

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Thursday, 19<sup>th</sup> September, 2019

*(Convened via Kenya Gazette Notice  
No.8549 of 10<sup>th</sup> September, 2019)*

*The House met in the Kitui County Assembly  
Chamber, Kitui Town, at 2.30 p.m.*

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

#### PRAYER

#### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM MIGWANI WARD,  
MWINGI WEST CONSTITUENCY, KITUI

**The Speaker** (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon, of visiting residents of Migwani Ward, Mwingi West Constituency, Kitui County.

I request each one of them to stand when called out so that they may be acknowledged in the Senate tradition: They are-

- |                                     |   |                                   |
|-------------------------------------|---|-----------------------------------|
| (1) Mr. Joseph Maluki Mwendwa       | - | Senior Chief, Mumbuni<br>Location |
| (2) Mr. Erastus Mwendwa Maluki      | - | Senior Chief, Nzatani Location    |
| (3) Mr. David K. Mbusyo             | - | Senior Chief, Migwani<br>Location |
| (4) Mr. David Musili                | - | Senior Chief, Kisovo Location     |
| (5) Ms. Friconah Kithiki            | - | Chief, Itoloni Location           |
| (6) Ms. Grace Musanza               | - | Senior Chief, Nzeluni Location    |
| (7) Councillor Henry Musili Munyoki |   |                                   |
| (8) Mr. John Musili Mwenzi          |   |                                   |

On behalf of the Senate and on my own behalf, I welcome you to the Senate and wish you well for the remainder of your stay.

Thank you.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir, for this opportunity. I want to join you and my colleagues in welcoming the visiting administrators from Migwani. I hope that in their stay here, they will follow the proceedings of the Senate of the Republic of Kenya and learn a few things on how to run public affairs.

With those remarks, I welcome them.

## STATEMENTS

### INTERNATIONAL DAY OF DEMOCRACY

**Sen. Halake:** Thank you, Mr. Speaker, Sir, Mr. Speaker Sir. I rise, pursuant to Standing Order No.47(1) to make a Statement on an issue of general topical concern about the International Day of Democracy.

The United Nations International Day of Democracy is held annually, on 15<sup>th</sup> of September, to raise public awareness about democracy. This year's theme is: "Aptly participation; an opportunity to recall that democracy is all about people" Participation is the principle of democracy that has been embraced globally, including in our country, Kenya.

Democracy is built on inclusion, equal treatment and participation. It is also a fundamental building block for peace, sustainability, development and human rights. I would not want to go into all the tenets of democracy, but just to say that every human being on earth has a right to take part in the governance of his or her country, directly or through their freely chosen representatives. This right is provided for under the Universal Declaration of Human Rights (UDHR) of 1948, in the African Union Charter and in our own Constitution.

As you are aware, I am the Chairperson of the Centre for Multiparty Democracy (CMD) and wearing that hat, it is important that I raise awareness about democracy and the regression that is happening with our democratic games.

Mr. Speaker, Sir, organizations like CMD, Kenya, play a key role in the realization of a democratic political environment that is conducive for political competition and collaboration, towards achieving a democratic nation. It is envisioned that Kenya as a nation that is guided by the spirit of the Constitution, principle of accountability and transparent leadership, inclusion of people in decision making processes and respect of the law by political parties are the best instruments towards realizing the above.

Political parties should be helped to embrace the democratic ideals of inclusion, accountability and transparency and to realize people-centered leadership. Funding of political parties enables the parties to have a face of ownership by all citizens and helps to dispel off the one-man dependency syndrome.

Although Kenya is a constitutional democracy, the country's democratic terrain has undergone periods of constraint, characterized by democratic regression, polarizing politics and a decline in democratic freedoms. Other indices that point to democratic decline in our country include; skewed economics, where the elite control our economy leading to an ever expanding gap between the wealthy and the poor, tightly enmeshed economic and political elite, limited spaces for citizens to participate and express dissent and clamping down of civil society's ability to act.

Mr. Speaker, Sir, we have seen in the recent past a very assertive government that has literally constrained space for the civil society. It is against such realities that profound national problems such as corruption, unemployment, inequality and conflict have been left largely unaddressed. It is harder for citizens to exert democratic

accountability over the different facets of Kenyans, including what we are seeing in our own houses, recently, as well.

On a positive note though, Kenya has registered positive milestones in democratic development upon which entrenchment of a democratic culture can be anchored. Article 10(2) of the Constitution recognizes democracy as one of the national values and principles of governance, alongside patriotism, national unity, sharing and devolution of power, the rule of law and participation of the people.

Mr. Speaker, Sir, the choice of this year's theme for the International Day of Democracy fitted very well in our democratic agenda. Democracy should be a process that has participation at its heart by all, in an open system.

Strengthening Kenya's democratic landscape will depend on the extent to which local and community-level citizen voices are heard and integrated in decision-making and also the extent to which devolved and decentralized governments allow communities to develop their new initiatives and have a direct say in the local and national governance.

It will also depend on whether all citizens, regardless of their economic statuses, have a say in economic and political decision-making. It is imperative for us as the people's representatives to deliberate on the milestones of our democracy and the gaps that hinder the realization of a fully democratic nation. We need to appreciate that despite the progress achieved so far, democracy represents a constant striving for voice, participation and the right to express dissent – a system of managed open-endedness as well as organized uncertainty.

Thank you.

#### PROVISION OF IMMIGRATION SERVICES IN NORTHERN KENYA

**Sen. (Dr.) Ali:** Mr. Speaker Sir, pursuant to Standing Order No.48 (1), I rise to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations on the provision of immigration services to Kenyans in the northern Kenya region.

In the statement the Committee should-

(1) State whether there have been put in place measures to improve the provision of immigration services, particularly the issuance of passports to Kenyans residing in Garissa and other towns in northern Kenya, following the closure in 2015 of the Immigration offices in Garissa.

(2) Give reasons why Kenyans in northern Kenya have to travel over 1,000 kilometers to Nairobi for passport processing, whereas some regions have short distances to travel, like Nakuru, Eldoret, Kisii, and Kisumu.

(3) State the measures being put in place to streamline the services offered by the State Department for Immigration to ease the burden of travelling to Nairobi, especially for persons wishing to go for Hajj, and to ensure that these Kenyans get services efficiently.

Thank you.

**Sen. M. Kajwang':** On a point of order, Mr. Speaker, Sir. I am well aware of the provisions of Part II of our Standing Orders on Statements, particularly Standing Order

No.47 (2) that requires a Senator to do a written Statement, at least three hours before Sitting of the House.

Mr. Speaker, Sir, I wish to beg your indulgence that the Committee on Public Accounts and Investments has been holding its meetings since we came to Kitui and as Chair, I have not been able to do a written Statement.

I wish to beg if could give me just a minute or two to update the House on some of the resolutions that we have made as Committee on Public Accounts and Investment, either now or at the right time as you may deem fit.

**The Speaker** (Hon. Lusaka): Okay, I will give you later. Let us deal with the Statements that I have already approved and also reactions to the Statement by Sen. (Dr.) Ali.

**Sen. (Rev.) Waqo:** Thank you, Mr. Speaker, Sir. I want to thank Sen. (Dr.) Ali, for bringing this very important Statement.

I stand in support of this Statement because I come from that area and we are hugely affected by this challenge. I would like to share one case that I interacted with recently before coming to Kitui. A young man was invited for studies somewhere; he did all his applications but just because he comes from Marsabit, up today, he has not received his passport, making him lose the opportunity to go for his further studies.

Mr. Speaker, Sir, it is unfortunate because the people who come from the northern part of Kenya are treated as if they do not belong to this country. In fact, even getting identity cards is a big challenge to them and, therefore, I support this Statement so that the services can be available to them. You can imagine the accommodation and travel expenses incurred when people travel to Nairobi just to get a passport. Sometimes they have to sell the few animals that they have especially at such times when drought has killed all their animals.

It is unfortunate that Kenyans in these parts of the country feel mistreated and mishandled at Nyayo House. That young man called me twice while there and said that he came to Nyayo House even before taking breakfast and had not been served even after 5 p.m. Therefore, it is a matter that we need to give all the attention that it deserves and seek the answers that we need.

Thank you.

**Sen. Iman:** Mr. Speaker, Sir, I thank Sen. (Dr.) Ali for bringing this Statement. Before the closure of the Immigration Office in Garissa, people acquired passports with ease. However, with the closure of the immigration office in Garissa, things have gone haywire. It is unfortunate that people from our county are treated as lesser beings.

My father missed Hajj this year due to delay in the processing of his passport. I wish the Ministry of Interior and Coordination of National Government would relook into the possibility of reopening of the Immigration Office in Garissa.

**Sen. Seneta:** Mr. Speaker, Sir, I congratulate Sen. (Dr.) Ali for bringing this Statement to the House. I laud him for highlighting this issue that not only affects the people of the North Eastern part of Kenya, but many Kenyans. The Committee that will look into this matter should look at how we can devolve all matters pertaining passport issuance to possibly all the county headquarters in the counties.

Kenyans are forced to queue for long hours at Nyayo House to apply for passports. The cost of transport and accommodation for people seeking passports is high. Many of our people are not even informed on where you can get such a document. The

Committee that will be looking into this matter should look into how the Ministry of Interior and Coordination of National Government is dealing with processing of issuance of national identity cards, passports and all the other documents that are required by the citizens of this country. If that is done, it will be easier for our people to access the necessary documents without a struggle.

**Sen. Wetangula:** Mr. Speaker, Sir, I thank our distinguished colleague from Wajir County for bringing this Statement. This Statement speaks to not only Northern Kenya, but all frontier counties such as Bungoma, Busia, Trans-Nzoia, West Pokot and Turkana counties which suffer the same fate. Sen. (Dr.) Ali and our colleagues from the North are complaining about passports issuance. In our counties, it is a struggle getting a national identity card. It is hard to get a national identity card in areas such as Pokot, Bungoma, and Trans Nzoia. You are required to attach copies of identity cards of your grandfathers during application. I wonder where one is supposed to get the identity cards of their great grand fathers who lived at a time when there were no identification documents.

Identification and travel documents are a constitutional right for every Kenyan. The Committee responsible that you may refer this statement to must call the Minister for Interior and Coordination of National Government and the responsible departments to explain why people who live in frontier counties are discriminated against routinely as if they are not legitimate Kenyans.

**Sen. Dullo:** Mr. Speaker, Sir, I wish to join my colleagues in thanking the Senator for Wajir County for bringing this statement. I believe this issue is long overdue. The Committee on National Security, Defence and Foreign Relations has looked into this matter severally even in the last Parliament and requested the relevant departments to have one database where an individual can access all the documents.

One time, a suggestion was made to merge births, national identity and deaths registration under Immigration so that by the press of a button, one could get a national identity card, birth certificate as well as death certificate. However, there was a lot of politics because departments do not want to merge because they want to protect their niche.

Mr. Speaker, Sir, Kenyans really suffer in the processing of identity cards, birth certificates or passports especially for us who come from Northern Kenya. The policy that requires individuals from the border counties to be vetted is long overdue because it is wrong. Foreigners are attaining passports easily in Nairobi without being vetted while true Kenyans from frontier counties are subjected to vetting.

I thank the current Director of Immigration because he assisted our people in processing of passports during the last Hajj. However, that is not enough because it is not the work of a Member of Parliament to go to Immigration to help our people get travel documents. Kenyans should get all important documents wherever they are. The relevant Ministry needs to be instructed to open up more regional offices to benefit our people. There is lack of employment in the country. Unfortunately, the jobless youth cannot get the required travel documents for them to look for employment outside the country. This issue is urgent. I therefore hope that the committee will ensure the regional offices are opened as soon as possible.

I thank you.

**Sen. (Eng.) Hargura:** Mr. Speaker, Sir, I thank Sen. (Dr.) Ali for bringing up this issue. As Members of Parliament, we sometimes have to walk to Nyayo House to follow up on the issue of passport issuance for our constituents.

We understand that the Government has to be careful to make sure that Kenyan documents are only issued to Kenyans and include vetting the people from border counties because foreigners can acquire Kenyan documents. However, someone does not know what they are doing at Nyayo House.

Elderly people from Northern Kenya are forced to travel all the way to process passports in Nairobi majorly to go for Hajj. Such elderly people are also subjected to vetting. I wonder who the right person to vet such an individual is. Is it not somebody at the sub-county level or the regional level who knows the background of that person? However, you will find people queuing there throughout the year. I have had an opportunity to go to Nyayo House at different times of the year and I always see elderly people from Northern Kenya queuing there. If vetting for the national identity cards is done at the local level, vetting for the passports should also be done at the local level because there is no difference between the national identity card and passport.

Mr. Speaker, Sir, if one can apply and process the national identity card at the sub-county level, passports can also be processed locally. We need to decongest the queues at Nyayo House by decentralizing the Department of Immigration. We should look into how we can provide services effectively to Kenyans and not to subject them to suffering in Nairobi.

**Sen. Shiyonga:** Mr. Speaker, Sir, I rise to support Sen. (Dr.) Ali's statement. The long queues at Nyayo House for passports are disheartening. The long queues start building up as early as 3.00 a.m. I support my colleagues who have highlighted that services need to be decentralized. We made a remarkable step in decentralizing services through setting up Huduma Centres in different regions. I believe that we need to decentralize services offered by the Department of Immigration.

Vetting of individuals who apply for passports is important, but I believe that it can be done locally in the different regions. I request the relevant Committee to look into this issue because we talk too much with less action. We would like to see more Kenyans accessing services from the Department of Immigration with ease.

I thank you, Mr. Speaker, Sir.

**Sen. Poghio:** Thank you, Mr. Speaker Sir. Let me also support the Statement by Sen. (Dr.) Ali. This is probably one country that has overrated the document called the passport. We made the passport look like an elitist document. The passport is just an ID Card. It is simply meant to enable you to travel to another country. If the ID cards were allowed to be used, we would not need the passport. We would just use our ordinary IDs to travel. We make it so difficult and make it look like you have to wake up very early in the morning and line up for many days to get the passport. The same applies even for people who are in Nairobi, let alone people who have come from outside.

Mr. Speaker Sir, the issuance of the ID or a passport should be an equalizer meaning that everybody should be given---

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

**The Speaker** (Hon. Lusaka): What is your point of order Sen. Omanga? Does the Senator want to be informed?

**Sen. Omanga:** Mr. Speaker Sir, I can hear my colleagues talking about Nairobi, but I think the Statement by Sen. (Dr.) Ali is different. This is because two weeks ago, for the people in Nairobi and other parts of the country, they introduced the E-Citizen where you apply for the passport online. The process is similar to that one of getting a visa whereby you actually get an appointment and the long queues are no longer there. For passport applicants from Northern Kenya, it is a special case because there is the issue of vetting. The E-Citizen was introduced two weeks ago and it does not apply in the case of Northern Kenya where they are subjected to vigorous vetting.

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

**Sen. Poghisio:** Mr. Speaker, Sir, the Statement will still be considered by committees, so, I do not think answering it now will be very helpful.

I just wanted to say that we should demystify the passport and make it a very ordinary document that every citizen can have at their convenience. It is possible to do that at the counties. We just want as many people as possible to have a passport because it is a right under the Constitution.

Thank you, Mr. Speaker, Sir.

*(Interruption of debate on Statement)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM ST. ANGELA'S  
SECONDARY SCHOOL, KITUI COUNTY

**The Speaker** (Hon. Lusaka): Hon. Senators, before we proceed, I have a brief Communication to make. I would like to acknowledge the presence in the Public Gallery this afternoon, of visiting students and teachers from St. Angela's Secondary School, Kitui County.

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

Thank you.

Sen. Wambua, I know you may want to do two things.

**Sen. Wambua:** Mr. Speaker Sir, I will do those two things. One, I would like to join you in welcoming the students from St. Angela's Secondary school. This House should note that that is the school where the wife of Sen. Mutula Kilonzo Jnr. went.

*(Laughter)*

So, Sen. Mutula Kilonzo Jnr. owes those students a cup of tea after this sitting. I would like to welcome the students and their teachers and encourage them to take the privilege that they have been given to attend the sittings of the Senate of the Republic of Kenya in Kitui, to be inspired and work towards joining leadership positions in the near future.

*(Resumption of debate on Statement)*

The second thing that I would want to do is to congratulate Sen. (Dr.) Ali for bringing up this Statement. The answer to this Statement lies in the attitude of law enforcement. It is a requirement of the law that Kenyans should have identification documents. If you do not have an ID and you are walking around in town, police officers from the same department of the Government which is responsible for issuance of ID cards will harass you. As Sen. Poghio has said, there is no difference between a national ID card and a national passport. They are just identification documents only that one is used to facilitate travel outside the country. Therefore, if we can issue national ID cards at sub-county level, there is absolutely no reason why you should not issue passports at the same centres.

