

**PARLIAMENT OF KENYA****THE SENATE****THE HANSARD****Wednesday, 7<sup>th</sup> October, 2015**

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

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

**PRAYERS****COMMUNICATION FROM THE CHAIR****ADMISSIBILITY OF SEN. MURUNGI'S MOTION ON  
ESTABLISHMENT OF A TASK FORCE TO SURVEY AND  
FIX BEACONS FOR ALL COUNTY BOUNDARIES**

**The Speaker** (Hon. Ethuro): Hon. Senators, I have a Communication to make on the notice of Motion by Sen. Murungi.

On Tuesday, 22<sup>nd</sup> September, 2015, the Senator for Meru County, Sen. Kiraitu Murungi gave a Notice of Motion whose main thrust is to request the Office of the President and the Ministry of Lands, Housing and Urban Development to establish a task force to survey, mark and fix beacons for all county boundaries.

Thereafter, several Senators, including Sen.(Dr.) Machage, Sen. Murkomen, Sen. Khaniri and Sen. Mutula Kilonzo Jnr. raised reservations on whether the Notice of Motion was proper in terms of procedure, and whether it was constitutional, given the framework regarding alteration of county boundaries as provided for in Article 188 of the Constitution. In addition, there were assertions that a similar Motion, sponsored by Sen. Mutula Kilonzo Jnr., had been passed by the House and that, indeed, a Bill on county boundaries was on the verge of introduction to the Senate.

Hon. Senators, I will allow the Senators at the Bar to enter the Chamber given that some of them seem to be much appreciated in this Communication.

*(Sen. M. Kilonzo Jnr., Sen. (Dr.) Khalwale and  
Sen. Melly entered the Chamber)*

*(Sen. (Dr.) Khalwale continued standing in his place)*

Order, Sen. (Dr.) Khalwale! If I were you, when courtesies are extended to you, you take the earliest opportunity to appreciate them by sitting.

Hon. Senators, let me begin by giving a chronology of events surrounding this matter. First, a Motion was earlier filed by Sen. Mutula Kilonzo Jnr. urging the Standing Committee on Legal Affairs and Human Rights to initiate and prioritize the drafting of legislation within 90 days to provide for an independent commission to inquire into, examine and identify the boundaries of counties taking into account the criteria set out in Article 188(2) of the Constitution. The Motion was subsequently approved by the House.

Secondly, I am aware that the Standing Committee on Legal Affairs and Human Rights has done a great deal of work to implement the resolution of the House and that a Bill has been drafted in that regard. However, the Bill has not been introduced to the House yet by way of First Reading as required under Standing Order No.129.

Hon. Senators, it is important to note that the Motion by Sen. Mutula Kilonzo Jnr. and the Bill being developed by the Committee aim to establish an independent Commission to consider the boundaries of counties in accordance with Article 188 of the Constitution. Let me repeat for emphasis that the Motion by Sen. Mutula Kilonzo Jnr. and the attendant Bill being developed by the Committee aim to establish an independent commission to consider the boundaries of counties in accordance with Article 188 of the Constitution.

I, therefore, would like to clarify that what Sen. Murungi's Motion is seeking is to have the boundaries as they now stand clearly surveyed, marked and beacons fixed. For the avoidance of doubt, he is not seeking to have the boundaries altered as doing so without the recommendations of an independent commission would violate the provision of Article 188 of the Constitution. This is, therefore, in my considered opinion, a different matter altogether because, regardless of any disputes and any proposals that may be made for the alteration of county boundaries, counties remain in existence and there are boundaries.

It may be such that the process of survey and marking would be affected and be difficult to undertake while disputes exist. That goes to the merits of the Motion and is a matter for the Senate to determine in the debate and for the Senate to make a decision.

Hon. Senators, arising from the foregoing, therefore, I am satisfied that there is no contradiction in the Motions by Sen. Mutula Kilonzo Jnr. and Sen. Murungi. They can both proceed. Indeed, Sen. Mutula Kilonzo Jnr.'s Motion was passed by the House. So, even as you entertain Sen. Murungi's Motion, you will already put into account what you had already decided as a House.

I thank you.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, for the record, I want to confirm that The County Boundaries Bill was withdrawn from the Order Paper during the First Reading because the schedules for two counties had been inadvertently omitted by the Government Printer. Therefore, in every sense of the word, the Senate has been seized of that Bill. The amended Bill is pending for your approval.

