

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Wednesday, 18<sup>th</sup> September, 2019

*(Convened via Kenya Gazette Notice  
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*The House met at the Kitui County Assembly  
Chamber, Kitui Town, at 2.30 p.m.*

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

#### PRAYER

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators. I will apply Standing Order No. 40 and direct that, first, for the convenience of the House, we dispense the item appearing in Order No.11. Then, we will go back to Statements.

Senate Minority Leader, approach the Chair first if you do not mind.

*(Sen. Malalah approached the Chair)*

As the Mover of the item in Order No.11 is preparing, I direct that we continue with Statements.

Let us have the distinguished Senator for Vihiga, Sen. Khaniri.

#### STATEMENTS

##### CONTINUED FAILURE BY COUNTY GOVERNMENTS TO MEET THEIR OWN-SOURCE REVENUE TARGETS

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, I thank you for this opportunity.

I rise pursuant to the provisions of Standing Order No. 47(1) to make a Statement on an issue of general topical concern regarding the successive failure of county governments to meet the own source revenue targets.

This Statement could not have come at a better time. It is coming when we have just passed the Country Allocation of Revenue Act (CARA). I know that there are number of countries that were adversely affected, in that, they got a lower allocation of resources than what they were allocated last year, simply because they did not meet their targets in own source revenue collection. This Statement will interest the Senator for Mombasa, Senator for Bungoma and many others.

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Mr. Deputy Speaker, Sir, before the establishment of county governments in 2013, some of the current counties were city, county, town, municipal or urban councils. These councils collected revenue and offered services to the people under the then Ministry of Local Government. One of the greatest wins for the people of Kenya in the Constitution of Kenya, 2010 is devolution, as we all know. Hence, from 2013, the governance of Kenya was divided into two levels; the national Government and the county governments.

The Fourth Schedule to our Constitution distributes the functions between the two levels of government. Governments all over the world collect revenue to enable them offer services to the public. This is the same case in Kenya. Even though counties are entitled to equitable share of revenue raised nationally, they are also obligated to collect own source revenue.

It has been observed that counties have generally failed to collect the projected own source revenue since the dawn of devolution in 2013. In most cases, counties are underperforming when compared to the defunct local governments. This situation has been blamed on a number of factors such as over-projection, administrative inefficiency, gaps in policy and legislation, lack of support from the public, and maybe, corruption.

Mr. Deputy Speaker, Sir, Article 209(3) of the Constitution gives counties the power to collect revenue through property taxes, entertainment taxes, and any other taxes as authorized by Parliament. Further, Article 207(1) also dictates that all counties should establish a County Revenue Fund, where all revenue collected by the county governments should be deposited. The reasoning and advantage of OSR is that, in addition to encouraging financial independence of counties, it will provide more resources for development.

I believe that after six years of devolution, there are many lessons that counties have learnt, which are crucial in improving revenue collection. There have been a number of proposals such as enlisting the services of the Kenya Revenue Authority to collect these levies, fees and taxes on behalf of counties, automation of the whole revenue collection process, outsourcing and enacting enabling legislations and policies in the counties.

It should not be forgotten that the tax burden on citizens is generally heavy across the board, hence counties need to be innovative in their revenue raising schemes. We are all alive to allegations of double taxation on the common *mwananchi*, while the wealthy go scot-free.

Mr. Deputy Speaker, Sir, the Senate, as the protector of devolution, has a role to play in interrogating this state of affairs and propose solutions. Some of the proposals that I believe the Senate can constructively engage the counties on with regard to increasing revenue collection, is transparency and fidelity to the Constitution on the matter of own-source revenue collection.

Most counties collect revenue, but the money is never deposited in the County Revenue Fund as espoused in the Constitution. What this means, therefore, is that, the money collected is either banked in other accounts or never deposited in the county, and hence, not protected. It is pilfered by county staff.

Mr. Deputy Speaker, Sir, counties should also undertake public participation on the issue of revenue collection. Public goodwill is important because most people evade

taxes due to the negative perception created. The public should be encouraged to participate in the process of making legislation concerning revenue and the county governments need to be open on their expenditure of public funds. Counties also need to urgently address public concerns on issues such as double and expensive taxation.

In addition, counties need to conduct proper research on the possible tax opportunities in their respective jurisdictions. Currently, according to their budgets, most counties cannot exist without funding from the national Government because the own source revenue is not even 10 per cent of their total annual budget. It is also wise for counties to create an enabling business environment for the public to engage in economic activities that will in turn enable them to pay taxes.

Mr. Deputy Speaker, Sir, if we do not take the necessary steps as the Senate in conjunction with the county assemblies, to ensure the protection of county funds, then devolution will fail under our watch. Normally, it is expected that devolution will improve revenue collection. It definitely has, only that the revenue thus collected is neither registered nor deposited in the right county accounts. Most counties open and operate numerous accounts where local revenue collection is deposited. This is wrong and in deliberate disregard of the law.

County assemblies should be encouraged to improve oversight over local revenue collected. Furthermore, the proposed formula for revenue allocation by the Commission on Revenue Allocation (CRA) has, as one of its objectives, the promotion of county fiscal performance and rewarding of counties for optimizing revenue collection.

Mr. Deputy Speaker, Sir, if counties increase own source revenue collection, they will benefit twofold - directly from increased funds and from grants from the equitable share.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. As directed yesterday, we will be raising hands when we want to catch the Speaker's eye. I can see so many hands up.

**An hon. Member:** I was the first.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order. I have seen the hands and I will give a few hon. Members a chance to make a few comments. I am just reminded of the House of Commons and we are doing better than they normally do.

Proceed Sen. Seneta and be brief.

**Sen. Seneta:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to add my voice to this Statement. From the onset, I want to congratulate Commissioner Sen. Khaniri for that important thought.

I want to point out three issues: One, revenue collection in our counties is a very important issue that needs a depth discussion in this House. This revenue is the monies that Kenyans need to go back to the service that they are given. One of the things that is missing in our counties is lack of proper systems, in terms of how this revenue is collected; how it is banked and how it is accounted for. Many of our counties employ members of staff who are not competent and transparent in the collection of the revenue.

If you go to our streets in the small urban areas in our counties, you get people with receipt books that lack a stamp from the county or one that is not clear on how these monies are channeled to the county treasury.

Public participation is also very important. Kenyans need to understand why they should pay these taxes and how much they are paying. The issue of involvement of citizens is very important. I wish the counties can bring on board the citizens in terms of giving them information on these taxes that are being collected. Citizens in our counties are harassed every other day because of either single business permits or all other taxes that are supposed to be paid that they are not aware of.

Lastly, is the issue of double taxation. Business people are being charged all manner of taxes that are also taxed by the national Government as well as the county governments. Therefore, I agree with Sen. Khaniri that it is high time that we got policies that guide this process because revenue is very important, but should be equally collected in a transparent manner. They should also give back services to the citizens.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Seneta, you took a lot of time. This is not your Statement. If you were passionate about it, you would have brought the Statement.

*(Laughter)*

You cannot wait for other Senators to do their homework and then you want to come and shine on their sweat. Nevertheless, yesterday you were the last to speak and that is partly why I allowed you to---. We have to be fair.

I will allow a few more comments, but for not more than two minutes. Just say that one thing that has not been said by the owner of the Statement.

Hon. Senators, I have a Communication to make.

*(Interruption of debate on Statement)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF CENTRAL PRIMARY  
SCHOOL, KITUI COUNTY

Hon. Senators, I would like to appreciate visiting students and teachers from Central Primary school, Kitui County. On behalf of the Senate and my own behalf, I welcome them.

*(Applause)*

*(Resumption of debate on Statement)*

The distinguished Senator for Bungoma, proceed.

**Sen. Wetangula:** Thank you Mr. Speaker, Sir, I will try to compress what I want to say. My own county lost Kshs.56 million in the current allocation because of under collection of own source revenue.

The problems we have in addition to what Sen. Seneta and Sen. Khaniri have said, is endemic corruption. Money is, in fact, collected, but it is never declared because

it ends up in people's pockets and private accounts. The institutions of governance in this country have badly let down the country. The office of the Director of Public Prosecution (DPP), the Auditor-General, the Director of Criminal Investigations (DCI) and all these institutions that ought to be looking after public resources, not to forget our own watchdog committees in Houses of assemblies and Houses of Parliament. They can do better.

There was a county that had 50 different accounts in which they were depositing own source revenue. This is causing confusion so that they can be able to steal the money. This has to be checked by the assemblies, this House and other institutions.

Mr. Deputy Speaker, Sir, more importantly, as we push for more revenue to be collected, we must guard against fleecing the ordinary people in the villages. I have seen in some counties that *mama mboga* and *boda boda* riders are taxed on a daily basis. In other counties, they pay once a month while in other counties they pay once a year. This House has a duty - I want to urge Sen. Khaniri to move beyond his Statement and look at what law of general application of counties we can bring to give general guidance on own source revenue collection, especially on common user activities like *boda boda*, *mama mboga* and others.

Mr. Deputy Speaker, Sir, lastly, the issue of punishing counties for failing to collect revenues to their target is punitive, unreasonable and should be relooked at. The monies that go to the counties for the ordinary people that we represent for healthcare and agriculture; if a Governor is reckless or incompetent in collecting taxes, why take away money being allocated from the national Government for facilities that reach the ordinary person? We must find a way of dealing with errand Governors and protecting the people in the counties.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki: Time is up, Sen. Wetangula.

**Sen. (Dr.) Lang'at:** Thank you, Mr. Deputy Speaker, Sir. I do not want to repeat what other Senators have said. However, I have noted that another challenge that Sen. Khaniri should also include is that there are some assets that are under-valued in revenue collection. For instance, in my county and Kericho County we have huge tea plantations but when you check what is collected from them, it is very low. Therefore, we would like to ask the Members of County Assemblies to come up with Bills on the re-evaluation of some assets so that they may increase taxation on them.

Some counties have got huge resources, for example, in Taita Taveta County, they have some animal reserves. However, the taxes that the counties are collecting from them are so little based on valuation done immediately after Independence or some years back. Therefore, I think that some assets should be re-evaluated to make sure that new taxation is applied accordingly.

Thank you.

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

**Sen. (Dr.) Zani:** Thank you, Mr. Deputy Speaker, Sir. Let me join you in welcoming pupils from Central Primary School as I proceed to support this Statement. I want to thank Sen. Khaniri for bringing this Statement; it is a very important Statement.

It resonates about what the Senate is talking about currently, that is, own source revenue, knowing well that shareable revenue is not enough within the counties. A huge

chunk of that shareable revenue goes to recurrent budget rather than development budget. Therefore, it is very important to bring up an idea to have own source revenue.

Mr. Deputy Speaker, Sir the own source revenue for Kitui County stands at Kshs324 million against a target of Kshs500 million. They are at 65 per cent of acquiring or getting to their specific target, but there is a problem. My point is that there is already a Bill in this House, it is an amendment to the Public Finance Management Act (PFM) that this House is already seized off that addresses the issue of coming up with a regulatory system that brings together the Controller of Budget, Kenya Revenue Authority and other key players.

We will discuss this within the House so that they get together and come up with a system that is going to be shared across various counties, mobilise and put very well so that the collection of this revenue can be well-managed and so that there is a pattern and standardization across the counties. Therefore, if we are able to get to that point where we can make that amendment successfully as a House and be able to push this agenda, so that there is more regularity, standardization and efficiency in own source revenue, that will help counties.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you Sen. (Dr.) Zani. I note that today you chose to use the English language. Well, no controversies.

**Sen. (Dr.) Ali:** Thank you, Mr. Deputy Speaker, Sir. I will be brief. I would like to congratulate the Commission on Revenue Allocation for bringing the financial index. If they did not do that, it would encourage counties to over-estimate their own source revenue. If they continue doing that, they will always have problems and that is part of corruption that has been stated.

What I remember is that in the old times when we had county councils, some of them used to collect a lot of revenue. The people who usually collected the money were tax collectors and the receipts had no numbers. As a result, you would find that the tax collector was a very rich man while the Chairman of the county council was very poor. As the Governor for West Pokot usually says: "They are fat, round and short because of the money they eat from the public".

**The Deputy Speaker** (Sen. (Prof.) Kindiki: Order, Sen. (Dr.) Ali. Wind up neatly.

You can do better than that, Senator for Wajir County.

**Sen. (Dr.) Ali:** Mr. Deputy Speaker, Sir, they are usually fat because they eat a lot of money which is not theirs. I think we should encourage our Members of the County Assemblies to make sure that governors who over-estimate and put in their budgets monies which they do not have, and bring a lot of pending Bills, that practice should not be encouraged.

Thank you.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. Article 209(3) (c) of the Constitution gives us the powers to come up with a legislation that can be able to give the county governments a way of raising own source revenue.

When we look at the same Article, it defines which areas county governments can charge taxes. They can charge property taxes, entertainment rates, single business permits, parking fees, building permits, and fees from billboards.

Mr. Deputy Speaker, Sir, I remember very well that we dealt with a legislation in this House that talked about outside advertising. We realize that yesterday we concluded a very lengthy battle with our colleagues from the National Assembly, some who probably do not understand the reason why we are here when they go out there and utter all manner of nasty words about this House.

What we ought to do is to guide these county governments on how they can be able to enhance their own source revenue. One of the areas which is very important - I hope that treasury will pursue this - there is no reason as to why, currently, we are dealing a lot with cash. We should come up with a legislation that encourages every business in this country to transact electronically so that we are able to tell how much is being collected. When we had the city councils or the county councils in the past, the chairman of the council and the clerk were very aggressive in making sure that everyone had paid plot rates.

As I speak, we still have a battle in Narok County. Members of the business community went to court and said that they do not want to change from being a town to a municipality because it will broaden the tax collection. As the Senate of this Republic, instead of just pointing fingers at the county governments and saying that they are not raising more or the money they raise is being misused, it is time we developed a legislation that will ensure that we use technology.

We normally go to benchmark in other countries like Estonia which is a very small country. In Tallinn, which is the Capital City of Estonia, every single building is numbered and the number of businesses being operated are known. When the authorities go to collect taxes, they know that, for example, from building 1 to 1,000, there are about 10,000 businesses. Therefore, they can develop their accounts properly and indicate how much is being raised. So, this Statement is very important.

As I conclude, I would like to encourage Sen. Khaniri to develop this into legislation that will ensure that when we sit here, we can easily know how much money comes from each county.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You can continue advising the Senator quietly.

Let us have the distinguished Senator for Kericho County.

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, this is a topical issue raised by our colleague, Sen. Khaniri. There are three quick things that I would wish to say. First, the people to squarely blame on this particular debacle is the National Treasury because our Committee on Finance and Budget had developed an Own Source Revenue Bill that would have guided counties on how to sort out this particular mess.

When the Cabinet Secretary for the National Treasury, Mr. Henry Rotich, appeared before us, he requested that in the spirit of cooperation and coordination that should exist between the Legislature and the Executive, we should shelve our Bill.

He promised to bring a Bill before Parliament for consideration in relation to this particular issue. Unfortunately, when they brought it, they took the Bill to the "Lower House". As we all know, everything there gets a priority except things to do with devolution. Therefore, for the past six months, the Own Source Revenue Bill has been before the National Assembly without due consideration.