Mr. Speaker Sir, we should push for legislation to decentralize the immigration department because the issuance of passports is a routine issue. There is nothing special with a passport that people should be denied, vetted or profiled on account of application for passports.

I support.

**Sen. Dr. Langat:** Thank you, Mr. Speaker Sir. May I also join you in welcoming the students who are in the Gallery to this particular great House. Secondly, I also stand to support the Statement from Sen. (Dr.) Ali particularly on the support of the students. I remember two months ago, some students from Garissa University and Egerton University got an exchange programme to study some agricultural courses in Israel. Those who came from Garissa had so many problems at Nyayo House. I do not know the person who directed them to our office. When I went there, I realized that they had queued there endlessly for two weeks and had not gotten those particular documents. By the time I assisted them to get those documents, the programmes for two of those students had already delayed and they never attended the course.

As my colleagues have said, these are documents that are so important especially during this era of globalization where our children are expected to work elsewhere all over the world. Therefore, instead of encouraging them, we are raising some hurdles to discourage them.

I support this particular Statement. There was a time in Eldoret when we were not getting these passports. We used to be referred to Kisumu. Today, they are issuing passports in Eldoret. Therefore, I wonder why there is no issuance of passports in these other areas. It is very cumbersome to travel for 680 Kilometers to come for a passport; it is not comfortable.

I support this Statement and urge the committee that will take up this matter to do it seriously and bring this particular situation into control.

Thank you, Mr. Speaker, Sir.

**Sen. Prof. Ekal:** Thank you, Mr. Speaker Sir, for also giving the chance to thank Sen. Dr. (Ali) for bringing this particular Statement to the Floor. What the other Hon. Members have said is all true. This is to say that this is a serious problem in our country. Something must be done to stop the harassment and the embarrassment that some of our folks go through.

Sometimes people think that Kenya is a small country, but when you consider somebody from Kibish in Turkana, who is on the border of Kenya and Ethiopia, and he or she has to travel to Nairobi to get a passport. Imagine somebody from Nadapal, which



is at the border of Kenya and South Sudan, and they have to travel to Nairobi to get these services. Why can these services not be decentralized? They should be put in the counties in such a way that people can get them right there at their homes.

Mr. Speaker, Sir, then there is the tax factor. Every time somebody from such far flung areas travels to Nairobi, they spend money travelling, sleeping and eating in Nairobi. This is an extra burden and an extra tax on people that should not be there.

The third point I want to mention, Mr. Speaker, Sir, is the vetting of people because you do not think that they are Kenyans. I do not know if you have noted that I am clearly traditionally marked. I have tribal marks that say I am a Turkana, and if there is any doubt, then I am a Maasai, because this is the way our people did things before now. It is, therefore, so appalling when I walk in Nairobi nowadays and the people describe me as a South Sudanese, yet I have been in Nairobi for so many years and I was always a Maasai. Therefore, this suspicion where clearly a native Kenyan is thought to be from another country should get out. In any case, what is the fear? Why would we not allow people, like the South Sudanese or the Ugandans who would like to become Kenyans, to become Kenyans? What are we afraid of? The country is big enough to host all of us.

Mr. Speaker, Sir, think of a country like the United States of America (USA). We go to the USA, we ask for citizenship and they grant it. Why is it that we cannot grant others identity cards?

I have the case of Somali people who live in Turkana. Somali people like Turkana because they are also pastoralists, and they are used to that kind of life. However, those people are having the roughest time when they want identity cards and passports. The moment you see somebody with wavy hair, you say, "Ooh, this one is from Hargeisa." However, that is a Kenyan whose grandfather was born in Kenya. What is that person supposed to do to prove to the authorities that he is actually a Kenyan?

Mr. Speaker, Sir, there is also point that Sen. Wetangula raised, that people have to show some identification, which includes their parents, grandparents and great grandparents identification documents. My God! Somebody like Prof. Malachy is the first one from his family to go the university. He is the first one to know the dates, according to the *mzungu*. However, others are simply just normal Turkana people. Therefore, when you ask for the identification card of my father, who cares, because he did not have one! Ask for the identification card of my grandfather, he did not have one! It is, therefore, just ridiculous that we ask our people to present things that we know do not exist. I do not know whether it is ignorance or carelessness.

Therefore, Mr. Speaker, Sir, the Committee should take this issue seriously and remember those of us from far flung counties. I am sure that even the people from Kitui have to travel to Nairobi to get these documents. We, therefore, suffer the same fate. Why can we not do justice to our citizens?

Thank you, Mr. Speaker, Sir.

(Applause)

**The Speaker** (Hon. Lusaka): Let us have Sen. Halake, then we conclude on that matter, because I think we are beginning to repeat ourselves.

**Sen. Halake:** Thank you, Mr. Speaker, Sir. I rise to support the Statement by Sen. (Dr.) Ali, which is really timely.

Mr. Speaker, Sir, the Kenyan Constitution states that every person is equal before the law and shall enjoy equal protection by the law. All the persons have the right to full enjoyment of essential rights and fundamental freedoms, including the rights to economic, social and political rights.

Mr. Speaker, Sir, the people of Northern Kenya have suffered for long. We have been told that the people from the other frontier counties have also suffered the same. However, we from Northern Kenya have been discriminated against on all accounts. The number one account on which the people from Northern Kenya and frontier counties, especially the in the north from Moyale all the way to Mandera, Isiolo, Marsabit and Garissa, have suffered immensely is in contravention to our own Constitution and the rights and freedoms as guaranteed in it in the Bill of Rights.

Mr. Speaker, Sir, this House has been mandated with devolution. One of the things that we should be legislating on to ensure that the basic documents are given as a devolved function is this one. We, therefore, should, as this House, volunteer. I volunteer myself to come up with legislation that will compel our authorities to provide these passports at the point where people live, work and play.

Mr. Speaker, Sir, we keep talking about devolution and decentralization. However, until such a time that we ensure that these kinds of things are done, we will continue to lament, as we have seen in the last few days. We keep lamenting about the rights that have been denied us, especially the discrimination that continues to plague the people of Northern Kenya.

Therefore, Mr. Speaker, Sir, I beg to support and volunteer to be part of the team or to come up with legislation that will ensure that the decentralization of key documents is done at the sub-national level.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Sen. Mutula Kilonzo Jnr., make your statement.

STATE OF KENYA GOVERNMENT  
PRISON IN KITUI

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. I want to make a Statement very quickly on behalf of myself, the Committee on Justice, Legal Affairs and Human Rights and the Committee on National Security, Defence and Foreign Relations on something very important that has happened in Kitui during our visit. However, it is also a request, and some Members are here. This Statement is about the prisons in Kitui.

(1) The Committee on National Security, Defence and Foreign Relations should explain how a private developer acquired and gazzetted land belonging to the prison and subsequent approvals to construct a multi-storey building next to the prison overlooking the prison.

(2) What is the cause of the prolonged and unwarranted increased delay of up to seven years in cases pending in Kitui Magistrates Court and High Court, meting out unwarranted suffering to remandees and causing congestion in prisons?

(3) What intervention has the Committee put in place to resolve the challenges being faced by the remandees and prisoners under prison administration?

(d) Why are the prison warders in Kitui excluded in the risk allowances awarded to other civil servants working in the county?

(e) What measures has the Government put in place to ensure timely issuance of police clearance certificates and certificates of good conduct after the jail term is served fully? What is the interface between the prisons and the DCI to facilitate issuance thereof?

Mr. Speaker, Sir, allow me to make one comment. In the process of preparing this Statement, it has come to my attention that nearly 100 remandees have been released following the intervention of the two Committees.

Thank you.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. I want to thank Sen. Mutula Kilonzo Jnr. for raising the statement which I and Sen. Faki had lined up to make. We, in fact, visited the prison yesterday, and I want to start by commending the officers of Kitui Prison. They are knowledgeable and very hard-working officers; and they looked more humane than many prison officers I have seen, who spend most of their energy bastardizing and bullying prisoners. I saw a lot of camaraderie between prisoners and their officers.

More importantly, Mr. Speaker, Sir, we noted – and the Committee for Justice, Legal Affairs and Human Rights, in which some of my colleagues we were with come from – that there are a lot of delays dealing with cases in this part of the country. People have been in remand for five years waiting for their cases to be tried. Some of them are petty cases, such as possession of *busaa*, stealing a chicken or a goat.

How do you stay in remand for that long? We were appallingly told that unlike other places and jurisdictions, when eventually these persons are sentenced, they do not even take into account the pre-trial remand period. If your sentence is about two years and you have been in custody for three or four years, upon conviction you should be allowed to go home. You should not be sent to any prison.

Last and more important is the issue that the two committees agreed on, which Sen. Mutula Kilonzo Jnr. has mentioned. That some of these boys and girls in prison are unfortunate victims of circumstances and the economic situation in the country. You go to jail and when you come out, even to become a matatu tout, driver or work in a Muhindi's shop, you need a certificate of good conduct from the police.

This House should bring legislation because the new Constitution changed prisons from places of punishment to places of correction. That a person who has finished his or her prison term, upon satisfaction by officers who supervise the term, must come out with a certificate of good conduct saying: "We have rehabilitated this person and he or she is fit and clean to join society and be productive like everybody else." That way, they will not come out and the only other occupation is to revert to crime because that is the only thing they can do. If you cannot be a tout, driver or sell in a shop, what else can you do?

This House must come up with legislation. Yesterday's visit was a major eye opener to the Members of the Committee. We were surprised with the knowledge of the prisoners. They are young and vibrant and they told us how they watch television and see Sen. Wetangula debating. They were extremely welcoming to us.

Thank you, Mr. Speaker, Sir.

**Sen. Cheruiyot:** Thank you, Mr. Speaker, Sir. Amongst other things, this is one of our highlights as the Senate, will be so proud of after leaving Kitui County today. This is the impact that the visit of the Committee will have created.

First, the impression of the prisoners to remember that in the eyes of many, they may feel condemned, but there are people who still look at them as human beings worthy of some rights.

Secondly, the issue that has been raised by Sen. Mutula Kilonzo Jnr., it will perhaps be better when you are issuing your final directions on this matter, to give an indication to the people of Kitui County who are listening to this debate, as to when the Committee that you will charge with the responsibility of following up this matter will come back with an answer to assure them that first this public land will be reverted to the use for which it was intended, and this land grabber will face the law.

**The Speaker** (Hon. Lusaka): Hon. Senators, before I give the Floor to Sen. Faki, I have a Communication to make.

*(Interruption of debate on Statement)*

### COMMUNICATIONS FROM THE CHAIR

#### VISITING DELEGATION FROM KITUI SCHOOL FOR THE DEAF, KITUI COUNTY

I would like to acknowledge the presence in the Public Gallery of visiting students and teachers from Kitui School for the Deaf, Kitui County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

#### VISITING DELEGATION FROM ST. CHARLES' LWANGA BOYS' KITUI

I also acknowledge the presence in the Public Gallery this afternoon, of visiting students and teachers from St. Charles' Lwanga Boys' Kitui. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

#### VISITING DELEGATION FROM MULANGO BIBLE COLLEGE SCHOOL, KITUI COUNTY

Finally, I would also like to acknowledge the presence in the Public Gallery this afternoon, of visiting students and teachers from Mulango Bible College School, Kitui County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

I thank you.

*(Applause)*

(Resumption of debate on Statement)

Sen. Faki, proceed.

**Sen. Faki:** Asante, Bw. Spika, kwa kunipa fursa ya kuchangia taarifa ya Seneta wa Kaunti ya Makueni, Sen. Mutula Kilonzo Jnr..

Kwanza nina wakaribisha wanafunzi katika kikao hiki cha mwisho cha Seneti hapa Kaunti ya Kitui kabla ya kurudi makao yake makuu jijini Nairobi. Ninawaomba watie bidii katika masomo kwa sababu bila masomo, hawatafika hapa.

Pili, jana asubuhi tulizuru Gereza la Kitui tukiwa na Maseneta wa Kamati ya Haki, Sheria na Haki za Binadamu na Kamati ya Usalama wa Nchi, Ulinzi na Uhusiano wa Kimataifa. Tulipata kwamba Jela ya Kitui, kama jela zingine zote, lina tatizo la msongamano wa wafungwa. Jela ya Kitui yenye uwezo wa kubeba wafungwa 300, ilikuwa na wafungwa 673 jana asubuhi. Wengi wa wafungwa hao wameshtakiwa makosa madogo madogo ambayo faini yake labda haizidi Kshs5,000 ama Kshs10,000. Mwisho, wanabaki kukaa ndani wakipewa chakula na hawafanyi kazi yoyote.

Bw. Spika, mahali wanapoka ni chumba chenye urefu wa futi 10 kwa 10 ambapo wafungwa zaidi 100 wanalala. Hili ni jambo linalo dunisha maisha ya binadamu. Hii ni kwa sababu binadamu zaidi ya 100 hawapaswi kulala ndani ya chumba chenye ukubwa wa futi 10 kwa 10. Sisi Maseneta tuliguzwa moyo na tukachanga takribani Kshs80,000 kulipa faini ya baadhi ya wafungwa hao ili warudi nyumbani. Wafungwa 15 waliachiliwa hapo hapo baada ya kulipa hiyo faini. Zile pesa kidogo za *per diem* ambazo tulipewa juzi zote zilibaki hapo.

Lazima mahakama ziwe macho kwa sababu utapata unawekewa dhamana kwa makosa madogo ambayo familia yako haiwezi kupata. Wale mabwanyenye wanaoshtakiwa na makosa makubwa wanapewa bondi ndogo ambazo wanalipa kwa urahisi. Masikini wanao shitakiwa katika makama nyingi wanapewa bondi kubwa ili wakose kulipa na warudi gerezani.

Jambo lingine ambalo tuliona ni kwamba pia mahakimu wana utepetevu mkubwa katika kuendesha kesi zao. Utapata zaidi ya kesi 100 katika gereza hili hazina tarehe za kusikizwa. Ikiwa huna tarehe ya kusikizwa, ina maana kwamba unakaa ndani lakini hujui ni lini utatoka. Iwapo umefungwa, unajua unatumikia kifungo cha miaka miwili kisha uende nyumbani. Kama unangojea kesi, hujui utatoka lini.

Bw. Spika, kuna mambo ambayo lazima mahakama ifuatilie. Hatuwezi kuwa na Katiba mpya inayolinda haki za Wakenya ilihali wale wanaotakikana kulinda hizo haki wanazikanyaga na kuendelea kunyanyasa Wakenya wasio na hatia.

Mwisho ni kwamba tume elezwa kipande cha ardhi cha jela hii ya Kitui kimenyakuliwa na mabwanyenye wa kibinafsi. Ukiwa ndani ya jela, utaona jengo lenye ghorofa tano linaloongalia ndani ya jela. Haipaswi kuwa hivi kwa sababu ya usalama wa jela hilo na pia wafungwa kwa sababu hilo jengo linazidi ghorofa nne na ukuta wa jela ni ghorofa. Kwa hivyo usalama wa wafungwa na wale waliomo katika jela hiyo umo hatarini kwa sababu hatujui ni nani atakayekuja katika jumba lile linaloangalia ndani ya jela.

Kama Kamati ya Haki, Sheria na Haki za Binadamu, tutarudi kuangalia mambo haya kwa undani zaidi. Hata hivyo, maswala kama haya hasa mahakama na ofisi ya Mkurugenzi Mkuu wa Mashtaka lazima wawe *proactive* na kuhakikisha kwamba

wananchi wanapata haki zao. Katiba imewalizimisha kulinda haki za wananchi. Kwa hivyo mwananchi yeyote hatakiwi kudhulimiwa kwa sababu yuko gerezani.

**The Speaker** (Hon. Lusaka): Sen. Pareno and then Sen. (Prof.) Kamar.

**Sen. Pareno:** Thank you, Mr. Speaker, Sir. I was part of that team that visited the prisons. We saw very interesting things in that prison.

First of all, I applaud the Commander of the Prison and all those officers serving the people in that prison. We found a very interesting relationship between those officers and those that are remanded. We had songs and dances such as the one man guitar. We had entertainment and you could clearly see the relationship between the officers and those that have been remanded there is very good in terms of correctional services. It actually reflected an institute that is ready to correct these people and not to punish them as such. That is one positive side. However, we had so much shocking revelations.