**The Speaker** (Hon. Ethuro): I cannot agree more, except when I make the Communication, I have to be careful with those kinds of considerations. I know for a fact that the Bill is there.

**Sen. (Dr.) Machage:** Thank you, Mr. Speaker, Sir, for your wise ruling. However, I want to go on record by making the following statement. The passing of Sen. Murungi's Motion will be a recipe for anarchy and disturbance in the counties.

*(The Speaker (Hon. Ethuro) consulted the Clerk at the Table)*

**The Speaker** (Hon. Ethuro): What is it, Sen.(Dr.) Machage? You may wish to repeat. I have received a Petition from Sen. Khaniri and I have reason to believe him.

**Sen. (Dr.) Machage:** Very well, Mr. Speaker, Sir, although verbal rewinding is not easy.

Thank you for your wise ruling on the matter. However, I want to go on record by making the following statement: Sen. Murungi's Motion will be a recipe for anarchy and disturbance at the county boundaries level. There are already skirmishes and quarrels on the same since Sen. Mutula Kilonzo Jnr. brought a Motion here and his intention to bring a Bill in the House on the same.

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Machage, I wish to withdraw my words that Sen. Khaniri is always useful. That is exactly what I said in my statement.

**Sen. Ndiema:** Mr. Speaker, Sir, I am on a point of order. Is it in order for Sen. (Dr.) Machage to go into the debate while you actually said that the merits and demerits will be discussed when the Motion is debated?

**The Speaker** (Hon. Ethuro): Absolutely. I said those are some of the issues you can raise. Sen. Ndiema has captured it.

**Sen. Murungi:** Mr. Speaker, Sir, mine is very simple. I wish to record my sincere thanks and gratitude for saving my Motion which faced stiff resistance from some forces of which Sen. (Dr.) Machage is one. My Motion is intended to bring order and to reduce uncertainty and chaos that is happening as a result of these boundaries not being marked. We will contribute to the Motion when the time comes.

I thank you for allowing this Motion to proceed.

**Sen. (Dr.) Khaniri:** Mr. Speaker, Sir, I want to plead that you re-state the sentiments you made that are normally very useful to the Chair in bringing some information. What Sen. (Dr.) Machage said is the exact opposite of what you had made in your ruling. He alleged that if Sen. Kiraitu Murungi's Motion is passed, it will be a recipe for county boundaries conflict. That is not what you said.

Having said that, I do fully respect your ruling. The Motion will come here and we will do justice to it. Some of us will definitely shoot it down because I believe there is no legal framework under which the Office of the President can survey, mark and fix beacons. That is my only problem with it. Why the office of the President? We think it is unconstitutional and we will revert back to Sen. Mutula Kilonzo Jnr.'s Motion, which is best anchored in the Constitution. It is only this House that has the mandate to deal with county boundaries, but not the Office of the President.

**The Speaker** (Hon. Ethuro): Hon. Senators, my attention has been drawn to the statements by my good friend Sen. George Khaniri. I want to make it abundantly clear. 'Invariably' he has been extremely useful to the Chair. 'Invariably' mark my word, Sen. (Dr.) Khalwale. However, I want to read that particular paragraph for the benefit of Sen. Khaniri and other Senators. Since he always insists that I give him undivided attention, I wonder what he is doing looking downwards. I hope he is not looking at the phone instead of me.

The fourth paragraph in my communication states as follows:-

"I would like to clarify that what Sen. Kiraitu's Motion is seeking is to have the boundaries as they now stand clearly surveyed, marked and beacons fixed for the avoidance of doubt."

Hon. Senators, already we have some formal boundaries for counties. We borrowed these from the Provinces and Districts Act. That is the law of the Republic of Kenya. I am not altering or changing that until Sen. Mutula Kilonzo Jnr.'s Bill comes.

It will be available to you, then you know you will have started another process of challenging that. But for now, I have to live with what I have.

Sen. Murungi's Motion is not seeking to have the boundaries altered as doing so, without the recommendations - and in fact, I have even married it with an independent commission which is what Sen. Mutula Kilonzo Jnr. is seeking - would violate the provisions of Article 188 of the Constitution.

This is a different matter all together. Regardless of any disputes and any proposals that may be made for the alteration of county boundaries, counties remain in existence and have boundaries.

This is the point Sen. Khaniri and Sen. (Dr. Machage, were making. Therefore, you are not saying anything that I had not said before. It may be that such a process of surveying and marking would be affected and would be difficult to undertake while disputes exist. We are in agreement on that.

