**The Senate Majority Leader** (Sen. Murkomen): On a point of order, Mr. Speaker, Sir. Have you heard what Sen. Cheruiyot just said? Is he in order to try and undermine the very petition that seeks to protect small scale tea farmers while he knows very well that we have a tea factory in Flax with a neighbouring land of over 1000 acres of tea? We also have a tea factory in Kapcherop. Mr. Speaker, you have been an administrator in that region and you know that. Is Sen. Cheruiyot in order to undermine the petition that talks about protection of small scale tea farmers?

**The Speaker** (Hon. Lusaka): The Senate Majority Leader, are you personally a small scale tea farmer?

**Sen. Cheruiyot:** Mr. Speaker, Sir, Sen. Murkomen must choose what he wants to be in this House. On certain days when it is convenient like today, he wants to become a tea farmer. When it is more convenient, he wishes to be a squatter. So, he is a pastoralist on certain days

*(Laughter)*

Mr. Speaker, Sir, this Petition is important and I am proud of the work that the Senate as a House has done on issues facing tea farmers.

Mr. Speaker, Sir, you are aware that last week on Thursday, we passed the Tea Bill, 2018. Part of the key highlights of the Bill is that we are pushing for a strong regulator in the tea sector because basically, tea farmers have been left on their own. When the Government changed Kenya Tea Development Authority (KTDA) from being a state parastatal to being a private entity, many small-scale tea farmers have ended up suffering in their hands. It is my hope that the National Assembly will agree with us on the need to have a strong regulator in the tea sector.

Secondly, Mr. Speaker, Sir, you will recall that late last year, this House passed a Motion that was brought that sought to form a select committee to look into the challenges facing the tea farmers. The report is ready and it should be up for debate either late this week or when we resume after the short recess. Having listened to the cries and pleas of tea farmers in this country, the President should quickly form a commission of inquiry to look into the operations of the KTDA for the past 19 years since it became an agency and how the investments it has been making benefit the tea farmer.

One of the richest state corporations in this country happens to be the one that has been mentioned in this Petition. However, we have the tea farmers who are the people who have, through toil and hard work, ensured the corporation has billions but they continue to lose their money each and every time a bank collapses and are completely poor and impoverished. Therefore, we request the President to form a commission of inquiry to tell farmers what will happen to their investment.

Many buildings that the KTDA own in this town and things it has been doing have been raised in this Petition. I agree with them and look forward to what the Committee on Agriculture, Livestock and Fisheries will establish on this particular issue.

Should we debate the Report and pass it before the 60 days that are allowed, the petitioners will have some of the answers. Perhaps 90 per cent of their issues will be addressed.

Therefore, Mr. Speaker, Sir, I support and thank you.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Speaker, Sir, for giving me an opportunity to give a few remarks on this Petition. Tea farming is important in this country just like other types of farming. What has been lost to the Ministry of Agriculture and Irrigation is the voice of the farmer. They collapsed all organisations that used to represent farmers into something called the Agriculture and Food Authority (AFA), something that is not sensitive to individual specialization of farmers. You will find the animal called AFA talking about coffee, tea, fishing and sugarcane, so that we have many competing interests without specialization.

We, Members of the Committee on Agriculture, Livestock and Fisheries, have been looking at the possibility of unbundling this animal so as to get entities that specialise in various sectors. So, a time has come and I think it is important to look at tea and have the farmers' voice in tea entities, so that the farmer gets the right attention, is resourced and can speak to people.

With those remarks, I beg to support.

**Sen. (Dr.) Milgo:** Thank you, Mr. Speaker, Sir, for giving me a chance to also support this Petition. From the outset, I wish to state that tea growing is an economic activity and the petitioners have spoken well.

Tea is one of the major crops that contribute to the Gross Domestic Product (GDP) of this country. However, many farmers, particularly those doing small-scale farming, suffer as a result of mismanagement of that particular sector due to privatisation of the KTDA. It is unfortunate that many small-scale farmers grow tea on all their farms but they do not have a voice when it comes to voting. During Annual General Meetings (AGMs), they are used as rubberstamps. They are called and told regulations that large-scale farmers pass. They are not considered as tea farmers but rather workers on their own farms.

I am glad there is a Bill coming. I know there are two committees that went round to find out problems that bedevil particularly small-scale farmers in the tea industry. It is time we had a strong regulator not only to regulate the factories but also the Savings And Credit Co-operatives (SACCOs).

There are two SACCOs in my county. One of them is M-Pesa Sot Tea Growers SACCO where small-scale farmers put their money. However, they cannot even access any money for school fees or basic needs.

I hope the Petition will be looked into and given the attention it deserves. If that is properly done by the Committee on Agriculture, Livestock and Fisheries, small-scale farmers will be saved the challenges they have been facing for many years.

I thank you.

**Sen. Wetangula:** Mr. Speaker, Sir, I support the Petition by Mr. Isaac Mugo who is challenging the dominance and oppression of the KTDA and large-scale producers in the tea sector. The Senator for Kericho County should know that you do not have to come from a tea growing area to know about tea. We just finished a report on maize and Sen.

Seneta here from a non-maize growing area was one of the most industrious and productive Members of the Committee.

The coffee sector used to have similar problems. It took a man called Mbiu Koinange, in 1912, to challenge the Queen's Government and the rules that oppressed small-scale farmers in the tea sector. The biggest problem in farming is what the distinguished Senator for Migori County has said. In 2011, in a hurry to fix the new Constitution, all agricultural statutes were collapsed into one called the AFA. That was the beginning of a myriad of problems in the agricultural sector. With the AFA, the sugar sector regulator disappeared with farmers' money amounting to over Kshs25 billion. Today, the sugar factories like Sony, Nzoia, Mumias, Muhoroni and others are on the brink of death.

Mr. Mugo is giving this House a catalytic move for the Committee on Agriculture, Livestock and Fisheries--- I cannot see the Chairperson here but I think Sen. Ochillo-Ayacko is a Member of the Committee. They should take advantage and carry out a critical review and unbundle all the statutes that collapsed into the AFA, so that we have proper regulation of crops, areas where they are grown, the value chain process and so on, and so forth.

The problem in the tea sector is not just about voting rights. We had uproar in the last Senate when Kenya Tea Development Agency Holdings Limited (KTDA) unilaterally and unreasonably decreed that the tea bonus in some parts of the country was going to be paid at Kshs48 and Kshs16 in other parts of the country such as Bomet. Nobody knew how they arrived at that decision. We are now left to ask; who will watch the watchers? Who will regulate the regulators? That is why this Senate is here to protect and defend the interest of counties and the people.

Lastly, I join you in welcoming my brothers and sisters from Kakamega. They should feel at home and learn as much as they possibly can. This is a house of reason, appeal and revision. In this House, we debate issues without emotion.

*(Interruption of debate on Petition)*

## COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM MISSIONARY CORNERSTONE  
SCHOOL, UASIN GISHU 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 Missionary Cornerstone School, Uasin Gishu County.

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

*(Resumption of debate on Petition)*

**Sen. Kinyua:** Ahsante sana, Bw. Spika, kwa kunipa fursa hii. Ninaunga hoja hii mkono na ningependa kusema ya kwamba kila mtu anapaswa kupewa haki yake. Hiyo isipotendeka, tutakuwa tunaonyesha ya kwamba mnyonge hana haki na mtu ambaye amelima shamba yake ndogo hawezi kupiga kura. Itakuwa pia inaonyesha ya kwamba huyo mtu hana usemi wowote katika ukuzaji wa majani.

*(Sen. Cheruiyot, Sen. Kang'ata and Sen. Kibiru consulted loudly)*

Kamati ambayo itapewa jukumu---

**The Speaker** (Hon. Lusaka): Sen. Cheruiyot, Sen. Kang'ata and Sen. Kibiru, consult in low tones.

**Sen. Kinyua:** Kamati ambayo itapewa jukumu ya kuangalia haya maneno wanapaswa kuona ya kwamba hoja hii imeshughulikiwa kwa mapana na marefu kwa sababu hata wanyonge wana haki---

*(Sen. Halake consulted Sen. (Eng. Mahamud)*

**Sen. M. Kajwang':** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. M. Kajwang'?

**Sen. M. Kajwang':** *Mr. Speaker, Sir, je, Sen. Halake anaruhusiwa kuinama karibu na Seneta wa Laikipia anavyofanya? Huenda akamchanganyisha mpaka akasahau yale ambayo alikuwa akiyasema.*

*(Laughter)*

**The Speaker** (Hon. Lusaka): *Order Members.* Ninajua ya kwamba Seneta wa Laikipia anauwezo wa kustahimili jambo lolote.

*(Laughter)*

Endelea Seneta wa Laikipia.

**Sen. Kinyua:** Ahsante sana, Bw. Spika. Mimi ni mkristo halisi na sizingatii wala siyafahamu mambo ambayo anajaribu kuyasema. Kwa hivyo ninaweza kustahimili.

Ni vizuri tutie maanani kwa hoja hiyo ndiposa tuweze kusema ya kwamba kila mkenya; maskini, tajiri, mlala hoi, mla nyama na mla nyasi, anahaki.

**Sen. Shiyonga:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to support the Petition.

Farmers are being exploited in Kenya, especially the small scale farmers.

*(Senators consulted loudly)*

Mr. Speaker, Sir, kindly protect me from the noise. Farmers are being exploited in Kenya.

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

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

**Sen. Wambua:** Mr. Speaker, Sir, I am not sure if it is in order for Sen. Shiyonga to allude that Senators are making noise in the House.

**Sen. Shiyonga:** Mr. Speaker, Sir---

**The Speaker** (Hon. Lusaka): Sen. Shiyonga, did you say noise?

**Sen. Shiyonga:** Mr. Speaker, Sir, I said loud consultation.

*(Laughter)*

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

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

**Sen. Kabaka:** Mr. Speaker, Sir, we were discussing legal issues. In fact, we were consulting the senior legal counsel, Sen. Wetangula, on the rights of the minority in a company set up and I cited the case of Ford vs Abbot as enshrined in the principles of the company law---

**The Speaker** (Hon. Lusaka): Order Sen. Kabaka.

**Sen. Kabaka:** That is not noise. I went further to cite other decisions in that support. If she heard that discussion, she would have appreciated it. We do not make noise but give substance.

**The Speaker** (Hon. Lusaka): Senators consult in either low or high tones. They do not make noise.

**Sen. Shiyonga:** Mr. Speaker, Sir, it is true that Members do not make noise, they consult in low tones.

Small scale farmers in Kenya are exploited. This Petition has come at the right time. I am a Member of the Committee on Agriculture, Livestock, and Fisheries and I know that this Petition will be committed to our Committee. I am sure that the information from this House and the one that we shall gather will enable us help the small-scale farmers.

We have had problems with payments of the farmers, voting and resource allocation. Therefore, we need to have a legislation to deal with this problem because farmers in tea zones have suffered. They have lost a lot of resources and money and have been side-lined. The Petitioner, Mr. Isaack Mwangi Mugo has said that they are side-lined when it comes to voting yet they are the ones who are supposed to vote because they are at crossroads. In fact, they are the ones who are supposed to be elected because they are the stakeholders. When elected, they can discuss the real problems that they are facing.

I support the Petition.

**Sen. (Prof.) Onger:** Thank you, Mr. Speaker, Sir. Let me add my voice to this appropriate and important Petition to this House. You will all remember that we had a Committee that looked into the tea programmes. The problems that are inherent in the tea industry are numerous but the person who bears the heaviest burden is the small scale farmer; the farmer who literally pays for everything.

When we did the survey on the tea industry, it was apparent to us that the tea industry has more than 42 levels of taxation. Mr. Speaker, Sir, you were once a Permanent Secretary in the Ministry of Agriculture and you will appreciate that the most

troubled, tested and persecuted person is the small scale holder in the tea industry. More so, even the immediate factories which ostensibly they ought to own, are at the mercy of the executive from the KTDA. Therefore, what the KTDA says at the headquarters is what goes on the ground. The ‘small’ men and women in that environment within that factory setting, even though they have representation at the factory level, have no voice over what happens to their tea, how it is being processed, what the end product is, and what happens at the end of the auction in Mombasa.

Mr. Speaker, Sir, if there is any merit in this Petition, it is how we now get the common man - the ordinary small-scale tea holder with less than 1,000 trees – to survive in that harsh environment.

This morning I was looking at someone who grows a lot of things in a quarter of an acre. They are quite comfortable with that because of the modern scientific methods of farming. The type of tea bush they planted some 20 or 40 years ago is the same. They have not been able to adopt clones such as Clone 35, which does very well, particularly in some of the highlands in the western part of Kenya and some various types of clones that have very high yields that one can pick every nine to ten days.

This regulation is important because if we do not give power and authority to our people, then devolution will not have a meaning, more so, when agriculture is one of those areas that have been devolved. The Petition will draw a lot of information from the just concluded Tea Bill that we have been able to pass in this House. The Committee on Agriculture, Livestock and Fisheries should be able to draw a lot of inspiration and material from that Committee because we covered quite a lot.

I support.

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

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for giving me an opportunity to add my voice. I support Mr. Mugo’s Petition. In one of the President’s speeches, he mentioned that we should endeavour to be ‘farmer-centric’. As we endeavour to be so, we must just walk our talk. In essence, the Kenyan farmer, especially the small-scale farmer, must be protected.

The tea farmers are doing a commendable job. Kenyan tea is one of the most highly consumed beverages worldwide. If you go to America and other parts of the world, you will find it being brewed and people demand for it. Kenyan famers also do a commendable job because they add to the economy of this country. They do the farming and employ people. There is a lot of input which should be translated to the output.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Hon. Senators, let us consult in low tones.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for your intervention. The Kenyan farmer does a lot for the economy of this country. For that reason, there is need for us, as the Senate, to ensure we protect the interests of the farmer. In doing so, we have to be sensitive and empathetic to the farmer, so that the small-scale farmers are protected. The land that these farmers have is what they rely on to take their children to school and support their families. This is something we cannot ignore. Therefore, there is need for us to ensure that the Kenyan farmer is comfortable when he is doing his work.

The tea industry should be investigated and researched on even in universities. We should ensure that whatever findings they get have positive input to the farmers.

Mr. Speaker, Sir, this Petition will ensure that Kenyans farmers are empowered, strengthened and given a voice. Our support to them, as the Senate, will be glorifying.

I support the Petition.

**The Speaker** (Hon. Lusaka): Hon. Senators, the time for Petitions is over. Pursuant to Standing Order No.232 (1), the Petition stands committed to the Senate Committee on Agriculture, Livestock and Fisheries.