Out of the over 700 convicted people in that prison, most of them are either rapists or convicted of either murder or on trial for murder cases. This is alarming because if we were told out of those that had been convicted of murder or were facing murder charges were about 174, about 277 of robbery with violence, then a majority of the remainder were people facing rape charges inclusive—

**The Speaker** (Hon. Lusaka): Do you want to be informed by Sen. Mutula Kilonzo Jr.?

**Sen. Mutula Kilonzo Jr.:** Mr. Speaker, Sir, I thought I should inform the Senate that part of the strange thing about the people facing murder in Kitui is that in one case we have six members of one family who are facing murder of the same person. We have another case of a mother, the daughter, a two year old child and their father in prison and many others.

**Sen. Pareno:** Mr. Speaker, Sir, I was going to say just that. Out of those cases you have an entire family in that prison there is a women's side and a man's side on the other. This side you have the woman of the same family and the men on the other. In fact, when we asked them to raise their hands so that we see how many of them have relatives on both sides, over 20 raised their hands indicating that they had relatives on both sides of the prison. Therefore, something has to be done. I briefed the Senator for this county. There is something that needs to be done either some moral decay or something happening which is not right.

You cannot have a prison of 700 people and out of those, the majorities are either murderers, rapists or alleged murders or rapists so that we do not condemn those who could be innocent.

There is a very serious intervention required, maybe societal or cultural. I know there are a lot of interventions like for the Maasais, the moment you fight you do not reach the police station. You are punished there and then, you compensate immediately and there is reconciliation in the family. There is need for total reconciliation in as far as what we saw in this particular prison.

Mr. Speaker, Sir, apart from that, there is the issue of congestion. The prison hall is supposed to hold about 400 people, it is holding over 700. There are so congested in such a way that it cannot be healthy.

This Committee should go ahead and look at why we have so much harsh sentences from the courts. All of us were lawyers as we were standing there. We found those sentences to be too harsh and we ended up releasing so many using our own funds,

over 50 as a way to intervene, some of them very desperate cases. I saw a child of about six months to one year with the mother, and suffering with the mother because of some of these things. This urgently needs a lot of intervention and will definitely make a difference now that we have come to Kitui.

**Sen. (Prof.) Kamar:** Thank you, Mr. Speaker, Sir, for giving me a chance. First, I wanted to join you in welcoming the students in the public gallery. They are streaming in and out. We want to thank and encourage them to work hard in school. Among the students here, are students from St. Michaels School for the Deaf, a school we visited yesterday as a Committee and I would like to wave at them.

It is a wonderful school, a school that has really brought together students and changed their lives forever. We also visited Mulango VTC yesterday. I would like to encourage the students who are here, that those who do not go for universities or colleges should be encouraged to go for this because this county has some of the biggest village polytechnics that we have in the country.

It was very impressive except for the fact that we must encourage the county government to hire instructors for them. The school has only five hired instructors by the Government out of the 16. These children have great opportunity. Today, we paid a courtesy call to South Eastern Kenya University (SEKU), a beautiful university which is built on 10,000 acres. There is no such university in this country with magnificent buildings and wonderful professors.

We would like to encourage these students that the sky is the limit. Even before they think of going to Nairobi, there is one around. I encourage the students to work hard.

Finally, I would like to thank the Committee. This joint Committee has done us proud through the day as we shared lunch because they were affected personally and they have been sharing the impact they have had and the money they had and the payments to make sure that people were released from this prisons. We want to congratulate this Committee because they have really left a mark on our behalf in this Kitui Remand.

The most important thing was to bail out people who were stuck because of Kshs2,000 and Kshs5,000. That has triggered another 100 being released. I congratulate the Committee for making us proud.

**The Senate Minority Leader (Sen. Orenge):** Thank you, Mr. Speaker, Sir. I am very happy to hear this report from the Committee on National Security, Defence and Foreign Relations and the Committee on Justice, Legal Affairs and Human Rights. Somebody said that you came here to eat *mandazis*. If eating *mandazi* makes sure that you can do so much good to people of this area, please, eat more *mandazis*.

The same person was saying that you are sitting on a golden chair worth Kshs50 million. The people of Kitui will look at that chair and they will know its value.

We are so modest and accepted to come not in a new chamber; we are just using the Chamber of the County Assembly as we found it in order to understand the problem of this county Assembly who are partners in the legislation. However, this topic we are talking about is very critical. Probably, I am saying this to that man in the National Assembly. There used to be a Minister for Home Affairs in charge of prisons who was very powerful. Somebody came with a statement like the one which was made by Sen. Mutula Kilonzo Jnr. complaining about conditions in prisons. That is when he was Minister for Home Affairs in charge of prisons.

He had his problems with the Government of President Moi. He was sacked, arrested and charged with failing to pay NSSF. He was given a summary trial; he was not allowed to even have one more day. When he went to court, the magistrate told him that he had been saying that courts were delaying cases. So, his case must go on. He had no good defense thus he was convicted, *alipoenda* in prison, the moment he removed his shoes and clothes, he was told *wembe uko hapa na akanyolewa*.

When I met Mr. Oletiptip, who was then Minister for Home Affairs, a week after somebody had been kind enough to pay his fine, he was wearing an amulet. Mr. Oletiptip told me: "Orengo, *Mungu yuko*. This was from a very powerful Minister.

Officers of institutions of this country, particularly those in the administrative justice, should know that some of the things in the law like bail serve a purpose. Some people think that when people are locked up, denying them bail is achieving something.

I was told by the group that went to the prison that there is an individual who has been locked up for three years because he cannot pay Kshs3,000. If the family cannot raise the money, that is an indicator of poverty. Some people say that Kenya *inaendelea* yet we have a Kenyan who has been in prison for three years because they cannot afford Kshs3,000. If Members of the Committee did not visit the prison, he would have suffered for one or two more years. The late Kenneth Matiba had climbed Mt. Kenya and Mt. Everest, but he was imprisoned.

I plead that we have a positive approach like the Committee did. We should have a prison system that emphasises reforms, so that people who are taken to prisons go through a reform process and come out as people who are ready to play their part in building the nation. We should not make prisons places where people go and expire. I was imprisoned at Kamiti Maximum Security Prison and Naivasha Maximum Prison and I know what being in prison means. I do not desire for anyone to go there particularly if they have not been taken through a proper judicial process.

Mr. Speaker, Sir, I may not have any other time to say anything. The proceedings we have had in Kitui have been very productive because Members went to the prison. Some went to inspect roads and schools and I think Sen. (Dr.) Musuruve will request a statement. The County Public Accounts and Investments Committee (CPAIC) invited officers of some institutions although the governors did not come. Governors should know that it is better to be questioned in the presence of their people and not in Nairobi. If they are doing well, they should defend themselves where their people are and not in Nairobi because we brought our services to them.

As I conclude, I am glad that Sen. Dullo who is the Deputy leader of Majority left Nairobi and came here to defend this House. We heard what she did yesterday and we are very happy with her. There is somebody in the National Assembly that if allowed to lead the House for another two or three years, then Parliament will die. They are charlatan accusing the Senate that we said they are an appendage of the Executive, but that is not true. It seems they know, but I have never heard anybody say that.

We are stronger and we will leave Kitui tomorrow or Saturday having done good work. Jesus Christ requires us to visit those in prison and Senators went to see people in prison. Some went to Church while others went to *harambees*.

I thank you.

**Sen. Dullo:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I also wish to thank Sen. Mutula Kilonzo Jnr. Just to respond to the Senate Minority Leader, we



have to defend the Senate and we will ensure that we do that. I would like hon. Members to know that we have many enemies out there. Therefore, we have to stand together and defend this House in order to do what we are required to do.

Mr. Speaker, Sir, in the previous Senate, I led an *ad hoc* committee to look into the state of prisons and issues affecting prisoners. We spent a lot of taxpayers' money even to travel out of the country. We went to Sweden and also looked at the status of prisons in other European countries. We came back with recommendations that we wanted implemented back at home. Unfortunately, before we tabled that report in the House, we went to elections. I know the time of the committee has lapsed. If we are given an opportunity, we have a good report that can help this country in terms of transformation of prisons. That is something that we will be proud of as the Senate.

I did not accompany the Committee that visited the prison yesterday because of another engagement. However, having been a convener when I worked at the Prisons Department as a commissioner for the Kenya National Commission on Human Rights (KNHCR), prisons reforms is dear to my heart. I have traversed this country visiting many prisons and I can report that prisoners are living in a pathetic situation.

One time I attended a conference in Ghana where Ministers and leaders from various countries were present. One Minister who is now retired made a confession. He said that when he was Minister in charge of Home Affairs, he never wanted reforms. However, immediately he left the Government, he was arrested and taken to prison. He regretted and wished to be back to his position to introduce reforms and make prisons better. That means that even us here could be in prison tomorrow. Therefore, we need to take care of prisons in our country.

The Act itself has not been reviewed over the years. Even with the new Constitution in place, things are still the way they used to be. We have many facilities in prisons that are not even utilised. We have many hectares of land in this country that people just grab. If those farms are utilised properly, it will be possible to feed this country without asking for relief food or importing maize from other countries.

It is like the poor are the ones who serve sentences because the rich can pay money behind closed doors and get away with crimes they commit. You will find children below 18 years mixed with hardcore criminals in the same cells. By the time they come out, they have learned the same habits. The law does not allow them to be mixed with the hardcore criminals. That is a big problem that this country needs to deal with.

I know if we bring that report, Members of the National Assembly will say that that is their mandate. I hope that will not stop us from making that report useful to this country. I hope we will be given an opportunity to make reforms in our country if we are serious about ensuring that the rights of people in this country are protected.

I thank you.

**The Speaker** (Hon. Lusaka): Hon. Senators, let me also join you in congratulating Members of that committee for an excellent job. If anybody doubts what we are doing in Kitui, I think they need to re-examine themselves. You sacrificed and we have been told that people have been released. I thank you for that.

Before we go to the next Statement, I also want to use this opportunity, on your behalf, to thank the people of Kitui for the warm reception they have accorded us. It is because once I leave, I do not think I will be back here maybe until after 46 years, if I

will be alive. It has been a success and we will continue doing a good job on behalf of the Senate.

Sen. Wambua, tell the people of Kitui County that we are grateful. I can see most Members of the County Assembly (MCAs) are here. We also have visiting schools and all who have come to listen to proceedings of this “Upper House”.

Let us have the next Statement issued by Sen. (Eng.) Mahamud.

PASSAGE OF ANNUAL BUDGETS AND APPROPRIATION  
BILLS BY COUNTY ASSEMBLIES WITHOUT  
REFERENCE TO CONSTITUTIONAL PROVISIONS

**Sen. (Eng.) Mahamud:** Mr. Speaker Sir, I rise pursuant to Standing Order No. 51(1) (a) to make a Statement regarding the budget process at the county level of government.

As this House is aware, the Division of Revenue Act, 2019 and the County Allocation of Revenue Act, 2019, were assented to by the President on 17<sup>th</sup> September, 2019 and 18<sup>th</sup> September, 2019, respectively.

In previous financial years, the Division of Revenue Act and the County Allocation of Revenue Act were enacted before the beginning of the financial year in which they are to apply. This year, however, these two vital pieces of legislation will now come into effect at the end of the first quarter of the financial year in which they are to apply. This has had adverse effects on the budget-making process at the county level of government and in particular the ability of counties to prepare their annual budgets and appropriation Bills.

Mr. Speaker, Sir, Article 218 (1) (a) of the Constitution provides that-

“Division of Revenue Bill shall divide revenue raised by the national Government among the national and county levels of government in accordance with the Constitution.”

Further, Article 218(1) (b) provides that-

“A County Allocation of Revenue Bill shall divide among the counties the revenue allocated to the county level of government”.

The enactment of these two pieces of legislation, therefore, forms the basis upon which the two levels of government both the national Government and the county governments prepare the relevant legal instruments for expenditure of public funds.

In the case of county governments, Article 224 of the Constitution provides that-

“On the basis of the Division of Revenue Bill passed by Parliament under Article 218, each county government shall prepare and adopt its own annual budget and appropriation Bill in the form, and according to the procedure, prescribed in an Act of Parliament”.

Therefore, the consequence of the delayed passage of the Division of Revenue Bill and the County Allocation of Revenue Bill is that county governments were by law, precluded from preparing their own annual budgets and appropriation Bills. The only remedy that was available to county governments was as contemplated under Section 134(1) and (2) of the Public Finance Management Act.

However, the provisions of Section 134 of the Public Finance Management Act contemplate that the option of votes on account would arise where the Division of

Revenue Bill and the County Allocation of Revenue Bill have been passed and for whatever reason a county assembly has not passed an Appropriation Bill. The Section does not contemplate the situation we found ourselves in where the Division of Revenue Bill had not been passed and the national revenue had not been divided between the two levels of Government.

Mr. Speaker, Sir, it has, however, come to our attention that during the long drawn process of the passage of the Division of Revenue Act and the County Allocation of Revenue Act, some counties purported to pass their annual budgets and Appropriation Bills in the absence of these two vital Acts. This was an unlawful act on the part of any county assembly and an egregious disregard for the budget process as contemplated under the law.

It must be remembered that Article 10 of the Constitution provides for the national values and principles of governance that bind all State organs, State officers, public officers and all persons whenever any of them applies or interprets the Constitution, enacts, applies or interprets any law or makes or implements public policy decisions. One of these binding principles is the rule of law which is underpinned by the duty to uphold and respect the provisions of the Constitution. Any county government that purported to pass their annual budget and Appropriation Bill in the absence of the Division of Revenue Act, 2019 and the County Allocation of Revenue Act, 2019 did not only flout the provisions of Article 224 of the Constitution, but also undermined the rule of law and failed to adhere to the national values and principles of governance as set out in the Constitution.

It has also come to our attention that the Controller of Budget may have authorized the release of funds based on these unlawfully enacted appropriation laws by county governments. If this is the case, it behooves me to remind the Controller of Budget that all actions taken by State and public officers must be informed by the provisions of the Constitution and any relevant applicable law.

In this instance, the Constitution unequivocally requires any county government to await the passage of the Division of Revenue Bill by Parliament before preparing their annual budgets and Appropriation Bill. It is, therefore, a moot point that any budget prepared by any county government before the passage of the Division of Revenue Bill is null and void and should not have formed the basis of any authorization of release of funds by the Controller of Budget.

Mr. Speaker, Sir, to my great consternation and to our surprise, it has been reported in the dailies of national circulation that the National Treasury released Kshs50 Billion to counties after the assent to the Division of Revenue Bill, 2019, but before the enactment of the County Allocation of Revenue Bill.

While the veracity of these reports is yet to be ascertained, I would like to reiterate that the budget-making process in the devolved system of government is a two-step process. There is the vertical allocation of nationally raised revenue between the national government and county level of government and the horizontal allocation of the counties' share of revenue between the 47 counties with an attendant approval of a Cash Disbursement Schedule under Section 17(7) of the Public Finance Management Act.

The enactment of the Division of Revenue Bill is, therefore, not the final step in this process as it pertains to county governments. The enactment of the County

Allocation of Revenue Bill and approval of the Cash Disbursement Schedule are indispensable steps in the process.

A purported transfer of funds by the National Treasury in the absence of the County Allocation of Revenue Act and an approved cash disbursement schedule would, therefore, not only be irregular but also a disregard of the role of the Legislature in determining the allocation of revenue and in particular, the role of the Senate as the protector of the interests of the counties and their governments. This is a trend that was witnessed during the protracted process of the passage of the Division of Revenue Bill, 2019, and its effect on the objects and purposes of devolution should be of great concern, not only to this House, but to the entire nation.

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

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

In light of the above, I would like to-

(a) Urge the Controller of Budget to issue a circular to all county governments to prepare their annual budgets and Appropriation Bills;

(b) Urge counties, as a matter of urgency, to prepare their annual budgets and Appropriation Bills as contemplated under Article 224 of the Constitution;

(c) Direct the National Treasury to prepare and submit the Cash Disbursement Schedule in the shortest time possible and as contemplated under section 17(7) of the Public Finance Management Act; and,

(d) Urge this House to expedite the consideration and approval of the Cash Disbursement Schedule, when it is submitted to us, as contemplated under section 17(7) of the Public Finance Management Act.

I thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Since it will be transmitted to the assemblies we do not have to worry about contributing to it at this stage. We will go to the next Statement which is by the Senator of Kitui County, Sen. Wambua. Again, I will limit discussion on this one so that we can finish the Statements.

**Sen. Wambua:** Thank you, Madam Temporary Speaker, for giving me this opportunity. I will not rise again. So, if you allow me, I seek your indulgence to say a thing or two about this visit.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Do you have a different Statement that has not been approved? Could you read the one you have then we consult on the other one when you finish because we still have two Statements after yours?