But it goes on to the merits of the Motion---

*(Sen. Wetangula spoke off the record)*

Order! Sen. Wetangula, your opinion is not final, mine is.

*(Laughter)*

But that goes to the merits of the Motion and is a matter for the Senate to determine in the usual manner. Already, Senators George Khaniri, Dr. Machage and Kiraitu Murungi have expressed their different opinions. That is the nature of democracy. Let it come to the Floor, you deal with it.

By the way, you do not just challenge my rulings. I have already made a ruling and it is final, Sen. Wetangula. Let us proceed. The Motion is coming, you will decide.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order.

**The Speaker** (Hon. Ethuro): Sen. Wetangula, I have not given you the chance.

I have allowed enough ventilations and they are repetitive. There was Sen. Ndiema and Sen. Kiraitu. If those two are not enough, the number was doubled.

Next Order!

## PAPERS LAID

**Sen. Murkomen:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today Wednesday 7<sup>th</sup>, October 2015.

### REPORT OF THE CIC ON TRANSFER OF FUNCTIONS TO COUNTIES

The Report of the Commission for the Implementation of the Constitution on the Assessment of the Transferred Functions to the County Governments, August 2014.

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

**The Speaker** (Hon. Ethuro): Sen. Murkomen, are you dealing with ‘B’?  
Sen. Murkomen order! Are you dealing with ‘B’ on Papers? I thought you had ‘A’ as well.

**Sen. Murkomen:** Mr. Speaker, Sir, I am a member of the Legal Affairs Committee. The first one I laid on behalf of the Legal Affairs Committee.

Mr. Speaker, Sir, I hope you heard me. The first one I laid as a member of the Legal Affairs Committee on behalf of the Chair, Legal Affairs Committee which Sen. Mutula Kilonzo Jnr. and I, are members.

However, I am the Chairman of the Committee.

**The Speaker** (Hon. Ethuro): Order, Sen. Murkomen! I had no doubt about your membership in the Committee and you laying the document. However, what surprised me is why you are clueless and you are the Chairman.

*(Laughter)*

ANNUAL PROGRESS REPORT OF THE CIC  
FOR THE YEAR 2014/15

**Sen. Murkomen:** Mr. Speaker, Sir, on behalf of the Chairperson of the Standing Committee on Legal Affairs and Human Rights I beg to lay the following Paper on the Table of the Senate, today, Wednesday, 7<sup>th</sup> October, 2015:-

Annual Progress Report of the Commission for the Implementation of the Constitution for the year 2014/15.

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

**STATEMENTS**

**The Speaker** (Hon. Ethuro): Can we have the requests first, Hon. Senators?

**Sen. Okong’o:** Bw. Mzungumzishi, umesema kwanza tuanzie kwa wale wanataka kuuliza maswala fulani. Langu lilikuwa swala la mbeleni hivyo basi nitangoja kidogo.

**Sen. (Dr.) Kuti:** Mr. Speaker, Sir, I would like to bring the attention of the House to my--

**Sen. Murungi:** Mr. Speaker, Sir, we are at a loss; what name did Sen. Mong’are call you? *Musungumusi*? That is a new one. Could he repeat it? We do not know whether it is a Kisii name or---

*(Laughter)*

**Sen. Okong’o:** Bw. Mzungumzishi, yanaonekana ndugu Seneta wa Meru hakuwa hapa wakati mwalimu, Sen. Zani alipoleta neno mpya linatumika badala ya neno “Spika”. Hilo ndilo neno mwafaka badala ya “spika.”

**Sen. Murungi:** Mr. Speaker, Sir, I studied Kiswahili language up to Form 6 level, but I never heard that word, ‘*musungumusishi*’. Pengine msemaji--.

**The Speaker** (Hon. Ethuro): Order! Sen. Murungi, hucusikia neno gani?

**Sen. Murungi:** ‘Musungumusishi’

(Laughter)

**The Speaker** (Hon. Ethuro): Sen. Kiraitu nafikiri muda umesonga tangu umalize kidato cha sita na wakati Sen. Okong’o alipoenda shule.

**Sen. (Prof.) Anyang’ Nyong’o:** Mr. Speaker Sir, Is it in order for Sen. Kiraitu to assume that the word ‘mzungumzishi’ is a type of *mzungu*?