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

I thank you.

Next Order.

### PAPERS LAID

#### REPORT ON THE COUNTY HALL OF FAME BILL, 2018

**Sen. Sakaja:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Tuesday, 18<sup>th</sup> June, 2019:-

Report of the Standing Committee on Labour and Social Welfare on the County Hall of Fame Bill (Senate Bills No.39 of 2018).

The Bill was initially sponsored by the Senate Majority Leader, Sen. Murkomen. The Committee has gone through it and given a report with proposed amendments.

I thank you.

*(Sen. Sakaja laid the document on the Table)*

#### REPORT OF THE MEDIATION COMMITTEE ON THE PHYSICAL PLANNING BILL, 2017

**Sen. Mwangi:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Tuesday, 18<sup>th</sup> June, 2019:-

Report of the Mediation Committee on The Physical Planning Bill (National Assembly Bills No.34 of 2017).

*(Sen. Mwangi laid the document on the Table)*

**The Speaker** (Hon. Lusaka): Next Order.

### NOTICE OF MOTION

#### ADOPTION OF REPORT OF THE MEDIATION COMMITTEE ON THE PHYSICAL PLANNING BILL, 2017

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

THAT the Senate adopts the Report of the Mediation Committee on The Physical Planning Bill (National Assembly Bills No.34 of 2017) laid on the Table of the Senate on Tuesday, 18<sup>th</sup> June, 2019, and pursuant to Article 113 of the Constitution and Standing Order No.161(3) of the Senate Standing Orders, approves the mediated version of the Bill.

**The Speaker** (Hon. Lusaka): Next Order.

## STATEMENT

### PROTECTION OF KENYAN CITIZENS WORKING IN SAUDI ARABIA

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on Labour and Social Welfare on the protection of Kenyan citizens who work in Saudi Arabia.

In the Statement, the Committee should explain the following-

(1) Explain whether the bilateral agreement between Kenya and Saudi Arabia with improved terms of employment, rights and privileges of domestic workers and their employers has been implemented.

(2) Explain, whether the Government, having allowed Saudi Arabia to start recruiting Kenyan citizens mostly domestic workers, is equally protecting them as they carry out their employment.

(3) State whether the domestic workers in Saudi Arabia have access to their wages, free housing, health insurance, transport and food as the agreement has set out.

(4) State whether the recruitment agencies are licensed and held accountable for the wellbeing of the domestic workers.

(5) Explain whether there exists a legal framework that enhances co-operation between Kenya and Saudi Arabia to protect the rights of both employers and domestic workers and regulate their contractual relationships.

(6) State whether the Kenyan Embassy in Saudi Arabia can act as an agent to protect the Kenyan domestic workers who are victims of abuse and detention without reasonable cause.

(7) Explain whether the Government will intervene and compel the release of domestic workers, Kenyan citizens, who are currently detained and their travel documents withheld by their employers in Saudi Arabia.

Thank you, Mr. Speaker, Sir.

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. This is a matter that has been under the consideration of our Committee together with the Ministry of Labour, Social Security and Services and the National Employment Authority (NEA). We will ask for an official response but it would be good for us to interact with the Senator on this important issue because it affects many of our young people. We will bring, within the standard time, a response about the vetting of these employment bureaus and our bilateral agreements with these countries. In fact, we have just signed a very clear agreement with Saudi Arabia, Qatar and such countries. However, it will be of essence for us to deal with it directly with the Senator for Narok County.

Thank you, for that Statement. We will bring a response as the Committee on Labour and Social Welfare.

**Sen. Shiyonga:** Thank you, Mr. Speaker, Sir. I stand to support the Statement by Sen. Olekina on the domestic workers employed in Saudi Arabia.

This Statement is timely because most domestic workers who are employed in Saudi Arabia are being totally frustrated. These are our children whom we have educated and have gone to look for a livelihood. From some of the disturbing videos that have been going around, it gives evidence that our children in Saudi Arabia are suffering. It is high time, therefore, that the Kenya Government through the Saudi Arabian Embassy in Kenya or the concerned authorities find a way to save our children because they are suffering in a country where they have gone to look for a livelihood, whereas citizens of Saudi Arabia are enjoying in Kenya.

**Sen. (Prof.) Ekal:** Thank you, Mr. Speaker, Sir, for allowing me to also contribute to this Statement.

I would like Kenyans to read their history and understand that during the time of enslavement, it was the Arabs who sold our people to White men and those are the people who found themselves in the Americas and other parts of the world. Secondly, you should also remember that today, there are no black people in Arab countries. The reason for this is that when our people were taken there, the men were castrated so that they would not produce any black people.

Given that kind of history, I know these people have that mentality that black is inferior and should be used as a slave. That is the reason why when our people go to such countries, they get the most ridiculous and outrageous treatment.

**Sen. Kang'ata:** On a Point of Order, Mr. Speaker, Sir. Allow me to rise on a point of order as to whether the words from my colleague may be construed as racial profiling in terms of making sweeping statements in general terms against an entire people. In my opinion, those words may be quite offensive. I strongly believe that those words should be expunged from our records because of the sensitivity of the subject. Is there historical evidence to support the insinuation that the people in Saudi Arabia took black people, killed and castrated them? Are those Arabs ---

**The Speaker (Hon. Lusaka):** Sen. Kang'ata, you are out of order! Sen. (Prof.) Ekal was just giving a historical perspective of what happened.

Sen. (Prof.) Ekal, proceed.

**Sen. (Prof.) Ekal:** Thank you, Mr. Speaker, Sir, for protecting me from Sen. Kang'ata. Apparently, Sen. Kang'ata, being young, did not study his history. You need to read that history and find out a lot of the suffering that Africans experienced. Tippu Tip is one of those people who were buying our people and selling them off to foreigners to be enslaved. I am not particularly accusing Saudi Arabia but I am just saying Arab countries in general still have that mentality that black people are inferior and should be treated as slaves. That is the reason why when our people go to work there, they get the most horrible treatment.

In sending our people to work in such countries, I think we should vet their potential employers and find out whether they understand the whole concept of human rights. Otherwise, we will be exposing our children to very negative treatment.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Clerk, read Orders no.8 all the way to 12.

**COMMITTEE OF THE WHOLE**

*(Orders for Committee read)*

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

**IN THE COMMITTEE**

*[The Temporary Chairperson (Sen. Nyamunga) took the Chair]*

THE COUNTY GOVERNMENTS (AMENDMENT) BILL  
(SENATE BILLS NO.11 OF 2017)

*(Consideration of National Assembly Amendments)*

*(Resumption of debate interrupted on 12.6.2019)*

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, we are on Order No.8.

*(Loud consultations)*

Hon. Senators, can I have your attention? We have done all the amendments. I now call upon the Mover to report.

THE COUNTY GOVERNMENTS (AMENDMENT) BILL  
(SENATE BILLS NO.11 OF 2017)

*(Consideration of National Assembly Amendments)*

*(Resumption of Debate interrupted on 12.6.2019)*

**Sen. Kihika:** Madam Temporary Chairperson, I beg to move that the Committee do report to the Senate its consideration of the National Assembly amendments to the County Governments (Amendment) Bill Senate Bills No.11 of 2017 and its rejection thereof.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Chairperson** (Sen. Nyamunga): We move on to the next Bill. We will report all of them together.

THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS)  
BILL (SENATE BILLS NO.18 OF 2018)

*Clause 3*

**Sen. (Dr.) Lelegwe:** Madam Temporary Chairperson, I beg to move—  
THAT, Clause 3 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph—

No. 6 of 1996           (b) provide a framework for planning of commercial structures  
along county roads in accordance with the Physical Planning Act;

*(Question of the amendment proposed)*

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

*Clause 4*

**Sen. (Dr.) Lelegwe:** Madam Temporary Chairperson, I beg to move—  
THAT, Clause 4 of the Bill be amended by deleting the words “and all commercial buildings constructed along major roads” appearing immediately after the words “county roads”.

*(Question of the amendment proposed)*

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

*Clause 5*

**Sen. (Dr.) Lelegwe:** Madam Temporary Chairperson, I beg to move—  
THAT, Clause 5 of the Bill be amended—

(a) in sub-clause (1) by—

(i) deleting the words “all roads” and appearing immediately after the words “drainage systems along” in paragraph (b) and substituting therefor the words “county roads”;

(ii) deleting the words “national and” appearing immediately after the words “constructed along” in paragraph (c);

(iii) deleting paragraph (d) and substituting therefor the following new paragraph—

(d) construct, maintain and facilitate the construction and maintenance of adequate parking bays in the respective county.

(iv) deleting paragraph (e);

(v) deleting paragraph (f) and substituting therefor the following new paragraph—

No 6 of  
1996.

- (f) facilitate regular inspection of all buildings, roads, streets, lanes, alleys, parking bays and walkways under the jurisdiction of the county government to ensure that they adhere to prescribed building codes and standards as set out in the Physical Planning Act, the Urban Areas and Cites Act and any other written law;
- (b) by inserting the following new sub-clause immediately after sub-clause (2)—
- (3) The CEC shall, for purposes of subsection (2) consult with the National Council for Persons with Disabilities established under section 3 of the Persons with Disabilities Act.

*(Question of the amendment proposed)*

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

*Clause 6*

**Sen. (Dr.) Lelegwe:** Madam Temporary Chairperson, I beg to move— THAT, clause 6 of the Bill be amended by inserting the words “in accordance with the Physical Planning Act,” immediately after the words “in the county”.

*Question of the amendment proposed)*

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

*Clause 7*

**Sen. (Dr.) Lelegwe:** Madam Temporary Chairperson, I beg to move— THAT, Clause 7 of the Bill be amended —

(a) by deleting sub-clause (1); and

(b) by deleting sub-clause (2) and substituting therefor the following new sub-clause—

(1) The county executive committee member shall, in consultation with the National Lands Commission, designate public land for the construction of parking bays within the county.

*Question of the amendment proposed)*

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

*Clause 8*

**Sen. (Dr.) Lelegwe:** Madam Temporary Chairperson, I beg to move— THAT, the Bill be amended by deleting Clause 8 and substituting therefor the following new clause—

Construction and  
maintenance of  
walkways by the  
county government

**8.** Each county government shall construct and maintain walkways along all county roads in the respective county.

*(Question of the amendment proposed)*

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

*Clause 9*

**Sen. (Dr.) Lelegwe:** Madam Temporary Chairperson, I beg to move—  
THAT, the Bill be amended by deleting Clause 9 and substituting therefor the  
Following new clause—

Designation of  
Pedestrian Crossing

**9.** (1) The county executive member shall Designate areas for use by pedestrians for the Purpose of crossing a county road in a manner that does not interfere with the flow of traffic and that complies with national and county Legislation.

(2) The county executive member shall, for the Purpose of subsection (1) and where Necessary, designate a pedestrian crossing and Maintain a footbridge or any other convenience for use by pedestrians to cross a county road

*(Question of the amendment proposed)*

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

*Clause 10*

**Sen. (Dr.) Lelegwe:** Madam Temporary Chairperson, I beg to move—  
THAT, the Bill be amended by deleting Clause 10 and substituting therefor the  
following new clause —

Access ways to  
commercial buildings

No. 6 of 1996

**10.** (1) Subject to subsection (2), an owner of a commercial building which is situated along a county road—

(a) may, with the approval of the county government, construct an access-way to the property in which the commercial building is situated in such a manner that the access-way does not obstruct a county road or extend directly from a county road.

(b) shall allocate adequate space for access to the building in accordance with the Physical Planning Act and any other written law.

(2) The county government shall ensure that there is an alternative means of access to commercial buildings in the area where the building is situated.

(3) Every person who, immediately before the commencement of this Act, owns a commercial building situated along a county road shall comply with provisions of this section—

(a) within a period of twelve months from the date of the commencement of this Act; or

(b) within a period of twelve months from the date of completion of the construction of an alternative means of access to the building as provided under subsection (2).

(4) A person who contravenes subsection (1)(b) commits an offence and is liable, on conviction, in accordance with section 30 of the Physical Planning Act.

*(Question of the amendment proposed)*

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

*Clause 11*

**Sen. (Dr.) Lelegwe:** Madam Temporary Chairperson, I beg to move—  
THAT, the Bill be amended by deleting Clause 11 and substituting therefor the following new clause—

Construction and  
maintenance of  
walkways by owners  
of commercial

buildings.

**11.** (1) The owner of a commercial building may construct and maintain a walkway next to the commercial building where the county government—

(a) has designated an area next to the building for the construction of a walkway; and

(b)

(b) has not constructed or has failed to maintain the walkway.

(2) A person shall not construct or maintain a walkway under subsection (1)—

(a) unless such person has applied for and obtained approval of the county executive committee member; and

(b) otherwise in accordance with the prescribed standards.

*(Question of the amendment proposed)*

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

*Clause 12*

**Sen. (Dr.) Lelegwe:** Madam Temporary Chairperson, I beg to move—

THAT, clause 12 of the Bill be amended in sub-clause (2) by deleting the words “in accordance with the standards prescribed under this Act” and substituting therefor with the words “in accordance with the Physical Planning Act and any other written law”.

*(Question of the amendment proposed)*

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

*Clause 13*

**Sen. (Dr.) Lelegwe:** Madam Temporary Chairperson, I beg to move—

THAT, clause 13 of the Bill be amended—

(a) in sub-clause (1) by deleting the word “pavement” appearing immediately after the word “A” and substituting therefor the word “walkway”;

(b) in sub-clause (2) by deleting the word “pavement” appearing immediately after the words “commercial activity on a” and substituting therefor the word “walkway”; and

(c) by deleting sub-clause (3).

*Question of the amendment proposed)*

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

*Clause 14*

**Sen. (Dr.) Lelegwe:** Madam Temporary Chairperson, I beg to move—  
THAT, clause 14 of the Bill be amended—

- (a) by deleting sub-clause (3); and
- (b) in sub-clause (4) by deleting the word “seize” appearing immediately after the words “committee member may” and substituting therefor the word “walkways”.

*(Question of the amendment proposed)*

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

*Clause 15*

**Sen. (Dr.) Lelegwe:** Madam Temporary Chairperson, I beg to move—  
THAT, Clause 15 of the Bill be amended—

- (a) by deleting sub-clause (4) and substituting therefor the following new sub-clause—

Cap 39 of 1953

(4) A person who contravenes this section commits an offence and is liable, on conviction in accordance with section 52A of the Traffic Act.