The second issue is that counties need to check and regularly update their land value roll. The amount of money that counties can collect from land taxes is enough to fund the operations of many of our county governments.

What Sen. (Dr.) Langat shared with those of us who come from tea growing areas is that---. For example, in my own county, the land value roll that is used to build the multinationals that occupy huge tracks of land in our county was last updated in 1994.

This year I challenged our Governor to update it so that we know the exact value of that particular land and ensure that the multinationals pay land rates that are commensurate to the value of land that they occupy. Right now, they pay only Kshs220 per acre for land that is close to Kshs10 million per acre. I would wish to challenge our colleagues from Kitui County Assembly who are here to ensure---

**Sen. Halake:** On a point of order, Mr. Deputy Speaker, Sir. Is my neighbour in order---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Who is your neighbour and where do you live?

**Sen. Halake:** Around this neighbourhood. Is the Senator for Kericho County in order to blame the National Treasury, yet this House handed over a piece of legislation on our mandate? Are we becoming a House of lamentations or are we just sleeping on the job?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Under what Standing Order is that?

**Sen. Halake:** Under the Standing Order on relevance

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Which one is that? Do not say Standing Order No.1, because that one is for the Speaker to apply.

*(Laughter)*

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, allow me to school my neighbour later on Standing Orders after I am done with my presentation.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Which neighbour again? What is this neighbour business, Sen. Cheruiyot?

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, it is only limited to the precincts of this House and nowhere else.

I was saying that Members of the County Assembly (MCAs) of Kitui who are here should also check when the land roll of Kitui County was last updated so as to ensure that people are paying the proper value for the land they occupy in the urban centres of this particular county.

Lastly, scientifically, we have been told that human beings respond to either the carrot or the stick. That should be corrected to state that we Africans respond to both the carrot and the stick. We need to motivate and deter at the same time.

There is an amendment to the Public Finance Management (PFM) Act that will come to this House. While debating on the County Allocation of Revenue Act yesterday, we kept on referring to the ceiling of 7 per cent to county assemblies. Since county assemblies are supposed to provide proper oversight to ensure that county governments collect enough revenue, then we should peg it to the amount that they collect. If a particular county is properly oversighted and overshoots the revenue they are supposed to



collect, we should have a percentage to go to county assemblies to fund operations. I will move an amendment to the PFM Act.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I know everyone wants to speak, but we do not have infinite time. I find this matter extremely important for the work we do here. I would like to hear if there are further comments from the Committee that is involved but I cannot see the Chairperson here. I am saying that because of what the Senator for Kericho County has just said because it is not just enough to discuss Statements here.

Sen. Cheruiyot, other than what you have told us, is there anything you are doing about own source revenue at the moment?

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, unfortunately, we are waiting for the Bill to come from the National Assembly. Right now, there is no Bill before our Committee or even a legislative proposal.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What prevents you from re-introducing your Bill, now that the gentleman's agreement you had made with the Executive has not been honored?

*(Sen. Omanga consulted loudly)*

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

**Sen. Wetangula:** On a point of order, Mr. Deputy Speaker, Sir. I am actually a Member of the Committee. After I spoke and sat down, I remembered that there is a Bill that was brought by the distinguished Sen. (Dr.) Zani that seeks to give effect to all these issues that we are canvassing.

That Bill has been dealt with at the Committee level. It is awaiting public participation and then it will be brought to the Floor. George Khaniri, the Senator for Vihiga County should liaise with Sen. (Dr.) Zani. All Members with issues pertaining to the same can also do so in order to enrich this Bill.

**Sen. Omanga:** On a point of information, Mr. Deputy Speaker, Sir. I wanted to inform the House that the court barred the County Public Accounts and Investments Committee (CPAIC) from looking at own source revenue and limited that to the county assemblies. The Senate will only look at the money that is given to the counties by the national Government.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Omanga. You should have received counsel from counsel. That judgment relates to oversight. Contested as it is, it relates to oversight on own source revenue. Is that not so? It does not relate to any other thing.

The judge said, and I believe it is a grave error, that the Senate cannot oversight counties relating to own sources of revenue. However, that is completely different from what we are discussing here. It does not mean that you cannot legislate on own source revenue, encourage counties to improve on their revenue or punish counties that do not raise their own revenue. It does not mean everything else.

Sen. Omanga, be advised accordingly.

I appreciate Sen. Khaniri for bringing this Statement. I wanted that information so as to know the kind of directive to give. At this juncture, I do not find it critical to refer the matter to a Committee for further action. As Sen. Wetangula stated, it appears that there is already a legislative endeavour that is on the way.

**Sen. Khaniri:** Mr. Deputy Speaker, Sir. I oblige with your ruling. Sen. (Dr.) Zani has already shared with me a soft copy of the Bill. I am going through it and will add some input into that Bill.

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

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATION FROM MUSLIM PRIMARY SCHOOL, KITUI COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Muslim Primary School, Kitui County.

I welcome them to the Senate of the Republic of Kenya.

I thank you.

*(Applause)*

Immediately after we dispose the Statement by the Chairperson of the Committee on Agriculture, Livestock and Fisheries, we will move to the Motion by the Senate Minority Leader.

Kindly proceed, the Chairperson of the Committee on Agriculture. Sen. Ndwiga.

### STATEMENT

#### PUBLIC AND STAKEHOLDER ENGAGEMENT ON THE MUNG BEAN BILL

**Sen. Ndwiga:** Mr. Deputy Speaker, Sir, Standing Order 51(1) (a) provides that a Committee chairperson may make a Statement relating to a matter for which the Committee is responsible.

In fulfilment of this provision, I wish to make a Statement in regard to the public and stakeholder engagement on the legislative proposal on the Mung Bean Bill held today, 18<sup>th</sup> September, 2019.

The public hearing forum was well attended, having representation from the County Executive, the county Assembly, co-operative in the mung bean industry and farmers. The Committee received numerous views on the proposed Mung Bean Bill, including the following-

(a) That the scope of the Bill should be expanded to cover all pulses.

(b) That the Committee should consider amending the National Cereals and Produce Board Act to include pulses among the scheduled crops as this would be a solution to the storage and marketing challenges facing the farmers currently.

(c) That the mung bean should be among the crops that are sold to the State's Strategic Food Reserve.

(d) That there is need to increase capacity and resources towards research in the pulses industry. Although the Bill requires the Agriculture and Food Authority (AFA) to establish linkages with international research agencies for the adoption of best mung bean farming and processing practices, there is need for the Senate to lobby for more resources to be set aside for programmes under the Kenya Agricultural and Livestock Research Organization (KALRO). This will ensure that the country develops the best seeds.\

(e) That despite the farmer's efforts to produce good quality mung beans, they are faced with marketing challenges. The Committee notes that the Bill also requires the Agriculture and Food Authority to promote access to international markets. This would go a long way in ensuring that farmers get value for their efforts.

The Committee has observed that the recent assent by the President to the Warehouse Receipts Systems Bill and the Irrigation Bill will be instrumental in the growth of the pulses sector in the country. The Committee, therefore, recommends that the operationalization of the two Acts be fast tracked.

Mr. Deputy Speaker, Sir, the Committee shall continue to engage stakeholders on the Bill.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I see no interest on that issue. The Senator for Kitui had an interest on the Bill but is currently not in the Chamber. So, let us proceed.

Let us move to Order No.11. If time allows, we will come back to the statements later.

Next Order.

## MOTION

### ESTABLISHMENT OF *Ad Hoc* COMMITTEE TO INVESTIGATE MES

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, I rise to move this Motion on behalf of both the Senate Majority Leader and the Senate Minority Leaders.

THAT, AWARE THAT while Health is a devolved function, Article 6(2) of the Constitution states that:

“The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation”

FURTHER AWARE THAT, there is no existing comprehensive legal framework to guide the consultative and collaborative process between the Ministry of Health (MoH) and County Governments;

COGNIZANT THAT, when the Managed Equipment Services (MES) project was launched on 6<sup>th</sup> February, 2015, the Ministry of Health

entered into arrangements with five foreign firms for the provision of specialized medical equipment worth Kshs38 Billion;

NOTING THAT, according to the Ministry of Health, the project is aimed at improving health infrastructure and enhancing the capacity of counties to provide specialized healthcare targeting non-communicable conditions such as cancer and renal conditions, as well as to promote diagnostic, radiological and critical care services;

CONCERNED THAT, the Council of Governors (CoG) has voiced opposition to the project on the grounds that county governments were not involved in the tender-procurement process, the monies are debited annually from the accounts of the counties directly by the Treasury, there was lack of proper consultation between the Ministry of Health and county governments, and that, leasing the medical equipment was ultimately more expensive than direct purchase.

CONCERNED FURTHER THAT, the extent to which county government structures or institutions were involved in the project has remained unclear, and the opposition raised by the CoG reveals serious gaps in the consultative process between the MoH and county governments, including the terms of the contracts which end in 2022.

NOW THEREFORE, in exercise of its oversight function, the Senate resolves to establish an *ad hoc* committee to investigate and establish the facts surrounding the leasing of the medical equipment, in the now 119 beneficiary hospitals countrywide, including:

- i. whether county governments were involved in prioritizing the medical equipment in accordance with their needs;
- ii. the details of the company from which the equipment was leased;
- iii. the viability and benefit of leasing versus outright purchase;
- iv. the availability of adequate numbers of health human resource to provide specialized health services as envisaged in this project;
- v. the operation, training and maintenance facilities in place for the equipment;
- vi. the terms and period of the lease of each piece of equipment, where the equipment was supplied, the lease amount, and who bears the cost of the residual value of the equipment at the end of the lease term;
- vii. the schedule of equipment supplied to each hospital, and the cost thereof, including proof that the monies disbursed were utilised for the intended purpose; and,
- viii. the results of the exercise, considering the terms of the contract end in 2022, when equipment has remained unused in some counties despite the county having paid annually for the installation, maintenance and utilisation of the same since 2015; and submit a report to the House within 90 days.

AND FURTHER THAT, the following Senators be appointed to serve in the Committee:

1. Sen. (Dr.) Mbitio Michael, MP – Member

- |  |   |        |
|--|---|--------|
| 2. Sen. (Dr.) Abdullahi Ali, CBS, MP , | – | Member |
| 3. Sen. Seneta Mary, MP                | – | Member |
| 4. Sen. Kinyua John Nderitu, MP        | – | Member |
| 5. Sen. (CPA) Ali Farhiya, MP          | - | Member |
| 6. Sen. Wetang’ula Moses, EGH, MP      | - | Member |
| 7. Sen. Lokorio Petronilla Were, MP    | - | Member |
| 8. Sen. Masitsa Naomi Shiyonga, MP     | - | Member |
| 9. Sen. Outa Frederick Otieno, MP      | - | Member |

Mr. Deputy Speaker, Sir, just before I go into the body of the Motion, I understand somewhere in Nairobi, somebody attacked the Senate that we are wasting taxpayers’ money and that we should not be sitting here in Kitui.

The problem in Kenya is that we have got too many ignorant people in government positions. When a leader who on the day he was elected swore by the Bible to defend and protect the Constitution, forgets the Constitution he swore to protect, you get amazed. To that extent, it is very difficult to punish impunity in this country because when the guilty are people in responsible positions, it becomes a very sorry situation.

Mr. Deputy Speaker, Sir, if you may allow me to read Article 126(1) – Location of sittings of Parliament - to the leader of the National Assembly which reads that:

“A sitting of either House may be held at any place within Kenya and may commence at any time that the House appoints”.

That is the Constitution of Kenya.

I do not know what the Leader of Majority in the National Assembly swore when he was swearing to protect and defend the Constitution. I think he forgot his brains and the Constitution at home. I can just sympathize with him in that regard. It reminds me of a joke of a cartoon you normally see in the *Nation* newspaper named handicap. There is one time when handicap was coming from a pub at midnight and met another drunkard on the way and the drunkard asked him: Is that the moon or the sun that I am seeing? Handicap said: I also do not know, I am new in this neighbourhood. Maybe the Leader of Majority in the National Assembly is new in this neighbourhood. That is all I can say about that.

Mr. Deputy Speaker Sir, you will remember that the facts behind the formation of this Committee is partly in fulfilment of the directives that you had given at some point and I will come to that. Secondly, you would appreciate that the House has a Standing Committee on Health and the membership of this Committee are members of that particular standing committee, but because of the importance of this matter that has dogged us for so long, it was required - following the directive that was made by the Speaker - that we form an *ad hoc* Committee to look into this matter comprehensively and as quickly as possible.

In fact, if it is possible to have a report within the next 60 days rather than 90 days, we will be better off as a Senate. In fact, you would remember that we are going on a long recess in December. I would urge this Committee, that when it gets to its work which will happen if formation of this committee is approved by the Senate, that the Membership tries to do this work and gives us a report before we go for the long recess.

The background to this issue arose from a question or a matter which was raised by Sen. Dullo, the Senate Deputy Majority Leader. That was far back as Wednesday, 21<sup>st</sup>

November, 2018. She asked the question requiring several responses on to the question of the leasing of medical equipment. Following extensive debate on the matter, the Deputy Speaker directed at the time that the Majority Party on behalf of the House in the Committee on Health, invites the Cabinet Secretary for Health on the 27<sup>th</sup> November, 2018, to reply to issues that had been raised by Sen. Dullo and by this Senate in the deliberations and debate that took place on 27<sup>th</sup> November, 2018.

Then we had the meeting with the Cabinet Secretary on 27<sup>th</sup> November, 2018. That meeting took place in the Senate Chambers in the Main Parliament Buildings in Nairobi and the Cabinet Secretary was accompanied by senior Ministry officials and they brought along with them documents relating to not just the management of the equipment, but also to the Universal Healthcare Programme.

At our sitting on 27<sup>th</sup> November, 2018, there was a further directive that the three committees chaired by the Senate Majority Leader, that is the Standing Committee on Health, Committee on Devolution and Intergovernmental Relations and Committee on Justice, Legal Affairs and Human Rights, look at what was made available at that stage and come up with certain answers to the Senate in the form of a report.

During the Senate sitting, the Chair directed that an interim report to be tabled in the House on Wednesday the 5<sup>th</sup> December, 2018. That sitting took place and following interventions by Members, there were misgivings about the report and the Committee asked for more time to engage various stakeholders in order to conclude the matter. After making that request, the Chairperson found favour with the Speaker. In fact, he wrote a letter and the final outcome of this process was that the Speaker through the Deputy Speaker, required of the leadership of the House to re-look at the Membership of the Committee, because it had mutated not just as the Committee on Health but now including the Committee on Justice, Legal Affairs and Human Rights in order to ensure that we have a committee that will eventually deal with this matter comprehensively.

As these deliberations were going on, the distinguished Senator for Bungoma County brought a Motion seeking the formation of an *ad hoc* Committee and that Motion was approved by the House Business Committee.

However, following consultations, the House Business Committee (HBC) felt that since this matter was very important, the Motion should be moved by the Senate Majority Leader and the Senate Minority Leader. However, there was general agreement that since the distinguished Senator for Bungoma County had actually crafted the Motion - in fact, the Motion nearly in its entirety, is as was drafted by the distinguished Senator for Bungoma County - it was felt that it should be a Member of the Committee.