(Laughter)

**The Speaker** (Hon. Ethuro): For avoidance of doubt, *mimi naridhika na hilo neno*.

MEETING WITH HEALTH CS TO DISCUSS ISSUES  
BEFORE THE COMMITTEE

**Sen. (Dr.) Kuti:** Thank you, Mr. Speaker, Sir. I bring to the attention of the House my attendance today after a long absence. I was indisposed. I was out in the United States of America (USA) where I underwent a successful surgical procedure. I thank God that I am back.

(Applause)

Also, while I was away, I know a lot of issues on the Committee on Health were raised on the Floor of this House. I would like to bring to the attention of the House that I have organised a meeting with the Cabinet Secretary (CS) for Health tomorrow at 9.30 a.m. at the Senate Chamber to address the various issues that the House has been raising.

I invite all hon. Senators, especially the Committee Members to be there so that the issues of preparedness for *El Nino* are addressed. There are already cases of cholera and other diseases. We need also to address staff strikes which have caused a lot of suffering to Kenyans.

I invite the House to join us tomorrow.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. I welcome back our brother who has been away. We all wished him quick recovery. I also take the opportunity, now that my distinguished brother Senator for Nyeri County has come in, to pass our collective condolences to him for the loss of his father. Many of us were not able to attend the send-off, but we felt with you, our brother, for losing your beloved father.

Mr. Speaker, Sir, the distinguished Senator for Isiolo County has given very important information to the House, but we wish that a matter---

**The Speaker** (Hon. Ethuro): Order, Senators! I think the system is now working. If it is not, we will do it manually. Please, check to confirm if it is working. Why are the microphones not working?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, it is on now.

**The Speaker** (Hon. Ethuro): Proceed, Sen. Wetangula. Please, be brief so that we can move on to the next item.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I will be very brief.

In this Chamber, if you call a meeting concerning education, health and security, you will be sure that every single delegation will turn up because it affects virtually every county. The

distinguished Chairperson of the Committee on Health has announced today that tomorrow at 9.00 a.m. the CS for Health will be here to discuss very weighty issues of health; strikes, lack of medicine and all manner of things that are going on in the Ministry of Health.

For Members of this House to participate effectively and in an informed manner, I believe that we need adequate notice so that we can also get information from our counties on issues that we need to raise with the CS. It is not right to tell us at 3.30 p.m. that at 9.00 a.m. in the morning, the CS will be here for us to deal with matters as weighty as that.

We fully appreciate that our brother has been away. He has been unwell and we pray for him to recover quickly. However, I suggest that he gives Members adequate notice so that the CS can come next week on a day and time you may choose so that we can interrogate him on these matters.

**The Speaker** (Hon. Ethuro): Proceed, Sen. (Dr.) Khalwale. You have one minute.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, through you, I would like to pay my tribute to Sen. (Dr.) Kuti. He has done something which is unprecedented in this country whereby leaders think it is a crime for the public to know when they are unwell. He has demystified that and told Kenyans that he has just come out of surgery. Because of the privilege I have of being a doctor, I want to also say that the young doctor who was my junior in the medical school was suffering from a swelling in the parathyroid gland. Therefore, that nodule was surgically removed.

How I wish that the facilities that we have in the United States of America (USA) could also be found here so that more Kenyans who cannot afford to travel abroad can have access to life saving procedures. Congratulations, my brother.

**An hon. Senator:** How do you declare somebody's illness in public?

**The Speaker** (Hon. Ethuro): Order, Members! Sen. (Dr.) Khalwale, I thought that at your graduation, you took the Hippocratic Oath. I do not want to use the opposite that the Senate Minority Leader is using. The fact that he said that he was indisposed and he is now ready and has invited the CS for Health to come tomorrow at 9.30 a.m. to deal with all the pending matters before the Committee, is sufficient that he has fully recovered.

I would like to urge the Senate Minority Leader that, while his sentiments are much appreciated, given the circumstances in which the Chairperson has described, it is only fair that we take that offer. This is a digital world; between 3.30 p.m. and 9.30 a.m. we can work on phones. If it means that Safaricom and Airtel get a bit more money, so be it, so that they do not leave the market.

More importantly, we will start with the issues that are already pending before the House in terms of the statements already sought by Members. If by tomorrow, we find that there are other issues that the CS for Health would need to address, I do not think it is beyond us to invite the CS again. I know the CS in particular; he is more than willing to engage with the Senators, he has told me as much. So, hon. Members, let us meet tomorrow at 9.30 a.m. Let us respect our chairperson; he has come back with enthusiasm and that is the only gratitude we can show him.