- (b) by deleting sub-clause 5.

*(Question of the amendment proposed)*

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

*Clause 16*

**Sen. (Dr.) Lelegwe:** Madam Temporary Chairperson, I beg to move:-

THAT, Clause 15 of the Bill be amended

- (a) by deleting sub-clause (1) and substituting therefor the following new sub-clause—

(1) The county executive committee member may, in consultation with the Cabinet Secretary and all relevant

- stakeholders, make regulations for the better carrying out of the provisions of this Act;
- (b) in sub-clause (2)
- (i) by deleting paragraph (a); and
  - (ii) in sub-clause (2)(b) by deleting the word “pavement” appearing immediately after the words “parking bays and” in paragraph (b) and substituting therefor the word “walkways”.

*(Question of the amendment proposed)*

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

*Clause 2*

**Sen. (Dr.) Lelegwe:** Madam Temporary Chairperson, I beg to move-

THAT, clause 2 of the Bill be amended—

- (a) by deleting the definition of the word “commercial building” and substituting therefor the following new definition:

“commercial building” shall have the same meaning assigned to it under the Physical Planning Act;

- (b) by inserting the following new definition immediately after the definition of the word “national road”—

“walkway” means any egress, footpath, pathway or route for use by non-motorized traffic and shall not include cycle lanes;

- (c) by deleting the definition of the word “heavy commercial vehicle” and substituting therefor the following new definition—

“heavy commercial vehicle” has the meaning assigned to it under section 2 of the Traffic Act;

- (d) by deleting the definition of the word “county road” and substituting therefore the following new definition—

“county road” means all roads falling within the mandate of the county governments under Part 2 of the Fourth Schedule to the Constitution and specified under any other written law;

- (e) by deleting the definition of the word “major road”;
- (f) by deleting the definition of the word “minor road”; and
- (g) by deleting the definition of the word “national road”.

*(Question of the amendment proposed)*

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

*The Title*

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

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

*Clause 1*

**Sen. (Dr.) Lelegwe:** Madam Temporary Chairperson, I beg to move-

THAT, the Bill be amended by deleting clause (1) and substituting therefor the following new clause—

Short Title 1. This Act may be cited as the County Roads,  
Walkways and Parking Bays Act, 2018.

*(Question of the amendment proposed)*

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

Hon. Senators, we have concluded the Clauses, but we will only give a progress report. We cannot take a vote.

The Mover can now proceed.

**Sen. (Dr.) Lelegwe:** Madam Temporary Chairperson, pursuant to Standing Order 148, I beg to move that the Committee do report progress on it is consideration of the County Planning (Roads, Pavements and Parking Bays) Bill (Senate Bills No. 18 of 2018) and seek leave to sit again tomorrow.

**Sen. Musuruve** seconded.

*(Question proposed)*

*(Question put and agreed to)*

THE COUNTY OUTDOOR ADVERTISING CONTROL BILL  
(SENATE BILLS NO.19 OF 2018)

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, we are now proceeding to consider the amendments on the County Outdoor Advertising Control Bill (Senate Bills No.19 of 2018)

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*Clause 3*

*(Question, that Clause 3  
be part of the Bill, proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): The Division will come at the end.

*Clause 4*

**Sen. Poghio:** Madam Temporary Chairperson, I beg to move:-

THAT, clause 4 of the Bill be amended –

- (a) in subclause (2)(b) by deleting subparagraph (ii) and substituting therefor the following new paragraph –
  - (iii) the Kenya National Highway Authority or any other entity responsible for the management of road reserves, where the advertisement is to be displayed on a road reserve;
- (b) by inserting the following new subclause immediately after subclause (2) –
  - (2A) The county executive committee member shall keep and maintain a register in which shall be recorded all applications made and licences issued under this Act.

*(Question of the amendment proposed)*

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

*Clauses 5 to 14*

*(Question, that Clauses 5 to 14  
be part of the Bill, proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): The Division will come at the end.

*Clause 15*

**Sen. Poghio:** Madam Temporary Chairperson, I beg to move:-

THAT, clause 15 of the Bill be amended –

- (a) by deleting the marginal note and substituting therefor the following new marginal note –

Publication of application for a licence.

- (b) in subclause (2) by inserting the words “within seven days from the date of the notice” immediately after the words “on the application”.

*(Question of the amendment proposed)*

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

*Clauses 16 to 21*

*(Question, that Clause 16 to 21  
be part of the Bill, proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): The Division will come at the end.

*New Clause 14 A*

**Sen. Poghio**: Madam Temporary Chairperson, I beg to move-

THAT, the Bill be amended by inserting the following new clause immediately after clause 14 –

No other government entity to levy fees. 14A. Subject to this Act or any other written law, no other government entity shall levy fees on outdoor advertising.

*(Question of the New Clause 14A proposed)*

*(New Clause 14A read the First Time)*

*(Question, that the New Clause 14A be read a  
Second Time, proposed)*

*(Question, that the New Clause 14A  
be part of the Bill proposed)*

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

*New Clause 18 A*

**Sen. Poghio**: Madam Temporary Chairperson, I beg to move-

THAT, the Bill be amended by inserting the following new clause immediately after clause 18 –

Dispute resolution. 18A. (1) The National government, a county government or any other person who is a party to a dispute arising under this Act shall take reasonable measures to resolve the dispute by alternative dispute resolution before resorting to judicial proceedings.

(2) A party is considered to have taken reasonable measures to resolve a dispute by alternative dispute resolution if such a party–

- (a) notifies the other party of the issues that are in dispute and offering to settle them;
- (b) responds appropriately to a notification under paragraph (a);
- (c) provides relevant information and documents to the other party to enable that party understand the issues and determine the best approach to take in responding to the issues; or
- (d) where an alternative dispute resolution mechanism is agreed to –
  - (i) collaborating with the other party in determining the person to facilitate resolution of the dispute; and
  - (ii) attending the alternative dispute resolution process.

*(Question of the New Clause 18A proposed)*

*(New Clause 18A read the First Time)*

*(Question, that the New Clause 18A be read a Second Time, proposed)*

*(Question, that the New Clause 18A be part of the Bill, proposed)*

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

*Clause 2*

*(Question, that Clause 2 be part of the Bill, proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): The Division will come at the end.

*The Title and Clause 1*

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

**The Temporary Chairperson** (Sen. Nyamunga): The Division will come at the end.

Hon. Senators, we have concluded the Clauses, but we will only give a progress report. We cannot take a vote.

The Mover can now proceed.

**Sen. Poghiso:** Madam Temporary Chairperson, pursuant to Standing Order 148, I beg to move that the Committee do report progress on it is consideration of the County Outdoor Advertising Control Bill (Senate Bills No.19 Of 2018) and seek leave to sit again tomorrow.

**Sen. Olekinase** seconded.

*(Question proposed)*

*(Question put and agreed to)*

THE COUNTY LAW COMPLIANCE AND ENFORCEMENT BILL  
(SEN. BILLS NO. 25 OF 2018)

*Clause 3*

*(Question, that Clause 3 be part of  
the Bill, proposed)*

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

*Clause 4*

**Sen. Sakaja:** Madam Temporary Chairperson, I beg to move-

THAT, Clause 4 of the Bill be amended in sub-clause (2) by –

- (a) inserting the words “deployment, secondment” immediately after the words “the ranks” in paragraph (a); and
- (b) inserting the following new paragraph immediately after paragraph (c);
- (c) Ensure that recruitment and appointment of officers to the unit reflect the ethnic and geographical diversity of the people within the county.

*(Question of the amendment proposed)*

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

*Clause 5*

*(Question, that Clause 5 be part of  
the Bill, proposed)*

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

*Clause 6*

**Sen. Sakaja:** Madam Temporary Chairperson, I beg to move-

THAT, Clause 6 of the Bill be amended in sub-clause (2) by deleting the words “on matters such as weights and measures and noise level” appearing immediately after the words “with county laws” in paragraph (b).

*(Question of the amendment proposed)*

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

*Clause 7*

**Sen. Sakaja:** Madam Temporary Chairperson, I beg to move-

THAT, Clause 7 of the Bill be amended in sub-clause (1) by –

- (a) deleting the words “any other law” appearing immediately after the words “this Act or” in the introductory clause and substituting therefor the words “the respective county legislation”; and
- (b) deleting the words “contrary to the provisions of this Act or any other county law” appearing immediately after the words “to cause harm” in paragraph (d)(i).

*(Question of the amendment proposed)*

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

*Clause 8*

**Sen. Sakaja:** Madam Temporary Chairperson, I beg to move-

THAT, Clause 8 of the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause –

(1) An enforcement officer may make an *ex parte* application to the relevant court for an order to seize property and for any other relevant order where the enforcement officer has reasonable grounds to suspect that any property –

- (a) has been or is being used for the purpose of carrying out a regulated activity contrary to the respective county legislation; or

- (b) is maintained, kept or controlled in any other manner contrary to the respective county legislation.

*(Question of the amendment proposed)*

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

*Clause 9*

**Sen. Sakaja:** Madam Temporary Chairperson, I beg to move-

THAT, Clause 9 of the Bill be amended –

- (a) by deleting sub-clause (4) and substituting therefor the following new sub-clause –

(4) In the case of perishable or rapidly depreciating property, the court may make an order for the disposal or return, by the unit, of the property to the owner.

- (b) in sub-clause (5) by deleting the word “destruction” appearing immediately after the words “an order for” in the introductory clause and substituting therefor the word “disposal”; and
- (c) by inserting the following new sub-clause immediately after sub-clause (6) –

(7) Where, upon the conclusion of proceedings, the court finds the owner of the property not to have committed an offence, the court may make an order for compensation for any loss suffered by the owner of the property.

*(Question of the amendment proposed)*

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

*Clause 10*

**Sen. Sakaja:** Madam Temporary Chairperson, I beg to move-

THAT, the Bill be amended by deleting Clause 10.

*(Question of the amendment proposed)*

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

*Clause 11*

**Sen. Sakaja:** Madam Temporary Chairperson, I beg to move:-

THAT, the Bill be amended by deleting Clause 11.

*(Question of the amendment proposed)*

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

*Clause 12*

**Sen. Sakaja:** Madam Temporary Chairperson, I beg to move-  
THAT, the Bill be amended by deleting Clause 12.

*(Question of the amendment proposed)*

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

*Clause 13*

**Sen. Sakaja:** Madam Temporary Chairperson, I beg to move:-  
THAT, Clause 13 of the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause –

- (1) A notice required to be given shall be deemed to have been served if -
  - (a) it is served upon the owner or occupant of the property;
  - (b) it is served upon an employee, who occupies a position of management, of the owner or occupant of the property; or
  - (c) sent to the last known address of the owner or occupant of the property.

*(Question of the amendment proposed)*

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

*Clause 14*

*(Question, that Clause 14 be part of  
the Bill, proposed)*

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

*Clause 15*

**Sen. Sakaja:** Madam Temporary Chairperson, I beg to move:-  
THAT, Clause 15 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3) –

(4) A county government shall not establish, maintain or operate a facility for the purpose of detaining a person arrested pursuant to this Act.

*(Question of the amendment proposed)*

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

*Clauses 16 to 24*

*(Question, that Clauses 16 to 24 be part of the Bill, proposed)*

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

*New Clause 25*

**Sen. Sakaja:** Madam Temporary Chairperson, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after clause 24 –

25. This Act shall not be construed as providing for the establishment of a police service or an entity performing a mandate similar to that of the National Police Service established under Article 243 of the Constitution.

*(Question of the New Clause 25 proposed)*

*(New Clause 25 read the First Time)*

*(Question, that New clause 25 be read a Second Time, proposed)*

*(Question, that New Clause 25 be part of the Bill, proposed)*

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

*The Schedule, Clause 2, the Title and Clause 1*

*(Question that the Schedule, Clause 2, the Title and Clause 1 be part of the Bill, proposed)*

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

**Sen. Khaniri:** Madam Temporary Chairperson, pursuant to Standing Order No.148, I beg to move that the Committee do report progress on its consideration The County Law Compliance and Enforcement Bill (Senate Bills No. 25 of 2018) and seek leave to sit again tomorrow.

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*(Question proposed)*

*(Question put and agreed to)*

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

*Clause 3*

*(Question, that Clause 3 be part of  
the Bill, proposed)*

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

*Clause 4*

**Sen. (Eng.) Mahamud:** Madam Temporary Chairperson, I beg to move:-

THAT, Clause 4 of the Bill be amended-

- (a) in paragraph (a) by inserting the word “equitable” immediately after the words “the promotion of the”;
- (b) by deleting paragraph (c);
- (c) by inserting the following new paragraph immediately after paragraph (d)-
- (d) the use of public funds in a prudent and responsible manner in accordance with Article 201 of the Constitution.

*(Question of the amendment proposed)*

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

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

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senator, what is your point of order.

**Sen. Sakaja:** Madam Temporary Chairperson, I cannot see the amendments, unless there is a Supplementary Order Paper. Those of us who are digital cannot see the amendments.

**The Temporary Chairperson** (Sen. Nyamunga): That is on page 1007.

**Sen. Sakaja:** Thank you, Madam Temporary Chairperson.

**The Temporary Chairperson** (Sen. Nyamunga): Is the digital one not working? Let us have the Chairperson.

*Clause 5*

**Sen. (Eng.) Mahamud:** Madam Temporary Chairperson, I beg to move:-

THAT, Clause 5 of the Bill be amended in subclause (3) by deleting the word “expenditure” appearing immediately after the words “allocation for development” in paragraph (a) and substituting therefor the word “budget”.

*(Question of the amendment proposed)*

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

*Clause 6*

**Sen. (Eng.) Mahamud:** Madam Temporary Chairperson, I beg to move:-  
THAT, Clause 6 of the Bill be amended by deleting subclause (2) and substituting therefor the following new subclause-

(2) The county assembly shall consider and either approve or reject the criteria within twenty-one days of receipt of the criteria.

*(Question of the amendment proposed)*

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

*Clause 7*

**Sen. (Eng.) Mahamud:** Madam Temporary Chairperson, I beg to move:-

THAT, Clause 7 of the Bill be amended-

(a) in subclause (1) by deleting the word “county” appearing immediately after the words “resident of each” and substituting therefor the word “ward”;

(b) in subclause (4) by deleting the words “the village councils” appearing immediately after the words “offer technical assistance” and substituting therefor the words “to the respective ward administrator”.

*(Question of the amendment proposed)*

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

We also have an amendment by Sen. (Dr.) Milgo.