Mr. Deputy Speaker, Sir, this was partly to do – I want to say this clearly before the Senate – with the Report on the *ad hoc* Committee on Maize which was chaired by the distinguished Senator for Uasin Gishu County and the Senator for Bungoma County. There was general approval of the manner in which that Committee had conducted itself, eventually holding meetings with stakeholders and coming up with a Report which, to date, has not been implemented but it was approved with enthusiasm by the Senate.

We agreed to keep the majority of the Members of the Committee on Health because this is the way it should be. However, just to inject a little bit more energy into the Committee, it was recommended that the originator of the Motion, being Sen. Wetangula, be part of this Committee. I commend this Committee as it is.

Let me say that part of the reason why we are here now, instead of having resolved this matter as a House, is because the Committee on Health dilly-dallied a bit. They may have had their reasons. I am putting it diplomatically and politely.

*(Laughter)*

**Sen. Mutula Kilonzo Jnr.:** Diplomatically is the word.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very unusual today, Sen. Orengo.

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, I am looking forward to the outcome of the work they will do, rather than what has happened in the past.

*(Sen. Omanga stood on a point of order)*

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

*(Sen. Omanga spoke off record)*

Order!

Is there a point of order? There is none.

**An hon. Senator:** She is contributing.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What are you contributing on?

**Sen. Poghiso:** It was an accident.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): There is no Motion before us yet.

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, I want to be as brief as possible because this is a matter the rest of the House would want to contribute to. You will remember when this matter came before the Committee---

*(Sen. Zawadi crossed the Floor without bowing to the Chair)*

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

**Sen. Mutula Kilonzo Jnr.:** Hauchuni minazi.

*(Sen. Zawadi bowed to the Chair)*

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

**The Senate Minority Leader** (Sen. Orengo): *Bado yuko Kilifi County.*

Mr. Deputy Speaker, Sir, as I have mentioned, the total worth of this entire project was Kshs38 billion. This is a matter in which counties did not have a choice. The national Government on its own initiative, contracted companies to supply these medical equipment without consultations and concurrence of the counties. Therefore, complaints which came from counties were many and quite substantial.

You remember when we were dealing with documentation that were brought before us, very quickly on the face of it when they were placed before the Senate, we found that the Memoranda of Understanding (MoUs) which should have been signed by

counties or was put before us as evidence that they had been signed by counties in relation to nearly 21 counties, were only available on the first and last pages.

It is normally quite a bit tricky for those who deal with documents. People are often made to sign documents without thinking of the consequences or signing the last page of a document without knowing the content. More than 21 counties had signed this MoU but had not read its contents or the contents were not made available to them. Some 16 counties in which all the MOUs that had been signed were in relation to Mandera County. For example, Nyeri County Governor signed, but the document did not talk about Nyeri County but Mandera County. That happened to 19 counties.

In fact, Mr. Deputy Speaker, Sir, to some extent, when you look at the counties which had signed, the Governor should be put to account because when a document bears the name of Mandera County and you are a Governor of a specific county and you have staff and legal counsel and you still sign a document that has nothing to do with your county, that was regrettable.

The copies of MOUs related to Garissa, Samburu, Bomet, Kakamega and Vihiga counties were not made available. I think these were counties which actually outrightly refused to sign these MOUs. I remember specifically Bomet was such a county.

If you look at the amount of the value of the contract in the total sum of USD432 million, which together with other facilities translated to more than Kshs38 billion, that was just an initial figure because there were variations. Under the scheme, each county was paying Kshs95 million annually. This sum was raised upwards. In fact, as we speak, it could be more. It was revised upwards to Kshs200 million, coming to a cumulative figure of Kshs9.4 billion per year. That is from the initial Kshs4.5 billion.

All these facts put together show that there was something wrong in the manner in which this matter had been handled; how the negotiations took place, the companies that were involved, the tendering process and the execution of the tenders.

Mr. Deputy Speaker, Sir, as we speak, this is a matter that is still bogging counties. On paper, the national Government will pretend that this is part of the money that is being made available to the counties. Our Committee on Health went round to some counties and there were some counties that had not received these equipment. Other counties had received but had not installed the equipment. Where they had been installed, there was no electricity. Where there was electricity and they were installed, there were no personnel. There were so many logistical problems. Sufficient work was not done in thinking through how the entire project was going to be implemented. It has resulted to the loss of revenue and burdened counties with debt that is not justifiable.

Mr. Deputy Speaker, Sir, as I conclude, this Committee has its work cut for it. As you can see, the first name on the list is Sen. (Dr.) Mbito, who is the Chairperson of the Standing Committee on Health, together with his Vice Chairperson, Sen. (Dr.) Ali.

We thought that keeping them there was important for purposes of institutional memory. There are many documents already available to this Committee. Some of them have gone round to several counties and that institutional memory was necessary to enable this Committee do its work properly.

In conclusion, this is one of the projects where I normally say that a lot of corruption in this country is not done at the time when it is being implemented; it is done



when it is being planned. Somebody sat down and said, in the words of Sen. Mutula Kilonzo Jr., “How can we make some money? How can we steal?”

*(Laughter)*

There are people who know even where the money is allocated, and where the budgeting process is going on. That is why the National Assembly has been captured. I want to say here without fear of contradiction that the National Assembly has been captured. The Constitution says that the holder of the pass is Parliament, and it is not just the National Assembly. This is because when you read the Constitution, there are some money Bills; not so defined as money bills in the Constitution, but exempted under Article 214.

However, in essence, they are money Bills which have to come to the Senate. Therefore, when you have a National Assembly which has been captured, then you find the Executive that can do such things.

It is no wonder that they are even refusing the Senate to get oversight money, because of this kind of activity. I think a day is coming when Kenyan people should challenge, and look into the conduct and behavior of certain institutions. For example, why should the Finance and Budget Committee in the National Assembly be given special funds that only belong to it? They are given that as a sweetener in order to do the national Treasury’s bidding. We used to think that the executive had captured the whole essence of Government.

However, we are now in a situation where the National Assembly has been captured. When I hear the Chairman of Finance and Budget Committee in the National Assembly speaking, I do not know the difference between him and the Cabinet Secretary of the National Treasury. It is very difficult. You can even hear him saying: “Where are we going to get this money?”

*(Laughter)*

Of course, the Government does not get money from the heavens; it has got well designed processes for raising revenue in terms of taxation.

Therefore, in dealing with this matter, we will be freeing, first of all, the counties from the yoke of an imperial national treasury and from a National Assembly which has been captured. By doing so, we will also be loyal to the old principle or creed of: “No taxation without representation.” If the National Assembly cannot play that role, then the Senate can play that role.

There was a founder of the American Constitution known as John Adams, who was the second President of the United States of America (USA). He said: “Facts are very stubborn things, you cannot change them.” Facts exist, and those facts – whether in regard to these corrupt deals as we will see in this acquisition of medical equipment – also exist in the whole budgeting process.

Therefore, I hope that from the debate that I heard yesterday, where Sen. Mutula Kilonzo Jnr., Sen. Wetangula, Sen. Mwangi and the Chairman of the Finance and Budget Committee, Sen. Mahmud, who is not here today, say that unless we are prepared to push

some constitutional changes that do not require the referendum, we will still remain in the dog house. Normally, for constitutions to be exhaustive, is very difficult.

Constitutions are not made for good people, since they do not need Constitutions. If you have got good people, you do not need a Constitution that is this big; even 10 pages will do. The old Constitution was not as big as this, but because the good people were becoming fewer in Kenya, we had to make these many pages of a Constitution. I think the next one we make may be 500 pages.

*(Laughter)*

This is because we lack good men. In Kenya, even most of the religious leaders are no longer good men.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Kindly summarize, Sen. Orengo. You have concluded thrice.

*(Laughter)*

**Sen. Orengo:** Mr. Deputy Speaker, Sir, I was coming to the meaty part.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You have concluded thrice.

**Sen. Orengo:** Mr. Deputy Speaker, Sir, I stand guided.

With those remarks, I beg to move and request the distinguished Senator for Bomet – the person who taught the Senator for Kericho – to second.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Dr.) Langat. Despite your teaching prowess, you have to wait until you are given the Floor.

**Sen. (Dr.) Langat:** Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators. I have a short communication to make regarding the passage of the County Allocation of Revenue Bill (Senate Bills No.8 of 2019).

### MESSAGE FROM THE NATIONAL ASSEMBLY

PASSAGE BY THE NATIONAL ASSEMBLY OF THE  
COUNTY ALLOCATION OF REVENUE BILL  
(SENATE BILLS NO.8 OF 2019)

Hon. Senators, I wish to report to the Senate that Pursuant to Standing Order No.41(3) and (4), I have received the following message from the Speaker of the National Assembly regarding the passage by the National Assembly of the County Allocation of Revenue Bill (Senate Bills No.8 of 2019).

**Sen. Mutula Kilonzo Jnr.:** Without amendments!

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(Laughter)

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

The Message says, and I quote-

“Pursuant to the provisions of Standing Orders 41(1) and 144 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly:

Whereas, the County Allocation of Revenue Bill (Senate Bills No.8 of 2019), was passed by the Senate on Tuesday the 17<sup>th</sup> of September 2019 with amendments and referred to the National Assembly for consideration.

Whereas, the National Assembly passed the said Bill on Wednesday, 18<sup>th</sup> of September 2019, without amendments and in the form passed by the Senate.

Now, therefore, in accordance with the provisions of Article 110 of the Constitution and Standing Order 41(1) and 144 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate.

Hon. Senators, the Speaker of the Senate is in the process of transmitting this Bill to His Excellency the President for assent. I am advised that it could be signed within the course of today.

Thank you.

(Applause)

Very well, proceed, Sen. (Dr.) Langat.

**Sen. (Dr.) Langat:** Thank you, Mr. Deputy Speaker, Sir, for giving me this chance to second this very important Motion to establish an *ad hoc* Committee to investigate and manage the equipment services.

This is a very important Motion, because as we know very well, health is a devolved function and it is squarely within our mandate. That equipment has become a great problem to our counties. The Council of Governors (COGs) had even complained and raised a serious matter on this. They said that they were not involved in the procurement process; there was no basic assessment to establish the priority or the most urgent needs in our counties before these equipment were brought.

Mr. Deputy Speaker, Sir, it is very interesting that most of our counties are now experiencing a lot of challenges. I remember just the other day when Sen. Murkomen got a problem while we were in the field, while we were thinking of taking him to the County Hospital, which is well written that it is a referral hospital--- We were told that there is no immediate attention because of the challenges they are facing. With all those huge equipment, they could still not even do some minor X-rays, to the point that Sen. Murkomen was taken to a private hospital and finally referred to Nairobi.

If the counties had been involved in the procurement and the purchase of this equipment, they could have had an opportunity to recommend the most appropriate and basic ones based on various counties. This particular *ad hoc* Committee has a lot to bring to the Senate and make sure that the Senate’s mandate is taken back to its position.

It is interesting that the Cabinet Secretary (CS) for Health still thinks that health is a function of the national Government. I want to cite a situation where last week the CS came to my county accompanied by Members of the Committee on Health of the National Assembly. I was not involved, but later on when I heard about it, I went to the meeting. When she was launching this particular equipment, it was unfortunate that the doctors who were supposed to come and assist in the use of this equipment--- One of them was actually cancer equipment facility. We did not have the human resource personnel and the same CS went to the Moi Teaching and Referral Hospital (MTRH) in Eldoret to bring some personnel to go and only stage-manage that they would be visiting the county to assist on the same. It is a shame.

This particular Motion is very important, and I want to ask the Members of this particular Committee to assist this House to make sure that sense is brought back to the Executive, or else they will continue imposing some of the rules, laws and activities to this particular House that may injure devolution in a bad way.

The question that we normally ask ourselves is: Why leasing? I tend to think that some equipment is not expensive that we could not even purchase. Why should we lease and who is responsible for sustenance and maintenance of this equipment? What about the money that most of the counties have been paying all along even before the use of this equipment?

The equipment that was brought to Bomet two weeks ago, our county has been paying for the same for around three years. I tend to think that when something is imposed and rushed into implementing, it raises many questions that requires this House to investigate and find out why.

I support this particular Motion. It was not the priority of our counties. The infrastructure to support this particular equipment was not in the place. Many of them have been lying idle. Therefore, this particular Committee will assist this House to support devolution, especially in matters to do with health.

I want to conclude by asking the Members that beyond this particular Motion, we have many issues concerning health that may require legislation. Our governor had serious complaints that they are so fixed only procuring medicine from the Kenya Medical Supplies Authority (KEMSA). At times, it is very expensive and they are not allowed to procure them from other sources that might be cheaper or good in quality. This Committee would like to ask them to expand and go further, to ensure that they include most of the things that are disturbing our counties on matters to do with health.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you for being brief and to the point.

Sen. Mutula Kilonzo Jnr., maintain the tempo.

**An hon. Senator:** Propose the question!

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Mutula Kilonzo Jnr.! You may resume your seat for a while.

*(Question proposed)*

*(Sen. Mutula Kilonzo Jnr. consulted loudly)*

Order, Senator for Makueni. I had called you earlier.

As Sen. Mutula Kilonzo Jnr. prepares to make his contribution, I recommend that you be magnanimous and not waste a lot of time. Apply the, a, b and c of public speaking. Be accurate, brief and clear.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Senator ---

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I did not say which Senator. There were several points of orders.

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, I thought you said the best of them all.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): No.

*(Laughter)*

What is it, Sen. Aaron Cheruiyot?

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, I thank you for confirming. I thought it would serve this House better if you would be guided from the onset about time so that we know and is leveled for everyone.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Is that the mood of the House?

**Hon. Senators:** Yes!

**The Deputy Speaker** (Sen. (Prof.) Kindiki): This is an important matter and as many Senators as possible should speak to it. So, we should make a decision. Would you want to take five or three minutes?

**Hon. Senators:** Five minutes.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): As many are of that opinion says 'aye' and those that are of a contrary opinion say 'nay'. The 'ayes' have it.

*(Question, that Members' contributions to the Motion be limited to five minutes, put and agreed to)*

Sen. Mutula Kilonzo Jnr., you have five minutes.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, you did not wait for the 'nays' but it is okay. I will not challenge your ruling.

I support this Motion. In the words of Sen. Moses Wetangula, this interrogation will be noisy, messy and there will be many casualties. I suspect that it is the reason why Sen. Wetangula was behind the drafting of this Motion.

*(Sen. Eng. Mahamud consulted loudly)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Eng.) Mahamud.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I have no doubt in my mind from the contracts which we have read, shared and have, that this is a scandal. I have no doubt in my mind that these contracts involve the big boys of Kenya. I have no doubt in my mind that the probity of Senators who will sit in this Committee will be put into question. Some of you will not sign this report and some of you might run away.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Mutula Kilonzo Jnr. Do not go that direction. You can say the same thing differently.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, some of you will shy from the truth. So, the time to refuse to sit in this Committee is now before we pass you. If we agree to pass you and you let us down, we will name and shame you here. That is a promise. We say so because we know on authority that just like some other committees, you will be tempted with money to hide the truth. This is because these contracts have the hand of high authorities in Kenya and people in the Ministry and they are watching us keenly. They will interfere like what they normally do.