On your behalf and my own behalf, I welcome Sen. (Dr.) Kuti back to the Chamber.

*(Applause)*

Order, Senators! You will excuse me today. It is not the day for entertaining many points of order. Once the Chair has directed, so be it.

We have a lot of business pending and this is the moment. I thank one active hawk-eyed Sen. Mutula Kilonzo Jnr. for bringing to my attention that we have requisite numbers to vote.

That is exactly what we will do, then come back to statements. So, we go to Order No.8. We will do Order Nos.8, 9 and 10.

### BILLS

#### *Second Reading*

THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE)  
BILL (SENATE BILL NO. 35 OF 2014)

*(Sen. Mutula Kilonzo Jnr. On 22.9.2015)*

*(Resumption of Debate interrupted on 22.9.2015)*

#### *Second Reading*

THE OFFICE OF THE COUNTY PRINTER BILL  
(SENATE BILL NO. 42 OF 2014)

*(Sen. Sang on 22.9.2015)*

*(Resumption of Debate interrupted on 23.9.2015)*

#### *Second Reading*

THE SENIOR CITIZENS CARE AND PROTECTION BILL  
(SENATE BILL NO. 43 OF 2014)

*(Sen. (Prof.) Lesan on 1.10.2015)*

*(Resumption of Debate interrupted on 6.10.2015)*

*(Sen. Wetangula spoke off record)*

The Speaker (Hon. Ethuro): Senate Minority Leader, you will have the opportunity to do so.

*(Laughter)*

Order, Senators! You have heard all the three orders. I now wish to put the question.

**The Speaker** (Hon. Ethuro): Once the Bar is drawn, it will cover all the three votes.

*(The Division Bell was rung)*



**DIVISION**

## ELECTRONIC VOTING

*(Question, that the Petition to County Assemblies (Procedure)  
Bill (Senate Bill No. 35 of 2014) be now Read a Second Time,  
put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen.(Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Chiaba, Lamu County; Sen. Gwendo, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kembi-Gitura, Murang'a County; Sen.(Dr.)Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen.(Prof.)Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen.(Dr.)Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

**NOES:** Nil

**The Speaker** (Hon. Ethuro): Hon. Senators, the results of the Division are as follows:-

**AYES:** 38

**NOES:** Nil

**ABSENTIONS:** Nil

So, the "Ayes" have it.

*(Question carried by 38 votes to nil)*

*(The Bill was read a Second Time and committed  
to a Committee of the Whole tomorrow)*

**DIVISION**

## ELECTRONIC VOTING

*(Question, that the Office of the County Printer Bill,  
(Senate Bill no. 42 of 2014) be now Read a Second Time,  
put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen.(Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Chiaba, Lamu County; Sen. Gwendo, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kembi-Gitura, Murang'a County; Sen.(Dr.)Khalwale, Kakamega County; Sen. Khaniri, Vihiga

County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen.(Prof.)Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen.(Dr.)Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong’o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

**NOES:** Nil

**The Speaker** (Hon. Ethuro): Hon. Senators, the results of the Division are as follows:-

**AYES:** 38

**NOES:** Nil

**ABSENTIONS:** Nil

So, the “Ayes” have it.

*(Question carried by 38 votes to nil)*

*(The Bill was read a Second Time and committed to a committee of the Whole tomorrow)*

## DIVISION

### ELECTRONIC VOTING

*(Question, that the Senior Citizens Care and Protection Bill (Senate Bill No. 43 of 2014) be now read a Second Time put, and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Prof.) Anyang’-Nyong’o, Kisumu County; Sen. Billow, Mandera County; Sen. Chiaba, Lamu County; Sen. Gwendo, Nairobi County; Sen. Haji, Garissa County; Sen. Kagwe, Nyeri County; Sen. Kembi-Gitura, Murang’a County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Murungi, Meru County; Sen. Ntutu, Narok County; Sen. Sang, Nandi County; Sen. Wako, Busia County; and Sen. Wamatangi, Kiambu County.

**NOES:** Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Madzayo, Kilifi County; Sen. Mohamud, Wajir County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans-Nzoia County; Sen. Obure, Kisii County; Sen. Okong’o, Nyamira County; Sen. Orengo, Siaya County; and Sen. Wetangula, Bungoma County.