**Sen. (Dr.) Milgo:** Madam Temporary Speaker, I beg to drop my proposed amendment to Clause 7.

*(Proposed to Clause 7 by Sen. (Dr.) Milgo dropped)*

*Clause 8*

**Sen. (Eng.) Mahamud:** Madam Temporary Chairperson, I beg to move:-

THAT, Clause 8 of the Bill be amended-

(a) in subclause (1) by deleting the words “section 7(4)” appearing immediately after the words “the proposals received under” and substituting therefor the words “section 7”;

(b) by deleting subclause (2) and substituting therefor the following new subclause-

(2) The projects identified under subsection (1) shall be submitted to the respective county assembly for approval.

(c) by deleting subclause (3) and substituting therefor the following new subclause-

(3) The county executive committee member shall publicize the projects approved by the county assembly for implementation in each ward by notice in the county Gazette and through such other means as the county executive committee member shall consider appropriate.

*(Question of the amendment proposed)*

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

*Clauses 9 to 11*

*(Question that Clauses 9 to 11 be part of the Bill proposed)*

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

*Clause 12*

**Sen. (Eng.) Mahamud:** Madam Temporary Chairperson, I beg to move:-

THAT, Clause 12 of the Bill be amended in subclause (5) by deleting the words “subsection (2) or” appearing immediately after the words “of funds under” in the introductory clause and substituting therefor the word “subsection”.

*(Question of the amendment proposed)*

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

*Clauses 13 to 19*

*(Question that Clauses 13 to 19 be part of the Bill proposed)*

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

*Clause 2*

**Sen. (Eng.) Mahamud:** Madam Temporary Chairperson, I beg to move- THAT, Clause 2 of the Bill be amended in the definition of the term “community” by deleting the words “location, sub-location or village and having common interests” appearing immediately after the words “as a ward”.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): We also have an amendment by Sen. (Dr.) Milgo but we will drop it because she is not here.

*(Proposed amendment to Clause 2 by Sen. (Dr.) Milgo dropped)*

*The Title and Clause 1*

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

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

**Sen. (Eng.) Mahamud:** Madam Temporary Chairperson, pursuant to Standing Order No.148, I beg to move that the Committee do report progress on its consideration of The County Wards (Equitable Development) Bill (Senate Bills No.34 of 2018) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I call upon the Chairperson to report progress.

**PROGRESS REPORTED**

THE COUNTY GOVERNMENTS (AMENDMENT) BILL  
(SENATE BILLS NO.11 OF 2017)

*(Consideration of National Assembly Amendments)*

**Sen. Nyamunga:** Mr. Deputy Speaker, Sir, I beg to report that the Committee of the Whole has considered amendments by the National Assembly to The County Governments (Amendment) Bill (Senate Bills No.11 of 2017) and rejected it thereof.

**Sen. Kihika:** Mr. Deputy Speaker, Sir, I beg to move that the House do agree with the Committee on the said report. I request Sen. Olekina to second.

**Sen. Olekina** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Next is The County Planning (Roads, Pavements and Parking Bays) Bill (Senate Bills No.18 of 2018).

THE COUNTY PLANNING (ROADS, PAVEMENTS AND  
PARKING BAYS) BILL (SENATE BILLS NO.18 OF 2018)

**Sen. Nyamunga:** Mr. Deputy Speaker, Sir, I beg to report progress, that the Committee of the Whole has considered The County Planning (Roads, Pavements and Parking Bays) Bill (Senate Bills No.18 of 2018) and seeks leave to sit again tomorrow.

**Sen. Olekina:** Mr. Deputy Speaker, Sir, I beg to move that the House do agree with the Committee in the said report.

**The Deputy Speaker** (Sen. (Prof) Kindiki): Who is seconding?

**Sen. Olekina:** I request Sen. (Eng.) Mahamud to second.

**Sen. (Eng.) Mahamud** seconded.

*(Question proposed)*

*(Question put and agreed to)*

THE COUNTY OUTDOOR ADVERTISING CONTROL BILL  
(SENATE BILLS NO.19 OF 2018)

**Sen. Nyamunga:** Mr. Deputy, Speaker, Sir, I beg to report progress, that the Committee of the Whole has considered The County Outdoor Advertising Control Bill (Senate Bill No.19 of 2018) and seeks leave to sit again tomorrow.

**Sen. Poghio:** Mr. Deputy Speaker, Sir, I beg to move that the House do agree with the Committee in the said report. I ask Sen. Seneta to second.

**Sen. Seneta** seconded.

*(Question proposed)*

*(Question put and agreed to)*

THE COUNTY LAW COMPLIANCE AND ENFORCEMENT BILL  
(SENATE BILLS NO.25 OF 2018)

**Sen. Nyamunga:** Mr. Deputy Speaker, Sir, I beg to report progress that the Committee of the Whole has considered The County Law Compliance and Enforcement Bill (Senate Bills No.25 of 2018) and seeks leave to sit again tomorrow.

**Sen. Olekina:** Mr. Deputy Speaker Sir, I beg to move that the House do agree with the Committee in the said report. I request Sen. Sakaja to second it.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, I would like to second that the House do agree with the Committee in the said report. This Bill would bring a lot of sanity in county law enforcement and compliance.

*(Question proposed)*

*(Question put and agreed to)*

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

**Sen. Nyamunga:** Mr. Deputy Speaker, Sir, I beg to report progress that the Committee of the Whole has considered the County Wards (Equitable Development) Bill (Senate No.34 of 2018) and seeks leave to sit again tomorrow.

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, I beg to move that the House do agree with the Committee in the said report. I ask Sen. Olekina to second.

**Sen. Olekina** seconded.

*(Question proposed)*

*(Question put and agreed to)*

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

**Sen. Sakaja:** Mr. Deputy Sir, I am just noting that actually on this one, there is interest.

**The Deputy Speaker** (Sen. (Prof) Kindiki): Are you the interest?

**Sen. Sakaja:** Yes, I am the interest. Just to say one or two things even as the House agrees with the Committee in the said report, I know Members of County Assemblies across the country and, indeed, Kenyans have been looking forward to this House to pass this Bill.

Initially, that brought a version of the County Wards Development Equalisation Fund Bill 2018 which went against the provisions of separation of powers in our Constitution. What this Bill will actually result to, if the House agrees with the report of the Committee is that, they will make sure that in our counties, each and every corner no matter the wings of the Governor, no matter the subjective decision-making that every part of a county and every ward, whether they voted for a governor or not, whether they

sided with the executive or not, whether they are in the same party or not, will have equitable development.

So, I want to thank the Committee when they took it up from Sen. Kang'ata and they made sure they have brought clarity. I am dismayed---

*(Sen. Kang'ata walked into the Chamber)*

**Sen. Olekina:** Mr. Deputy Speaker, Sir, I arise on a point of order. I do not know whether you noticed that Sen. Kang'ata casually walked in front of the Senator who was speaking and in front of the Speaker. Seriously, this is a House governed by Standing Orders. You must declare him out of order.

**The Deputy Speaker** (Sen. (Prof) Kindiki): Sen. Olekina, did he walk in between or did he stand in between?

**Sen. Olekina:** He walked and he was right in front of Sen. Sakaja. As a matter of fact, I was struggling to see Sen. Sakaja when he was talking.

**Sen. Kang'ata:** Thank you, Mr. Deputy Speaker, Sir. I think the problem is to stand particularly between the Speaker and the Senator. But if I am wrong, I apologize but if I am right, uphold my explanation because I think the problem is you stand between the Speaker and the contributor. I think that is the problem. I think it needs to---

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

**Sen. Kang'ata:** I passed behind. In fact, I also had a small chit chat with the Speaker who was very happy.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof) Kindiki): I think the conduct being referred to is completely different from your alleged chit chat with the Speaker. Very well.

**Sen. Poghiso:** The Standing Order is actually No.112 (2). It states that no Senator shall pass between the Chair and any Senator who is speaking or between the Chair and the Table.

**Sen. Kang'ata:** Allow me to explain; his point of order was ---

**The Deputy Speaker** (Sen. (Prof) Kindiki): Sen. Kang'ata, who gave you the Floor? Resume your seat. Sen. Poghiso is right; the Standing Order refers to passage. You are making it worse when you say that you stood because passing, which is a motion and movement, is prohibited. Can you imagine what standing still would entail? It is worse.

Sen. Kang'ata, it is good that you bowed at the Bar, which is an improvement from your previous conduct. Last time, I saw you walk and I was very surprised. I almost made such a directive but you managed to mitigate. Sen. Kang'ata, when leaving the Chamber this evening, you need to have a copy of the Standing Orders for you to improve on these things. For now, I will allow you to do what you wanted to do, which is to make a few remarks before I put the question.

Sen. Sakaja, are you on a point of order?

*(Sen. Sakaja spoke off record)*

Sorry, you were interrupted. Conclude, but make your remarks brief.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, I will be brief. I just want to make some highlights. I want to thank Sen. Olekina for standing up on that point of order. I have risen on that point of order on several occasions. In many cases, he has been the one flouting the rules, and I am glad that he has now taken up the gospel. Many Senators do not know the existence of that provision. If a Senator is standing and speaking, one cannot pass between him and the Speaker. They have to go round, behind or they have to wait.

This Bill is a breath of fresh air. We have counties with antagonistic politics where the county administration denies certain parts of the county development. Recently, during a by-election, a governor said that, 'if you vote in this person, you will not get development'. Governors must now know that development is not a gift or present that they give to the people because of their magnanimity. Development is actually provided for in our law. Every part of this country needs to get development. I want to thank the Chairperson and the Committee. They did an exceptional job during the public participation.

I have heard the Members of the National Assembly speak negatively about the Senate. I want to tell them that they should not look at us then come up with laws. Instead, they should look at the people that we are representing because they are also their people. I heard somebody say that the Senate should not get money for oversight. He must have said that because of the manner in which we dealt with the Division of Revenue Bill. We cannot and we shall not be intimidated as a House. We will continue to play our oversight role with or without the money. In fact, they are not the ones giving us the money, that money belongs to the people of this country.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I hope the governors and the future governors have heard.

**Sen. (Dr.) Zani:** Thank you, Mr. Deputy Speaker, Sir, for this opportunity. I also want to say a few things about this Bill and its importance to the counties.

This was the subject of a petition by the Members of the County Assemblies (MCAs). They went through a lot to state that there was inequality at the county level. They had to prove that a certain project had not been conducted because of their relationship with the governor. However, this Bill now allows equitable distribution of development in the county. The politics between Members should not play out in terms of development. That is because the people who bear the brunt of that toxic relationship have no idea of the process.

I am happy that this Bill was taken up and amended by the Committee to ensure that it is not a money Bill. They have also ensured that it does not have any constitutional hinges and they have contextualised it within the Senate. I know that it will make a big difference in the counties. Congratulations, Sen. Kang'ata.

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

**Sen. Kang'ata:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I want to congratulate the Chairperson of the Committee on Finance and Budget for shepherding this Bill so as to make it non-contentious. He has also made sure

that the views of all the stakeholders have been taken into account. I also want to thank my fellow Senators for supporting this Bill.

Article 176(2) inspired this Bill. It states that:-

“Every county government shall decentralise its functions and the provision of its services to the extent that it is efficient and practicable to do so”.

There is no other way of effectuating this article other than sending money to the smallest political units that we have in this country; the ward.

The changes that have been done by the Committee will ensure that the executive power of a county reposes with the hands of the governor. Therefore, we have ensured that the concept is adhered to. The people who are going to manage all these entities are part of the executive of the county. However, issues of complaints of marginalisation and skewed development at the counties will now be addressed by this new Bill.

Today is a historic day. I know that the MCAs and Kenyans at the grassroots level are celebrating.

**Sen. Kihika:** Thank you, Mr. Deputy Speaker, Sir. I congratulate the Committee for having worked on this Bill and I hope that the House will agree with the Committee. This is a timely Bill. I cannot fail to recognise the work done by Sen. Kang’ata, the Senator for Murang’a, because he initiated this Bill.

All the MCAs have been looking forward to the passage of this Bill. I have worked in the counties and I know how important this Bill is. A governor would dish development to wards depending on how the MCA toes the line or how he gets along with him. The governor would do all that with the intention of containing the MCAs. With this Bill, development will now be shared equitably across the wards. This will go a long way to entrench devolution.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, the Bill has not been passed. Withhold your congratulations.

**Sen. Seneta:** Thank you, Mr. Deputy Speaker, Sir. I also want to congratulate the Committee and the initiator of the Bill. This is a very important Bill. It is a constitutional Bill and will streamline service delivery in our counties. Right now, the allocation that goes to the wards depends on one’s ability to sweet-talk the governor or how best they can place themselves. However, this Bill will ensure that all wards get enough and equal amount of allocation which will help the smaller units to get development. I hope that this Bill can be fast-tracked because its implementation will help this country.

*(Question put and agreed to)*

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

**BILLS***Second Reading*THE MENTAL HEALTH (AMENDMENT) BILL  
(SENATE BILLS NO.32 OF 2018)*(Sen. Kasanga on 29.5.2019)**(Resumption of debate interrupted on 11.6.2019)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Kasanga, you had 15 minutes left. Put on your shoes and conclude your reply.

**Sen. Kasanga:** Thank you, Mr. Deputy Speaker, Sir. You were right last time that I should have tried to summarise. Now that I know 15 minutes is not a very long time, I will start by thanking all the Senators who contributed. If you will allow me, I will read them by name. They are: Sen. Were, Sen. (Dr.) Musuruve, Sen. Mugo, Sen. M. Kajwang', Sen. (Dr.) Milgo, Sen. (Prof.) Ongeru, Sen. Wetangula, Sen. (Dr.) Langat, Sen. (Dr.) Zani, Sen. Poghio, Sen. Cheruiyot, Sen. (Rev.) Waqo, Sen. Sakaja, Sen. Kihika, Sen. Farhiya, Sen. Nyamunga, Sen. Olekina, Sen. Malalah, Sen. Mwaura, Sen. Halake, Sen. (Dr.) Kabaka and Sen. Mutula Kilonzo Jnr.

Mr. Deputy Speaker, Sir, I have taken note of every comment, addition, sentiments, and motion that has been put into this Bill. I will summarise some of the salient issues that were brought up. They include aligning the Bill to the global trend of moving away from institutionalization of patients to home and community-based care; increasing penalties on matters pertaining to administration of properties of persons with disability and addressing the issues of persons with physical disability as well as mental illness.