#### TERRORIST ATTACK ON AIC CHURCH, GARISSA

**Sen. Wambua:** Madam Temporary Speaker, I rise pursuant to Standing Order 48(1) to seek a Statement from the Standing Committee on National Security, Defence, and Foreign Relations regarding the terrorist attack at the African Inland Church (AIC) in Garissa on 1<sup>st</sup> July, 2012, where 13 persons died and over 60 persons were injured, most of whom were from Kitui County.

In the Statement, the Committee should:-

- (a) provide details of the victims of the attack, indicating those who lost their lives as well those who suffered injuries;
- (b) explain what measures have been made in an attempt to apprehend the perpetrators of the act as well as to ensure that a repeat of the same does not happen;
- (c) outline what measures have been put in place to ensure the survivors of the attack are offered support in terms of counselling and rehabilitation in view of the trauma they suffered following the incident; and,
- (d) explain the steps taken by the Government to ensure families of the deceased and those injured in the attack are compensated.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you, Senator. As I said, I will limit time. I will allow Sen. (Dr.) Musuruve to read and not make a comment in two minutes. This is because the Committee on Education will give us a full report in Nairobi. Please, take two minutes.

While we are waiting on her, I would like to make a Communication.

*(Interruption of Statements)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM CENTRAL PRIMARY  
SCHOOL, KITUI COUNTY

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

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

*(Applause)*

*(Resumption of Statements)*

Sen. (Dr.) Musuruve, read in two minutes.

### SPECIAL NEEDS EDUCATION

**Sen. (Dr.) Musuruve:** Thank you, Madam Temporary Speaker for giving me this opportunity to raise a Statement on Deaf Education.

I rise pursuant to Article 47(1) to make a Statement of general concern on special needs education. Issues of special needs education are issues of great concern nationally and internationally. Education is supposed to be an equalizer, and even so, it is seemingly difficult for children with disabilities. This is because the playing field is not level.

Deaf children, specifically, begin their journey to school without the dominant languages of instruction, that is, English and Kiswahili. This has a great impact on their performance in subjects taught and examined in English. The Sector Need Policy that was launched by the President, His Excellency Uhuru Muigai Kenyatta reveals that there are gap areas in deaf education. It shows that there are no instruction materials for teachers and learners.

I commend the Standing Committee on Education for filling this gap on Tuesday at Kitui School for the Deaf by distributing materials and overseeing on the infrastructure of the school. The Committee on Education distributed about 480 books to about 15 institutions that were there.

I further thank the Committee on Education for launching these books in the first Senate *Mashinani* Sittings in Uasin Gishu County. I thank my fellow Senators who also donated a number of books while we were at the Senate *Mashinani* Sittings in Uasin Gishu.

I would like to bring to the attention of the Senators that there are still many more copies of these instruction materials that I endeavour to continue donating through the Senate Committee on Education in all our *Mashinani* activities in this Twelfth Parliament.

I would also like to bring to the attention of this House that I have authored *Lugha Ishara Yarahisishwa*, both teachers and learners copies with the Kenya Institute of Curriculum Development (KICD). I hope that KICD will move with speed to evaluate these books, so that they are launched by the Senate for the purpose of distributing to learners.

**The Temporary Speaker** (Sen. (Prof.) Kamar: You have 30 seconds.

**Sen. (Dr.) Mususruve:** Madam Temporary Speaker, I would like the Senate to know that we were able to get information about the problems that children with special needs face. Some of the problems address the issues of infrastructure, lack of resources, inappropriate teachers, lack of capitulation and delayed capitulation.

I thank the Standing Committee on Education for giving me a platform to come up with a Bill on sign language, which Sen. (Prof.) Kamar and I, came up with. It has gone through the First Reading and is awaiting public participation.

I call upon the entire nation, stakeholders, the KICD, the Ministry of Education and all stakeholders and researchers to come in and enrich this Bill.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you very much. Please, we have very little time on our hands. We will have a full report from the Committee on Education.

Sen. (Dr.) Zani, you have a minute.

**Sen. (Dr.) Zani:** Thank you, Madam Temporary Speaker. I wish that Sen. (Dr.) Mususruve had had more time. This is because yesterday we visited deaf and blind children. These issues are serious. When you see them face to face, you begin to see where the delinking might be.

One of the areas of delinking is the responsibilities that had been given at TIVET level. At the school for the deaf, we were informed that for certain responsibilities, there is no allocation as to whether they should be handled at the national level or county level. When they have a problem they take it to the Ministry of Education and are told to take it to the county. This pushing to and fro has caused a lot of problems

even in terms of funding. These children are already disadvantaged in one way, or the other. It was really sad to realize that the little financial assistance meant to go to them sometimes does not reach them.

The other problem was the Sector Policy Paper that was launched. This does not seem to be implicated. I know that we will tackle this at the Committee on Education. However, it is important to pinpoint these two issues, so that we bring them out as a key deliverable that we need to think about for the Kitui case that we saw yesterday.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you, Senator. We are aware that the Committee on Education will look at the whole report globally and present everything about the trip they have made.

Allow me to call the next Statement by Sen. M. Kajwang’.

#### ACTIVITIES OF THE CPAIC IN KITUI COUNTY

**Sen. M. Kajwang’:** Madam Temporary Speaker, I intent to make a very brief Statement regarding the activities of the County Public Accounts and Investments Committee (CPAIC) here in Kitui. We had scheduled to interrogate the books of accounts of three counties while here in Kitui.

On Tuesday, 16th September, 2019, we had scheduled to interrogate Kitui County Governemnt. With the wisdom of the leadership of the House, the appoinmtnet with Kitui was deferred. In place of Kitui, the Senate invited the Governor of Nyeri. The Committee considered that situation and found it to be inappropriate for us to come to Kitui without discussing issues to do with Kitui. We, therefore, requested the Governor of Nyeri to go back to Nyeri, so that we could give him another date.

We took the opportunity to meet with the Public Accounts Committee of Kitui County Assembly. It needs to be on record that the Governor of Kitui did not appear because we did not issue proper invitation to her.

On the 17<sup>th</sup> which was a Wednesday, we were scheduled to meet the Governor of Machakos County. He sent a letter to the Committee where he indicated that he suspected that the Senator of Machakos County has mobilised goons to heckle and humiliate him when he appeared before the CPAIC.

Madam Temporary Speaker, we considered the letter and found it quite disrespectful to the institution of Senate and to the Senator of Machakos County. The Committee, therefore, resolved to issue summons to the Governor of Machakos to appear before it on 30<sup>th</sup> September, 2019, and the venue shall be the Machakos County Assembly.

Today on the 18<sup>th</sup> of September, 2019, we were scheduled to meet Makueni County Governor. Makueni is one of those counties that received an unqualified opinion. In the work of oversight, it should not just be about doom and gloom. Sometimes we are looking for success stories, so that others can learn from them. Unfortunately, the Governor of Makueni did not appear despite sending his written submissions. Those in the know tell me that the Governor might have been around this town.

The Governor had written a letter to the Committee excusing himself from appearing, saying that he had to travel to the USA for an appointment despite the fact that the invitation by the Senate Committee went out in the Month of June.

The question that runs in our minds is whether this is a conspiracy, or a coincidence that the governors of the three counties in Ukambani region have chosen not to appear for a variety of reasons.

Secondly, governors must also know that appearing before the Senate is not a favour to the Senate, but a duty and part of their job description. Thirdly, we have had engagements with the County Public Accounts and Investment Committees of the County Assemblies of Kitui, Makueni and to an extent Machakos. We must encourage the county assemblies to exercise their function of primary oversight because they have all the time in the world to look at those books. However, the situation seems to be quite deferent, particularly for Kitui County. They are not up to date in their consideration and we believe that they will learn quite a bit from the experience we have had with them even though that experience has not been very colourful because the Governors chose not to appear.

Finally, Madam Temporary Speaker, the Committee would wish to move the House to agree with it that the next time we are having Senate *Mashinani* anywhere else, the governor of that county should not be excused. The Governor of Kitui indicated that she was busy hosting the Senate. Since I came to Kitui, I have only seen her at the Speaker's Gallery. I have not seen her here or in meetings. I did not see her at dinner at the Senator's home. Therefore, I am wondering at what point she was hosting Senators for her to be so busy that she cannot appear before the Senate to account.

It will set a very dangerous precedent, if governors are absent when we are having these events. When we were with you in Uasin Gishu County, we had a wonderful engagement with the Governor, the governors of West Pokot and Baringo counties. Let us not send a message that governors can choose when they want to appear and when not to. One of the governors wrote to us suggesting a suitable date and place for our meeting. It is not for them to choose; they have 365 days to spend the Kshs316 billion that we approved on Tuesday. We are just asking for one day out the 365 days for them to come and account. Let us not excuse, or exclude host governors from appearing.

Madam Temporary Speaker, finally, I wish to appreciate the Members of the County Assemblies that we have met with. We hope that will have some learnings. I also wish to appreciate other institutions that have been with us, for example, the Ethics and Anti-Corruption Commission (EACC) and the office of the Auditor General. There are certain public Petitions that we have handed over to the EACC.

Due to the pressure of time, the Committee shall make a more detailed report, but it was important that we bring this update to the House while we were in Kitui.

Thank you, Madam Temporary Speaker.

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

Proceed, Sen. Omanga.

**Sen. Omanga:** Thank you, Madam Temporary Speaker. It is so unfortunate that governors from this region of Ukambani have mastered the art of public relations. It was the only opportunity for the Governor of Makueni County to come and use the platform today with the CPAIC to show us what other counties have been going to Makueni to benchmark about. This is because he had an unqualified opinion in his accounts. We are now questioning the audit report. We were even advising whether we can have a special audit for Makueni County because I do not see why a governor with an unqualified



account, with an A; if he was a student doing exams he would come and start hiding and fail to discuss his accounts.

You remember when went to Uasin Gishu County for Senate *Mashinani*, the Governor for Uasin Gishu county actually pleaded, so that he could appear. Governors from that entire region appeared in the CPAIC Committee. We discussed their accounts and they were so grateful that they had a lot to learn.

It is unfortunate that this region of Ukambani is one those marginalised areas we have in this country. It is an area where they are still talking about *mwolio* which is yellow maize as relief food. It is a region where they are talking about water. People are put into office and given public money, but they are not able to come and account for it. We gave them money publicly here the other day, but now they cannot come in public to account for it. This House and the Committee needs to take stiff measures to all other governors who do not want to account for public money. They are behaving as if this money is their pocket money and yet it is public.

**The Temporary Speaker** (Sen. (Prof.) Kamar): I will give one minute to Sen. Olekina and Sen. Mutula Kilonzo Jnr. If you take one minute each, in five minutes I will have covered everybody.

**Sen. Olekina:** Madam Temporary Speaker, the issue of accountability is something very important and we must demand for it. There is no reason as to why we should sit here until 9.00 p.m. fighting for money to go to county governments and yet governors are not willing to account for it. Shame on them!

We want to encourage the citizens of this country; of each and every county, to come to our Committee of CPAIC and submit petitions. It was embarrassing that the auditors would issue an unqualified audit opinion yet, the devil is in the details. When you look at it, it is a shame. When I received this dossier, I made it purposely my mission to visit that county. To my surprise, whatever was written in that dossier was vividly. You could see poles and poles, yet millions and millions of shilling had been used to argue that certain projects had been done. It is embarrassing. It makes me feel very sad.

*(The red timer went on)*

Madam Temporary Speaker, please allow me 30 seconds. It makes me feel very sad that I sat in the Mediation Committee. I argued as to why we should send more money to counties because we cared about the people. However, those people who are tasked with the fiduciary responsibility think that it is their time to line their pockets. How else are we ever going to progress in this nation and yet those people who are tasked with the most basic responsibility of ensuring that the poor people get water cannot even account for a penny? When they are called to account for public money, they run away.

I fully support this Statement. I want to tell those governors out there that this House will take them to task.

Thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Proceed, Sen. (Dr.) Langat. You have one and half minute. Let us be brief because the Chairperson of the Committee is going to give us a more elaborate report.

**Sen. (Dr.) Langat:** Madam Temporary Speaker, I will be very brief. I want to say that this is very ridiculous. We have been moving all over this county. When we went

to the hospitals, it was very sad to note that there is no medicine. We were in a certain polytechnic with the Chairperson and we realised that three students were sleeping on one bed. It is so congested.

I think that prison is better than what we saw. They have never received anything from the county government and yet we have been giving out money from the Senate to support Early Childhood Development and Education (ECDE) and vocational training centres.

We hear that the governors are dilly-dallying and failing to account for the money we have given them and yet their counties are suffering. Some hospitals are being closed because of lack of medicine and equipment.

We want to tell the citizens of Machakos and Makueni counties that their governors have failed to account how they have been spending money to given to them on your behalf by the national Government. The guilty ones are always afraid. They have run away from the truth, but we shall follow them and bring them to Nairobi. Why should they fear goons? Goons have been there all the time. Some of them have been organizing and paying goons. That is a shame! We want to tell the citizens of these great counties that we shall follow up them on your behalf, until they account to the letter, the money we have been giving them.

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

Sen. Halake, you have one and a half minutes.

**Sen. Halake:** Thank you, Madam Temporary Speaker. This week we have been talking about devolution being under attack. A story is told of an army that was continuously losing the battle. When they looked, they told themselves: "We are the problem". In this case, the people that are supposed to be championing for devolution are the problem. If devolution dies today, it is because our governors have killed it.

Let us forget apportioning blame somewhere else, both in terms of sub-optimal use of our resources and also avoiding accountability. I would like to tell the people of Ukambani: Your governors did not snub the Senate, they snubbed you. We were not doing this for ourselves, but for the people of Ukambani and the people of this country. By snubbing the Senate, what they did in essence is snub their own people. Therefore, they should take note they were snubbed by avoiding accountability.

I rest my case, but it is very disappointing to think that if devolution dies, it is because the people that are supposed to defend it have chosen to kill it.

**Sen. Seneta:** Thank you, Madam Temporary Speaker. I also want add my voice on this by saying that we have really struggled to add monies going to counties. It is very sad for the people we are giving the money not to be able to tell the citizens of their counties, how much they are using and what projects they are going to put the monies in.

I want to encourage the county assemblies of Makueni, Machakos and Kitui to do their oversight roles very seriously. When we visited Mulango Vocational Training Institute, we realised that the classes are not friendly. The college is not attractive. They have never received any funding from the county government. This is the same case with St. Michael Primary School, which we visited. They have never been funded by the county government yet these monies are intended to go to those institutions. These monies are supposed to be distributed by the same CEOs who do not want to appear before Senate to say what projects they are undertaking.

*(Interruption of debate on Statement)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM KYANDONI MIXED  
SCHOOL, KITUI COUNTY

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

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

Thank you.

*(Resumption of Statement)*

**Sen. Wambua:** Thank you, Madam Temporary Speaker. I will speak for two minutes. I will begin by welcoming those students from Kyandoni Mixed School. That is my village school. I urge them to follow the proceedings and purpose to work hard in school.

Madam Temporary Speaker, on the issue of the report by Sen. M. Kajwang', I will shoot straight. The genesis of the problem was the decision to exclude Kitui County from the programme. Arising from that problem, the two other governors have taken a cue from that; they have decided that they will not appear before the CPAIC. This forms an axis of impunity in this region.

The decision by the governors not to appear before the Senate is not the decision of the great people of the lower eastern region. It is a decision of three people who think they can run and hide from accountability. I have spoken to the Chairperson of CPAIC and I have gotten the assurance that his Committee will go back to Makueni, Machakos and Kitui. They will hold the governors to account in the assemblies of those counties in the presence of the public and the MCAs.

Lastly, we are talking about money going to technical training institutes and ECDEs. In this county, the budget that the Executive purports to be using they have allocated Kshs380 million to the education department for salaries and only Kshs10 million for development.

**The Temporary Speaker** (Sen. (Prof.) Kamar): I will give you one more minute because you are the host.

**Sen. Wambua:** Thank you. How do you have development with Kshs10 million in an entire county for education and ICT? It is a shame. It must be said as it is. The money we allocate to counties does not belong to governors. It belongs to the people in those counties. This misconception that somebody can do as they please with public money - as a Senate of the Republic of Kenya - we must bring this attitude to an end. The best way of doing it is to hold these governors to account.

I have asked the CPAIC to make sure that the law and the Constitution is followed to the letter. This includes, imposing fines and even jail sentences to these

governors. We are not here to joke and play around with them. We are here to serve the people of this region and this Republic.

I support.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you very much. Before I ask Sen. Mutula to conclude now that his Governor did not appear, I have been accused that I left one corner.

Sen. Were, you may proceed.