**ABSTENTIONS:** Nil

**The Speaker** (Hon. Ethuro): Hon. Senators, I will now announce the results:-

**AYES:** 23

**NOES:** 15

**ABSTENTIONS:** 0

The vote is lost.

*(Question negatived by 23 votes to 15)*

*(Applause)*

*(Loud consultations)*

**Sen. (Dr.) Khalwale:** Mnataka kufunga wazee kwa nini?

**The Speaker** (Hon. Ethuro): Next Order!

### COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

#### IN THE COMMITTEE

*(The Temporary Chairperson (Sen. (Dr.) Machage) took the Chair)*

#### THE CLIMATE CHANGE BILL (NATIONAL ASSEMBLY BILL NO. 1 OF 2014)

**The Temporary Chairperson** (Sen. (Dr.) Machage): Order, Senators! We are in the Committee of the Whole. If we could maintain the numbers, it would be okay. Please, as you think of what to do, stay in the House so that we can execute the Committee of the Whole. I request you, including the Deputy Speaker, to stay.

We are on Order No.11, The Climate Change Bill (National Assembly Bill No. 1 of 2014)

*Clause 3*

**Sen. Khaniri:** Mr. Chairman, Sir, I beg to move:-

THAT, Clause 3 of the Bill be amended in sub-clause (2) by inserting the word “and” immediately after the word “intergenerational” appearing in paragraph (e).

Sen. (Dr.) Khalwale: ..... *(Words expunged at the order of the Temporary Chairperson)*

**Sen. Khaniri:** I am not on record.

**Sen. (Dr.) Khalwale:** Mr. Temporary Chairman, could you consider, in view of the fact that even the numbers have dwindled, that we stand down this Motion and do some other work

so that there is quality to legislation? We expect the Chair of the Committee to lead us through the process.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale! Even if I was to consider your suggestion, there are Standing Orders to be quoted and proper execution of the same done.

Sen. Khaniri, did you actually make the remarks that Sen. (Dr.) Khalwale is purporting to put into your mouth?

**Sen. Khaniri:** Mr. Temporary Chairman, Sir, I have no idea what the Senator for Kakamega is talking about. Whatever I said is on record and I think the HANSARD will bear me witness.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Very well. I rule Sen. (Dr.) Khalwale out of order. I order that whatever you said is expunged from the records of today's proceedings.

*(Laughter)*

I am serious. He made a very blatant accusation. So, that should not exist and appear in today's proceedings.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Chairman, Sir. I do not have any problem in having my words expunged, however, you have to specify – for purposes of the record – what it is that I said that is not admissible, so that it is that particular part that is expunged. I would like your directive to be clearer.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale! I am not here to parrot or repeat what you say.

Sen. Khaniri, are you ready to proceed? Please, approach the Table.

*(Sen. Khaniri approached the Table)*

## **PROGRESS REPORTED**

THE CLIMATE CHANGE BILL  
(NATIONAL ASSEMBLY BILL NO. 1 OF 2014)

**Sen. Khaniri:** Mr. Temporary Chairman, Sir, I rise under the provisions of Standing Order No.139 to request the Temporary Chairman to postpone the session so that the Committee can report progress to the House.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

**Temporary Speaker** (Sen. Mositet): What is your point of order?

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. Before the Chairperson of the Committee of the Whole reports progress, I request the Chair to find that the words that were expunged from the records were the same words that are the reason the House is rising to report progress. I request that my words be reinstated on the HANSARD because they are not offensive in any way.

Mr. Temporary Speaker, Sir, this might be unique, but I know that under Standing Order No.1, you have the power to make this finding. It will be very bad for my grandson who will be a Senator in Kakamega to come here and find that my words were expunged only to be reintroduced by a different senator.

**Sen. (Dr.) Machage:** On a point of order, Mr. Temporary Speaker, Sir. Sen. (Dr) Khalwale is a seasoned Member of this House, and has actually been in Parliament for the last three terms. He knows the procedure and the process to follow if at any one time he disputes the ruling of a Speaker or a Chair. Is he in order to raise that point of order the way he did it?

**The Senate Minority Leader (Sen. Wetangula):** On a point of order, Mr. Temporary Speaker, Sir. You cannot possibly be a judge in your own cause. The distinguished Senator for Migori was the Chair of the Committee of the Whole. He made a ruling which carried the moment. The distinguished Senator for Kakamega has, after fresh developments, asked the Speaker, to make a ruling on the matter that new circumstances have arisen, and for reasons that the distinguished Senator for Vihiga advanced and convinced the same Chair, he adjourned and he is reporting progress. So, the person to rule, I am not saying which direction, is the Speaker and not the Chairperson of the Committee who is a *functus officio* on the matter.