There were also concerns of conditions of the caregivers in the mental health facilities; limiting functions of national Government to those that are prescribed in the Constitution and empowering counties to do more. There is also need for work places in the Government, including Parliament, to have in-house mental health practitioners.

There is also need to look into matters of consent of treatment and right to participate in treatment by the mentally ill.

Members also talked about areas of ownership and disposal of properties of octogenarian and inclusion of persons who are non-practitioners into the mental health boards in the counties. There is also need to look into maternal mental health, legal capacity of the mentally ill people and definitions of what unsound mind in various existing laws is.

Mr. Deputy Speaker, Sir, I am deeply grateful to all the Senators. All their contributions have been taken into account. Like I said last time, the fight against stigma on mental health issues has started now that the Senate has spoken. I want to take these conversations and put them into a form of publication, as a way of deeply appreciating what the Senators have contributed, and take it further and wider because many Kenyans do not read our HANSARD to see what we say. I want to publish the conversations in the

Senate into a publication, which I shall unveil in October, running up to the day of mental health. As I speak right now, the Ministry has asked me to be an ambassador and so, I will use this as a tool to have this conversation as I move forward.

Mr. Deputy Speaker, Sir, I will wind up by picking a few quotes that were said here on the Floor, which I will put forward somewhere.

Sen. Mutula Kilonzo Jnr and Sen. Mwaura said that “we are all insane, what differs is the degree of insanity.”

Sen. Mugo also said “let us fight stigma. Speak up.”

Sen. (Prof.) Ongeru said: “Unresolved mental health ailments can lead to deeper grievous mental health conditions.”

Sen. Wetangula said: “The sophistication of a society is judged by how they treat their minorities, disadvantaged and the mentally ill.”

Sen. Sakaja said: “To all Kenyans, especially men who do not speak up, it is okay not to be okay.”

Thank you, Mr. Deputy Speaker, Sir. God bless you, all Senators, and our country.

I beg to reply. I have been asked to ask Mr. Deputy Speaker---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! You have discharged your function, unless now you want to be on a point of order now. I think that is what you intended.

**Sen. Kasanga:** Can I speak on a point of order, Mr. Deputy Speaker, Sir?

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

**Sen. Kasanga:** Mr. Deputy Speaker, Sir, can I ask you to defer the putting of the question?

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Kasanga, you have done very well until now. When you finish moving, you are supposed to resume your seat and proceed on a point of order immediately, which you have done. When you are allowed or the Speaker gives you the Floor, you move and ask. Make your prayer. That is the order of things. I assume you are on a point of order now.

What is it, Sen. Kasanga? Make your prayer.

**Sen. Kasanga:** Mr. Deputy Speaker, Sir, I request that you defer putting of the question.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Why?

*(Laughter)*

You cannot just defer. It is division time. Why should I defer putting of the question? The Senate waits for no man nor woman.

**Sen. Kasanga:** Mr. Deputy Speaker, Sir, it would be wonderful if we have more numbers, given how important this Bill is to the nation.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Anyway, I have heard you, but this is not about wonders; it is about our tradition. We do not have the threshold for division.

Therefore, I grant Sen. Kasanga's request. The division is deferred to tomorrow. It is so ordered

*(Putting of the Question on the Bill deferred)*

Next Order!

*Second Reading*

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Seneta, are you moving the Bill? The moving of a Bill is an important function. You cannot move it from anywhere.

*(Sen. Seneta walked to the Dispatch Box)*

**Sen. Seneta:** Thank you, Mr. Deputy Speaker, Sir. I beg to move The Kenya Medical Supplies Authority (Amendment) Bill of 2018. The Kenya Medical Supplies Authority (Amendment) Bill of 2018 was published on 26<sup>th</sup>---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! You need to take the business of the House a bit more seriously. You should proceed as follows:

“I beg to move that the Kenya Medical Supplies Authority (Amendment) Bill (Senate Bills No.38 of 2018) be now read a Second Time.”

That is the moving. You can then continue with your story.

**Sen. Seneta:** Mr. Deputy Speaker, Sir, I beg to move that The Kenya Medical Supplies Authority (Amendment) Bill (Senate Bills No.38 of 2018) be now read a Second Time.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is good. I thought you were in the other House the other time. That is how it should be done.

You can now continue.

**Sen. Seneta:** Mr. Deputy Speaker, Sir, The Kenya Medical Supplies Authority (Amendment) Bill (Senate Bills No.38 of 2018) was published on 26<sup>th</sup> November, 2018 and read the First Time on 26<sup>th</sup> February, 2019.

Mr. Deputy Speaker, Sir, the principal object of the Bill is to align the Kenya Medical Supplies Authority Act with the Constitution of Kenya and the Health Act, 2017.

Mr. Deputy Speaker, Sir, KEMSA Act was assented to on 14<sup>th</sup> January, 2013 and commenced on 25<sup>th</sup> January, 2013.

As you are aware, before the year 2010, all hospitals in the country were centrally managed by the national Government. The KEMSA was established to store and supply medical supplies to all the medical facilities in the country. Health is now among the devolved functions under Part II of the Fourth Schedule of the Kenya Constitution, 2010.

County governments now manage and control all Level 1 to Level 5 health facilities under their jurisdiction. County governments are therefore, required to procure all medical supplies for the county health facilities under their jurisdiction.

Section 67 of the Health Act, 2017 further provides that the county government can opt to procure medical supplies from KEMSA.

Mr. Deputy Speaker, Sir, I have since identified various legislative gaps in the KEMSA Act. One of those gaps is the fact that despite being envisioned to receive most of its business from counties, KEMSA Board still remains under the control of the national Government. The Board as currently constituted is made up of persons nominated by the national Government.

Further, other legislative gaps have led to inefficiencies within KEMSA that have resulted in reports that the KEMSA is storing expired medical supplies. It is for this reason that I have proposed to amend the KEMSA Act to align it to the provisions of the Constitution and the Health Act and to make it be recognized as one of the devolved services of the counties.

Clause 2 seeks to amend the Long Title of the Act so as to provide that the Authority serves both the national and county governments.

Clause 4 of these Amendments seeks to amend Section 4 of the Act relating to the functions of the Authority. The proposal seeks to require the Authority to engage with county governments on the basis of partnership agreements where counties seek to establish drawing rights and maintenance of appropriate supply chain system for drugs and medical supplies.

Mr. Deputy Speaker, Sir, Clause 5 of the Bill proposes to amend Section 5 of the Act by allowing the Council of Governors (CoG) to appoint two persons to the Board of the Authority. This proposal seeks to ensure the interests of county governments are considered by the Board when making decisions. This is especially important given that counties are expected to generate a significant amount of business for the Authority.

Clause 6 proposes to amend Section 19 of the Act to obligate the Authority to consult the county government prior to procuring medical products on behalf of a county government. This provision was born out of the fact that under Section 67 of the Health Act, county governments may engage other parties other than KEMSA to supply the county health facility with medical supplies.

This provision, therefore, seeks to ensure that the Authority only procures medical supplies expressly requested by counties. The issue of expired medical supplies in KEMSA stores will also be addressed.

Clause 7 seeks to ensure that the CoG is consulted before the Cabinet Secretary (CS) makes regulations under the Act. It further seeks to protect the interests of the county government while conducting business with the Authority.

Mr. Deputy Speaker, Sir, this Bill is a critical piece of legislation required to strengthen devolution. It comes at a time when we, at the Senate, have seen the loopholes in our laws as regards procurement of medical supplies by the county governments and the gaps in the law regulating the KEMSA. It is our duty, therefore, to protect the interests of counties and their governments. I have no doubt that we shall consider the proposal made and make further proposals to enrich this legislation in order to achieve our mandate.

As we are aware, health is a devolved function and, therefore, all institutions that are in charge of it should provide services as stipulated in the Constitution. The KEMSA

therefore, as constituted is not legal. This Bill, therefore, seeks to align it to the Constitution.

This Bill is amending the Health Act to make sure that the medical supplies we receive in our counties are of high standards, good quality and are stored well, bearing in mind that the mandate of this Authority is to store medical supplies.

The Bill also is amending the Act to make sure that it aligns the Board to the Constitution by having representatives of the county governments who will be talking on behalf of the county governments and looking into their interests.

Mr. Deputy Speaker, Sir, I beg to move that the Kenya Medical Supplies Authority (Amendment) Bill (Senate Bill No.38 of 2018), be now read a Second Time. I call on Sen. Wetangula to second.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Seneta, you have done a good job, only that you almost fell within Standing Order No.90. However, I allowed you to read because of paragraph 2 of that Standing Order.

Who is your Seconder?

**Sen. Seneta:** Mr. Deputy Speaker, Sir, I request Sen. Wetangula to second.

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

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir, for an opportunity to second this Bill.

Mr. Speaker, Sir, you recall in the last Parliament when we were sitting at the Kenyatta International Convention Centre (KICC), you as the Senate Majority Leader, attempted to bring a Bill to amend the KEMSA Act. We all thought the intentions were suspicious and clouded in what we did not quite understand. Today, this Bill comes in as a milestone in trying to further the management of the health sector in the country.

The foundation of this Bill in the Constitution can be traced in Article 6(2). It says:

“The governments at the national and county levels are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and cooperation.

Nothing is as important to the people of this country apart from provision of food, as provision of health. In this country, the provision of health, which is more than 90 per cent, devolved has been left to the vagaries of free market, mismanagement, underfunding, and, above all, endless labour disputes. The causalities to this are the innocent people of Kenya. If you go to the villages, in a radius of 20 kilometres, a leader will be obligated to attend an average of 10 different funerals on a Saturday. People are dying of very preventable ailments. Hospitals are being run in a manner that is devoid of quality. The procurement and supply of drugs for even simple ailments that can be handled like waterborne diseases and some easily communicable diseases, has become a nightmare.

Since the advent of devolution and the devolvement of health, and to a large degree, agriculture sector, the amount of money we have in the Budget and the amount of money that ends up in the counties to take care of the health sector cannot even be 2 per cent as opposed to the Abuja Declaration of 15 per cent.

Mr. Deputy Speaker, Sir, KEMSA has been tasked to procure and supply medicine to hospitals in the country. When I agreed to second Sen. Seneta on this Bill, it

was on the appreciation of the noble goals that it has set in improving the health sector. This is because seven years down the devolution path, the health sector is still marred in serious difficulties.

The amount of money given to counties is inadequate and corruption in the counties is making it difficult to get quality drugs. We have had questions and statements made on this Floor where some counties procured substandard and, sometimes, even expired drugs. Also, we have had the hawkers in the market bringing in generics whose quality is clearly not known. The Pharmacy and Poison Board appears also to be sleeping on the job because their ability to regulate and let in medicine that is good for human use is also in question.

I will encourage Sen. Seneta that once this Bill is passed to visit the Pharmacy and Poison's Board Act and see how its operations can also be aligned with devolution to help counties.

I have even had private discussions with you and we have on many occasions agreed that health is too important to be left in the manner it is been run in the country.

The counties have taken over hospitals. The national Government is left with very paltry section of health. There are only five referral hospitals in the country: Kenyatta National Hospital and Moi Teaching and Referral Hospitals are the most notable. The rest are Mathari National Teaching and Referral Hospital, Port Reitz for Communicable Diseases and Spinal Injury which do little things like dispensaries. However, in a proposed Budget of Kshs304 billion, which the national Government has put on the table, if you take out 15 per cent to health in accordance with Abuja Declaration, it still comes to less than Kshs40 billion for provision of health services for the whole of Kenya. About Ksh100 billion is left at the centre, where they are only concerned with policy and the national referral hospitals.

In trying to help the counties, the philosophy of this Bill is so critical that we must have a guarantor to KEMSA for the supply of medicine to hospitals.

The Bill talks of drawing rights. The language can even be made clearer that the national Government working in conjunction, co-operation, and collaboration with the counties under Article 6(2) of the Constitution must sit down and draft a clear contractual understanding. We all know that it is the national Government that disburses funds to the counties, then it stands in as a guarantor to the drawing rights; that no Kenyan is going to die of malaria, diarrhea and diseases that are easily preventable simply because there is no medicine in hospitals; two, that KEMSA will be obligated as a public body to avail drugs on request, which is what the proposer of this Bill is calling drawing rights.

When a county is laying an order to KEMSA for the supply of their either quarterly or semi-annual supply of medicine, KEMSA is under legal duty to supply those drugs. The county is then legally obligated with the Controller of Budget to ensure that in the event of failure of the county to pay from the money available to them because of mismanagement, or whatever reason, the Controller of Budget will have a duty to ensure that money is paid to KEMSA so that it is not grounded that drugs are supplied to hospitals and wananchi can access them and we build a health nation where everybody is responsible and concerned. That is the only way.

Mr. Deputy Speaker, Sir, take any single weekend, go to your county and walk to a hospital. I have done that before and what you see is a sorry state. I once visited

my hospital and found dead bodies of a Friday still in the wards on a Sunday. Nobody cares. The local Kenya Medical Training College (KMTC) first year students are the ones manning wards and doing rounds. The doctors we train who take the Hippocratic Oath--- I used to joke with Sen. (Dr.) Khalwale that it has now been turned into an “oath of hypocrisy”. He is talking of being a “Hypocritical oath”.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is actually Hippocratic and not hypocritical.

*(Laughter)*

You should know what you mean to us. It is Hippocratic.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, it is now an oath of hypocrisy because the doctors who take this oath to swear they will never let anybody die within their vicinity with their ability to save lives, will leave dying patients in hospital, go to their private clinics and tell them: “Whoever wants to save their lives, follow me there. You pay, I will treat you.” where he earns a salary, he has no business with patients. That is why we called it the oath of hypocrisy.

Even when you look at what is going on in these hospitals, there is so much jostling and fighting about welfare and nobody is concerned about patients. Everybody is fighting about how much they earn, how much they should earn and how much they will be earning. Nobody is talking about how to look after patients. Even if you were to leave those nurses---

This brings me to the point that this country must continuously strengthen KMTCs and train good and quality nurses. If you go to the villages, you will find a 90-year-old man who has been going to hospital for treatment and has never been seen by a doctor. They are only seen by nurses and dressers and all those low calibre medics but they save lives. Now, commercial enterprise has approached us and taken over. Everybody is just talking about different things.