Mr. Deputy Speaker, Sir, we have three choices as a country with regards to the equipment that is here. One is to buy it. Two, continue leasing it. Three, dispose it. The contradiction about disposing this equipment is because, for example, in Makeni, we have a built a hospital called Makindu Trauma Centre where we have installed it. What are we supposed to do if the Committee or the contractors say that we dispose or buy it, yet the Government has already spent an inordinate sum of money? Will we spend more money? This is a case where we are damned if we do or if we do not.

People are talking about people's lives. I was in a conference in Kisumu and the County Executive Committee Member (CEC) said that the second hospital in Isiolo has never installed any equipment. The Chairman of the Committee on Health is here and he can confirm that in hospitals in Trans Nzoia, one hospital has never installed single equipment and they are paying. It is a shame. This is a country where we make money out of people's deaths. This is a country where we are waiting to kill human beings. This is a country where we lease equipment which in seven years becomes obsolete. We have hired stretchers, leased gloves, syringes and linen trolleys.

This contract was signed by the Cabinet Secretary (CS) but when he was asked, he said he did not know. I feel sad for the Committee. If you are not as sad as I am, do not take up this job because it will be something that you do not want to deal with. It will be difficult and you will need the protection of the Lord. Your conscience will be pricked so many items when you hide the truth and Kenyans lose their lives in Isiolo, Trans Nzoia and other counties where they have not had the benefit of having this equipment.

Mr. Deputy Speaker, Sir, for the first time in this country, we have violated procurement laws by varying a contract more than a hundred times and nobody seems to bother. If we had powers to prosecute, we will complete this report and jail some people.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Mutula Kilonzo Jnr. Your time is up.

Proceed, distinguished Senator for West Pokot County.

**Sen. Poghio:** Thank you, Mr. Deputy Speaker, Sir. Under normal circumstances, when a Motion is moved by the Senate Majority and Minority leaders, it ties a person to support it on the account of the Movers.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is under what Standing Orders, or are you talking about political responsibility?

**Sen. Poghio:** Mr. Deputy Speaker, Sir, I know those leaders and I tell you from knowledge that when they look at you, you will have to support them.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I hope the Senate Minority Leader is not looking at you.

**Sen. Poghiso:** Mr. Deputy Speaker, Sir, he is looking at me with four eyes.

I wish to raise a few concerns about this Motion. One of the concerns is that the membership of the proposed Committee is ideally the Committee on Health.

Mr. Deputy Speaker Sir, if more than 60 per cent of the membership is from the Committee on Health, we have a lot of explaining to do when it comes to passing it as an *ad hoc* Committee. There are other instances like the issue of two Senators from the same county and things like that. Therefore, I would like to think of the process. There is nothing wrong with the Motion going through, but we should also look at the possibilities of the process.

Also, when there is an *ad hoc* committee - which we should be using very sparingly - the use of an *ad hoc* committee is not to find things when we have standing committees. We have had *ad hoc* committees before, and it is not a panacea that we have an *ad hoc* committee doing the job of standing committees. Sometimes there is mischief in the *ad hoc* committees. I would like the House to think whether we really need to use *ad hoc* committees in this particular case. Furthermore, the content we are asking for needs to change. If you look at the information we are looking for, it is not new information. This information can be found in libraries. You can do what we call---

*(Sen. Khaniri consulted loudly)*

**The Deputy Speaker** (Sen. (Dr.) Kindiki): Order, Senator for Vihiga! You have been doing well this afternoon. Do not wash away that great achievement. Consult in low tones.

I add the Senator for West Pokot one-and-a-half minutes.

**Sen. Poghiso:** Thank you, Mr. Deputy Speaker Sir. If we must go back to the drawing board and get hold of the things we are looking for, we must change the narrative that we provide in the Motion. As far as the Motion is concerned, if you look at it critically, you will find that the information is not new. You can find this information from sources that are readily available. Without being opposed to something that is good, I suggest that we look at the possibility of the Mover rewriting this Motion, so that it sticks and gives a little more strength to diversify the kind of people who will be in this Committee. This will also make sure that the kind of information we are putting in the Motion is additional information that is useful for getting to the root of the problem.

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

**The Deputy Speaker** (Sen. (Dr.) Kindiki): Sen. Poghiso, would you like to be informed by the Senator for Nairobi City County?

**Sen. Poghiso:** Yes, Mr. Deputy Speaker Sir.

**The Deputy Speaker** (Sen. (Dr.) Kindiki): Sen. Sakaja, what is it?

**Sen. Sakaja:** Thank you, Mr. Deputy Speaker, Sir, and Sen. Poghiso for agreeing to be informed.

As we consider the very weighty contribution by Sen. Poghiso, I would like to inform the House of two things.

First of all, in the report that we have just passed as a House on the Division of Revenue Bill, the Mediation Committee proposed that a joint *ad hoc* committee be formed to look into the issues which came up during mediation. This was accepted by the entire House.

Secondly, the House had started this same process in the Senate and we want to start another committee before being told what happened to the other process. Is it in order, even as I inform the House of those two elements that are substantive in nature, that we consider those two issues as we do this other report? This is because the Senate does not legislate or pass reports in vain.

**The Deputy Speaker** (Sen. (Dr.) Kindiki): Sen. Sakaja, are you on a point of order or a point of information?

**Sen. Sakaja:** It was an orderly point of information.

*(Laughter)*

**The Deputy Speaker** (Sen. (Dr.) Kindiki): Proceed, Sen Poghisio.

**Sen. Poghisio:** Mr. Deputy Speaker Sir, I chose to use part of that information.

I am in a bit of a quagmire that I would like to put before this House to consider how to handle this matter. Otherwise, it is important that we get to the bottom of this matter. It is useful, but let us look at our own mechanism of getting to the bottom of this matter.

**The Deputy Speaker** (Sen. (Dr.) Kindiki): Very well.

The distinguished Senator of Bungoma County for a very long time has been seized of this matter for historical reasons.

Proceed, Sen. Wetangula.

**Sen. Wetangula:** Thank you, Mr. Deputy Speaker, Sir. I originated this Motion and I recognize the acknowledgment by Sen. Orenge that, indeed, I did. You may recall yourself sitting in the Chair and saying a lot of strong statements about this process at a time when we were having difficulties. From the onset, I want to advise my nephew, the Senator for Nairobi City County, that the sweetener that he put in the report that he brought here the other day about setting up an *ad hoc* committee jointly with the National Assembly flies in the face of common sense. This is because the National Assembly has no interest in this matter and has no interest in getting this issue resolved.

In fact, I dare say that a senior leader in the National Assembly, whose name I will keep from the Floor, told me that when he tried to remove this from the budget, he received serious phone calls to tell him that is a no gone zone, and that is the zone we want to go. This is a scandal of monstrous proportions. It was called the Managed Equipment Services (MES), and it has become a big mess. A governor from the Rift Valley who allowed me to quote him, if I wished to, told me that equipment worth Kshs20 million was delivered to his county and Kshs200 million was creamed off at the center in this whole saga.

My distinguished colleague from Trans-Nzoia County, the county where my party is the government, in Endebess, we were told by the Minister herself that equipment was delivered in a hospital that does not have electricity and to date, it is on a container. It has



never worked. I want to persuade my colleague of long experience from West Pokot that his wishy washy issues of the matter---

**The Deputy Speaker** (Sen. (Dr.) Kindiki): Order! Sen. Wetangula, use a better term.

**Sen. Wetangula:** His not so convincing views on the matter---

**The Deputy Speaker** (Sen. (Dr.) Kindiki): Fine, that is acceptable.

Senator of West Pokot, what is it? Let us hold Sen. Wetangula's time.

**Sen. Poghiso:** Mr. Deputy Speaker Sir, I think he owes me an apology for claiming that my mind is wishy washy to begin with.

**The Deputy Speaker** (Sen. (Dr.) Kindiki): I am sure Sen. Wetangula will find no problem apologizing to you, being the gentleman he is because I saw him retract very fast when I brought it to his attention.

**Sen. Wetangula:** Mr. Deputy Speaker Sir, I have never known someone with such a solid mind and position on issues as the Senator of West Pokot.

As the defender of counties, their governments and their people, this House cannot sit and watch when money is being taken away. You remember we started by paying Kshs3.5 billion. We moved to Kshs5 billion, then Kshs9 billion and now we are back to Kshs6.4 billion, in a fixed term contract. Where are the addendums to this contract for variations of these figures?

I want to salute the Chairman of the Committee of Finance and Budget. At least he has been strong, steadfast and consistent on this particular issue. However, this is fraud flying in our faces.

They brought some details on the Floor and you, Sen. Orengo, Sen. Mutula Kilonzo Jnr. and I were in that House. The report was about leasing disposable syringes, hand groves, trays and wooden chairs. It was scandalous!

Mr. Deputy Speaker, Sir, I agree with Sen. Mutula Kilonzo Jnr. that if you are fainthearted, jerk-kneed and wish-washy; if you do not know whether you are going or coming you should opt out of this Committee.

*(Laughter)*

This Committee will be like the Committee on Maize which we co-chaired with Sen. (Prof.) Kamar - the Senator for Uasin Gishu County. The distinguished Senator of Bomet and Sen. Were were members. At that time, I did not know Sen. Seneta well but her conduct in that Committee raised my appreciation of her a notch higher, as a woman of great substance.

We want to help this country---

*(The red timer went on)*

Mr. Deputy Speaker, Sir, could I have three minutes?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is two minutes, Sen. Wetangula.

**Sen. Wetangula:** We want to help this country. Today, we are grappling with medical equipment. Tomorrow, we might outrageously start leasing fertilizer, a one off user.

**Hon. Senators:** Yes!

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, we might start leasing all manner of things. This House must stand up to be counted. I want to tell you and this House here in the great County of Kitui that the passage of this Motion has made history. This is because we shall remember that sitting in this beautiful Chamber of Kitui County, this House unanimously, in a Motion originated by yours truly, moved by Leader of Minority and the Majority and unanimously supported by even those who are half-hearted, we are going to get to the bottom of this mess and stop any future theft of public resources.

Mr. Deputy Speaker, Sir, health is 95 per cent devolved. On what basis would somebody sit at Afya House to lease equipment for a health centre in Endebess or Hulugho, Mandera, Loyangalani or Longisa? This scandal must be checked, brought to an end and those culpable must bite the bullet.

*(The red timer went on)*

The President has pronounced himself as I finish, that he is fighting corruption in all its forms and manifestations. If there is a case of corruption, this is it.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Wetangula. Order, Senators, I will request the Mover of the Motion to approach the Chair for consultations.

*(Sen. Wetangula approached the Chair)*

Meanwhile, the distinguished Sen. Omanga, you have the Floor.

*(Applause)*

**Sen. Omanga:** Thank you, Mr. Deputy Speaker, Sir. Part of this Motion is ridiculous or we are being treated to some kind of comedy. When I was growing up, there was a programme called “Reddykyulas” where the comedians used to imitate some personalities. I think this is the kind of thing we are being treated to in this Motion.

The membership of this Committee other than two or three Members are from the Senate Committee on Health which, as a Member of this House and of the public feel like the Committee has disappointed us and has not been able to deliver on its terms of reference (TORs).

There is a Swahili saying that, “Samaki huoza kutoka kichwani”. The leadership of this Senate Committee on Health has not been able to steer it towards its mandate. I think the Senate Committee on Health is being sanitised by giving it a different name that is “*ad hoc* Committee.”

*(Laughter)*

There is nothing Ad hoc about this committee. It is the same Health Committee. We have been getting Petitions and Statements---

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

Mr. Deputy Speaker, Sir, I would love it if you could give me your ear. I am requesting for your audience. We have been having Petitions and Statements in this House from the Committee on Health which go un-responded to.

Three months ago, we had issues on Kirinyaga County and this was all over the media. There were so many issues about the hospitals and reports that they were closing. The Senator of Kirinyaga County brought a Petition to this House. The Senate Committee on Health was supposed to go and visit Kirinyaga County but up to date, three months down the line, we have never had any report of Kirinyaga County from the Senate Committee on Health.

When they went to the ground, it was only two Members of that Committee---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Are you discussing the conduct of the Committee or this Motion?

**Sen. Omanga:** Mr. Deputy Speaker, Sir, I am discussing the membership of the Committee - the sanitized *ad hoc* Committee on Health.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! Sanitization is a medical term.

Proceed.

**Sen. Omanga:** Mr. Deputy Speaker, Sir, up to date, we have never received any report regarding Kirinyaga County. The Senator was complaining because the Committee had no quorum. They had only two Members in Kirinyaga. If these are the same Members forming the *ad-hoc* committee, then we expect to have quorum issues.

I am also raising the issue of regional balance. We do not have the vast coastal region representation. I have the privilege of sitting in the CPAIC Committee where we have been going to the counties and looking at these health facilities. We have issues in the coastal region. I can only see five Senators from one region the Western part of Kenya and we have two Senators from the same county. I do not know what happened to regional balance because I think it is very important for us to get a feel of every region when we are doing the membership of this Committee.

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

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

**Sen. (Dr.) Ali:** Mr. Deputy Speaker, Sir, is Sen. Omanga in order to---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! You are not on record and you also need to calm down.

**Sen. (Dr.) Ali:** Mr. Deputy Speaker, Sir, is Sen. Omanga in order to profile Members of a Committee that this Member belongs to this region and this one belongs to this county?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Dr.) Ali. Sen. Omanga is perfectly in order to talk about diversity---

**Sen. (Dr.) Ali:** Could she tell us those Members who come from one county---

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Sen. (Dr.) Ali. Do not over-sensationalise a straightforward matter.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Omanga, would you like to be informed by Sen. Seneta?

**Sen. Omanga:** Yes, please.

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

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

*(Sen. (Dr.) Ali resumed his seat)*

**Sen. Seneta:** Mr. Deputy Speaker, Sir, I wish to inform my colleague, Sen. (Dr.) Ali---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You are time barred. He is already on his seat.

**Sen. Seneta:** Mr. Deputy Speaker, Sir, issues of diversity are constitutional---

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

*(Laughter)*

I did not say if the door is closed, you use the window to enter.

The distinguished Senator of Kitui County, are you on a point of order?

**Sen. Wambua:** No, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Omanga still has a minute or so.

**Sen. Omanga:** Mr. Deputy Speaker, Sir, you can remember the issue of Isiolo County where the Senator who is the Deputy Leader of Majority was very furious and frustrated that the Committee sided with the county executive and her issues were never addressed. She actually said that on the Floor of this House.

We have six Members of the Standing Committee on Health and Members of the *ad hoc* Committee and that means we are closing shop. It means that we do not have the Committee on Health but instead we have the *ad hoc* committee which is time bound. After 90 days, we will not be having our substantive Committee on Health. It means we will be working with the *ad hoc* committee until next year.

Mr. Deputy Speaker, Sir, I oppose.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Your time is up. Let us have the Senator for Kitui County.