**The Temporary Speaker (Sen. Mositet):** The Chairperson of the Committee of the Whole had ruled and that was the session of the Committee of the Whole. Now, the House is back and the Chairperson is supposed to report. Before he did so, he rose on a point of order on a matter which has not been brought to my attention. To me, I feel that at least you are completely out of order yourself, if the *status quo* will have to remain as per the way the Committee of the Whole was.

Now, I ask the Chairperson to report progress.

## REPORT

### THE CLIMATE CHANGE BILL (NATIONAL ASSEMBLY BILL NO. 1 OF 2014)

**Sen. (Dr.) Machage:** Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the Climate Change Bill, (National Assembly Bill No.1 of 2014), and seeks leave to sit again tomorrow.

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

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir. I want to second the Senator for Vihiga. I want it on record that the very reasons the House moved from the Committee of the Whole, to come and report progress to you, were advanced by the Senator for Vihiga which convinced us. The same reasons had earlier been advanced by the Senator for Kakamega and the Chair of the Committee went ahead to expunge my words. Because I respect the Chairperson of the Committee of the Whole, let these words remain in the HANSARD the way I have put it.

The true position of the Committee of the House in progress is that that is how the Chairperson conducted himself.

I support.

*(Question Proposed)*

*(Question put and agreed to)*

**The Temporary Speaker** (Sen. Mositet): Next order!

### COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

#### IN THE COMMITTEE

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

THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLY  
APPROVAL) BILL (SENATE BILL NO. 20 OF 2014)

**The Temporary Chairperson** (Sen. (Dr.) Machage): There is no amendment to Clause 3. The Division will be done later.

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

**The Temporary Chairperson** (Sen. (Dr.) Machage): There is no amendment to Clause 4. The Division will be at the end.

*(Question, that Clause 4 be part of the Bill, proposed)*

*Clause 5*

**Sen. Madzayo:** Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting clause 5 and substituting therefor the following new clause –

(1) An advertisement inviting applications for nomination for appointment to an office to which this Act applies shall specify that the candidate shall be required to appear before a committee of the relevant County Assembly.

(2) An applicant shall not be required to appear before the committee of a County Assembly pursuant to a notice issued under subsection (1) within a period of less than twenty-one days.

Mr. Temporary Chairman, Sir, the rationale is that Clause 5 as currently provided for in the Bill appears to imply that a candidate who has been nominated for a public appointment is required to appear twice before the same vetting committee of the county assembly. First, 21 days prior to the date set for the vetting as per Clause 5 and, secondly, on the date indicated to them by the clerk of the county assembly for the approval hearing as per Clause 7.

Therefore, I propose the substitution of the Clause with a proposed new Clause 5 which clarifies the fact that the notice is to specify that the candidate is to appear before the county assembly and that there should be a period of 21 days before the period the notice is issued and the date the candidate is supposed to appear before the assembly.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. (Dr.) Machage): The Division will come later.

*Clause 6*

**Sen. Madzayo:** Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 6 of the Bill be amended by inserting the following new subclause immediately after subclause (1) –

(1A) An appointing authority shall, in issuing a notice under subsection (1), notify the members of the public on the proposed nomination through such media and platforms established under section 91 of the County Governments Act as it considers appropriate.

Mr. Temporary Chairman, Sir, the new provision seeks to ensure that there is public participation in the process. We need to engage the public in this process using the mechanisms for public participation that may be established by a county government pursuant to Section 91 of the County Governments Act.

It is expected that involving the public through such mechanisms would ensure that the information regarding the approval hearing reaches as many members of the public as possible and that they have adequate time to submit their statements contesting the suitability of a candidate in good time. Subclause 1(A) seeks to make the process of engaging the public more meaningful.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. (Dr.) Machage): The Division will come later.  
Next Clause!

*Clause 7*

**Sen. Madzayo:** Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 7 of the Bill be amended –

(a) in subclause (2) by –

(i) deleting the word “seven” appearing immediately after the words “later than” and substituting therefor the words “fourteen days”;

(ii) inserting the words “Subject to subsection (2A)” at the beginning of subclause (2).

(b) inserting the following new subclause immediately after subclause (2) –

(2A) The approval hearings shall be held in a public place and shall be conducted during working hours.