Mr. Deputy Speaker, Sir, I want us – as a House that defends and protects counties – to now deal with the issue of medical and the primary engagement is that a hospital is not about buildings or anything else other than the personnel that man the hospital and the drugs available and equipment to protect people. You can have the best equipment you want but if you have no drugs--- You go to the village every day and ask: “*Huyu mtu alikufa namna gani?*” “*Alikohoa tu akaenda hospitali akakufa.*” Those are the things you hear everywhere. How can you *kohoa tu na kwenda hospitali na kufa?* It is simply because nobody is working as they should. Let us give hospitals medicine and ensure there is a stable flow.

In fact, now that this is a budget cycle, the national Government must by now have carried out a survey as to how much we require on the average to put in the supply of medicines for the year to serve the people of Kenya. That money should be put directly in the account of Kenya Medical Supplies Authority (KEMSA). Once that that is done, KEMSA is then held responsible for regularly and routinely importing good quality medicine and encouraging local manufacturing of good quality medicine that are available to all hospitals from the national referral hospitals down to the clinics in the villages.

Third, then the counties are obligated when they order medicine to pay for what KEMSA already has in the budget. So, they are only replenishing the accounts of KEMSA that already has money to bring medicine from India, Germany and wherever.

Mr. Deputy Speaker, Sir, fourth, the Controller of Budget (CoB) and this House through this law, will ensure that even if a county has run out of their recurrent expenditure for purchase of drugs, it will not be a reason to deny them receiving drugs to treat and save the people of Kenya from any ailments.

Then the CoB supported by this House, where a county has mismanaged and run short of money, will direct that the money being released to the county is creamed off and paid to KEMSA to make sure KEMSA does not run out of money to supply drugs continuously for the cycle to keep Kenyans healthy. That way, we will help the people of Kenya.

I agree with the proposal of the Bill that we must also re-organise and re-arrange the Board of KEMSA so that counties are represented. We have directors who are nominated by the Council of Governors (CoG), persons of ability, probity and upright standing, who will also protect the interests of the people of this country.

Once we re-arrange the Board of Directors, then, it follows that even the management of KEMSA must be responsive to this re-arrangement, so that we do not have a situation where you have a management at KEMSA that thinks they are *alpha* and *omega* and that the national Government and counties are irrelevant and insignificant clients that they do not bother about. They must be made to understand that whether it is an order from the Kenyatta National Hospital (KNH) as the biggest hospital in the country or a small dispensary somewhere in Tharaka-Nithi County--- What was that place called, again?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Who are you asking? Order!

*(Laughter)*

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, if it is a small clinic in Marimanti, Kianjai, Sibiloi and so on, once an order is made---. In fact, Sen. Seneta, you must also find a clause to obligate KEMSA to have a period within which drugs must be supplied once an order is made, regardless. This is because we are securing them for payment, we must also obligate them to deliver drugs on time. Sometimes far flung counties like my brother here from Marsabit County, you order for drugs and four months down the line you are told there is no lorry to deliver them to the country yet they are delivering to other places where Kenyans must be treated equally.

If this is done – this is the philosophy of this Bill – KEMSA should no longer be a national Government instrument for supply of drugs. It must be an instrument of joint ownership, obligating its activities to county governments and the national Government equally. We must ensure that, no Kenyan will suffer the lack of drugs simply because a county did not have money to pay for drugs upfront because the national Government is guaranteeing a steady and stable and uninterrupted supply of medicine whenever the county places an order.

Mr. Deputy Speaker, Sir, once we do this, we will have made a milestone in dealing with issues of health. The current situation in the country is totally unacceptable

and is a terrible indictment to all of us both at the national and county level because as people are bickering, pushing and pulling, fighting and jostling, people are dying. We cannot just sit there and say people are dying because KEMSA did not supply drugs. That will be a criminal liability.

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

Mr. Deputy Speaker, Sir, two minutes?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): One or two?

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, please, give me three minutes.

*(Laughter)*

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

**Sen. Wetangula:** Mr. Deputy Speaker Sir, we should never have a situation where Kenyans die because of a disagreement between entities whose duty is to serve Kenyans.

I will help Sen. Seneta to include an amendment that apportions criminal responsibility for any reckless conduct on the part of Kenya Medical Supply Authority (KEMSA) or any public officer, be it at the county or national level, that knowingly and willfully engages in conduct that leads to a loss of life. For example, if you are a hospital superintendent and know that the quantity of drugs in your hospital is running out, and you do not place an order--- If people die in the period you have placed an order because of your recklessness, you must be held criminally accountable. If we do not do this, people will continue doing things the way they want.

Mr. Deputy Speaker, Sir, I want to urge the management of the health sector in this country that our good doctors - and many of them are our friends whom we went to school together - must choose either to work for the public or themselves. If you dedicate yourself to be a doctor at Bungoma County Referral Hospital, Kerugoya County Hospital or wherever, for heaven's sake, serve the people of this country, earn your decent salary and live within your means. It will not be practical for you to have one foot in your private clinic and another in a public hospital. Every morning you want to go to your private clinic, set up systems for earning you big money, then go spend time harassing patients, and run back to your clinic.

There is a friend of mine called Dr. Yumbia. I was shocked the other day when they rushed to Machakos where a child died. We condemn any reckless cause of death of any Kenyan at any age. How do you, in your right senses, walk to a hospital because a child has died, and close it when there are patients there queuing to be treated, others admitted and some on the way coming to the hospitals? I have never seen such an unreasonable behavior by a professional body. I think we also need to bring some law to streamline the management of these professional bodies, so that they can be responsive to the needs of people, and not act on the whims of their situations.

Mr. Deputy Speaker, Sir, I want to congratulate Sen. Seneta for bringing this Bill. This Bill will go a long way in assisting counties and people in the country to realize universal health. I want to urge the national Government, committed as they say to their

big Four Agenda, and health is one of them, that this is one way of actually achieving that goal.

Thank you, Mr. Deputy Speaker, Sir.

*(Question proposed)*

**Sen. Were:** Thank you, Mr. Deputy Speaker, Sir. I would like to contribute to The Kenya Medical Supplies Authority (Amendment) Bill which has been sponsored by Sen. Seneta. This Bill seeks to provide collaboration between the Kenya Medical Supplies Authority and county governments.

Mr. Deputy Speaker Sir, it is worth noting that health is a fully devolved function save for policy. Hospitals from Level 1, which is community based, to Level 5 are managed by counties.

The success of the health sector will indicate to us the success of devolution. It is very important that we take health matters seriously, especially the issue of providing collaboration between KEMSA and the county governments in the provision of medical supplies. Any time people complain about the status of our health facilities, it is usually about the unavailability of drugs. Providing collaboration between county governments or our county health facilities and KEMSA is very important.

The county government in this Bill has been given some authority to sit in the board of KEMSA. This is very important so that if there are any hiccups to be discussed about medical supplies to the counties, they can be ironed out at the decision-making level. Knowing that county governments are the key clients for KEMSA, it is important that they are at the decision-making table. This will also ensure a smooth service delivery, efficiency, and effectiveness. Having the county government through the Council of Governors represented on the board with two representatives, will also ensure that we are able to measure the impact of medical supplies and health.

As mentioned earlier, the availability of medicine is the measure of the success of a health facility. If Kenyans go to a health facility and find appropriate quality drugs, then they are sure they are being attended to. They are sure that the health sector or the county government for that matter, is meeting their needs. KEMSA currently supplies medicine directly to health facilities. This needs some guidance in law. I would request Sen. Seneta to provide an amendment to this Bill, so that there is a system of connecting the county government, KEMSA and the particular health facility at whatever level, so that when KEMSA sends or delivers drugs to a health facility, the county government is aware.

As it is now, the county government can place an order but it is hard to know that KEMSA has supplied. At the moment, there is no connectivity. If a system is developed and guided by law, so that everyone knows what is happening in the supply chain, we will ensure that there is efficiency and effectiveness in the health sector. As I have mentioned earlier, health will be the measure of the success of devolution.

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

**Sen. (Eng.) Hargura:** Mr. Deputy Speaker, Sir, I would like to support this Bill, which is an amendment to The Kenya Medical Supplies Authority Act.

Much as this is an Authority that has been mandated to deal with the supplies of drugs and other medical equipment to all health facilities, there is need to understand that there is devolution, and health is a devolved function.

The facilities other than the ones which are referral facilities under the national Government are under the county governments. Therefore, the county governments must be fully involved in the supply system, unlike what is there now where the Act says that they consult the county governments. Clause 4 of the Bill says clearly that the Authority needs to enter into partnerships with the county governments to establish drawing rights and maintain appropriate supply chain system. The main amendment there is 'enter into partnership with county governments to establish drawing rights.'

We have been getting new reports that counties owe a lot of money to The Kenya Medical Supplies Authority (KEMSA). Therefore, an agreement or engagement must be entered into from the beginning so that counties only requisition for drugs that they can afford. KEMSA also has to play its part in making sure that it provides quality drugs on time.

I do not get the direct connection between KEMSA and health facilities. I thought that it is the county governments that procure. This is tricky because the county governments have to receive and make sure that what they receive is what they have ordered for, and then pay for it. If there is that direct connection between KEMSA and health facilities, the county governments, which are the procuring entities, might not be in a position to certify that what they are paying for is what they requisitioned for and supplied. I, therefore, support Sen. Were in saying that the Mover of the Bill has to check and tie it in so that counties only pay for what they have ordered.

Mr. Deputy Speaker, Sir, there are some diseases which we experience in the arid parts of this country. For example, in the last three months, we have been struggling with a disease in my county called kala azar. When we followed up, we were told that it is a neglected tropical disease, and most of the drugs are provided by donors. When we checked with the Ministry of Health, we were told that there is no line item budget for procurement of those drugs for those diseases.

Right now, West Pokot, Baringo, Turkana, Marsabit all the way up to Wajir are experiencing that outbreak of kala azar. Marsabit, especially, has been having it and in the last three months, we lost 15 people to that disease; and over 200 cases have been confirmed and treated. That shows that it is a serious disease. However, the counties cannot afford the drugs. Therefore, a central body like KEMSA is the right organisation to coordinate the procurement of those drugs. The national Government needs to procure, because it is an issue which cannot be handled by the counties.

In that case, I would like KEMSA to be the coordinating agency in terms of procurement or sourcing these drugs from donors like the World Health Organisation (WHO) and The United Nations International Children's Emergency Fund (UNICEF) so that we can have timely distribution whenever there is an outbreak of that disease. That way, there will be a quick response, because it is done from one point. Unlike now, when it occurs, counties have to look around for counties which could be stocking those drugs. However, if it is coordinated through an organisation like KEMSA, it will be timely; it will save our people and we will not have the kind of deaths that we have had.

Mr. Deputy Speaker, Sir, we have also been having problems with the supply of other drugs, like the vector control drugs. We have been running up and down, but I thank the county government and the governor for securing stocks of that drug, which we launched on Sunday. We sprayed the whole area and settlements so that we can control the spread of the disease.

Therefore, I support and hope that the Mover will take into account the amendments that have been proposed by Sen. Were.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Hargura.  
Proceed, Sen. (Dr.) Musuruve.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to support this amendment Bill, which is timely and relevant to this country. We are talking of the Big Four Agenda, and health is one of the Big Four Agenda that we cannot afford to ignore.

Mr. Deputy Speaker, Sir, I am happy about this Bill for amending the long title so that it incorporates the national Government and the county governments. This is a good amendment which speaks to Article 6(2) of the Constitution, which states that the two levels of Government should have a mutual collaboration. We must defend our Constitution. Therefore, this Bill comes in handy to support and defend this part of the Constitution.

Mr. Deputy Speaker, Sir, by the time KEMSA was established in 2000, the county governments had not been constituted and the Constitution had not been promulgated. However, these amendments will ensure that the three levels work together. We will have a tripartite relationship of KEMSA, county governments and the national Government. When we have this kind of a relationship, it will be good for the County governments. It will also provide services to the common man, which is the essence of devolution. The tripartite relationship will ensure that three parties work together for the good of the common man. This alignment is important for effective service delivery.

Mr. Deputy Speaker, Sir, the role that KEMSA is mandated to do is pertinent. The issue of procuring and storing drugs is core. Therefore, there is need for that relationship so that services are done effectively for the purpose of the good of the *mwananchi*. With this kind of relationship, it will ensure that KEMSA will supply drugs according to the demands of the counties. This will prevent a situation where drugs are poured into our counties and yet they may not be useful. With the tripartite relationship, it implies that the three parties will work together and have an assessment of the drugs that are needed in a particular county for the purpose of delivering them and ensuring that lives are saved.

Mr. Deputy Speaker, Sir, this Bill speaks to Sustainable Development Goal (SDG) 3, on health and the wellbeing of everyone. All nations of the world are looking forward to ensuring that they commit themselves to the SDGs. Therefore, when the amendments of this Bill come into force, they will ensure that SDG 3 is implemented.

Mr. Deputy Speaker, Sir, I am happy that this Bill gives authority to the county governments, because KEMSA will not just wake up from anywhere and decide to supply drugs. Clause 6 of the Bill says that county governments have a say. Therefore, this will ensure that drugs that are procured are relevant to the county. Counties will prescribe drugs that will be used in the counties. They will not procure expired drugs,

because everyone will be accountable. The county governments, KEMSA and the national Government will be accountable.

Mr. Deputy Speaker, Sir, there is need to account for expired drugs which, when used on patients, end up having negative effects. I watched in the media where a child was injected with a drug and, afterwards, the child got a disability as a result of the drug. It was not the right drug because it had expired. This relationship will ensure that someone somewhere is brought to account for such careless mistakes, whether it is KEMSA, county governments or the national Government.

This Bill is quite handy, especially when you look at Clause 7 and the Amendment in Section 21. It says that the council needs to be consulted before the CS makes regulations. This is very healthy, because if the CS just makes regulations from nowhere and without being informed on what exactly needs to go into the regulations, the users of those regulations might actually not accept them. I am anticipating that there will be public participation when we are coming up with regulations with regards to the users of this Bill. There is need for participation among relevant stakeholders. When they understand the regulations, they will not flaunt them.

I want to give a case in point of some regulations of the Teachers Service Commission (TSC). There are some teachers who were interdicted because they had not kept abreast with the regulations and code of ethics guiding their profession. Therefore, there is need for the relevant stakeholders to be aware of the regulations so that if they flaunt them, they have no one to blame but themselves.

Mr. Deputy Speaker, ignorance is no defence. I also strongly support the issue of drawing rights. This is an issue that has come out in this amendment, and it is a noble idea. Both the national Government and the county governments will draw some rights, meaning that it will be a win-win situation. Both the county governments and the national Government will be satisfied that whatever is happening is serving both levels.