**Sen. Wambua:** Mr. Deputy Speaker, Sir, I am disturbed by the list and membership of the *ad hoc* committee. When I walked in, I went straight to the Senate Minority Leader and consulted him on this list. Looking at the list, at least the Minority Side is entirely from western part of Kenya. On the majority side, there are two Senators from one county.

I believe that this House is big and Members are mature enough to speak the truth and call a spade by its name. The principle on this *ad hoc* committee is a brilliant idea. I do not suspect that the Senate Minority Leader and the Senate Majority Leader would conspire to sanitise anything or anyone. I believe that the idea which was brought forward by Sen. Wetangula was good.

*(Loud consultations)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator for Bomet and Senator for Wajir.

**Sen. Wambua:** Whereas I support wholeheartedly the decision to set up this committee to look into issues of the mess, I oppose the list as constituted. I propose that perhaps, the majority and minority sides should consult further on this list.

I have nothing personal against the Committee on Health but this includes Members of the Committee on Health plus two other Members. I do not want to say anything about my colleagues. The only point that is important for me to make on the Floor of this House is that the Senate Committee on Health of the Republic of Kenya has not done very well in Kitui County.

Mr. Deputy Speaker, Sir, last week, I brought a Petition on the Floor of this House about a hospital in Kyuso that was illegally closed down. Yesterday, through informal consultations, Members of the Health Committee of Kitui County Assembly went ahead to wait the arrival of their Senate counterparts in the Committee on Health at the hospital to understand the issues. That Committee has not gone there. I can confirm, through the Chair of the Committee who is here, that there was no business that the Committee on Health transacted today.

I am told that tomorrow, Members of the Senate Committee on Health of the Republic of Kenya will meet Kitui County Government Executive to discuss funding of hospitals. What a shame! That Committee cannot be the same to deal with this matter. It must be another committee and other Senators or else we should suspend this matter.

I thank you.

*(Sen. (Dr.) Langat consulted loudly)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Dr.) Langat. Proceed Sen. Halake.

**Sen. Halake:** Thank you, Mr. Deputy Speaker, Sir. First of all, I would like to congratulate the Senate for heeding the call from the governors. We should never forget the fact that governors petitioned this House to do this work. I therefore congratulate Sen. Wetangula for this timely Motion, which I fully support in terms of what it will do to unearth some of the below optimal practices and the mess.

I also have concerns with the composition of the *ad hoc* committee. As it has been said before, these are the same people. If we think that our Committee on Health can deal with it, then let us assign that work to the Committee as opposed to calling it an *ad hoc* committee.

It is true that our governors were bullied and forced to sign for the managed equipment services. Therefore, I am surprised that---

*(Loud consultations)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators. Sen. (Dr.) Ali, you are fairly agitated today but I do not know why. You are fairly agitated and restless. What is it, Sen. Wambua?

**Sen. Wambua:** Mr. Deputy Speaker, Sir, I seek protection from the Chair. The Senator for Wajir County is the Vice Chairperson of the Senate Committee on Health and he is approaching me. I do not know what his intention is. Therefore, I seek protection.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is why I mentioned about his agitation because not only was the Senator for Wajir County approaching you but he did so with menaces.

*(Laughter)*

Proceed, Sen. Halake.

**Sen. Halake:** Mr. Deputy Speaker, Sir, as I said, I fully support this Motion. The need to audit this mess cannot be gainsaid. All that said, time is of essence because this started five years ago and billions of shillings have gone down the drain. On the account of messing up with the composition of the Committee, we may be forced to not execute that today.

That said, I also have a concern with the composition of the Committee. If we think that the Committee on Health can do this, you should give them the 60 days as opposed to coming up with an *ad hoc* committee. So far, nobody has seen the lease agreement.

Before we even go into the content of this Motion, let us deal with the issue of composition of the *ad hoc* Committee. Therefore, while I am in full support of this Motion and look forward to seeing the audit of managed equipment service, I have a problem with the composition of Members of the Committee.

Therefore, I have my reservations and do not support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You may proceed Sen. Faki.

**Sen. Faki:** Asante, Bw. Naibu Spika, kwa kunipa fursa hii kuchangia Hoja ya kuundwa kwa kamati maalum ili kuchunguza mambo yanayohusu vifaa vya afya vinavyopelekwa katika kaunti.

Kwanza, wazo la kuunda kamati ni nzuri sana kwa sababu kwa muda wa zaidi ya mwaka sasa, Bunge limekuwa likilalamika kuhusu mradi wa vifaa vya hospitali lakini hatujapata jibu lolote.

*(Loud consultations)*

Bw. Naibu Spika, naomba unilinde kwa kuwa baadhi ya wenzangu wamesimama na wanapiga kelele.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senator for Makueni County, you are out of order. Sen. Shiyonga, resume your seat. If you must consult, you know what to do.

*(Sen. Shiyonga sat at her place)*

Proceed Sen. Faki.

**Sen. Faki:** Asante, Bw. Naibu Spika. Ijapokuwa wazo lenyewe ni nzuri, utekelezaji wake umekumbwa na utata kwa sababu Kamati ya Afya imekuwa ikizembea katika utendajikazi wake.

Bw. Naibu Spika, wale watu waliochaguliwa kuwa wanakamati wa kamati hii maalum wengi wao wanatoka katika Kamati ambayo iko. Mwaka jana, tulipokutana na Waziri tarehe ishirini na saba mwezi wa kumi moja mwaka wa elfu mbili kumi na nane, maswala haya yalikuwa yako wazi na walikuwa na jukumu wakati ule wa kupambana nayo na kuhakikisha kwamba swala hili halirudi katika Bunge.

Sijui ni matatizo gani ambayo yamekumba Kamati hii ya afya kuwa kakamavu katika kulifuatilia swala hili. Kwa hivyo, swala hili la vifaa vya afya ni swala ambalo lazima lifanyiwe utatuzi mapema kwa sababu kila mwaka mabilioni ya pesa zinatumwiwa kulipia vifaa hivi wakati vifaa hivi vingi havifanyi kazi.

Tumeona juzi katika hospitali kule Kwale vifaa ambavyo vimetolewa na vingine vimeharibika lakini hakuna juhudi zozote za kuvirekebisha na kaunti haziwezi kufanya marekebisho kwa sababu kuna mikataba ya kurekebisha vifaa vile wakati vinaharibika.

Vifaa vingine vimewekwa kwa hospitali ambazo hazina maji safi lakini wameletewa mashini ya kusafisha damu yani *dialysis machine*. Kwa hivyo, mradi huu ni sawa na mradi *Goldenberg* lakini tutaita *medicalberg* kwa sababu inahusisha vifaa vya afya.

Asante, Bw. Naibu Spika.

**Sen. Kibiru:** Thank you, Mr. Deputy Speaker, Sir. I stand to say two things with regard to this Motion. First, is it true that the Managed Equipment Services (MES) is a mess? As a member of a Committee that has moved around in this country, I have asked questions about the leased medical equipment. No single governor or medical officer has confirmed the viability of this project.

In terms of the content of the Motion, I would want to support. However, like many of my colleagues have said, I think the Committee of Health needs to pull up their socks. I have two statements; one touching on the general operations of the medical in the counties and the other one was specifically for Kirinyaga County. I have never gotten an answer for those two statements.

I was at one time invited by the Committee. I expressed my concerns because I was briefed. However, I did not join them because I had to attend the burial of my step-mother. However, having said that, I have never been invited. This is the fourth or the fifth month since I asked the two statements. Can we, as the Senate, agree that we have something to investigate but at the same time agree that the composition of the people

who do the work be relooked at so that we can do something that will be a legacy for this Senate?

In Kirinyaga, the MES is not working. When the reagents are finished, you have to wait for them to be imported because it is a closed system where you cannot use universal reagents including the films for the machines. Therefore, we do not need to overemphasize the need for the work to be done by the Committee that will be appointed by the Senate. However, the point is I oppose to the extent of the Committee that has been proposed.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The Senator for Samburu, approach the chair.

Order, Sen. (Dr.) Lelegwe.

*(Sen. (Dr.) Lelegwe approached the chair)*

**Sen. Shiyonga:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute on this Motion. I know it is painful when we are discussing issues that affect our people when health is devolved. I am a Member of the Committee on Health, and I have been proposed to be a member of the *ad hoc* Committee.

*(Laughter)*

I can read the mood of the House, and people are listening and what I can say in singular form is that if you look at these Members, they have spoken. The Mover of the Motion has spoken and the Members have supported his proposal that we defer debate on this matter. Let us do the needful. First of all, we start with the Committee itself and then come to the so called *ad hoc* Committee.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Order! Abstain using words like so-called.

What is it, Sen. Malalah?

## PROCEDURAL MOTION

### ADJOURNMENT OF DEBATE ON MOTION

**Sen. Malalah:** Thank you, Mr. Deputy Speaker, Sir. I stand to move a procedural Motion pursuant to Standing Order No.105 (1) that this debate be deferred for the mood of the House. We retreat and consult on the membership of the Committee.

Sen. Omanga categorically shared her fears that if the Members of the Committee on Health are the majority of the *ad hoc* Committee, we shall paralyse the operations of the Committee on Health. There has been a general concern on the membership of this Committee because the members of the health Committee have had almost two years to adjudicate this matter to no avail or success. Therefore, it would be improper for this House to again approve the same names who have failed to adjudicate this matter.



I sit in the House Business Committee. There have been grave accusations on the conduct of certain members who I will no mention today.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order. You know the rules about imputing proper motives. Members are Members whether you name them or not, they are Members. However, there are many ways of communicating the same message but differently.

**Sen. Malalah:** Mr. Deputy Speaker, Sir, all Members are good Members but there are some who I will not name---

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

*(Laughter)*

I will not allow you to get away with that.

**Sen. Malalah:** Well advised, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Just say perhaps, there could be a tendency.

**Sen. Malalah:** The gist of my argument is that this is a very fundamental issue that this House needs to deliberate on and come to a close because it is a matter that affects every corner of this Republic. Therefore, it is important that I urge my honourable colleagues to support this Motion of deferring this debate so that we could consult on the composition of this ad hoc Committee and bring back this Motion for passage.

The consequence of us not approving this Motion simply means that this Motion will be reintroduced only after six months. Kenyans will suffer. So I urge my colleagues to support my procedural Motion for deferment. Let us go and consult with the leadership of both sides and amend the list, and come up with an acceptable list before we proceed.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Malalah. That is quite diplomatic. You need a seconder to your Motion.

Order! Order, Members!

**Sen. Malalah:** I want to call upon the Senator for Nairobi City County, Sen. Sakaja, to second.

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

Proceed, Sen. Sakaja.

**Sen. Sakaja:** Thank you, Mr. Deputy Speaker, Sir. I want to applaud the Deputy Leader of Minority for bringing this procedural Motion. Sometimes you take a step back when you see how things are going. I want to urge Members to support this procedural Motion because when the initial Motion was brought, the leadership of the House failed to do two things.

First, to convince us as to why there is need for an *ad hoc* arrangement to perform the work that is substantively and fully within the purview of a Committee, yet puts all the Members of that Committee in that *ad hoc* Committee. That was not very convincing and there was need for us to be convinced as to why you need an *ad hoc* Committee to give the same Committee its own work. I think that when these consultations happen, let them move beyond just how to reintroduce the membership of this Committee, but also how to strengthen the departmental committees that we have.

The second issue that we need for clarity because Members of this House are respected; this House commands a lot of respect across the country. When we summon Members of the national or county governments, they come because they know that when Senate asks you questions, it is not the kind of hop-scotch games they play in the National Assembly. So, we need to be told, because we summoned the Cabinet Secretary for Health and many other officers, and this process is not beginning now for the first time. What happened to the earlier process?

That is the only way we will be able to convince these Members that we are not engaging in a process in vain but that we are serious. Members of the Committee on Education will tell you that we were deeply embarrassed when you brought this issue. Remember the Senate removed all this money and when we brought it up in mediation, Members from the “Lower House” could tell us, what you are telling us is hearsay or do have a report to the effect of what you are saying that the Senate resolved?

Sen. Olekina, Sen. Mutula Kilonzo Jnr., and I, could only look at each other in embarrassment and look down at our shoes because we had no answer for them. So, we need to be told by the leadership of that Committee and the leadership of the House what happened to the earlier process and what will prevent this process from moving the same way.

I want to applaud the leadership for taking this wise step and I second this Procedural Motion by Sen. Malalah.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators. I propose the Motion, that the debate be now adjourned.

*(Question, that debate be now adjourned proposed)*

I am going to give a few Senators two to three minutes to contribute, but restrict yourself if you get a chance, to the issue adjournment of debate not the Motion that is before us. That is, whether or not debate should be adjourned, very specifically. The first chance will go to the distinguished Senator for Uasin Gishu County.

*(Loud Consultations)*

Where the Speaker is looking does not necessarily say---

**Sen. (Prof.) Kamar:** Thank you very much, Mr. Deputy Speaker, Sir, for giving me the opportunity to support the Motion of adjournment of this debate.

I really support it because the feelings of the House are very clear and it is very important of us to carry each one of us. This is because whatever the Senate decides, it is a decision of the Senate. It is not a decision of a Committee, it is not the decision of the *ad hoc* committee. So the whole process from the selection of the Members, the interviews that they do on the ground and the Report that they table here is something that we must all own. I would really like to support the Motion from the Senator of Kakamega that it is important that we retreat and relook at this because the issues raised are really weighty.

I had, in fact, raised it much earlier, I would like to support that we actually retreat. But I want to urge the leadership of the House, that when they are discussing, it is should not be a discussion of two or three people; let them consult widely. If at all there were consultations, I think the issue would not have passed through the Senate Business Committee on its own. All the other Chairs would have been consulted, so that everybody is carried along.

I support.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. I rise to support the Procedural Motion to adjourn this debate. I agree with my colleagues that this is a very sensitive matter. This is a matter where corruption is written all over it. I think it is about time we started telling the truth in this country.

I was particularly concerned about the composition of the Membership. We are a House of union and I think it is imperative that Kenyans out there can see that the issues that we are discussing are representative. When we went to Samburu, it was a shame because those medical equipment were still in containers. When I looked at the membership of the *ad hoc* committee, in fact, I asked my leader why this was like this. The issue was that this matter needed to be dealt with by the Committee on Health. Let us call a spade a spade.

Martin Luther King once said that injustice and corruption will never be transformed by keeping them hidden but only by bringing them out in light and confronting them with the power of love. We love this county so much and we love our people and even if we are Members of the same House, where we think that there is some injustice, it is important to call a spade a spade.

All of us have information how this mess has become a mess. I remember when we were seated in a Committee and we had the Controller of Budget whom we asked to tell us where there is an agreement between the national Government and the county government in terms of Article 189 of the Constitution, when a function has been transferred from one level of government to the other. She could not give us an answer. She was upset because we are now dealing with issues which were very sensitive. I remember asking the National Treasury to tell us how money is being sent from the national Government to pay for devolved functions under the county government. They did not respond.

Corruption is really dishonesty in this country, and I think the only way that we can be able to really get to the truth of this matter is if we remain with the level of integrity that we have had in this House. I would plead with the leadership of both sides to really consult even the Members who will be proposed to be included in the Committee so that we can all feel as if this matter is coming to an end.