**Sen. Were:** Thank you, Madam Temporary Speaker, for the opportunity. Having listened to Sen. M. Kajwang' the Chairperson of CPAIC, I now understand why Sen. Malalah was addressing his Governor, Mr. Oparanya, directly. We need to hold these governors responsible for these funds. This is so that they know that when we sit here until midnight trying to allocate these funds to them, it is not for nothing. We are putting our hearts into it and we are going to continue holding them accountable.

I thank the CPAIC for standing firm. When they go to them in the county assemblies they should keep the heat up.

**Sen. (Dr.) Zani:** Madam Temporary Speaker, I want to emphasize the provisions of Article 118 of the Constitution on public participation. We need to emphasize on this over and over again. The audit process is part of public participation where you can openly say how much money you got and how you spent it for everybody to see. There were stalled projects and no one was able to explain them.

The governors are not going by the provisions of the Fourth Schedule on how they should use the money within the counties. The provisions on how to use that money are clearly indicated in the schedules. You will find governors going out of their way to do different things and the ECDE ends suffering as a result. The key word is public participation. Let us hold them accountable and do it in public.

Madam Temporary Speaker, we should emphasize to the citizens that they are in charge and that they should participate. The governors should account to them how they have spent the money.

**Sen. Wetangula:** Madam Temporary Speaker, I listened to Sen. M. Kajwang' giving us the hopeless story of how his Committee has been treated. The message must go out loud and clear that accountability for the use of public funds is not an option to anybody. Anybody who does not want to be accountable has no business holding public office. It is as simple as that.

When the Senate was pushing for allocation of resources to the counties, the governors pretended to be with us. However, when it appeared that the extra money was not forthcoming, they ran back to the Executive and said that it was not them pushing for more money, but the Senators and that they were ready to take whatever they would be given. It is the governors who make the President think that he has money to give to counties because they go to prostrate before the Executive and cut very awkward figures of themselves pretending that devolution is about benevolence from the national Government to the counties when it is not.

Madam Temporary Speaker, I would like to urge Sen. M. Kajwang' and his Committee that they have teeth in the Constitution. Article 125 is very clear. The CPAIC should give governors summons like the High Court does with severe penal consequences where there is failure, so that they know this country means business. At every election time, we elect 47 governors who come in as poor people with no homes,

cars or property. However, after five years, the number of billionaires in the country increases by 47.

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

Kindly proceed, Sen. Orengo.

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Speaker, when the Chairperson of the CPAIC was talking I picked that there was governor who wrote a dossier and after submitting it, he said he had nothing more to add. That is a governor who is completely misled. The powers that have been cited by Sen. Wetangula under Article 125(1) talks about Parliament or any of its committees having the powers to summon any person; and that refers to even the President.

The CPAIC can summon the President because looking at the definition of who a person is from all the statute books; that person is a biological person. The Committee can call any person of any nationality to appear for purpose of giving evidence and providing information. It is not the information that they choose to give, but it is the information that a Committee of Parliament wants from them or that particular governor. I, therefore, urge the CPAIC to use some teeth and bite hard.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, for a long time I did not suffer from any illusions about the conduct of governors. I wondered when the honeymoon between the governors and the Senate would end. I know that the honeymoon ended when money hit the accounts of the counties. We no longer have to hold hands with the governors about the governor's court case or any other funny things that that they want us to do with them.

It is extremely disappointing that we all sat here to hear a good report about the Makueni County Government. However, for some strange reason, documents concerning Makueni County found themselves into the Senate. I do not know how those documents found themselves on this Table. I have heard about witchcraft. However, this witchcraft is strange. The person who delivered those documents here did not show up, but the documents appeared here in the name of Makueni County. I do not know if this is contempt or impunity, but something is strange about the conduct of the governors of this region. I have no doubt in my mind that this was a conspiracy agreed upon by the three of them to snub the Senate for purposes of ensuring that we go away.

Madam Temporary Speaker, can Sen. Kajwang's Committee tell the governors of this region that we are going nowhere. We will deal with them be it under the sea, under the ground and in whatever they do even if they bring ghosts to the Senate to drop documents at night. We will deal with them.

Yesterday, the Deputy Speaker said that we either hang together or separately. By the time I am hung about Makueni County, I will make sure that Sen. Kajwang' is to my right, Sen. Olekina to my left and Sen. Omanga at the front or the back.

*(Laughter)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Order, Senators!

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, the Senators who do not sit in the CPAIC have delegated that responsibility to the Committee to question our governors without fear, favour or collecting money from them.

I am not embarrassed to say that I persuaded all of you to pass the County Allocation of Revenue Bill, especially those who wanted to reject it for all these reasons. If the Bill was only meant to benefit Gov. (Prof.) Kivutha Kibwana, Gov. Charity Ngilu or Gov. (Dr.) Alfred Mutua, I would not do it. However, the people of Kitui, Makueni and Machakos counties will receive services, I will not lose hope.

Our legislative work has been interfered with by somebody called hon. Duale. Can we, please, not mention hon. Duale anymore in this Senate because I do not think that he deserved the attention of the intellect of the Senate? Let us just ignore him. Let us suspend our business and deal with audit. I am happy that Sen. Kajwang' and team made a commitment that they will go to deal with Gov. Charity Ngilu in Kitui, Gov. (Dr.) Alfred Mutua with his theatrics in Machakos County and Gov. (Prof.) Kivutha Kibwana in Wote.

Madam Temporary Speaker, this morning, I was surprised with the trust that Kenyans have reposed on Senators has led a person to deliver a dossier of corruption in Makueni County to Sen. Olekina who is a Member of the CPAIC and not me. The people of this Republic should trust Senators to deliver a dossier like the one that I have seen today delivered to Sen. Olekina. We have handed copies of the dossier to the Ethics and Anti-Corruption Commission (EACC) and the Office of the Auditor General. However, that is not enough. Can we find a way of visiting the ghost projects?

My advice to the Members of the County Assembly (MCAs) who are listening is that if they are in bed with the governors, they are not going to be in bed with them for long. They should count their time because the axe that is going to fall on the governors will fall on them.

I thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Senators, let us move to the next order, which is Statements under Standing Order 52(1) from the Senate Majority Leader.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 24<sup>TH</sup> SEPTEMBER, 2019

**Sen. Dullo:** Thank you, Madam Temporary Speaker. I wish to read the Statement of the Senate Majority Leader.

Hon. Senators, pursuant to Standing Order 52(1), I hereby present to the Senate the Business of the House for the week commencing Tuesday 24<sup>th</sup> September, 2019.

On Tuesday 24<sup>th</sup> September, 2019, the Senate Business Committee (SBC) will meet to schedule the business of the Senate for the week. On that day and subject to further directions by the SBC, the Senate will consider Bills due for Second Reading and Committee of the Whole. The Senate will also continue with consideration of Business that will not be concluded in today's Order Paper.

On Wednesday 25<sup>th</sup> September and Thursday 26<sup>th</sup> September, 2019, the Senate will consider Business that will not be concluded on Tuesday and any other Business scheduled by the SBC.

Hon. Senators, with respect to the status of Bills, the Senate has so far concluded debate and passed 41 Bills. Of the 41 Bills, 8 have been assented to and are now part of the Laws of Kenya; the most recent being the County Allocation of Revenue Act, 2019.

Thirty one of the Bills are pending consideration in the National Assembly. I would like to commend the Senate for showing dedication and hard work in processing the said Bills and urge you to continue with this spirit as we come to the last few months of this Session.

On the other hand, hon. Senators, the House has a total of 24 Bills pending conclusion in the Senate, with 13 at the Second Reading and nine at the Committee of the Whole stage. Two Bills are scheduled to be read a First Time, as indicated in today's Order Paper. I urge respective Standing Committees to conclude consideration of the Bills and table reports, pursuant to the Standing Orders. In the same breadth, I urge respective Movers of the Bills to avail themselves whenever they are scheduled by the SBC.

Hon. Senators, over the last few days, the Senate has had opportunity to engage with the people of Kitui County with a view to listening to their concerns and finding workable solutions to their issues. To mention a few, I wish to acknowledge the Standing Committee on Agriculture, which undertook a public and stakeholder engagement on a legislative proposal on the mung beans. The Committee also undertook a visit to the Kitui Ginnery to familiarize itself with the challenges facing the cotton industry and seek legislative interventions to address them.

Madam Temporary Speaker, I also acknowledge the Standing Committee on Roads and Transportation; and the Standing Committee on Land, Environment and Natural Resources that visited Ikanga Market along the Kibwezi-Athi-Mutomo Road. This visit was conducted with a view to addressing issues affecting local residents with respect to compensation in upgrading the road, which upon completion, will be a key link to the coastal region of Kenya.

Additionally, I acknowledge the Standing Committee on Justice, Legal Affairs and Human Rights; and the Standing Committee on National Security, Defence and Foreign Relations, which undertook a visit to the Kitui Prisons to assess the state of prisons services in Kitui County. The Sessional Committee on County Public Accounts and Investments (CPAIC) also engaged with the Kitui County Assembly Public Accounts Committee, where inconclusive sessions on audit reports relating to Machakos and Makueni counties were held. I hope that the recommendations that will be made arising from these meetings and the other engagements by the other Standing Committees which held sessions in Kitui will go a long way to not only benefit the people of Kitui County, but the people of Kenya, as a whole.

Madam Temporary Speaker, before I conclude the Statement, allow me to sincerely thank all hon. Senators for their active participation during the Senate sittings in Kitui County. I also take this opportunity to thank the leadership of Kitui County Assembly, led by the Hon. Speaker and the County Executive, led by the Hon. Governor, for welcoming the Senate to Kitui County. It is my hope that through our engagements in the past few days, we are in a position to forge a stronger working relationship based on mutual understanding and collaboration to protect devolution.

Madam Temporary Speaker, I thank you and hereby lay the Statement on the Table of the Senate.

*(Sen. Dullo laid the Statement on the Table)*

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

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you. I was wondering why a point of order was coming on this Statement, because this is---

**Sen. Halake:** Madam Temporary Speaker, is my Senator, while acting on behalf of the Senate Majority Leader, in order to not have included the work of the Committee on Information, Communication and Technology (ICT), which had two sittings? One of the sittings was to check on the level of connectivity around Kitui in addition to other meetings, just to highlight a few other committees. For the record, it should be known that the Committee on ICT did a lot of work while here.

**Sen. Seneta:** Madam Temporary Speaker, I have not also heard the work that the Committee on Education has done since we came to Kitui. I was wondering whether what is being reported is for a few selected committees.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Leader of Majority?

**Sen. Wambua:** Madam Temporary Speaker, as she clarifies everything, the visit to Ikanga was not exclusively a visit by the Committee on Lands, Environment and Natural Resources. It was rather a joint Committee of Committee on Lands, Environment and Natural Resources and the Committee on Roads and Transportation

Thank you, Madam Temporary Speaker.

**Sen. Dullo:** Madam Temporary Speaker, I thank the Senators who have raised points of order. I believe that they are valid points, but because of the interest of time, we were unable to mention all the Committees. However, as far as the report of the sittings of Kitui, we will mention all the Committees.

Thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. (Prof.) Kamar): She has undertaken to go and do that correction, which is good for all of us.

**The Senate Minority Leader** (Sen. Orengo): On a point of order, Madam Temporary Speaker. It is good to mention the work of the Committees and what they have done. Indeed, Sen. (Dr.) Musuruve was in the process of giving a report about the work done by the Committee on Education. However, it was going to be a very long story and we have only an hour.

Madam Temporary Speaker, Standing Order 52(1) is futuristic; it does not give an account of what you have done. It deals with what is coming next week. That is the intention of Standing Order 52(1). Otherwise, if it was Standing Order 52(2), under which I can also give a statement, then one can give a report of what has happened now and in the past. I have looked at the Standing Orders, and this statement that is being made is under Standing Order 52(1), which is specific. There will be an expectation next that we should give a full account of what every committee does.

Being on my feet, Madam Temporary Speaker, it is actually required of every Committee to be giving reports of what they do. This is one of the things that we think that the Committees should take opportunity to report almost every week about the work they are doing. Otherwise, we may end up having Committees which cannot show us the work they are doing.

Madam Temporary Speaker, the point I was raising was about Standing Order 52(1).



**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you, Sen. Orengo; you have made that correction. It is Standing Order 52(1). The Senate Majority Leader was trying to be generous to slide in her point of appreciation, and then she did not summarize everything. She only created trouble for herself by not appreciating everybody, but Standing Order 52(1) actually has nothing to do with appreciation.

May I now take the last two minutes---?

**Sen. Seneta:** Madam Temporary Speaker---

*(Several hon. Senators stood up in their places)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Order! I have closed debate on that one because it is Standing Order 52(1) which is about our programme of Business for the coming week. That is what the Senate Majority Leader was conveying.

**Sen. Seneta:** Madam Temporary Speaker, mine is on the same. This is a House of records. Is it in order for you to direct that the report then be withdrawn so that the include work of every other Committee and report back next week?

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Senators, the Senate Majority Leader has already said that the comprehensive report is coming. We should, therefore, rest it there. Standing Order 52(1) is about the programme of Business for the coming week. It has nothing to do with appreciation. That is why, in appreciating, she was not exhaustive and she will do it when we will be getting the reports. I also urge Committee Chairpersons to give us reports when we are in Nairobi on this trip in particular.

With those remarks, I hope we are not going back to that. I have ruled on that one, Sen. (Dr.) Musuruve. Let us not go back to that one; or is it a different point of order?

**Sen. (Dr.) Musuruve:** Madam Temporary Speaker, I think that it is in order for me to be heard, but when we are giving our statements of general concern, three minutes is highly unfair.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Sen. (Dr.) Musuruve, I think I made it very clear that the Chairperson of the Committee on Education will give an exhaustive report on exactly what you are giving. She only took the time to report on a small aspect that I think the she is preparing a comprehensive report. You will be able to revisit your report. We agreed with you and the Senator who contributed from the Committee also felt that time was not enough. We will have enough time.

I had promised the host Senator two minutes to make a statement. Could you make that one last statement as we move out of Statements?

THANKS FOR THE SENATE  
MASHINANI KITUI EDITION

**Sen. Wambua:** Madam Temporary Speaker, I had told you that it will not be two minutes. It will be less than one minute just to appreciate Senators for finding time to visit Kitui County. On behalf of the great people of Kitui County, we are very grateful for the visit and interactions we have had with the Senators.

Apart from the few challenges we have had with regard to the appearances by the governors before CPAIC, I believe that we have had a great time. The people of Kitui,

Makueni and Machakos feel honoured that Senators spent a whole week in our region. We say to individual Senators that they are welcome to come and visit. As the Member of Parliament for Kitui Central challenged us on the first day, I hope you have made investments that after two or three years you will be coming back to check on.

Thank you Madam Temporary Speaker and thank you hon. Senators.

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

Next Order.

## MOTION

### ESTABLISHMENT OF *AD HOC* COMMITTEE TO INVESTIGATE MES

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 |

*(Sen. Orengo on 18.9.2019)*

*(Resumption of debate interrupted on 18.9.2019)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Senators, this is resumption of debate that started yesterday. At the point we stopped, we had adjourned debate. We are resuming debate on the same.

I would like to know if there is anybody who wants to debate. I am waiting for names to come forward. Therefore, if there is anybody who wanted to debate yesterday and was locked out, I will give one person the chance to do so.

**The Senate Minority Leader** (Sen. Orengo): On a point of order Madam Temporary Speaker. Yesterday, the Speaker gave specific directions and the adjournment was to allow consultations. Thereafter, on resumption of this debate, it was agreed that an amendment will be made to the Motion.

I plead with the Chair that it is about time that we deal with that amendment because the Motion as it is was bringing a lot of controversy that just seeing the names as they are and the Motion as it is, I think we are still attracting the same kind of controversy that we had yesterday.

Madam Temporary Speaker, would I be in order to ask you to allow the Deputy Majority Leader to do the necessary since this is a co-sponsored Motion? We held consultations with the Speaker about this.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you. May I call on the Deputy Majority Leader?

**Sen. Dullo:** Thank you, Madam Temporary Speaker. I believe the way the Senate Minority Leader has said, this was as a result of yesterday's discussion. Before I read the amendment to the names as were given out as a result of consultations between the Majority and Minority side, I wish to move the amendment to the Motion on the establishment of an *ad hoc* Committee on Managed Equipment services (MES).

Madam Temporary Speaker, I beg to move that the Motion be amended by deleting the words "90 days" and replacing it therefor with the words "45 days".

Secondly, by deleting the proposed membership of the Committee and replacing thereof with the following Senators.