There is also the issue of consultation. I mentioned earlier that consultation should be done before procuring the drugs so that drugs do not become useless by the time they get into the counties. When it comes to the issue of procurement, if the person or organization that is supplying the drugs is not given an objective limit, they will not mind supplying. They can even oversupply so that they get their take. I want to give an example of what is happening currently. You will find that some schools in this country have more books than the students that need to use those books. This is because suppliers know that once they supply, they will get their take. However, in the event of consultation, such errors can be avoided.

Mr. Deputy Speaker, Sir, I also want to speak on the issue of the Board of Directors. I do not know whether the Senator has included this; that the membership of the Board needs to be inclusive. We need to have representatives from the national Government and the county governments included in the membership of the board. Let all kinds of people be included.

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

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

Persons with disabilities (PWDs) should be included among the members of the Board of Directors. This is because these are people who actually need medical services. Many times, you find that they are ignored or their needs are not met because of the lack of awareness.

Madam Temporary Speaker, even in the KEMSA, there is need for sensitization regarding issues to do with PWDs. I will not shy away from saying that there is need for KEMSA to be sensitized. When children with disabilities go back to schools, you will sometimes find that they need medical attention, but their needs are not met. There is need for this issue to be incorporated.

I strongly support the Amendments to this Bill and congratulate Sen. Seneta for coming up with such a noble Bill.

Thank you, Madam Temporary Speaker.

**Sen. Cherargei:** Thank you Madam Temporary Speaker. I want to thank Sen. Seneta for this timely Amendment of the Kenya Medical Supplies Authority (Amendment) Bill (Senate Bills No. 38 of 2018). It is timely and very important, because KEMSA, as it is constituted now, has a lot of unfettered powers. They have gone into commercialization as opposed to the need to supply drugs to our county governments.

When you look at the Fourth Schedule of the Constitution, one of the key functions that was retained in the national Government was the issue of the health policy. However, the Budget that was read last week mentioned that a lot of money will go to the health sector. We had a meeting with the CoG, and we were joined by the Senate Committee on Health lead by Sen. (Dr.) Mbitio from Trans-Nzoia County. The CoG, led by Gov. Kutu, were of the view that the way the Health (Amendment) Act was signed and assented to law was not within the purview of Petition No.2, which is the advisory opinion of the Supreme Court on the role and concurrence of both Houses. I know that even as we go ahead and pursue other legal means to seek legal redress on that issue, I have seen that Sen. Seneta has relied on that Act, although I think the House will be updated on the progress we are making on this aspect.

The only role that the National Assembly was given to play was just to generate health policies. That was the argument being perpetuated by individuals or the reasons that were being given. When you look under Article 93, it states that Parliament is composed of two Houses; the Senate and the National Assembly.

Secondly, I want, from the onset, to support and thank Sen. Seneta for this wonderful amendment. KEMSA has the infrastructure to supply drugs according to the needs of Kenyans, from the two national referral hospitals to the hospitals at the county level like Kapsabet County Referral Hospital, Nandi Hills Hospital, Kibiyet Hospital, Maraba Hospital in Nandi County and other 83 health facilities in Nandi. The infrastructure that KEMSA should use should have been beneficial to all the people. We should have continuous supply of drugs. However, when governors give out drugs, they want the occasion full of pomp and colour, thus making it flowery. In my county, whenever drugs are supplied, there must be showbiz. That is not the way it should be, because every Kenyan has a right to drugs.

Governors use procurement and supply of drugs as a political tool, which is very wrong because that is an essential service, just like security and education. In my county, when the Governor launches the supply of drugs worth Kshs70 or 72 million, there is

usually pomp and colour during the event. There is always media coverage and *akina mama* who can sing and dance. During those events, you would think there is manna which has fallen from heaven, yet that is the people's right.

Therefore, KEMSA should ensure the continuous supply of drugs in our county and national referral hospitals. In the spirit of the Constitution and principles of devolution, the Council of Governors (CoG) should ensure that there is someone in the Board who is not out of touch with the reality of the facilities that we have.

Madam Temporary Speaker, the other day, we discussed about the impotent Medical Equipment Leasing Programme that has not benefited Kenyans. The Money for the programme was increased from Kshs94 to Kshs200 million for every county. We know that the programme will come to an end in a few years. We debated here and agreed that there should be zero allocation to the programme, but the National Assembly slashed the amount to around Kshs60 million for every county.

As I talk now, there are counties in this country – be it Kakamega, Bungoma, Mombasa, Trans Nzoia or Nandi – that have not benefited fully from the programme that was started in 2014, 2015 or thereabouts. We should ensure that we have people appointed to the Board by the CoG so that they are in touch with the reality. They should harmonise their activities and ensure continuous supply of drugs.

Madam Temporary Speaker, I come from Nandi County, and I do not know how other counties operate. If you see people calling the media, making a lot of noise and demonstrating, it tells you there are no drugs. After that, members of the county executive appear from nowhere and promise to supply drugs the following week.

Thirdly, since KEMSA has the infrastructure, expertise and technical knowhow, those officers should know, for example, that in the North Rift, there is a lot of malaria during the rainy season; and they should monitor that. I have heard a Senator talk about a breakout of disease in his county; KEMSA should come in handy at such times to do monitoring.

Fourthly, we also have terminal diseases. We have a rise in the cases of cancer, which impoverish Kenyans across the country. There are many types of cancer. Treating cancer by chemotherapy or using drugs is expensive, which has led many families in this country into poverty. Kenyans are dying at an alarming rate because of cancer. We should ensure that drugs used to treat cancer or mitigate its effects are affordable. The only agency with the expertise, technical knowhow and infrastructure to do that is KEMSA.

The National Hospital Insurance Fund (NHIF) cards should also be made affordable, because most people who die of cancer do not have medical cover since they are poor. They usually have to sell their land or cows while trying to get treatment.

Madam Temporary Speaker, a few weeks ago, there is a man who passed on in Simbi Village, in Lessos, Nandi County because of cancer. The family had used its entire savings; they had sold all their land and they are now poor. As we talk about the supply of drugs, we should find ways of making drugs cheaper or affordable for the treatment and management of diseases like cancer and other terminal diseases so that Kenyans no longer die.

I am hesitant on the provision that the Cabinet Secretary (CS) should appoint people to the Board, because consultation is key. The right word to be used is “must;”

because if you use “may,” it means there is an option. If that is the case, we are likely to have a crisis, like during the *Nusu Mkate* Government, where even ‘consultation’ was interpreted in courts of law. Therefore, the word should be “shall”, so that the CS has an obligation to appoint people to the Board, whose names are forwarded by the CoG. We will challenge the Health Act, because that is a legal issue.

Madam Temporary Speaker, a few weeks ago, I raised an issue on the pending bills on drugs that are owed to KEMSA. The other day, during the Madaraka Day celebrations in Narok, the President said that all pending bills must be paid. Today, I saw the Inter-governmental Budget and Economic Council (IBEC) report that was shared by His Excellency the Deputy President, Dr. William Ruto, and the CoG. They ordered the release of about Kshs60 billion that will be used to clear the pending bills.

Although we blame KEMSA for lethargy, ineffectiveness and inefficiency, we should also ensure that they get paid so that they discharge their duties, because debts can bog them down. We should also control other pharmacies that mushroom in the country, because we have people who sell fake drugs. We should relook at the Public Finance Management (PFM) Act to ensure that KEMSA is paid promptly, so that they ensure continuous supply of drugs. If they do not supply drugs, it affects their service delivery. I hope that the issue of pending bills owed to KEMSA, that the President talked about during the Madaraka Day celebrations in Narok, will be looked into.

Madam Temporary Speaker, KEMSA must be run beyond reproach. It should not be run like a kiosk, and it should not be a safe haven for corruption in this country. We do not want to see officers of KEMSA going to bed with county governments for kickbacks or commissions. KEMSA should be run with a lot of transparency, accountability and fairness so that they do what they are supposed to do to ensure service delivery.

I hope that Sen. Seneta will consider having a provision of reconstituting KEMSA to ensure integrity and high level performance. We should have performance appraisal for KEMSA officers, because we need integrity, transparency and fairness. KEMSA should be reconstituted so that it captures the spirit and aspirations of devolution. If this Bill comes to effect, it means there will be no option but to reconstitute it so that members nominated by the CoG are included. Of course, we should have additional members to reflect the spirit of the Constitution.

Thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you, Senator. There is an intervention from Sen. Farhiya.

**Sen. Farhiya:** Thank you, Madam Temporary Speaker. I beg to move that the debate on the Bill be adjourned pursuant to Standing Order 105 to allow for an urgent Motion, which is Order No. 18.

**Sen. Seneta:** Madam Temporary Speaker, I beg to second.

*(Question, that debate on the Bill be adjourned, proposed)*

*(Question, that debate on the Bill be adjourned, put and agreed to)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Having done so, it then follows that I will have to defer some of the Orders that are before us. Following consultations, we have deferred Orders No.15, 16 and 17 to tomorrow.

*Second Reading*

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

*(Bill deferred)*

*Second Reading*

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

*(Bill deferred)*

*Second Reading*

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

*(Bill deferred)*

Next Order.

**MOTION**

COMPLETION OF STALLED COUNTY PROJECTS THROUGH  
BUDGETARY MANAGEMENT

**Sen. Kibiru:** Thank you, Madam Temporary Speaker. I beg to move:-

THAT, AWARE THAT Kenya has had a development blueprint of Vision 2030 since 2008 which has guided planning and development for the last decade, with a focus to making Kenya an industrialized middle income economy with a higher per capita income for its citizens;

FURTHER AWARE THAT, the development planning of the country is funded from the Consolidated Fund through the annual budget whereby revenues generated by Kenyans through taxes, levies, and fees that are supplemented with support of development partners in the form of outright loans, conditional loans, grants and/or unconditional grants to support growth and development across the country;

COGNIZANT THAT, any diversion from the Vision 2030 blueprint as well as the President's "Big Four" Agenda, would negatively

impact the development trajectory that seeks to ensure a long term microeconomic stability resulting in a revision of targets on the goals for socio-economic, cultural, environmental, technological and political transformation;

NOTING THAT, whereas the National Government's Budget is based on Vision 2030 and "Big Four" Agenda, the County Governments' Budgets are based on their respective County Integrated Development Plans, (CIDPs) which are expected to dovetail with the overall national development blueprint;

CONCERNED THAT, there are glaring discrepancies in progress made in development among counties, particularly among the 14 devolved functions caused by lack of accountability, integrity, professionalism and remaining a blemish on the successes of devolution;

ACKNOWLEDGING, the tribulations, ridicule, pecuniary embarrassment and negative socio-economic impact that pending bills have had on the local business community who supplied or undertook a service for the county governments, and the attendant slowdown in actual project completion, the rise in stalled projects dotting counties, with County Governors prioritizing new projects instead of the completion of those which have stalled;

FURTHER ACKNOWLEDGING THAT, the National Treasury in its circular No. 9/2018 detailed the five hundred and forty five (545) projects which have stalled in the 47 Counties, and their status of completion, collectively amounting to an estimated project cost of three hundred and sixty six (366) Billion Kenya shillings;

NOW THEREFORE, the Senate recommends that the National Treasury in partnership with the Controller of Budget, Commission on Revenue Allocation, the Council of Governors and the County Assemblies Forum to-

1. Ensure that all the County Integrated Development Plans (CIDP's) and Annual Development Plans (ADP's) are aligned to Vision 2030 with an implementation, monitoring, and evaluation framework in place;
2. Address Pending Bills by prioritizing their payment, creating clear timeframes for payment and publishing a schedule of payment of the same; and
3. Prioritize the completion of stalled development projects prior to undertaking or funding new projects.

Thank you, Madam Temporary Speaker, for giving me this opportunity. This Motion is critical. We all know that Kshs366 billion is not a small amount of money. We have many stalled projects in Kirinyaga that go up to the tune of Kshs200 million. In the last financial year, Kirinyaga County got about Kshs4 billion. The percentage of money that has been put into those projects is enormous. The Kshs200 million can help us improve healthcare in our county. The stalled projects include health centres, water projects, roads and bridges.

In line with the SDGs, we need to tell our governors, especially those who are serving their first term, that they need to take care of our pending bills, because the time value of money is important. In project management, it is irrational to start a new project when the old project has not been completed. We should criminalise people who start new projects when there are stalled projects. Most of the governors do not continue with the stalled projects, because they either do not like the area or they feel that the area did not vote for them. They also start new projects for political expedience or for individual benefit.

We have stalled projects in all the counties and the Senators who are here will bear me witness to that. Most of the stalled projects were either started by the previous governors or the previous Members of Parliament (MPs), who were using the National Government Constituency Development Fund (NG-CDF) to construct them. As a country, we need to ask ourselves if that is corruption, and my answer to that will be yes. How can we allow ourselves to have Kshs366 billion of stalled projects, yet we are borrowing money to start new projects? We need to think of how we are operating in this country.

Madam Temporary Speaker, we know that this country has borrowed a lot of money to do development. Even in the national Government, leave alone the county governments, we have very many stalled projects. As a result, we are now talking about Kshs180 billion of pending bills. I keep asking how we got ourselves into this mess where we are now talking about a figure of Kshs180 billion in pending bills. According to the Public Finance Management (PFM) Act, we are not supposed procure services or projects if we do not have the finances. One wonders the point in time when the rain started beating us to the extent that pending bills are increasing.

Madam Temporary Speaker, something came up in the Senate Committee on Public Accounts and Investments (CPAIC), where I sit. Last time when the governor came before CPAIC, she told us that her county had pending bills amounting to Kshs160 million. However, she says that when the Auditor-General started auditing, the pending bills have increased to over Kshs460 million. There is mathematics that is not working out when it comes to the utilization of the public money. This is taxpayers' money, therefore, every penny must be put into rightful use. In the same Committee, we are proposing that it is high time we started talking about performance audit.

Some of these issues of stalled projects have been raised by the Auditor-General. However, I think we need to map out those stalled projects so that we fix the cut-off. Let nobody start new projects; we should let the old projects be the first charged in the budgets as we move forward. Let us make penalties for governors who violate that kind of understanding, that one must complete the stalled projects before they can think of starting new ones.

Madam Temporary Speaker, there is this argument that probably the stalled projects did not have feasibility studies carried out by the people who started them. Granted, but then as a manager of an organisation, the best one can do is to map out those projects and see if they can be utilised for another value. For example, we have police posts that are still stalled with nothing happening there. Can they, probably, be made assistant chiefs' offices or they be utilised in a different way? If it is a health centre that is

too close to another one, could we utilise it in doing something else instead of making public money lie idle?