**Sen. (Rev.) Waqo:** Thank you, Mr. Deputy Speaker, Sir, for allowing me to say something. I was fully prepared to give my views and ideas on the Motion before, but now I support the Procedural Motion that we adjourn, simply because of the composition as we have said. I will not repeat what the other hon Members have said about the membership. I equally have the same concerns.

Secondly, let me now turn to the issue of the *ad hoc* committee. Again, as we adjourn, we really need to see whether we need the *ad hoc* committee, because when we formed the *ad hoc* Committee on Maize, we raised the same concerns but nobody

bothered to listen. This has come up again, and it is making us to lose faith. This shows that there are Members who are always prepared to be part of *ad hoc* committee. This will give us an opportunity to rethink about the entire issue.

Mr. Deputy Speaker, Sir, as I finish, we are strong when we form *ad hoc* committees and even other committees to investigate matters, but when it comes to conclusion and giving the Report, we always have problems. I would not want to be part of the group which starts strongly and at the end become weak.

We need to look into that and if we form an *ad hoc* committee, it should be a strong committee that will be committed and all hon. Members should sign the Report. In the past, we have seen some hon. Members refusing to sign reports. If this trend continues, I will not support any *ad hoc* committee in this House.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The Chairperson of the Committee on Health, what do you have to say?

**Sen. (Dr.) Mbito**: Mr. Deputy Speaker, Sir, I thank you for giving me this opportunity. I agree that we should delay this matter. I would like to address some of concerns that have been directed towards my Committee. A lot of things have been alleged---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Dr.) Mbito! What the Standing Orders allow you to do now is discuss about the adjournment of debate. I agree that a number of statements have been made about your Committee. However, you will have an opportunity to respond to them later.

**Sen. (Dr.) Ali**: It is too late!

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Dr.) Ali! Does the Senate Minority Leader want to say something before I give further direction?

**The Senate Minority Leader** (Sen. Orenge): Mr. Deputy Speaker, Sir, I would like to remind the House that, I fully support this procedural Motion. However, I can assure you that the intention of the Senate Business Committee (SBC) was to have this matter before the Senate. I hope the Members of the Committee have heard what has come from the membership.

I took issue with Sen. Sakaja because he was there when the Chairperson and Vice-Chairperson of the Committee came before the SBC. We heard them in camera and told them that it would be a hot potato allowing the Committee on Health to handle this matter. It was our decision that instead of the Committee on Health feeling that it was the leadership that was against the Committee, we bring this issue to the Floor of the House.

Mr. Deputy Speaker, Sir, because the Members are being candid, the Chairperson will remember that in the sitting that we had in camera in the SBC, the Vice-Chairperson addressed us and he was so furious about the issue. Therefore, my position is that if the Members of that Committee were fair to the leadership, they would opt out of being in the Committee because they have put us in a very embarrassing position. When they presented themselves to us in the SBC, they had another story to tell which I cannot repeat here.

I would like to remind the House what the Deputy Speaker said about this matter. That is why what the Members are saying is not new at all. On 27<sup>th</sup> February 2019, you made a ruling and said that:-

‘The leadership of the House on behalf of the House will look at the membership of the Committee on Health and make recommendations on how this House can be more efficient in that Committee and report to the Speaker in two weeks of the recommendation’

Mr. Deputy Speaker, Sir, you made this ruling after complaints of so many adjournments and report deadlines not being met. Further, you said that:-

“This matter is no longer being handled by this particular Committee because we will not want to perpetuate this delay further.”

Those were the words of the Deputy Speaker in February 2019. From then on, the Committee on Health was available to give us a report on this matter. When the Committee on Health approached the SBC to be heard in camera, this happens rarely, we asked the members of staff to go away. The stories that they had to tell were not very good stories with the staff members around.

Mr. Deputy Speaker, Sir, it is for that reason that Sen. Mutula Kilonzo Jnr. stated that if a Senator is on this list, he or she should not be part of the list that we will come up with later if you cannot make up your mind at the end of the day. I agree with the House especially the Senator for West Pokot because I have known him for a long time. He is not easily persuaded otherwise on matters of principle.

In the name of accountability, when Sen. Wetangula crafted this Motion, he had already approached some Members to be in this *ad hoc* Committee. There was some kind of lobbying that was going on and the people who are in that Committee as chosen by the distinguished Senator for Bungoma County said that if they were left out of this Committee, they would reject it. The balance of the people that you see in this Committee were either in the Committee on Health---

**Sen. Wetangula:** On a point of information, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Orengo, would you like to be informed?

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, yes, I would.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, I would like to inform the distinguished Senator for Siaya County, my distinguished learned senior, that the old practice in the Houses of Parliament is that when a Member sets up an *ad hoc* Committee, you do not just include Members names. You consult them to see whether they are ready to serve or not. That is what Sen. (Prof.) Kamar and I did during the *ad hoc* Committee on maize. We personally approached each and every Member who served on the *ad hoc* Committee on maize. Some Members declined membership because they said they had conflicting interests. The Members who agreed to be part of the *ad hoc* Committee did a wonderful job.

Mr. Deputy Speaker, Sir, I would also like to inform the Senate Minority Leader that the *ad hoc* Committee route resolved substantially the problems of the Kenya Airways when hon.(Prof) Anyang’-Nyong’o chaired the Committee. We substantially laid the foundation for resolving the issues that affect the maize sector in this country. Implementation of our recommendation is the problem. I believe that *ad hoc* Committee is the way to go to resolve this problem in the health sector.

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, what the distinguished Senator for Bungoma County has said is true. The same Members that he consulted were the ones who are saying that they must remain in the Committee. We therefore agreed to have membership from both the ad hoc Committee and the Committee that was in the Motion as originally crafted.

We noticed that the *ad hoc* Committee was consisting of the same Members. It seems that the same people tend to be Members of *ad hoc* committees. That is a problem that we need to deal with because some people argued that there are certain names that are constant in *ad hoc* committees. Some Members have argued that at this rate, *ad hoc* committees are going to replace the standing committees. If there is any critical issue, an *ad hoc* committee will be constituted.

Mr. Deputy Speaker, Sir, I agree entirely with the House on substance issue of membership. However, we did not want this matter to remain with the SBC. It was better to bring it here so that the Committee on Health would hear what people had to say. We have engaged them privately and in consultations so I am happy that they have heard it for themselves. I think that we should bring this issue in tomorrow's Order Paper so that the *ad hoc* Committee can begin its work now instead of next week or the other week.

Members of the Committee on Health would help us if they opt out of the Committee, so that we have an easy way of choosing those who will be in this committee, of course with consultations.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well; we need to close this matter. Could I hear from the distinguished Senator for Kilifi County?

**Sen. Madzayo:** Asante, Bw. Naibu Spika. Pia mimi nilikuwa katika hiyo harakati ambayo wakili ama kiongozi, Sen. Sen. Orengo, aliposema kwamba ingekuwa bora kusuluhisha jambo hili kuhusu wale ambao majina yao yameandikwa hapa, kwa heshima ya hili Bunge. Nimekuwa katika Bunge kuanzia mwaka wa 2013. Kwa hivyo ingekuwa heshima kubwa ikiwa hao ambao wako katika hii *list*, badala ya sisi kupoteza wakati mkubwa, wajiondoe wenyewe ili sisi tupate nafasi. Hata sasa hivi, tunaweza kuchaguana hapa ndani; wote wanatosha.

(Laughter)

Bw. Naibu Spika, Katiba yetu inatambia kwamba tutakapokuwa tunachaguguana, lazima tuangalie kila sehemu ya nchi hii, ili kuona kwamba watu wote wanapewa nafasi ya kufanya kazi kama hiyo. Lakini tukiangalia majina haya, hata kama Sen. Wetangula amesema kwamba walienda pamoja na Professor na wakaweza kuwashawishi wale wakubali, ingawa wengine walikataa na wengine walikubali. Lakini ikiwa swala kama hili linafanya jina lako linaanza kuharibika saa hii, na uko hapa ndani, basi afadhali ujiondoe.

La mwisho, Bw. Naibu Spika, ikiwa wanachama wa Kamati hii hawataki kujiondoa, basi nafikiria nafasi iliyoko sasa ni kuchukua hatua ya sisi wenyewe kuwaondoa.

Asante, Bw. Naibu Spika.

(Laughter)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Madzayo, I had said that the Standing Orders allow us to talk about the adjournment of debate. However, I know that this is a fairly sensitive and important matter. I want to admit that we may not have handled this matter well enough, given its gravity across the country and the implications it has on public finance. I can understand the interest, because everybody wants to say something about it. We have spent so much time on this.

Can I hear, for two minutes, from the distinguished Senator for Kericho County?

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir. I support the Motion that is before the Floor of this House to withdraw this particular Motion because---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is to adjourn debate, not to withdraw the Motion.

**Sen. Cheruiyot:** I am sorry, Mr. Deputy Speaker, Sir. I support the Motion that is before the Floor of this House to adjourn debate. This is because if there are two issues that have left us with a bad face, as the Senate, at this particular term, one is the issue we concluded yesterday on the Kshs316 billion versus the Kshs335 billion debate.

The second one is this particular issue, which we continue to struggle with as a House. Therefore, it will be extremely important that the leadership of this House consults widely and treats this matter with the extreme sensitivity that it needs to be given. We are talking about the lives of Kenyans.

Mr. Deputy Speaker, Sir, the people who crafted this scandal are perhaps worse than those who put Mr. Cohen in that septic tank. They are cold blooded criminals, yet this House continues to treat this matter casually every now and then. Therefore, even as you will be giving your concluding directions, it will be important that you give a deadline as to when the leadership should table the names before this House, so that we can conclude and move forward as a country.

Mr. Deputy Speaker, Sir, health is a very grave matter of concern. However, thanks to this House for not being able to treat the health function seriously, earlier this year, the National Assembly passed a law that amalgamated the National Quality Control Laboratory and the Kenya Pharmacy and Poisons Board. That means that the persons who gives the licence to market a particular drug is the same one to test it, in order to approve whether or not it is good to be used in the market.

This is against all global standards because in the whole world, there is no other country that has put these two bodies together. They are always separate because of checks and balances. However, this has happened because the 'lower House' has turned into a conveyer belt of anything that the Executive wants. Unfortunately we, as a House, have allowed them, despite the fact that health is a devolved function. Consequently, Kenyans are continuing to suffer. People are taking fake drugs because of issues like these.

Therefore, Mr. Deputy Speaker Sir, I humbly plead with you that you give firm directions on this particular issue.

Thank you, Mr. Deputy Speaker, Sir.

**Sen. Pareno:** Thank you, Mr. Deputy Speaker Sir. I support that this debate be adjourned because we need to get it right this time. I am sure that if it is adjourned, given

the time we have, when it will resume, we would have thought enough on what we really want.

Mr. Deputy Speaker, Sir, I say this because of the experience I have had with the few *ad hoc* Committees we have had, as a House, and how they performed. I have personally not had a very good feeling about how we ended with the reports that those committees did. A good example is the Solai Dam Report, where the Members told us that they had received threats. At the end of the day, very few Members signed that Report.

The same happened to another report, which was not really *ad hoc*, but similar in nature; the Ruaraka Report. Members said that they had been threatened. At the end of the day, the House voted out a report that looked positive and voted for a report of its own Committee. The same happened to issues over the *Ad hoc* Committee on the Maize scandal, and we are yet to hear about the *Ad hoc* Committee on Tea in terms of how far they have gone.

Therefore, looking at the kinds of experiences that we have had with *ad hoc* Committees in this House, it is important that we relook at what we have; the membership and how we arrived at that membership. The balancing has been proposed and, at the end of the day, we should get the best out of it, noting that this is a very sensitive issue. We need to have people who are ready to face it; to sign those reports and give a positive report to this House.

Mr. Deputy Speaker, Sir, I beg to support.

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker Sir, I beg to support the adjournment of debate, as proposed by the Senator for Kakamega. This is a very serious matter, and we are not handling it with the seriousness it deserves, as the Senate. This matter has been discussed severally in the Senate Business Committee (SBC) and in my own Committee on Finance and Budget. After realizing that there is a lot of controversy about this particular matter, we recommended the suspension of this budget during the Budget Policy Statement (BPS) time in our Report on the Budget Policy Statement. We did this because of the confusion that this matter was shrouded in.

Mr. Deputy Speaker Sir, the discussion about the *ad hoc* Committee was discussed in the SBC, and it took time for the leadership of the House to even bring the names. I think there is a serious problem that we all fear. In as much as we will fear the report that will come later, which will unearth all the corruption, I think we fear to start. Going forward, if we decide to make an *ad hoc* Committee, so be it. I do not think we need to overload the Committee on Health and bring the names again.

Mr. Deputy Speaker, Sir, going forward, this matter is very urgent and serious, as mentioned earlier by other colleagues. Even during the mediation on the Division of Revenue Bill, it was a matter of discussion. I urge that the members who want to be on this, going forward, are people who should volunteer and say that they can do this job, because it is a very serious matter. It will deal with serious matters, and I know it will not be easy. You have to be brave and patriotic enough to deal with this matter.

I support the Motion by Sen. Sen. Malalah, but we should deal with this matter sooner than later.



**Sen. Were:** Thank you, Mr. Deputy Speaker, Sir, for this opportunity. I also support the Motion by Sen. Malalah to adjourn debate on this Motion, to go and relook at the list and probably replace especially Members from the Committee on Health.

I also want to remind us what Sen. Orengo read here; that you made a ruling that the Senate Business Committee (SBC) relooks at the constitution of the Committee on Health. Up to now, that has not been done. That is the elephant in the room that we are not facing. I urge the SBC, through the Chair, that you reconstitute this Committee, because we have another three years to work in this House. We will not continue working the way we are. Please, reconstitute this Committee as was requested in February by the Speaker.

I support the Motion.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Finally, Sen. Seneta.

**Sen. Seneta:** Thank you, Mr. Deputy Speaker, Sir. I also support the Motion on adjournment of the debate on this Motion.

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

Mr. Deputy Speaker, Sir, I am calling for your attention.

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

**Sen. Seneta:** Mr. Deputy Speaker, Sir, as we go forward, I urge the House to look at the urgency and seriousness of this matter. Again, we also need to look at the mandate of the Committee on Health. Remember health is a fully devolved function, and we not only have the issue of health facilities as a problem in health. We have so many issues affecting health in this country. Therefore, it is high time we look at either reconstituting this Committee or even let it handle this issue urgently.

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

**Sen. Seneta:** Mr. Deputy Speaker, Sir, let us not only look at the membership of the *Ad hoc* Committee, but also consider looking at the Committee on Health. This is because there are quite a number of issues that surround health in this country.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Members, as you are aware, we have been seized of this matter for more than a year now, beginning late 2018. This issue of establishing an *Ad hoc* Committee on the matter of the Managed Equipment Scheme (MES) was first introduced to this House by the distinguished Senator for Bungoma County, Sen. Wetangula, way back last year. I do not want to repeat the process, mutation and the twists and turns though which this subject has undergone.