1. Sen. Fatuma Dullo, MP - Member;
2. Sen. Mary Seneta, MP - Member;
3. Sen. Millicent Omanga, MP - Member;
4. Sen. Paul Githiomi Mwangi, MP - Member;
5. Sen. Dr. Christopher Langat, MP - Member;
6. Sen. Moses Wetangula, MP - Member;
7. Sen. Stewart Madzayo, MP - Member;
8. Sen. Judith Pareno, MP - Member;
9. Sen. Enock Wambua, MP - Member;

This is signed by both the Majority Leader, Sen. Murkomen and the Minority Leader, Sen. Orengo.

I do not think I will move because this matter was canvassed at length yesterday and this was what was causing a lot of tension in the House yesterday. I wish to table the names and request Sen. Mutula Kilonzo Jr. to second.

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

**Sen. Mutula Kilonzo Jr.:** Madam Temporary Speaker, I rise to second.

*(Question of the amendment proposed)*

*(Question put and agreed to)*

*(Question of the Motion as amended proposed)*

**The Temporary Speaker** (Sen. (Prof.) Kamar: Now that the amendment has carried the day, I would like to read the Motion in the amended form. It reads as follows-

THAT, AWARE THAT while Health is a devolved function, Article 4(3) 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 health care 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 National 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 Ministry of Health 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 country wide, 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 45 days;

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

- |                                      |   |         |
|--------------------------------------|---|---------|
| 1. Sen. Dullo Fatuma Adan, MP        | - | Member; |
| 2. Sen. Seneta Mary, MP              | - | Member; |
| 3. Sen. Millicent Omanga, MP         | - | Member; |
| 4. Sen. Paul Githiomi Mwangi, MP     | - | Member; |
| 5. Sen. (Dr.) Christopher Langat, MP | - | Member; |
| 6. Sen. Moses Wetangula, MP          | - | Member; |
| 7. Sen. Stewart Madzayo, MP          | - | Member; |
| 8. Sen. Judith Pareno, MP            | - | Member; |
| 9. Sen. Enock Wambua, MP             | - | Member; |

**Sen. Mutula Kilonzo Jnr.** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. (Prof.) Kamar): What is your point of order, Sen. Mutula Kilonzo Jnr.?

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, I wish to move a Motion under Standing Order No.104, that now that we have debated this matter extensively and exhaustively, that the Mover be called to reply. I ask Sen. Wetangula to second.

**Sen. Wetangula** seconded.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Okay. I see no objection.

*(Question, that the mover be now called upon to reply, put and agreed to)*

May I now ask the Mover to now reply?

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Speaker, I wish to thank everybody who contributed to this Motion and also the robust debate that took place yesterday that had ended up in amending the Motion. The critical amendment has been the number of days that they should report within 45 days. This is because if we do not have a report within 45 days, then we may have to be in a situation where we go into December recess without a report. That will put that report into jeopardy and a delay will also raise a lot of questions.

Finally, while this Committee is doing its work, you should be really focused on the mandate you have been given. However, if for any reason any Member of the Committee finds the fire too hot, please, let the House know. This is because this matter is born in controversy. I am glad that Sen. Dullo, the Senate Deputy Majority Leader, is in this Committee because this Motion was a product of the concerns that she raised, and

persistently, she has been demanding a report from this particular Committee , which now stands reconstituted.

Without further ado, I beg to move.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Senators, I have studied this Motion and it does not affect counties. So, I will proceed to put the question.

*(Question of the Motion as amended  
put and agreed to)*

*Resolved accordingly-*

THAT, AWARE THAT while Health is a devolved function, Article 4(3) 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 health care 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 National 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 Ministry of Health 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 country wide, including:

- ix. Whether county governments were involved in prioritizing the medical equipment in accordance with their needs;

- x. The details of the company from which the equipment was leased;
- xi. The viability and benefit of leasing versus outright purchase;
- xii. The availability of adequate numbers of health human resource to provide specialized health services as envisaged in this project;
- xiii. The operation, training and maintenance facilities in place for the equipment;
- xiv. 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;
- xv. 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,
- xvi. 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 45 days;

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

- |                                      |   |         |
|--------------------------------------|---|---------|
| 1. Sen. Dullo Fatuma Adan, MP        | - | Member; |
| 2. Sen. Seneta Mary, MP              | - | Member; |
| 3. Sen. Millicent Omanga, MP         | - | Member; |
| 4. Sen. Paul Githiomi Mwangi, MP     | - | Member; |
| 5. Sen. (Dr.) Christopher Langat, MP | - | Member; |
| 6. Sen. Moses Wetangula, MP          | - | Member; |
| 7. Sen. Stewart Madzayo, MP          | - | Member; |
| 8. Sen. Judith Pareno, MP            | - | Member; |
| 9. Sen. Enock Wambua, MP             | - | Member; |

**The Temporary Speaker** (Sen. (Prof.) Kamar): Let us go to the next Order.

## BILL

### *First Reading*

#### THE ELECTIONS (AMENDMENT) BILL (SENATE BILLS NO.18 OF 2019)

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

**The Temporary Speaker** (Sen. (Prof.) Kamar): Let us go to the next Order.



**BILL***First Reading*

THE ALTERNATIVE DISPUTE RESOLUTION BILL  
(SENATE BILLS NO.19 OF 2019)

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

**The Temporary Speaker** (Sen. (Prof.) Kamar): Let us go to the next Order.

**BILL***Second Reading*

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

*(Sen. (Dr.) Zani on 18.9.2019)*

*(Resumption of debate interrupted on 18.9.2019)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Who was on the Floor?

**Sen. Wetangula:** Madam Temporary Speaker, I was on the Floor and I have already taken my position.

**The Temporary Speaker** (Sen. (Prof.) Kamar): I was trying to trace who it was. Sen. Wetangula was on the Floor and he has 12 minutes.

**Sen. Wetangula:** Madam Temporary Speaker, I will try to take less. I was lamenting the death of Mombasa City. I was urging my colleague and distinguished learned friend, Sen. Faki, other coastal Senators and their governments to set up alternative sources of income since the death of Mombasa City appears to have complicity with some of their leaders.

Looking at the contents of the Bill, I would like Sen. (Dr.) Zani to know that there are a lot of loose ends in the Bill that need to be addressed. First, Sen. (Dr.) Zani proposes that the County Executive Committee (CEC) member in charge of Tourism in the counties should have the authority to license operators of tourism sites and activities. She has, in the First Schedule, listed a variety of activities, including hotels, clubs, motels, hostels, floatels, bandas and so on that need to be licensed to operate.

I believe that what drove Sen. (Dr.) Zani to bring this Bill is to promote local tourism and ordinary people who can emerge from nowhere and run small bandas and grow in terms of economy. However, that noble philosophy is negated by Clause 8 through Clause 14 where the proponent of the Bill seeks to give powers to the Cabinet Secretary (CS) to license the CEC. It does not provide for avenues for appeal where there

is an abuse by the CEC. If the CEC unreasonably rejects to license an applicant, there must be an avenue of redress. If the CEC cancels a licence provided, then it goes to the tribunal. What is not clear is whether the tribunal will be set up in the counties or at the national level.

I would like to talk about Clause 13(1) which states as follows:-

“(1)A person who—

(a) Breaches or fails to comply with the provisions of this Act;

(b) Breaches or fails to comply with any of the terms or conditions of a licence issued under this Act;

(c) Obstructs a person in the execution of powers or duties under this Act;

(d) Knowingly or recklessly makes a statement or representation which is false;

(e) Knowingly or recklessly furnishes a document or information required under this Act which is false; or

(f) Knowingly or recklessly uses or furnishes a fake or forged or invalid licence or a licence that has been altered without authorization commits an offence.”

There is a whole chain of statements creating offences of “knowingly” or “recklessly”. In law, it is better you say “knowingly” or “willfully”.

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

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

Whether you say knowingly or willfully, and not recklessly--- Recklessness is a very technical legal term that cannot apply here. It is knowledge and the will, knowingly and wilfully. Sen. (Dr.) Zani, you need to look at that. Recklessness in law means that you know you are doing wrong and know the consequences, but you do not care. That is what recklessness in law means, and I do not think it applies to somebody who is applying for a licence to run a curio shop or something as small as that, and you come from a tourist attraction area.

Sen. (Dr.) Zani, you go on to Clause 13 and provide for punishment for offences. I laud you for bringing this Bill because you want to help an ordinary *mama* in Kitui by the roadside, to run a small curio shop and be licensed to do so for tourists going wherever, to stop and buy a cup of tea or bracelet, and so on, but then, you cannot create offences with such harsh penalties.

Clause 13 (2) states that a person who is found guilty of an offense under this section is liable on conviction, in the case of a natural person – and that natural person is now *mama* with a curio shop - to a fine of Kshs500,000. This is not tenable. Sen. Olekina, you know those *mamas* who sell curios at the airstrips in Narok. How do you fine them Kshs500,000 when their stock is Kshs5,000? It is not possible. Sen. (Dr.) Zani, you should rethink this.

You go on and say that in case of a body corporate, a fine not exceeding Kshs2 million. Under the current Company’s Law, you can as a villager incorporate a company

where you are the only director. So, it becomes a corporate person. If you are running a curio shop with a stock of Kshs10,000 as 'Sen. Ledama Olekina incorporated', you are a corporate person. So, under Sen. (Dr.) Zani's thinking such a person will be hit Kshs2 million. It cannot work; it is not developing local tourism. You should rethink this, Sen. (Dr.) Zani.

You go further and say that where a body corporate is found guilty of an offence under this Act - I do not know who drafted this for you - every principal officer of that corporation is deemed to have committed an offence. It cannot work like that. You are saying that if it is a hotel, the beverages manager, the manager, waitress, front office manager and the chief chef are all guilty, and they will pay fines of Kshs500,000 or imprisonment for a term not exceeding--- This reminds me of what the President of Uganda, Hon. Museveni, always says; that immigration officers think that their duty is to prevent people from travelling. I would want Sen. (Dr.) Zani to rethink these provisions.

There is a provision for making regulations. I want to encourage her that if these regulations are going to help tourism in the counties, they should then be subjected to debate and approval by the respective county assemblies. This is because the delegated legislation has no effect unless it is passed by respective Parliaments, either the Senate, county assemblies or the National Assembly. You should look at that as well so that it can be able to help. Otherwise, the idea is good. All the issues listed are very good and people should be able to---

Even for my colleague from Narok, Sen. Olekina, if there are tourists who have come specifically to enjoy the comfort of a *manyatta*, they can sleep in a *manyatta* and pay some dollars to the owner. However, the Bill says that if that owner then violates something, you hit them with a fine of Kshs500,000 fines. It does not add up at all. Sen. (Dr.) Zani, at some appropriate moment, I will sit and do a write up on your Bill and forward to you, so that you can be able to improve it. I want to encourage Members that this is very good.

Like I stated yesterday, tourism is not about parks and beaches. It is about our culture, the way we live, where we live, our flora and fauna, mountains, valleys, hills and everything. Every single county in this country is a tourist attraction in its own right. Every region in this country is a tourist attraction in its own right. This Bill will go a long way to assist in helping counties grow.

More importantly, I want to encourage Sen. (Dr.) Zani on something we have completely left out. There is a lot of money that is given to the Ministry of Tourism through appropriations-in-aid and grants from various countries. This is money that develops tourism. We should oblige the national Government that when such money comes into the country, it should be shared across counties that have expressed and developed good ideas for development of tourism. This is to ensure that the money is not kept in Nairobi under the Tourism Trust Fund and the Cabinet Secretary starts dishing it out to friends to go and build huge hotels for free. I have seen it happen. The Tourism Trust Fund money is not given as loans, it is given out as grants and gifts to individuals. This money should be spread out across counties, so that any woman in Narok who wants to start a curio business can access it and start a business.

Anybody in Kitui who wants to set up a small cottage or boutique or hotel like we are here now--- If three or five Senators stayed in a private home, they would improve the economy of that individual and leave them moving to the next level in life. This is what

we are fighting for. We must also wean ourselves of the ridiculous notion that a tourist must be a foreigner, white, yellow or whatever. We can have Tanzanian, Ugandan or Kenyan tourists that can change economies of counties. This is what we are trying to provide for and encourage ourselves as Senators. Even our sitting here as Senate *Mashinani* is part of promotion of tourism. This is how the economies of our counties will grow. If it is well regulated, it will change the life of Kenyans.

I would have loved that when we were here for this one week, we should not have carried food from Nairobi to eat in our restaurant here; rather, we should have been eating the food that the people of Kitui eat. We should have enjoyed cassava, *muthokoi*, *ndengu* and all other foods, to appreciate the culture of the people we are visiting. We should not come here and be given fish fillets that we live on in Nairobi.

Mr. Temporary Speaker, Sir, with those few remarks, I beg to support this Bill and urge Sen. (Dr.) Zani that it is a wonderful idea. Please, make it better.

**Sen. Faki:** Asante Bw. Spika wa Muda, kwa kunipa fursa hii kuchangia Mswada wa County Tourism ambao umeletwa bungeni na Seneta maalum, Sen. (Dkt.) Zani.

Bw. Spika wa Muda, ninampongeza dada yangu, Sen. (Dkt.) Zani, kwa kuleta Mswada huu ambao umekuja katika wakati mwafaka. Utalii ndio ulikuwa msingi wa uchumi wa Kaunti za Pwani, kama vile, Lamu, Kilifi, Mombasa, Kwale na Taita-Taveta. Lakini, kwa miaka sasa, utalii umeshuka na watalii wengi ambao tunapata ni ndugu zetu kutoka sehemu za bara. Wao ndio wanasafiri Mombasa kama watalii wa ndani kwa ndani wakitumia Reli ya Standard Gauge Railway (SGR) au ndege.

Bw. Spika wa Muda, Mswada huu utakapopitishwa kuwa sheria, utasaidia pakubwa kuangazia uchumi wa utalii katika maeneo ya kaunti za Pwani. Ningependa kutoa masikitiko yangu kwamba Serikali Kuu haiweka mikakati yeyote ikishirikiana na serikali za kaunti kujaribu kufufua uchumi. Kwa mfano, ingekuwa bora kwa Serikali Kuu kupitia kwa Wizara ya Utalii, kuanzisha kongamano la kitaifa na kaunti zote 47 kuhusu mikakati ambayo wanapanga katika mambo ya utalii. Ilivyo kwa sasa, yale yanayofanywa na Serikali Kuu mashinani hayajulikani. Kwa hivyo, hakuna mwelekeo kamili unaotoka kwa Serikali Kuu kuhusiana na maswala ya utalii.

Jambo la pili ambalo limeleta upungufu wa utalii ni kwamba hatujakuwa na bidhaa mpya za kitalii. Tumezoea bidhaa zile za kila siku, kama vile wanyama wa pori na fuo za bahari. Ndizo tunazotumia zaidi kujenga utalii wetu. Lakini, kuna sehemu zingine ambazo zina fuo nzuri za bahari, wanyama wazuri na barabara ambazo zinamfanya mtalii kutoka uwanja wa ndege mpaka makao anayokwenda ya maeneo ya utalii kwa urahisi zaidi kuliko ambavyo tunafanya hapa Kenya. Kwa mfano, ukishuka Mombasa na unataka kwenda Tsavo National Park inachukua masaa kuweza kufika na kuona wanyama. Kwa hivyo, ni muhimu turekebishe miundo msingi katika maeneo ya utalii.

Bw. Spika wa Muda, hatujakuwa na ubunifu katika mambo ya utalii. Kwa mfano, hapa Kitui, tulielezwa kwamba kuna mlima ambao ukizunguka mara saba kama wewe ni mwanamme unageuka mwanamke na kama wewe ni mwanamke unageuka mwanamme. Mlima huo unaitwa Nzambani Rock. Lakini, hatukuona mapango yote barabarani kama vile, barabara kuu ya kuelekea Nairobi, Mombasa, Mwingi au Thika kuonyesha ya kwamba kuna mlima unaitwa Nzambani Hills ambao una historia ya mambo mazuri kama hayo. Kwa hivyo, ili kukuza uchumi wa kitalii lazima kaunti zetu ziwe na mbinu za kutafuta vitu vipya ambavyo vinaweza kusaidia katika mambo ya utalii.

Bw. Spika wa Muda, katika maeneo ya Pwani kama vile Lamu, kuna maswala ya ukosefu wa usalama na madawa ya kulevya ambayo yamechangia pakubwa kuua utalii. Wengi wa watalii wanataka kupata fursa wajumuike na wananchi wa kawaida na watembe barabarani jioni. Lakini, ikiwa hakuna usalama, watalii hawataweza kutembea. Kama kuna vijana wanaotumia madawa ya kulevya, watalii hawatapata fursa ya kutembea na kujionea vile wenyeji wanaishi.