Deterioration of stalled projects is very high. The moment you start building a house and it stalls, by the time you come back to start re-construction of the same building, the cost may have doubled. In a nutshell, the Motion seeks to force the county and national Government to ensure that we take care of all the stalled projects. The starting point is, probably, to map them out.

The national Treasury has come up with some regulations on what they are calling Project Information Management Systems (PIMS). It is good, but when is the time of implementation? We ask the national Treasury to move faster and ensure this system is implemented. We can also have the service delivery units in the counties so that we can monitor some of these issues.

The last case that the Senate lost to the Council of Governors (CoGs) – where we were to have County Development Boards to be chaired, probably, by the Senators – was unfortunate because that is the direction we need to go. We need governance issues so that when projects are started, there are feasibility studies and public participation. Once it is agreed that a certain project is what we need, then we give it priority. We do not have to start projects here and there. That is not proper utilisation of funds.

Madam Temporary Speaker, the people of Kenya got into a social contract with elected leaders, especially the President and governors. They gave up their rights to us so that we could utilise the taxes all pay on their behalf. The oversight role of the Senate can never be over emphasised. When we say that this project needs to be completed, we are not doing so because we want to be governors; it is our duty to do so. The people of Kirinyaga County, who elected me, did so because I can pinpoint to them what needs to be implemented. I promised them that I would ensure value for money; and that every penny must count.

We are now talking about increasing money to the counties. I hope that we are going to get more money to the counties. If that is so, they should also be responsible and make sure that every shilling is put to value so that Wanjiku and everybody else benefits from the monies we are taking to the counties.

Madam Temporary Speaker, as we move forward, we, probably, also need to look at the procurement procedure, because that is where corruption starts. We have abdicated our duties to some people we call engineers, Quantity Surveyors (QS), public works people, and the like. The moment they prepare a Bill of Quantities (BQ), more often than not they know who will win that tender. They do so with the one who will get that contract in mind. That is a process that also needs to be reviewed so that we see what it is and the structural issues we need to do.

Some of the procurement officers in the counties or the County Executive Committee (CEC) members require the security of tenure so that they are not dictated to by the governors. We need to have checks and balances that will enhance governance structures.

Madam Temporary Speaker, with those few remarks, I beg to move the Motion and ask my friend, Sen. Faki, to second.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you.

Proceed, Sen. Faki.

**Sen. Faki:** Asante, Bi. Spika wa Muda, kwa kunipa fursa hii kuunga mkono Hoja ambayo imeletwa mbele ya Bunge na Sen. Kibiru, Seneta wa Kaunti ya Kirinyaga, ambaye tulisoma naye Chuo Kikuu cha Nairobi. Hoja hii imekuja katika wakati mwafaka, kwa sababu kila mwaka kuna malimbikizi ya pesa na madeni katika kaunti. Serikali Kuu ya Kenya inazidi kuongeza madeni kwa sababu ya miradi ambayo inafanywa bila ya kukamilishwa.

Bi. Spika wa Muda, kiasi cha Kshs360 billion sio pesa kidogo, ikikumbukwa kwamba Bajeti ya kwanza ya Serikali ya Mheshimiwa Rais mstaafu Kibaki ilikuwa Kshs240 billioni. Kwa hivyo, sasa tuna kiasi Kshs360 billioni ambazo hazikutumika. Hii ni kwa sababu wananchi hawajaweza kupata ile tunaita kwa Kingereza *value for money* kutoka kwa miradi hii ambayo haijakamilika. Tukiangalia miradi hii, ni kama ile iliyofanywa na Serikali za Wilaya zilizokuwa kabla ya kuingia katika serikali za ugatuzi katika mwaka wa 2012.

Kuna miradi ambayo ilianzishwa na serikali za kaunti katika awamu ya kwanza, baina ya mwaka 2013 na 2017. Miradi hiyo imesimama kwa sababu wale magavana walioingia hawakuiendeleza.

Bi. Spika wa Muda, kuna miradi mingine ambayo imeanzishwa na hizi serikali za ugatuzi ambazo zimekuwa mamlakani kutoka mwaka wa 2013 hadi 2017, na wakarejea tena kwa muhula wa miaka ya 2017 hadi 2022. Miradi hii pia imekwama kwa sababu ya kukosa kulipa wanakandarasi. Tuliwahi kuzuru Kaunti ya West Pokot, ambapo tuliona miradi mingi iliyoanzishwa na Gavana aliyetangulia. Miradi hii imekwama katika serikali ya Gavana wa sasa, Gov. Lonyangapuo. Miradi hiyo imekwama ilhali pesa nyingi zimetumika.

Wananchi wanapata shida kwa sababu miradi ambayo ilikuwa imekusudiwa kama vile zahanati, shule za chekechea, barabara za kutumika kupeleka mazao sokoni haraka na wakati unaofaa. Zote hizo zimekwama kwa sababu miradi hiyo haijakamilika, na sasa imaekuwa donda sugu. Malimbikizi ya madeni inakabili serikali za kaunti. Vile vile, waliofanya kandarasi zile kwa pesa zao na kwa mikopo wanapata shida, kwa kushtakiwa na mali yao kuuzwa na madalali.

Ukitazama gazeti la jana la *Daily Nation*, utapata kurasa zaidi ya kesi kumi ambapo madalali wanauza mali ya Wakenya kwa sababu ya kushindwa kulipa mikopo. Mikopo yenyewe ni ya wale waliopewa kandarasi za kazi za kaunti au serikali na kushindwa kulipa hiyo mikopo, kwa sababu Serikali Kuu au serikali za kaunti zimekataa kuwalipa. Kutokamilishwa kwa miradi kwa wakati unaofaa kunaleta athari kwa serikali na uchumi wa nchi. Hii ni kwa sababu hatutatumia kikamilifu miradi iliyofanywa, ilhali pesa zimetumika na miradi kukwama.

Kwa hivyo, Bi. Spika wa Muda, naunga mkono Hoja hii kwa sababu itasaidia kuhakikisha kwamba serikali za kaunti na Serikali Kuu zinawajibika kuhakikisha kwamba miradi inayoanzishwa katika mwaka wa fedha wa serikali inakamilika kabla ya mwaka unaofuatia, ili wananchi wapate faida ya miradi ile. Pia, kuna miradi muhimu kama ya maji ambayo imekwama, na wananchi wanaendelea kukosa maji katika sehemu hizo.

Juzi, Kamati ya CPAIC ilizuru Kaunti ya Samburu, ambako tulipata miradi mingi imekwama kwa sababu ya ukosefu wa fedha, ilhali kila mwaka tunaomba fedha za kuendesha miradi hii. Kila mwaka, watu wanatengeneza *Annual Development Plans*

(ADP) ili kusaidia kutekeleza Vision 2030, ambayo ni ramani inayotumika na Serikali kuhakikisha tunapata maendeleo nchini. Kila miradi inapokwama, maendeleo yanabaki nyuma, na Serikali inashindwa kufikia *Millennium Development Goals* (MDGs), ambazo zimekwama katika Ruwaza ya 2030 katika mwongozo wa miradi ya Serikali. Ni muhimu kabla ya miradi mipya kuzinduliwa, ile iliyopangwa kufanyika katika mwaka fulani wa fedha za serikali ikamilishwe. La sivyo, ni muhimu kuweka hesabu ya kuhakikisha kuwa miradi hii imekamilika kabla kuanzishwa miradi mipya. Katika sehemu nyingi za kaunti, ile miradi iliyoanzishwa, kwa mfano na gavana aliyetangulia, haifanywi na gavana anayeendelea. Vile vile miradi ya NG-CDF iliyoanzishwa na Mheshimiwa aliyetangulia, yule anayeichukua anaigandamiza na hayuko tayari kuifanya miradi hiyo. Hii ni kwa sababu anahofia kwamba labda pesa nyingi zilitumika au aliyofanya miradi hiyo hakushauriana na watu.

Bi. Spika wa Muda, Wabunge au magavana pia wanabagua sehemu ambazo hazikuwapigia kura. Utapata sehemu zilizopigia kiongozi fulani kura kwa wingi zinapelekewa miradi kwa wingi, na kule kwingine hakupati miradi yoyote. Kwa hivyo, jambo hili linasababisha kutokuwa na usawa wa maendeleo katika sehemu tofauti za kaunti moja. Kwa hivyo, hili ni donda sugu. Ni lazima tutafute njia mwafaka ya kuhakikisha kwamba miradi inakamilishwa kwanza kabla ya kuanzishwa miradi mipya na serikali za kaunti au Serikali Kuu. Vile vile, lazima maendeleo yasambazwe katika maeneo yote katika kaunti ama nchi kwa usawa, kwa sababu sote tunalipa kodi katika mfuko mmoja. Haiwezekani kwamba mfuko wenyewe ufaidishwe sehemu fulani zaidi kuliko sehemu nyingine, wakati sote tumo katika Kenya moja.

Nikimalizia, hii miradi lazima ikamilishwe kwa wakati unaofaa ndio wananchi wafaidike na miradi iliyonuiwa kufanyika.

Naunga mkono Mswada wa Sen. Kibiru.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you, Senators.

I will now propose the Motion on Completion of all Stalled Projects under County Governments through Budgetary Management.

*(Question proposed)*

**Sen. (Rev.) Waqo:** Thank you, Madam Temporary Speaker, for allowing me to add my voice to this important Motion of completing stalled projects in county governments. I congratulate Sen. Kibiru for bringing it to this House. I know that we have a lot of stalled projects in the counties. In fact, the number of 545 stalled projects in the 47 counties is quite huge. The amount of monies that we have wasted is huge, such that every reasonable citizen should be concerned.

Madam Temporary Speaker, I support this Motion because of that and putting into consideration that Kshs366 billion is a wasted resource, especially today when Kenya is doing badly economically. Our citizens are frustrated because they have no hope for tomorrow. Many people are not employed. Also, the businessmen and women, especially those who have supplied materials to the county governments, are sick in hospitals because the county governments have not paid them.

It is as if the projects depend on the governor who is in office. However, projects should not depend on the elected person in office; they should be given life even when a

particular elected governor or any other officer leaves the office. Therefore, I support this Motion because we have wasted a lot of our resources. Once these projects are revived, the lives of many people will also be revived.

Madam Temporary Speaker, Vision 2030 is supposed to serve us, as nation. Unfortunately, we are not giving a lot of attention to it. Vision 2030 is a gift to us, as a nation. If we follow the plans that we have in that Vision, Kenya is one country that will really be transformed. That is the only way we can get out of the current confusion that we are in, in terms of development and managing our resources.

Madam Temporary Speaker, according to Vision 2030, every county should prioritize its needs. Unfortunately, what is happening currently is like any person who is elected comes up with his or her own vision, and dumps the old vision that has been there. That is why I agree with the suggested proposal that we give our recommendations. I support the proposal that all the CIDPs and ADPs should be aligned to Vision 2030. Implementation, monitoring and evaluation frameworks should also be put in place, because that is what we are currently lacking. If the Senate, which has the responsibility to oversight, pushes for this to happen, we will save all our counties and push them towards proper planning.

Again, according to the recommendation, the Motion proposes that we address pending bills by prioritizing their payments, creating clear frameworks for payment and publishing a schedule for payment of the same. As I said previously, many of our people who conduct small businesses are today suffering because they have not been paid. Therefore, this should be given a priority. This is because many school-going children are not able to attend school, and business people who have borrowed money are not able to repay their loans; and they are suffering as a result of that. The sooner this happens, the better for our people.

We should also prioritize the completion of stalled development projects instead of funding new projects. We should give a condition that we should bit fund new projects before old ones are finalised. This is the way to go.

Madam Temporary Speaker, we know well that through the development projects in our counties, county governors and the executive are benefiting a lot. They come up with projects where they will also benefit as individuals. In fact, it has become a cash cow for people. Therefore, we should try to see how this can be managed in order to deliver our nation.

Madam Temporary Speaker, if this can happen, then the idea of making Kenya an industrialized middle-income economy will be realised. As we all know, once that happens we, as a nation, will serve this region well because we are like the big brother. We are the people who give the way and guide others. Unfortunately, that is not what we are doing today. It is better for us to focus and support this Motion as much as we can so that Kenya can benefit.

Madam Temporary Speaker, I beg to support.

**Sen. Farhiya:** Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute and support this Motion. I thank the Senator for Kirinyaga, Sen. Kibiru, for bringing it to the House.

Madam Temporary Speaker, Kshs366 billion is more than a budget for one year for all the 47 counties. You can, therefore, imagine the kind of resources that are tied up

in those stalled projects. As suggested by Sen. Kibiru, when performance audit is carried out, it needs to be done by people with integrity. Those people should be selected carefully, because there are many corrupt people in independent offices that do not help the people of this country.

There is another thing that the governors have refused to appreciate. I sometimes wonder whether we elect people who are educated. An office has perpetual existence, and the fact that one person made a decision on a certain project does not mean that the other one has the ability to let the project stall if they take over. They forget that the money belongs to people who live in a particular county, because it is not from their pockets.

There is also impunity in our counties. Those are people who swore that they will abide by the Constitution and the laws of this country. The same people are full of impunity, and they allow a lot of taxpayers' money to get lost just like that. What kind of people are they? I cannot understand why they do not appreciate the fact that they are in office courtesy of the people.

We even have professors in charge of some of the counties. What gets into the heads of some of these learned people when they get to office? Sometimes they know something is against the law, but you find them doing it, and then give reasons. We have people whose primary role is to oversight counties. They are the ones on the ground to see what goes on. For example, we have cases where 85 per cent of the money was paid, but who is there to follow up and ensure that such projects are completed?

Like my colleagues have articulated, another thing is pending bills. Most people that counties do business with are small-scale traders. Some of them do not have enough capital. As a result, their businesses come to an end when they are not paid. That means that a lot of businesses are killed. This country needs to develop, but if you kill the engine of economic development through huge pending bills, how do you expect this country to develop?

A country like South Korea was at the same level of development with us in 1964, but it is far ahead of us now. If you go there now, you only see either grass or tarmacked roads. It is a desert country, but because of good leadership and the kind of investments--

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**The Temporary Speaker** (Sen. (Prof.) Kamar): Order! Sen. Farhiya, you are left with nine minutes, which you will have when we have debate on this Motion.

## ADJOURNMENT

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Senators, it is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Wednesday, 19<sup>th</sup> June, 2019, at 2.30 p.m.

The Senate rose at 6.30 p.m.