In other words, this matter has been before the Plenary. It has been deferred before the SBC not once, but severally. The Speaker has pronounced himself on this matter extensively and severally, yet going by what we have discussed this afternoon, it appears that we have not heard the last about this matter. Therefore, time has come for us to dispose this matter one way or the other.

I insist that for the sake of the dignity of our House, this matter must be dealt with immediately, exhaustively and with finality. Because of that, I emphasize that the Plenary of this House is superior to any other Committee or organ of this House. That includes

the SBC, which is chaired by the Speaker of the House. The Committee itself is creature of this Plenary.

In view of that and also considering that we have given SBC a lot of time to relook at this issue, yet it appears that we do not seem to be getting anywhere, I direct as follows: That, subject to the vote which we are about to take – because we have not voted on the adjournment Motion – this House will understand when I make further directions after that vote, if those directions are likely to lead to what I believe is in the national interest and that of the Members of this House. Therefore, we will not be conventional. I will direct very strict timelines, depending on the outcome of the Motion of adjournment which is before us.

On that note, I now put the question.

*(Question put and agreed to)*

**Hon. Senators:** Further directions.

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

Accordingly and following the resolution of the Plenary a few seconds ago, I give the following directions: That, the consultation so required be done overnight tonight.

*(Applause)*

I had already prepared the Movers of the Motion, who are the Senate Majority and Minority Leaders why we have to work or give the kind of directions we are giving. This is because if we are not careful, we will be the laughing stalk of the people of Kenya. This one item is likely to turn us into the laughing stalk of the people of this country. Therefore, if there is business that must be out of our way, it is this one. Therefore, the consultations be done overnight.

Second, I direct that once the consultations are done by the co-sponsors of the Motion, the improved or revised Motion based on those consultations be brought for approval and subsequently, be put on tomorrow's Order Paper on priority basis as Order No.8.

*(Applause)*

So, that matter will be disposed of during prime time tomorrow.

Thirdly, since this is not the Speaker's Motion, but the sponsors' Motion, I recommend to the Sponsors of the Motion to consider in their text, to input the views of the majority of the Members of this House; what they consider the views and concerns of the majority of the Members who have spoken even in Plenary this afternoon.

Fourthly, I recommend, again to the Sponsors of the Motion, to consider in the text of the Motion, to shorten the reporting period of this proposed *Ad hoc* Committee. The Standing Orders provide that *Ad hoc* committees have a life of up to 90 days. However, I do not think we have the luxury of 90 days. Therefore, I recommend that to be done because the nature of Motions on *Ad hoc* committees are either approved the way

they come or with very little amendments, especially on the composition of membership. The possibility of amendments is almost zero.

Therefore, I recommend that the sponsors of the Motion consider shortening the turnaround time to 30 days, 45 days, 60 days, or such other time that they deem necessary, so that we can expedite this matter. It is so ordered.

*(Applause)*

Members, that has been a long one.

I know that there are a few Statements, but there is quick legislative work we can dispose of in the next 15 or 20 minutes because there are not many amendments. Therefore, I would rather we dispose of Order No.10, then, we end with Statements. This is because it is a quick one. Therefore, we can go to that order right away.

Next Order!

### COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

IN THE COMMITTEE

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

THE COMMISSION ON ADMINISTRATIVE JUSTICE BILL  
(SENATE BILLS NO. 6 OF 2019)

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): Order, Hon. Members. We are now in the Committee of the Whole to consider The Commission on Administrative Justice Bill, Senate Bills No.6 of 2019.

*Clause 2*

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

The Division will be at the end.

*Clause 3*

**Sen. Were:** Mr. Temporary Chairperson, I beg to move:-

THAT Clause 3 of the Bill be amended –

(i) by deleting paragraph (d) and substituting therefor the following new paragraph–

(d) by deleting subsection (11) and substituting therefor the following new subsection –

(11) Where a nominee is rejected by the National Assembly under subsection (10), the President shall, within seven days, forward to the National Assembly a fresh nomination from amongst the persons shortlisted and forwarded by the selection panel under subsection (5).

(ii) by inserting the following new paragraph immediately after paragraph (d) –

(da) in subsection (12) by deleting the word “Parliament” appearing immediately after the word “If” and substituting therefor the words “the National Assembly”.

*(Question of the amendment proposed)*

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

*Clauses 4 and 5*

*(Question, that Clauses 4 and 5 be part of the Bill proposed)*

The Division will be at the end.

*New Clause 3A*

**Sen. Were:** Mr. Temporary Chairperson, I beg to move:-

THAT the Bill be amended by inserting the following new clause immediately after clause 3 –

**3A.** Section 54 of the principal Act is amended –

(a) by deleting the word “Parliament” appearing immediately after the word “reports to” in subsection (1) and substituting therefor the words “the National Assembly and the Senate”; and

(b) by deleting the word “Parliament” appearing immediately after the words “report to” in subsection (2) and substituting therefor the words “the National Assembly and the Senate”.

*(Question of the New Clause proposed)*

*(New Clause 3A read the First Time)*

*(Question, that the New Clause 3A be read a  
Second Time proposed)*

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

I call upon Sen. (Prof.) Kamar to second.

**Sen. (Prof.) Kamar** seconded.

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

*The Title and Clause 1*

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

Division will be at the end.

Hon. Senators, I call upon the Mover to report progress.

**Sen. Were:** Thank you, Mr. Temporary Chairperson, Sir. Pursuant to Standing Order No.148, I beg to move that the Committee of the Whole do report progress on its consideration of the Commission on Administrative Justice Bill (Senate Bill No. 6 of 2019) 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]*

### **PROGRESS REPORTED**

**Sen. (Dr.) Lelegwe:** Mr. Deputy Speaker, Sir, I beg to report progress that the Committee of the Whole has considered The Commission on Administrative Justice Bill (Senate Bill No. 6 of 2019) and seeks leave to sit again tomorrow.

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

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

**Sen. Were:** I call upon Sen. Seneta to second.

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

*(Question put and agreed to)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Next Order! Statement by Sen. Mutula Kilonzo Jnr.

### **STATEMENTS**

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

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

**Sen. Khaniri:** Mr. Deputy Speaker Sir, I just wanted to bring to your attention that in our Order Paper today, under the Order 'Statements', under Standing Order No. 48 (1), there is a list of them from "a" to "f", listed in some order. We expected that you would call them in that order because I think all the Hon. Senators are here.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Not necessarily. In fact, I did not even say 'Statements' under which Standing Order. There are statements under Standing Orders No. 47, 48 and 51. Since I had given Sen. Mutula Kilonzo Jnr the floor, I have to allow him to dispose of his Statement. Thereafter, I will look at the Order Paper and give further directions in light of Sen. Khaniri's comments.

#### PLIGHT OF THE IDPS

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Deputy Speaker Sir, for your guidance and protection.

Mr. Deputy Speaker, Sir, I request the following Statement arising out of a matter that has concerned me when it was brought to my attention. This request is for a Statement on the plight of internally displaced persons.

I rise pursuant to Standing Order 48(1), to seek a Statement from the Standing Committee on National Cohesion, Equal Opportunity and Regional Integration on the plight of Internally Displaced Persons (IDPs).

In the Statement, the Committee should address the following:

- (1) State whether the Committee is aware that the term of the National Consultative Coordination Committee on Internally Displaced Persons expired in 2017.
- (2) Explain why the said Committee has not been gazetted as required under Section 12 of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012.
- (3) Clarify whether the Humanitarian Fund provided for under Section 14 has been set up and if not state why.
- (4) State whether there is a budget for the said Committee to resettle any internally displaced persons.
- (5) Update the House on the Status of the National Internal Displaced Persons Policy.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Next Statement by Sen. (Dr.) Zani.

#### STATUS OF INCLUSION OF PWDS IN THE LABOUR MARKET

**Sen. (Dr.) Zani:** Thank you, Mr. Deputy Speaker, Sir. I will start with the first Statement.

Mr. Deputy Speaker, Sir, pursuant to Standing Order 48 (1), I rise to seek a Statement from the Standing Committee on Labour and Social Welfare concerning the status of inclusion of Persons with Disabilities (PWDs) into the labour market.

In the Statement the Committee should-

(1) Avail a report indicating the number of persons with disabilities in the country, their level of education, training and their job placement status, and whether they are in the public sector.

(2) Avail a report on the status of implementation of the constitutional provision that provides for progressive implementation of the principle that at least 5 per cent of members of the public in elective and appointive bodies are persons with disabilities.

(3) Avail an annual status report for the last five years on the national database of registered PWDs who have access to 30 per cent procurement opportunities in public entities reserved for special categories.

#### STATUS OF OPERATIONALIZATION OF IFMIS IN THE 47 COUNTIES

Mr. Deputy Speaker, Sir, pursuant to Standing Order 48 (1), I rise to seek a Statement from the Standing Committee on Finance and Budget concerning the status of operationalization of IFMIS in the 47 counties.

In the Statement, the Committee should-

(1) Avail a report on the state of IFMIS roll-out in all counties detailing compatibility and consistency of fiscal and financial information across counties.

(2) Explain the nature of capacity building and training programmes for staff at the county levels geared at imparting them with knowledge to provide solutions to financial management matters in counties.

(3) Report on the feasibility of splitting IFMIS into two separate systems to cater for the national and county governments, thereby creating a two-vote system as recommended by the Auditor-General;

(4) State measures put in place to ensure smooth operation of business in counties in case of disruption of IFMIS network.

(5) Explain whether IFMIS as currently designed, allows the Controller of Budget (CoB) and the Auditor-General to have an outlook of the distribution of funds and trace utilization of the funds to the lowest level.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let us have Statements “c” and “f” by Sen. Khaniri.

#### RAPID COLLAPSE OF KENYA’S HEALTHCARE SYSTEM

**Sen. Khaniri:** Thank you, Mr. Deputy Speaker, Sir,

I rise, pursuant to Standing Order 48(1), to seek a Statement from the Chairperson of the Standing Committee on Health concerning Kenya’s healthcare system, particularly with regard to cancer treatment.

In the Statement, the Chairperson should-

(a) explain how, in this day and age, four out of five healthcare providers lack the ability to accurately diagnose and treat common illnesses like pneumonia, diarrhea and cancer;

(b) explain why it takes six months to a year for persons diagnosed with breast cancer to start receiving treatment, thus increasing the mortality rate;

(c) explain why cancer treatment and medication in Kenya is four times more expensive than it is in India, thus causing Kenyans to seek treatment abroad; and,

(d) state what measures the Government is taking to ensure that healthcare, particularly cancer treatment, becomes available and affordable in the country.

Mr. Deputy Speaker, Sir, if you allow me, I can proceed because I had two Statements.

#### STATUS OF ASSETS REGISTERS IN COUNTIES

I rise pursuant to the provisions of Standing Order No.48 to seek a Statement from the Standing Committee on Devolution and Intergovernmental Relations concerning the status and completeness of assets registries in both county assemblies and executives in the country.

In the Statement, the Committee should-

(1) Provide to the House a status report on the availability, accuracy and completeness of assets registers in the counties.

(2) Clarify whether counties have accurate data on the status of liabilities, debts and pending bills inherited by the county governments from the defunct local authorities.

(3) Indicate what measures are in place to conduct an audit of the transition from the defunct local authorities to county governments, with a view to ensure that all public assets formerly vested in the defunct units are not misappropriated.

Thank you, Mr. Deputy Speaker, Sir.

#### UNREST AT KISUMU COUNTY ASSEMBLY

**Sen. Outa:** Thank you, Mr. Deputy Speaker, Sir. I rise pursuant to Standing Order No. 48(1) to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations concerning the unrest at Kisumu County Assembly.

In the Statement, the Committee should:-

(1) Explain the circumstances surrounding the unrest that took place in Kisumu County Assembly Chambers on Tuesday 10<sup>th</sup> September, 2019, when goons were hired to interrupt the proceedings of the county assembly.

(2) State why the local police officers have not made any arrest regarding the unrest despite a report and statement having been made to the Central Police Station.

(3) Explain why the persons responsible for assaulting the Serjeant-at-Arms have not been held liable despite having been caught on camera.

(4) Outline any measures put in place to protect unsuspecting officers on duty and Members of County Assemblies (MCAs) from such unrest in future.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Outa, which Committee is that issue addressed to?

**Sen. Outa:** Mr. Deputy Speaker, Sir, to the Standing Committee on National Security, Defence and Foreign Relations.



**The Deputy Speaker** (Sen. (Prof.) Kindiki): Where is the Chairperson, Vice Chairperson or a Member of the Committee on National Security, Defence and Foreign Relations? That issue is live and active. It does not look good since it sets a precedence, where the Speaker of the Assembly has been arrested and charged. It would be important to hear what the Committee intends to do right here.

**Sen. Outa:** Mr. Deputy Speaker, Sir, I am a Member.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Would you inform the House what it is that the Committee should do now that you are the owner of the Statement?

**Sen. Outa:** Mr. Deputy Speaker, Sir, I urge the Committee to move with speed because whatever is happening in Kisumu is what the Senate needs to protect the county assemblies from. Whatever is unfolding is unfortunate.

Goons were hired to disrupt the proceedings of the House. The Speaker was arrested, yet the police station is a stone throw away, and they watched in vain. I thought it was unjust, and it is something that the Senate should look into. That is why I seek my Committee to move with speed and come up with a report in less than two weeks.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Whom should they invite under Standing Order No. 48(2)?

**Sen. Outa:** Mr. Deputy Speaker, Sir, they should invite the regional police commandant because he is answerable and is in office to protect the county assembly. However, they have failed and were compromised.

*(Sen. Sakaja walked into the Chamber)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Vice Chairperson, you have just come in. Are you conversant with these issues? May be, you can consult Sen. Outa privately.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, I am conversant. I was following the proceedings. I shall make any further clarifications to the Senator. I had earlier assumed, just as it has been asked, that it was a matter within the Chamber, which is generally a matter of House privilege. However, the clarification is given that it involves the outside. That gives us the mandate to look into it as a Committee. We will take action.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): In that process, it is good for our assemblies to know that they are regional Parliaments. They are not like the defunct county councils and the old order of things; they are regional legislatures and should behave as such.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Were, is it on that issue?

**Sen. Were:** Mr. Deputy Speaker, Sir, I want to ride on his Statement.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is too late to ride on. You have been overtaken and the train has left the station.

Let us hear from Sen. Khaniri. Sen. Khaniri, what says thou?

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, I want to make a comment on Sen. Outa's Statement.

I thank him for bringing up this matter. I pick the cue from where you left. What happened in Kisumu is indeed unfortunate. This is what is giving our county assemblies a

bad name. I urge Members of all the 47 county assemblies to know that county assemblies' chambers are places where they compete in intellect and ideas. It is a place where they represent and legislate for the people who elected them. It is a place that puts the governments to account on resources that have been allocated to them to help the people. It is not a place for them to exercise their physical strength.