Bw. Spika wa Muda, nimetangulia kusema kwamba miundo msingi ni duni katika nchi yetu ya Kenya. Barabara zinazoelekea katika maeneo ya utalii zinaoshwa na mvua na hazipitiki.

Mafunzo ya utalii pia yamerudi chini katika nchi ya Kenya. Pwani kunajengwa chuo kikuu cha utalii katika maeneo ya Kilifi lakini mpaka sasa, miaka saba kutoka ujenzi uanze, hatujaona mwelekeo wote wa chuo hicho.

Kifungu cha 14 kinatoa fursa kwa waziri mhusika wa maswala ya utalii katika kaunti kufanya kanuni kuhusiana ni vipi atakeleza sheria hii. Lakini, kwa sababu tuna kaunti 47, kwamba kila kaunti itakuwa na kanuni zake, tutakuwa na kanuni 47. Hiyo kwa hakika, itakuwa nikurudiarudia mambo yale ambayo yanafanyika katika kaunti zetu. Kwa hivyo, ningependekeza kwamba waziri mhusika wa utalii aweze kutengeneza kanuni hizo na azipeleke katika kaunti nyingine na zipitishwe kama sheria.

Kifungu cha 15 kinasema kuwa serikali za kaunti kupitia bunge za kaunti zitunge sheria kama hii ili ziweze kutumika katika kaunti zile. Hiyo pia itakuwa kurudia mambo yale yale. Ingekuwa bora kwamba iweze kuchukuliwa na serikali za kaunti na iwe sheria ambayo itatoa mwongozo kwa maswala ya utalii katika kauli zetu.

Bw. Spika wa Muda, utalii katika maeneo ya Mombasa unaweza kuchangia pakubwa katika kujenga uchumi. Lakini, kama nilivyotangulia kusema, hakuna uwekezajia katika swala hili. Kwa mfano, ukienda katika hoteli ya English Point Marina, iko karibu sana na ufuo wa *Old Port* ambao unahesabika kama mita 200 kutoka upande moja hadi mwingine. Lakini, hakuna mashua za kuchukua watalii kutoka sehemu moja hadi upande wa mjini ili watembe katika mji wa zamani wa *Old Port* na baadaye wapande mashua na kuelekea upande wa pili na kurahisisha maswala ya usafiri.

Pia, ukipanda *ferry* inachukua zaidi ya saa moja kutoka Nyali hadi mjini. Kwa hivyo, kama kutajengwa jeti ya kisasa na vijana wapewe mashua za kuendesha biashara, itasaidia pakubwa kupunguza umaskini na itakuwa rahisi kwa watalii kutoka kwa hoteli na kwenda katika maeneo ya kutazama. Katika mji wa *Old Town*, kuna *Fort Jesus* ambapo pana historia kubwa katika Mji wa Mombasa.

Bw. Spika wa Muda, katika sehemu zingine kama vile Pwani ya kusini, mambo mengi ambayo yanaweza kufanywa na vijana ili kukuza utalii yanashindwa kufanyika kwa sababu ya ukosefu wa miundo msingi.

Kwa hayo machache, naunga mkono Mswada huu. Ninaomba tumsaidie Sen. (Dkt.) Zani ili Mswada kupita.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Temporary Speaker, Sir. This Bill by Sen. (Dr.) Zani is important particularly because we are grappling with the question of Own Source Revenue (OSR) by counties. This is one framework where counties can make money. I would like the people of Kitui to hear this. I expected that when the Senate is in Kitui, there would be stands for various places where Senators can visit over the weekend. I am surprised that some Senators got so bored and have left for Nairobi. They think that there is no activity in Kitui. This is because there should have been a

stand where Senators can get brochures and vehicles to take them to Nzambani Rock. There also should have been young ladies promoting various places where people can visit. That is the way to promote tourism.

I want Sen. (Dr.) Zani to hear that I recently visited Watamu. There is a place called Crab Shark that is done by the local community. The local community in Watamu rears crabs inside Mangrove Forest. When a person orders for the crab, they fetch and cook it for you as you watch. It is amazing. What surprised me is that they were so happy that I was there.

They wanted to take pictures, but they claimed that the local leaders have never visited them. You go to Hemmingsway, Watamu and all these big hotels run by all sorts of multi-national companies, but that place where a community is making money from tourism is not promoted by anybody. That is what Sen. (Dr.) Zani is talking about.

It brings me to this point - I want Sen. (Dr.) Zani to consider this in the amendment - I am now convinced that people do not know that there is an island in your county of Samburu. People do not know that there is a beautiful hotel in Samburu in the middle of a lake; a beautiful place where all of us can visit. Why have you not invited a committee of the Senate to go to Lake Samburu? This is a question I am asking you, Mr. Temporary Speaker, Sir, while you are here. It is called promoting local tourism.

Narok is possibly one of the most beautiful places in this country. Instead of spending money in Mombasa, in Pride Inn Hotel and Hotel Sarova Whitesands - I have nothing against all these places - we should hold our committee meetings in some of those local tourism places. A place called Ngerende in Maasai Mara by one of our leaders is a beautiful place, and there are many others.

Sen. (Dr.) Zani, perhaps, should consider, that in view of the fact that we have passed the Public-Private Partnership Framework Law and Regulations in county governments, I am not sure whether we should leave this to county governments alone. This law must provide for a framework where Sen. Olekina, as an investor in Narok, can enter, and he has connections all over the United States of America, and therefore, can look for a person who can partner with counties to promote tourism, so that we do not leave the responsibility of local tourism to counties alone. This is because they then treat income from tourism as own source revenue as opposed to local revenue raised from tourism, and they mismanage it.

With time, I have come to have very little faith in the management of counties and their understanding of the law, and their understanding of how they can trade. I told the people of Makueni and the Governor, that the Kitui County Textile Centre (KICOTEC) factory here, should not be run by the county government. It should be run by an investor. The County Government of Kitui should provide an enabling environment with land.

This is the same for the Kalamba Fruit Factory in Makueni. After investing in all those facilities, the person who should look for mangoes when they are off season in Makueni should be a private investor. Sen. Olekina has bought beautiful cows which give us milk. Similarly, when we are doing a milk factory, it should be run by people who are doing business. Let us give that portfolio to businessmen. Our work in county governments is to do the one plus one of business. It means, profit and loss account. We put in X and look for good lawyers like me to do joint venture agreements with them. The investment of the county is the land. The investment for the county is the factory. That is it! There should be no county revenue being put in factories like KICOTEC, Kalamba

Fruit Factory in Makueni, or any other place. This is so that they do not end up in a quagmire like KICOTEC has found itself in Kitui.

That framework is now available. Please, for those who are watching, the framework of public-public partnerships and regulations is now available as law. The State Corporations Framework that is available under the State Corporations Framework is also available for counties. Where there is no law available for a county, national law applies. That is the Constitution. There is no reason why Kitui County does not have a framework for KICOTEC. If there is no local framework, the law allows them to use the national law framework. I say this because it is possible. Today, Konza City runs on a gazette notice that is a page long. We have a Korean investor that is building a university. We have beautiful things happening in Konza City today and there is no legal framework *per se*, except the State Corporations Act, which allows the President to gazette Konza Technopolis.

Although I support this framework, let us not restrict every little place. For example, Sen. (Dr.) Zani has so ably created different frameworks under the First Schedule; hostels, tree houses, service flats, water sports, and balloon operators. There is nothing that stops any county from entering into different frameworks on hotels or different frameworks for water sports if you are in Mombasa or Lamu or near the ocean, or game fishing outfitters, enterprises, local boat operators, curio vendors, *et cetera*.

Mr. Temporary Speaker, Sir, I do not know whether you have been to a place called Chagamwe in Mombasa. Where is Sen. Faki? He has left. There are 2,500 Kambas and others, doing beautiful carvings. However, they are left to local devices of tourists walking into Chagamwe where they are doing their carvings. What has stopped the County Government of Mombasa from entering into a sort of framework with the traders for those things to be sold to tourists all over the world?

The reason why we are fighting with Japan over the patenting of *ciondo* and *kikoi* is because we have left the people who can do *ciondos* and *kikois* to fraudsters and other profiteers and racketeers. That is why a *ciondo* and a *kikoi* now look like a Japanese product when it should not be.

We can promote these things by allowing the county governments, through this framework that is proposed by Sen. (Dr.) Zani, not only for things that you can see but things that people can make with their hands. Those things can help these people make money. I would have loved for the Kitui County Assembly to allow a tent where there is food or at the parking lot, a tent where the women of Kitui would sell their beautiful *ciondos*. I recently got an order with sizes for people to sell *ciondos* in the United States of America. I am trying to look for people who can do those *ciondos* with the specifications that have been given by Zoey Baraka who has gotten an award from the Hilary Clinton Foundation. There should have been a place where all of us would have spent some of the money that we were given to buy a *ciondo*.

I would have been happy to do so, so that we can promote local tourism. Allow those platforms, like the way supermarkets do. If you go to Yaya Centre on weekends, they close one floor and allow people who are selling curios to sit there. If you go to Prestige in Nairobi, they do the same. Why will county governments not do the same? Kwame Nkrumah Road in Mombasa or any place can do the same. We can close it on a Saturday and allow people who have carvings and curios to sell their wares on one road, like Kenyatta Avenue.

Imagine the sort of business we would give to these local people who have things that they can sell. For that particular day, allow them to sell their wares throughout the day and night. We can do like what the Brazilians do; 24 hours. We put lights, security and ensure that people make money. Those are my proposals. For those periods, have a tourism week in Makueni or Marsabit.

Mr. Temporary Speaker, Sir, call us to Samburu for the cultural week such as the one we have in Lamu, so that it becomes a way of tourism. During that week, one of the Senate Committees can go and have their sitting in Lamu. After our meetings, we can then go and learn the traditions and some of the things that the good people of Samburu and other places do.

We can make money and promote business. We can help our people make a minimum of Kshs1,500. My concentration on this is not to allow county governments to collect more revenue so that they can pilfer it. My emphasis would be to allow *Mama Mwikali*, *Mama Mutheu* and *Fatuma*, to make some extra coins in their pockets from other places. We will provide an enabling environment; maybe for that week when you are doing tourism, you can give them tax holidays.

Mr. Temporary Speaker, Sir, we call investors to Kenya in the Export Processing Zones (EPZ) or Konza City and big places and give them tax holidays. You are aware of the case where the Commercial Bank of Africa (CBA) in the acquisition of NIC bank does not want to pay tax. They are seeking for a waiver.

**An hon. Senator:** No, they were exempted.

**Sen. Mutula Kilonzo Jnr.:** Oh, they were exempted from paying taxes.

When do we exempt the people who make Kshs1,500 or Kshs2,000 a day a week during these tourism sessions not to be taxed by our county governments? It is called 'robbing Peter to pay Paul'.

When I talk about Karl Max, I am serious that this is a country where the people who are oppressed are oppressed even more while the people who have, are given more time to either steal or cheat the taxpayer. Let us give Caesar what belongs to Caesar, but let us allow the people who can make little money through this framework do so.

I support.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Let us have Sen. (Dr.) Musuruve.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to support this Bill. I truly thank Sen. (Dr.) Zani for coming up with this Bill. It is coming at a time when we are talking about issues of unemployment and ways in which counties can pop out. Some of the strong points in this Bill are that it allows for marketing of counties.

It is a noble Bill because it allows the counties themselves to look at exactly what is viable in their counties and what can make them pop out and get some source of revenue. It is even within the Constitution that counties are allowed to collect revenue. This is one of the noble ways of ensuring that counties collect revenue.

There is a lot of revenue that can come out of the tourism industry. Even when we are talking about issues of tourism, we need to know that we, ourselves as Kenyans, can also become tourists. When we think of tourism, we should not limit ourselves to foreigners coming all the way from Europe to visit Kenya.



Mr. Temporary Speaker, Sir, there are some people living in Kenya who have never even gone to Mombasa. If they do so, they become tourists. In fact, very many save a lot of money just to travel to Mombasa and other places, towards the end of the year.

Tourism is important for this country because it also helps create employment. We know very well, as Kenyans, that employment is an issue in this country. However, we have to strategize and look for ways in which employment can be created. There is need for all counties to devise mechanisms and strategies that will help them create employment for their youth.

The issue of youth unemployment is serious because at that stage, they are supposed to be very active. However, if they are idle, they end up doing things that will be very harmful to themselves and might have some negative repercussions even for this country. Counties need to look for ways in which they can make their youth busy and engage them.

Tourism will create employment even in the hotel industry. As tourists go to whatever county, they will need accommodation. That means that in those places, cleaners, cooks and chefs will have been employed. This is a noble way of ensuring that counties are able to collect money.

Mr. Temporary Speaker, Sir, as we think of tourism in the counties, there is need for all counties to ensure that all places in the counties are accessible. Tourists are not supposed to be confined in towns; they can even go inside of the counties to witness the scenario and engage with locals.

I remember when I was young, there were some people who would come from very many counties and go to Tiriki land during the circumcision season. There was a way in which the season was attractive. Many people even came from Europe just to see how they did it; the dressing and all that.

There are some people also who come to this country just to see how beautiful the Maasais are. The real Maasai person will not put on make-up. You will see them with very attractive jewellery and bangles that sometimes attract tourists. Sometimes even the *shukas* they wrap on themselves are specifically red and others blue. All these attracts tourists.

When tourists come, we also have tourists especially our young people who are very vibrant. That energy should be used productively. They can become tour guides taking tourists from one corner to another.

Mr. Temporary Speaker, Sir, this Bill is coming in handy to ensure that we are opening up counties. We must take services to the counties. When counties are able to identify tourist attractions and ensure that the atmosphere is conducive for them, there is going to be revenue for the counties.

It is important for counties to come up with strategies and to have a register of the people licensed to carry out tourism. Those people should be accountable for the tourists who live under their care. This is because there are some tourists who live in homes, hotels and villas. Although tourists bring money to a country, there are some who come with ill-motives. There are instances where we have seen our daughters, for example, abused by tourists. Sometimes, the tourists cannot be traced. There is need for whoever is hosting tourists to ensure that he has the biodata of the number of tourists he has so that in case of anything, it becomes easy to trace those who may engage in heinous acts.

As we talk about tourists at the county level, there is need for counties to ensure that they also market their culture. Culture is a way of life that is expressed in many ways. For example, it can be expressed in terms of dance. Counties should, therefore, come up the way in which they dance for the purpose of ensuring that they attract tourists. This is because there are tourists who come and want to see those traditional dances in the comfort of their meals. Some of our children, instead of embracing our culture, have imported foreign cultures.

As we talk of food, if tourists come to a place such as Kitui, they should be eating *muthokoi* and other local foods so that they appreciate it. There is also need to ensure that those tourists who are not Kenyans learn Kiswahili because it is the *lingua franca* or English to ensure good communication.

People go to countries and cannot even construct a sentence---

(Laughter)

Mr. Temporary Speaker, Sir, Sen. Olekina is distracting me.

Sometimes tourists go to places where they cannot even construct a single sentence in the language that is used in that particular place; and they, at times, get into problems. Therefore, there is need to device mechanisms to ensure that they do not fall into problems. When we have tourists somewhere, it is important to bring ambassadors on board. This is because sometimes when tourists get into problems, there is no one to locate where they come from. There is need for counties to know that if there are tourists from Italy, then the ambassador from Italy should be informed that his people are here and for a certain period of time. There is need for us to know how long they will be around; will it be for a duration of one week? Their biodata should also be there.

Mr. Temporary Speaker, Sir, there is also need for a standard policy to ensure that all counties are able to identify their tourist attraction sites, so that they can market them. Some counties have tourist sites, but they then lack the proper marketing strategies. Therefore, there is need to help counties to ensure that whatever tourist attraction sites they have are well marketed. For example, there is a place in Kisii where they sell soapstone. The Kisii Soapstone attracts quite a number of tourists. Tourists really feel good to associate with the soapstone when they go to Kisii. Some of them buy soap dishes, carved animals, and all that. This creates revenue for the sculptures and the local people. Therefore, I support the idea that all counties need to identify these tourist attraction sites so that locals can benefit from them.

Mr. Temporary Speaker, Sir, I am speaking for *wananchi*. This Bill by Sen. (Dr.) Zani is actually addressing the issue of ensuring that the locals are involved. There is even the need for public participation in all counties so that they get to know what exactly can attract tourists, and how exactly tourists can be brought on board. When tourists come on board, there is need for the revenue collected to be utilized within the counties.

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

**Sen. Olekina:** Thank you, Mr. Temporary Speaker, Sir. I rise to support this Bill. From the outset, I agree with Sen. Mutula Kilonzo Jnr., that Sen. (Dr.) Zani should develop this Bill in a way that it encourages people and not counties to make money.