Mr. Deputy Speaker, Sir, for devolution to succeed, we must ensure that we have vibrant county assemblies that will help the Senate to ensure that county governments are brought to account on the resources that have been allocated to them to expend. I, therefore, discourage this and pick the cue from where you left. They must conduct their business with the decorum that county assemblies deserve.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The last Statement will be---

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

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

**Sen. Mwaruma:** Thank you, Mr. Deputy Speaker, Sir. I do not know whether this is the best time to raise this issue.

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

**Sen. Mwaruma:** Mr. Deputy Speaker, Sir, I previously raised a Statement in February, under Standing Order No. 48(1)---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Wait a bit. Are you following up on a Statement that---

**Sen. Mwaruma:** Mr. Deputy Speaker, Sir, before we go Statements under Standing Order No. 47(1), I can---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hold on a little while, I will get back to you.

Proceed, Senator for Tana River County.

#### RISING INSECURITY IN TANA RIVER COUNTY

**Sen. Wario:** Thank you, Mr. Deputy Speaker, Sir, for giving me this chance. I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on Security, Defence and Foreign Relations on the rising insecurity in Tana River County.

In the Statement, the Committee should-

(1) Explain the circumstances under which Mustafa Ali Gure, Hussein Ali Gure, Abdullahi Said Abdullahi and Ahmed Mohammed Haji were abducted by people who identified themselves as police on 12<sup>th</sup> September, 2019, at Ndera Location in Tana River Sub-County and later shot dead and their bodies burnt beyond recognition.

(2) Explain whether the persons who adducted the victims were indeed police officers and why the due legal process was not followed in dealing with the victims.

(3) Explain the status of investigation to bring to book those behind the murders.

(4) Explain measures that have been put to deter recurrence of such cases in Tana River County and restore security.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Mwaruma, I assume you are on a point of order.

APPOINTMENT OF VICE CHANCELLOR,  
TAITA-TAVETA UNIVERSITY

**Sen. Mwaruma:** Thank you, Mr. Deputy Speaker, Sir, for this opportunity. In February, I sought a Statement that was directed to the Standing Committee on Education about hiring of a substantive Vice Chancellor of Taita-Taveta University. I reminded this House, when you were the Chair, about the same issue one week before we went on recess. You directed that the response to the Statement be brought by the Standing Committee on Education in two weeks' time.

Up to now, I have not received the Statement and do not know where the failure is. I would like to decry the casual nature in which the Committee on Education is taking some of these Statements. It could also be a failure on the part of the secretariat to give information to committees, so that we get responses.

Mr. Deputy Speaker, Sir, I am stuttering because I want your attention. Your attention is important because you might need to sanction the Committee.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Is the Chairperson of the Committee on Education here?

**Sen. Mwaruma:** Mr. Deputy Speaker, Sir, I think you should give a strong---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Sen. Mwaruma, I am well versed on this matter and agree that you have a valid concern. Is the Chairperson, Vice Chairperson or any Member of the Committee on Education here?

**Sen. Seneta:** I am a Member of the Committee.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Where is the report?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I will consult with the Chairperson immediately and give an answer to Sen. Sen. Mwaruma, possibly before the end of the day.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): We want an answer now when we are here. Go and consult and come back, and stand on a point of order to give us feedback.

I remember this matter vividly. It is true that Sen. Mwaruma has reason to get concerned. In February, the responses were also casual and lackluster. Sen. Seneta, as you go to consult, remember that the House rises at 6.30 p.m. That is the end of Statements.

*(Sen. Wario stood in his place)*

Sen. Wario, why are you using gestures? Are you on a point of order?

**Sen. Wario:** Mr. Deputy Speaker, Sir, I would like you to direct my Statement to the Chairman who is right next to me.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): He is directed by the Standing Orders. Unless the Chairperson wants to say something about that issue, the Standing Orders are automatic.

**Sen. Wario:** Thank you, Mr. Deputy Speaker, Sir.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, this Chamber will make us very fit. Indeed, there is concern about the rising levels of insecurity across the country. Even in

our last sitting, many Members brought questions especially on matters dealing with human-wildlife conflict, herders, farmers, and so on.

As a Committee, because of the huge number of statements, we agreed administratively to transmit them, but we will invite Members to one sitting where we shall have the Cabinet Secretary (CS) for Interior and Coordination of National Government, Dr. Matiang'i, his Principal Secretary (PS) and the Inspector-General of Police to answer all these questions. I urge all Members who have raised Statements to avail themselves. We will communicate in good time.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): When is that sitting supposed to take place?

**Sen. Sakaja:** We have invited them and are yet to get their response.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): So, you asked the Cabinet Secretary and the other officials to suggest dates?

**Sen. Sakaja:** Yes. We normally agree on a date with them because of the nature of their office. They are not always in Nairobi. We have found a rhythm on how they agree on dates. Within the next 21 days, we will have had that sitting with the entire House.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Fair enough. I direct that the matter, alongside other pending issues on national security, be expedited and dispensed with within one month from today. That is so ordered.

INSECURITY CAUSED BY CAMEL HERDERS  
IN TERI B, TAITA-TAVETA COUNTY

**Sen. Mwaruma:** Mr. Deputy Speaker, Sir, previously, I raised issues concerning insecurity brought by camel herders. I want to say one thing concerning the same, so that I am on record. I thank the distinguished Senator for Nairobi City County for visiting the people of Teri B after they petitioned the Senate. I would like to report that the issue could be getting out of hand.

Three weeks ago, a herder lured a *boda boda* rider, directed him to the bush and killed him. In retaliation, three days ago, two camel herders were killed by the public. I do not know how far the retaliation will go. It is just a question of time before it becomes fully-fledged war. The Chairperson should expedite action, so that the issue does not get out of hand in Taita-Taveta.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is so ordered.

**Sen. Mwaura---**

*(Words spoken expunged by the order of the  
Deputy Speaker (Sen. (Prof.) Kindiki)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Sakaja. I direct accordingly that the portion of the altercation between the two distinguished Senators be expunged from the record of this House. It is so ordered and that is the end of that matter.

Next Order. Let us go to Order No. 12.

**BILL***Second Reading*THE COUNTY TOURISM BILL  
(SENATE BILLS NO. 5 OF 2019)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. (Dr.) Zani, I hope that you know we have about 15 minutes. However, if you think you can move that quickly---

**Sen. (Dr.) Zani:** Thank you, Mr. Deputy Speaker, Sir. I intend to move very quickly, so that I can get seconded and open it up for debate.

Mr. Deputy Speaker, Sir, I beg to move that The County Tourism Bill (Senate Bills No.5 of 2019) be now read a Second Time.

As we all know now, the buzz word is ‘tourism.’ All across the world everybody wants to travel whether for leisure or business. However, it has some very serious implications. For example, in Africa, tourism has contributed to USD194.2 billion, thus enhancing and changing society in terms of what the money can do. Therefore, it has increased employment, participation and inclusivity over time.

Kenya has registered 37.7 spikes in terms of international tourism arrivals in 2018, which was an increase from 1.47 million in 2017 to 2 million in 2018. Kenya is the third largest tourism economy in Sub-Saharan Africa immediately after South Africa and Nigeria. Kenya is doing very well. It has created about 1.1 billion jobs in 2018 and the visitors come from different countries.

Mr. Deputy Speaker, Sir, the nature of tourism has also not changed. Some people are interested in the astronomical aspect, others in the cultural aspect and in interacting with various cultures, so that they can bring out what these cultures are all about. This is very critical, and I think the nexus of this Bill.

Mr. Deputy Speaker, Sir, the purpose of this Bill is to ensure that counties utilize every opportunity they have in terms of tourist possibilities within those sectors. That way, they will alleviate poverty, fight rural to urban migration, empower communities and come up with more inclusive and sustainable development over time.

Looking at the current trend, you will notice that tourists come and want to live the life. The tourist attraction here in Kitui is a rock, which myth has it that if you go round the rock seven times, your gender will change. If you are a man, you will become a woman, and if you are a woman, you will become a man.

Many countries go around a particular item about their country and bring it out to attract tourists to those places. Russia, for example, has very many castles. As a result of that, they encourage tourists to come to their country to enjoy sites, while they preserve their cultural aspects. In exchange, a lot of money is earned through tourism.

Mr. Deputy Speaker, Sir, earlier this afternoon, we talked about the issue of own-source revenue collection at the county level. There is a disjuncture because the Ministry of Tourism and their perspective is that they want to sell Kenya as Kenya. They look at the national tourism. However, we have local tourism, which is unfortunately not defined in the Tourism Act. As a result of that, the Ministry of Tourism only markets Kenya

without delving into the specificities of counties and what the counties can offer. The possibilities that would come from the counties as sources of income would in a way provide another avenue for own-source revenue which can be exploited.

This Bill specifically seeks to come up with a methodology that is non-existent at the moment in the Tourism Act, which focuses on national tourism to enable counties. We should come up with a way that we can have sites within counties that can be protected because they are cultural sites or have a particular item that is new or different. That way, if tourists come to this country, not only will they be exposed to the national sites that are there. They can also be exposed to the tourist specific areas, where they can go and enjoy the food and interaction.

More tourists coming to the country are no longer just interested in visiting areas to enjoy themselves. Cultural tourism is now the buzz word. You will find tourists who want to learn the language, understand and interact. We need to market Kenya as a whole destination, at a national and county level. This Bill addresses this by defining local tourism which had not been defined before. This Bill further ensures that tourists can be encouraged to visit as many places as possible that can be visited.

National and local tourism are the key words, and they have to be very clear especially at the county and ministerial level. I am not saying that we should not have national tourism. We are encouraging the counties to move to the specific things that they have within their counties, analyse and make use of their uniqueness.

Mr. Deputy Speaker, Sir, the Constitution designates trade, development and regulation, including local tourism, as a function of county governments. However, the Constitution does not define local tourism. The Tourism Act is also silent on the definition of local tourism. It is as a result of this lacuna that the Bill now provides for this. At the end of the day, the purpose of the Bill is to make a provision for the development, management, marketing, promotion and licensing of local tourism by the counties.

I would like to scheme through the Bill quickly.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You have less than 10 minutes.

**Sen. (Dr.) Zani:** Mr. Deputy Speaker, Sir, just to indicate two aspects. One has to do with the County Executive Committee (CEC) Member for Tourism in each county, who has been given a lot of responsibilities. One of them is to identify, register and license these sites. The CEC is also required to come up with a strategic paper for the county about how local tourism will be developed within that particular county.

Second and important is the licensing and procedure for licensing. As the Senate, we are in charge of counties and the interests of counties in developing them and ensuring that they have a clean bill of health in financial matters. Therefore, I propose that this Bill begins to look at county tourism at the local level, to encourage own-source revenue within counties.

I beg to move and request Sen. Seneta to second.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Thank you. Sen. Seneta, I hope you are aware about the time constraints. Please, proceed.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. For the record, the exit of the distinguished Sen. Mwaura and the distinguished Sen. Omanga is for the remainder of today's Sitting only.

*(Question proposed)*

Sen. Wetangula, proceed.

**Sen. Wetangula:** Thank you, Mr. Deputy Speaker, Sir. This is an important Bill to the extent that tourism, under the Fourth Schedule, is a shared function. It is both at the national and county levels.

We start from a point of lamentation; that in this country, for the last over 50 years, our managers of tourism have made Kenyans and the world to think that tourism is about wildlife and the beach. That is what they have been limited to. That is very myopic thinking. When they are marketing tourism, they only take pictures of the beach and beach boys, and then snapshots from Maasai Mara National Reserve and the Tsavo National Park. They forget that almost everywhere in this country, there is a tourism site.

Examples include how maize is grown in Trans-Nzoia County, the caves in Mt. Elgon and the dry river beds in this area. Everything is attractive to human beings. Sometimes you go out of the country, like Australia, where there is just a small greenbelt along the coast; the rest is a very dry hot desert. When you go to a place like Alice Springs in the centre of Australia, just because of artesian wells which are equivalent to an oasis in the Middle East, millions of people go there. We have failed to tap our local tourism because of lack of broad thinking, so to speak, in those who design policy, market the country and those who promote tourism.

Mr. Deputy Speaker, Sir, many times when I was in the Ministry of Foreign Affairs and International Trade, I would go to an expo and Kenyans would be there falling under the weight of curios. All they would be showing is curios made of wood and stones from Kisii County. Nobody is there to market anything.

If we want to market our wildlife, for example, how come at the arrival desk at the Jomo Kenyatta International Airport (JKIA), we do not even see rolling films of the Maasai Mara Game Reserve or Tsavo and Amboseli National parks? People in this industry are suffering from a serious mental block. This Bill will now open up.

Mr. Deputy Speaker, Sir, if you go to our counties - I am sure it applies everywhere whether it is Marsabit or Tana River - each county governor has a CEC in charge of tourism and something else. I have called some in various places. I sit down with them and ask them what their portfolio is and what they do, and they have no idea. One told me that his duty as a CEC Member in charge of Tourism is to organize beauty contests. That cannot be something that you talk about. Nobody will come from Russia or China to see a beauty contest in Tharaka-Nithi or Bungoma. There must be some more and better products for us to market our country. Therefore, we want to change the profile.

I heard Sen. (Dr.) Zani rolling out some very attractive descriptions of our tourism comparable to others. However, how do you explain? A country like France has no parks or beaches, but it attracts 72 million tourists in a year.

Mr. Deputy Speaker, Sir, in Spain, during their archaic days of the dictatorship of General Franco, the fascist of the last vestiges of fascism in human history, it was still receiving 53 million tourists a year. Where did we take the wrong turn? When you look at the amount of tourists that we receive, it does not match with what we can offer, for example, our culture, food, fauna, flora, hills, mountains, rivers and our people who have maintained their culture like the Maasai. Therefore, as a House, we encourage our counties to market themselves.

Mr. Deputy Speaker, Sir, I remember the scandal of the last County Government of Vihiga. I do not know if you recall when Gov. Moses Akaranga appointed some con person and sent him to Germany. He paid an office for him in Berlin as a tourism representative, and the person was just drinking from morning to evening instead of marketing the county.

Mr. Deputy Speaker, Sir, this was an abuse of opportunities and resources. When we tried to inquire, this fellow was not appointed in accordance with any regulation or laws. We visited Germany once and when he heard that there was a delegation from the Senate in town, he vanished to go and drink elsewhere. These are some of the problems that we have in this country. Sen. Faki, Sen. Boy and other coastal Senators are here. They wanted to build a bloc of economy.

Mr. Deputy Speaker, Sir, if you go to Australia, Western Australia as a province, has an office in London that markets Western Australia. If you go to Queensland, they have their offices in America, which market their country. I would want to see the coastal block opening up offices in our tourist sources, for example, in China, India, America and other places. You do not have to wait for the Government because this is a shared function. Tell your governors to think outside the box.

For instance, the economy of Mombasa has been destroyed by the Jubilee Government, and you know it. Mombasa is dead. Instead of sitting and crying that Mombasa is dying, become more innovative and think of what else you can do because they have killed you already. How do you resurrect an emerging phoenix from the ashes, so that you turn round your economy? They have destroyed the port. There is no port of Mombasa anymore, and you know that.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Wetangula! When this matter resumes, you will have a balance of 12 minutes to tell us more about the death of Mombasa and the drinking ambassador of a certain county.

### ADJOURNMENT

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, it is now 6:30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Thursday, 19<sup>th</sup> September, 2019, at 2.30 p.m. in this very Chamber.

The Senate rose at 6.30 p.m.