Mr. Temporary Speaker, Sir, when you travel to Europe, particularly to Italy, you will find that people have converted their homes into tourism destinations. The

government in that country has supported that initiative by classifying it as agri-tourism, where with any move for one to convert their home into an agri-tourism center, you register it. Once you have done that, you are given subsidies by the government. Consequently, you end up paying less taxes because you are creating more employment and, in the process, solving the biggest problem that we have in this country of unemployment.

Mr. Temporary Speaker, Sir, when I briefly looked at this Bill, I realised that some of the penalties are more punitive than they are at encouraging innovation. If you travel to Eldoret today, there is a farmer called Kirwa who, a few years ago, was named as the best farmer in the country. I credit him for having taught me the most important thing on dairy farming. He converted his home into a local tourism-farming destination, where he trains farmers on dairy keeping and on how to develop dairy feeds.

Therefore, Mr. Temporary Speaker, Sir, I would plead with the sponsor of this Bill to come up with very radical amendments, which I hope she will consider doing them. The amendments should take away the aspect of county governments making money from this Bill, to which this comes in as a way to classify certain areas as agri-tourism destinations. A good example is Narok, Samburu and Tsavo, where we have tourism destinations; and Narok is completely zoned as a tourist destination. The biggest challenge that we currently have in Narok – where you know we collect about Kshs2.1 billion from tourists visiting Maasai Mara – is that the farms next to the wildlife corridors are littered with white *mabati* roofs. This is because people have gone there and they have created towns. You will even find a street called Majengo on the doorstep of Maasai Mara. This is the same in every tourist destination.

Therefore, Mr. Temporary Speaker, Sir, what we ought to do in this legislation, is to try and empower counties to zone their areas where they intend to help farmers. Instead of putting white roofs in Sekenani, we should encourage the local people from the Maasai community to maintain their cultural activities so that when these foreigners come, they can enjoy our culture. However, what is happening now is that anyone who wants to live close there puts up hostels and houses. In fact, sometimes other hotels prefer to fly their tourists straight into Maasai Mara instead of going by road, because before they enter the park, they will just find all these white *mabati* houses. This Bill should, therefore, introduce an element of zoning, where an entire area is classified as a tourist destination.

Mr. Temporary Speaker, Sir, I support the idea of promoting local tourism. Local tourism is key and very lucrative. In a few years' time, I will convert my own home into a tourist destination. I was so happy that here, in Kitui, there is one home – where most of us were staying – like that. Someone has created villas in the rural part, which encourages more people to traverse the county and appreciate what that county has. Since I came here, I have only been eating *muthokoi*, because I want to appreciate this culture. Therefore, instead of punishing people--- We should not be creating legislation and putting punitive measures in them. This issue where you can only transfer the license, we should make it very easy for one to access one. I like that aspect where you can only transfer to an activity similar to that one.

I, therefore, suggest to Sen. (Dr.) Zani to amend that clause and indicate that where it is zoned as an agri-tourism area or a particular field of activities that brings local

revenue or creates jobs in that area, that no other activities can be put there. This will encourage more people to invest in their local economies.

Mr. Temporary Speaker, Sir, I agree with Sen. Mutula Kilonzo Jnr. that we need to come up with a mechanism of private public partnership where that entity will eventually be run by a private entity. I am happy that the enterprise has created so many jobs. It is my hope that other counties will come to benchmark in KICOTEC Factory in Kitui County instead of travelling abroad.

I visited the clothes factory today and I was impressed by what they are able to do. In the past, the Ministry of Interior and Coordination of National Government used to procure their uniforms from abroad. However, they now buy them here. They are creating jobs for over 200 or 300 people. Other county governments should replicate what Kitui County has done through Public-Private-Partnership (PPP) framework. The county governments should not do everything. Big governments are not solutions for democracies. Small governments are a solution for democracies. With a small government, you encourage more people to become innovative and solve the problem of unemployment.

Mr. Temporary Speaker, Sir, I commend Sen. (Dr.) Zani for this Bill. However, I wish that she could spend some time on it before it goes for the Third Reading. I am not sure how much public participation has been carried out this Bill but I urge Sen. (Dr.) Zani to sample out counties that thrive in local tourism to see what other innovative ideas they have and then incorporate them. Looking at the different classification of local tourism activities and services which are classified as a, b,c,d,e and f, they were classified for purposes of coming up with rates on how much they should charge for licences. I do not think the classification is necessary. We need to ascertain whether our intention is to create own source revenue or providing a solution to the issue of unemployment by encouraging our people to be innovative and create money.

There are many people who live in this country who have never been to Narok. There are many people who live in this country who do not know where the raw product of the bread; wheat, comes from. The farmers in Narok who grow wheat can convert part of their land into agri-tourism centres, put up some condos, and then advertise all over the country for people to come to Narok to learn about wheat growing. Because of the problem of unemployment in this country, people are averse to welcoming people to their homes to show them what they do.

Mr. Temporary Speaker, Sir, if you went to a factory in Europe, the owner of that factory would take the time to walk you through. I recently visited Poland and one family took me through their farm and I was mesmerized by it. I love the idea that they were free and willing to share with me. However, here in Kenya, farmers treat their farms as their little secrets. We are in this world for a very short time. The more we care about our environment, the more we live in a peaceful environment.

The county governments need to come up with trade fairs with the intention of making sure that local youths pick up skills from there and that they are supported. In instances where the youth cannot afford to pay for the skills, the county governments can pay for them because it will lessen the burden for county governments.

I beg to support this Bill with various amendments. I hope that Sen. (Dr.) Zani will look at the HANSARD report to see what the Senators had to say. One of the first amendments is to do away with the heavy fees imposed on the local tourism. The

cottages will still make little money. If we are looking for ways of generating more revenue, there are certain services that when people, the Kenya Revenue Authority (KRA) can still make money. This is a very rich economy if only we follow things the right way.

Mr. Temporary Speaker, sir, we are moving to a cashless society. Most people use Mpesa to pay for services. All businesses should be encouraged to do merchant services. Sen. (Dr) Zani should include in the Bill that the KRA should waive or subsidize the charge for small business. The KRA will make more money when they subsidize the charge.

With those few remarks, I beg to support this Bill.

**Sen. Were:** Mr. Temporary Speaker, Sir, I support this Bill that has been ably sponsored by Sen. (Dr.) Zani. For a long time, we have been used to the fact that promotion, licensing and marketing of tourism is done at the national level. There are various institutions in the tourism sector that do this such that the county CECs do not know do not know what to do with their portfolios. The CECs in charge of tourism have been thinking that their docket is about organizing beauty contests.

This Bill by Sen. (Dr.) Zani has outlined for the CECs in charge of tourism very well a good guide as to how they should run their dockets of tourism with a few amendments of the licensing fees and the various penalties as outlined here. She has also classified the tourism sites and areas that can be promoted by the counties. Our counties have no excuse not to promote tourism in their areas to create employment as well as keep our people busy with the various benefits associated with it.

Mr. Temporary Speaker, Sir, we have various tourism attraction sites in our counties. For example, Kakamega County has a crying stone which is an attraction site that people visit without any framework to earn the county revenue. Baringo County as a whole is a scenic view. People go there to take photos and leave. The county would have classified the tourist attraction sites and made some money out of it in the process employ our people.

There are other forms of tourism other than just wildlife and beaches. There are other cultural and historical attractions such as the Koitalel arap Samoei sites in Nandi County. We have made it look like the other attraction sites are not worth promoting not just locally but internationally. Our counties have created mental blocks in this area. This Bill will seek to unblock their minds so that they open up their minds to promote other tourism sites for their counties.

Mr. Temporary Speaker, Sir, it is my hope that with this Bill, counties will think out of the box and promote their areas so that eventually people will plan to visit other counties.

With those remarks, I beg to support this Bill with amendments.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): The Mover, Sen. (Dr.) Zani, kindly reply

**Sen. (Dr.) Zani:** Mr. Temporary Speaker, Sir, I beg to reply.

I would like to begin by thanking Sen. Wetangula, Sen. Faki, Sen. Mutula Kilonzo Jnr., Sen. (Dr.) Musuruve, Sen. Olekina and Sen. Were for their insightful and constructive comments and contributions to this Bill. I have listened to the presentations that they have put in terms of contributions to this Bill. I will also look at the HANSARD and comb through it very carefully.

Mr. Temporary Speaker, Sir, some issues like the penalty are standing out very clearly. The penalty in this Bill needs to be reviewed downwards.

There are also issues of regulations, all counties making their own Bills which might cause confusion, zoning and so on. The whole nexus of this Bill is just to ensure that counties can come alive. So many countries and cultures do this. This seems to be the easiest and least intuitive thing to do because most of the materials that exist for local tourism are there. Now that many tourists want to experience it as it is, it does not even need to be upgraded.

For Kitui County with the Nzambani Rock, this would have been a time to see Kitui County market this cultural site. I will not go into each county, but each county has something precious they can showcase and that can bring money. Indeed, many countries the world over have successfully exploited their local tourism to this extent. Yes, we have a Ministry that is focused on this, but the Constitution gives a mandate to the counties. It is actually a shared function between the national and the county governments. Unfortunately, at the county level, it has not been developed in terms of looking of ways to manage, develop, market and regulate local tourism. This Bill hopes to do that.

With those comments, I beg to reply.

Mr. Temporary Speakers, Sir, under Standing Order No.61(3), I request you to defer the putting of the question to another appropriate time when we have quorum in the House.

Thank you.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Thank you. I order that putting of the question be deferred to a further date.

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

Next Order.

## BILL

### *Second Reading*

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

*(Sen. Murkomen on 6.8.2019)*

*(Resumption of Debate interrupted on 18.9.2019)*

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, I use my discretion to defer Order No.12; The County Hall of Fame Bill (Senate Bills No.39 of 2018) until Wednesday next week.

*(Bill deferred)*

Next Order.

**MOTIONS****ENGAGEMENT OF COMMUNITY HEALTH  
WORKERS BY COUNTY GOVERNMENTS**

THAT, AWARE THAT county health facilities, and the promotion of primary health care are devolved functions, and each county government is striving to offer the best healthcare to the people of Kenya;

COGNIZANT THAT, the provision of healthcare services is continuously riddled with numerous challenges ranging from understaffing of personnel to inadequate facilities and equipment resulting in congestion in hospitals further restricting effective service delivery;

NOTING THAT every Kenyan has a right to affordable and accessible healthcare, and the President has launched a pilot universal health care program called “Afyra Care” that will see many Kenyans access improved healthcare;

CONCERNED THAT, the diverse nature of counties and wanting infrastructural development is compromising the quality and accessibility of health centres especially during emergency situations, resulting in the loss of many lives occasioned by the failure by patients to reach health facilities in time;

FURTHER CONCERNED THAT, in each county there are numerous unemployed community health workers who are adept at working with communities in emergency situations, and have the requisite experience to support the medical practitioners in our country where, according to the World Health Organization 2014 report, there are two (2) doctors for every ten thousand (10,000) people;

NOW THEREFORE, the Senate resolves that the Council of Governors in partnership with the Ministry of Health –

- (i) Develop a policy for the training, certification and employment of community health workers to enhance the emergency health service delivery in the Counties, and
- (ii) Facilitate the said community health workers with the necessary basic equipment for use during emergency cases.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): I defer Order No.13. The sponsor of the Motion, Sen. Nyamunga, is not around.

*(Motion deferred)*

Next Order.

LEGAL AND POLICY INTERVENTIONS FOR CAREGIVERS OF  
PERSONS WITH PERMANENT MOTOR AND  
NEUROLOGICAL DISORDERS

**Sen. Omanga:** Thank you, Mr. Temporary Speaker, Sir. I beg to move the following Motion-

THAT, AWARE that Cerebral palsy, Down syndrome, Autism and other permanent motor and neurological disorders are birth defects characterised by, among others, disturbances of sensation, perception, cognition, hearing loss, congenital heart defects, lower than average IQ, impairment in social interaction and rigid, repetitive behaviors.

COGNIZANT that persons born with these and other permanent motor and neurological disorders face considerable difficulties in the social and behavioral aspects of their lives, including discrimination, physical challenges, mental and emotional health issues, and problems with inclusion and social isolation.

ACKNOWLEDGING the critical role that parents and caregivers of persons with permanent motor and neurological disorders play in ensuring that they realize their potential to the fullest extent possible and that they have long, healthy, and satisfying lives.

RECOGNIZING that, in taking care of these persons, caregivers make considerable sacrifices in the pursuit of education, employment, investment, and other opportunities for their own advancement and, in some cases, spend the most productive years of their lives taking care of persons with these disorders;

NOTING that most caregivers lack the training, tools and psychosocial support required in taking care of persons with these permanent disorders, are often subjected to the same stigma as the persons they take care of, and are exposed to stresses and pressure that have an adverse impact on their mental and physical wellbeing;

CONCERNED that, while a lot of progress has been made in taking care of other vulnerable and disadvantaged members of the society, equivalent efforts have not been made to recognize the important role that caregivers play, to create, through policy and legislation, a conducive environment for the provision of adequate, safe and informed care to persons with these disorders;

NOW THEREFORE, the Senate resolves that the Ministry of Labour, Social Security and Services, together with the County Governments, formulate a policy framework for the recognition, training, empowerment and protection for caregivers of persons with permanent motor and neurological disorders, including:

a) provision of financial assistance and incentives to caregivers, including inclusion in the list of beneficiaries under the Inua Jamii Cash Transfer Programmes;



b) provision of appropriate tax reliefs and exemptions to caregivers, equivalent to those advanced to other Persons with Disabilities (PWDs);

c) exemption from taxes on goods and services required for the care and protection of persons with the disorders; and

d) provision of the specialized training, psychosocial and other support necessary to engage in income-generating activities for caregivers of persons with permanent motor and neurological disorders, including accessing the quota set aside in law for vulnerable groups for the supply of goods and services to government entities.

Mr. Temporary Speaker, Sir, this Motion is close to my heart. It is true that I have been doing some social work. That is why I was pushed to come up with this Motion. The number of persons with disability in this country is growing and there is need to have a legal policy framework for both the national Government and county governments which will include caregivers of persons with permanent motor and neurological disorders.

We come from an African society which for many years when a person gets a child who is disabled or has permanent motor and neurological disorder, it was seen as a curse or a taboo. In some communities, these children were killed while in others, up to date, there are parents who decided to hide these children in their houses because of stigma. They do not come out or go to school.

It is very unfortunate because parents of these children are mostly single. It is unfortunate that when most women get these disabled children, men run away either because of the taboos and cultural belief associated with it, for example, that it is a curse. They do not also want to take responsibility.

Mr. Temporary Speaker, Sir, if one has a child who has cerebral palsy, one will become a caregiver. They will not go anywhere or leave the child with anyone but have to be there for the child, 24 hours the whole week. There is a class at Muslim Primary School where I have been doing community service. It is in between Starehe and Kamukunji constituencies in Nairobi.

Currently, there are a number of special units in public schools. Most of our public schools nowadays have one class dedicated to these kinds of children. The caregiving is left to the teachers who are not well trained to take care of these special needs.

In that class I take care of, most parents come from informal settlements around such as Kiambiu, Majengo, Shauri Moyo and Kitui Village. These parents cannot afford to even buy wheelchairs for these children yet, they have a permanent disorder. As the child grows, they become heavy yet parents have to carry them to school and all that. It is a challenge.

The parents learn in the process because they do not know how to handle stress, stigma and to handle the child the way it should. There is therefore, need to come up with the legal and policy framework to give these caregivers and parents counselling and quality training.

There is also need for the Government to support and engage these parents on income generating activities. This includes making it possible for them to access the

quarter set aside in law for vulnerable groups for supply of goods and services to Government entities.

There is also need for these caregivers to be exempted from tax on goods and services required for the caregiving, for example, diapers. Most children and people with permanent mortar and neurological disorders cannot do a simple activity such as going to the toilet. They have use diapers that are taxed and therefore, very expensive such that most people cannot afford them. There is need for the Government to exempt and zero rate tax on these goods and services required by the caregivers.

There is also need for provision of tax reliefs and exemptions because as we said, it is a fulltime job. If you are a parent, more so a single-mother, you are left to yourself. The husband may have run away because they either did not want the responsibility or they did not want to be associated with what is culturally believed to be a curse. It is a fulltime job and if you are not able to employ expertise---

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Order, Sen. Omanga. You will have eight more minutes to continue moving your Motion.

### ADJOURNMENT

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, it is now 6.30p.m, time to adjourn the House. The Senate, therefore, stands adjourned until Tuesday, 24<sup>th</sup> September, 2019 at 2.30p.m.

The Senate rose at 6.30 p.m.