(c) in subclause (4) by deleting the word “two newspapers” appearing immediately after the words “in at least” and substituting therefor the words “one newspaper”;

(d) by inserting the following new subclause immediately after clause 10 –

(10A) A candidate shall have a right to be heard on any statement or evidence submitted to the Clerk contesting the suitability of the candidate to hold the office to which the candidate has been nominated.

Mr. Temporary Chairman, Sir, the purpose is to amend subclause (2) by increasing the days between the date on which the notice is issued and the date of holding the approval hearing from 7 to 14 days. The basis for this amendment is because it may not be practical for the determination of the time and venue of the approval hearing, notification of the hearing and the hearing itself to occur within seven days from the receipt of the notification from the Speaker as implied in the reading of subclause 2.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. (Dr.) Machage): The Division will come later. Next Clause. There is no amendment to Clause 8. The Division will be at the end.

*(Question, that Clause 8 be part of the Bill, proposed)*

### *Clause 9*

**Sen. Madzayo:** Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 9 of the Bill be amended in subclause (1) by deleting the word “fourteen” appearing immediately after the words “decision within” and substituting therefor the word “twenty-one”.

Mr. Temporary Chairman, Sir, the rationale is that the amendment to subclause 1 seeks to reduce the number of days within which the county assembly considers a nomination and tables its report from 14 to 21 days, as the 14 days are not sufficient for the county assembly to thoroughly consider applications, select a nominee and produce a report in the stipulated period.

**The Temporary Chairperson** (Sen. (Dr.) Machage): What is it, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Temporary Chairman, Sir, I wish to support that amendment because the issue of approval is a serious matter. We should, therefore, not rush the process because, at the end of the day, the county will be stuck for five years with somebody who was not properly interrogated and could fail the functions of the county.

I beg to support.

*(Question of the amendment proposed)*



**The Temporary Chairperson** (Sen. (Dr.) Machage): The Division will come later.  
Next Clause!

*Clause 10*

**Sen. Madzayo:** Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 10 of the Bill be amended –

(a) by renumbering the existing clause as subclause (1);

(b) in subclause (1) by deleting the word “may” appearing after the words “appointing authority” and substituting therefor the word “shall”;

(c) by inserting the following new subclause immediately after subclause (1) –

(2) A nominating authority shall not resubmit the name of a candidate whose nomination has been rejected by the County Assembly unless the circumstances relied on for the rejection of the appointment of the candidate did not exist or ceased to exist at the time of rejecting the nomination of the candidate.

Mr. Temporary Chairman, Sir, the rationale is that we want to make it mandatory for the appointing authority to submit the name of another candidate where the county assembly rejects the proposed nomination. The provision as currently phrased does not make it mandatory, but leaves it to the discretion of the nominating authority.

I also propose a new subclause (2) which seeks to ensure that the nominating authority does not submit the name of a candidate whose nomination has been rejected by the county assembly. This is to ensure that there is integrity in the process and it is concluded as quickly as possible. However, the provision makes an exception where a nominating authority may resubmit the name where the circumstances of the rejection are nonexistent or had ceased to exist at the time of rejecting the nomination.

**The Temporary Chairperson** (Sen. (Dr.) Machage): You suggested an amendment here. Therefore, I hope the amendments will be less. All the same, do you want to say more?

**Sen. Madzayo:** Mr. Temporary Chairman, Sir, I do not have much more to say. What I had said is enough.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Hon. Senator, I did not gag you. Did I?

**Sen. Madzayo:** Mr. Temporary Chairman, Sir, you did not.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. (Dr.) Machage): There is no amendment to Clauses 11, 12 and 13. The Division will be at the end.

*(Question, that Clauses 11, 12 and 13 be part of the Bill, proposed)*

*First Schedule*

**Sen. Madzayo:** Mr. Temporary Chairman, Sir, I beg to move:-

THAT the First Schedule be amended –

(a) by deleting item 4. and substituting thereof the following new items –

4. (a) Date of birth:  
 (b) Place of Birth:  
 (b) by deleting items 6 and 7 and substitute the following new items –  
 6. Mobile phone number:  
 (c) by inserting the following new phrase immediately after item 21 (d)  
 (Attach clearance letter from the Ethics and Anti-Corruption Commission)  
 (d) by deleting item 25 and substituting thereof with the following new item-  
 25. Tax status: (Attach your Kenya Revenue Authority Clearance Certificate)  
 (e) in item 31 by inserting the following new phrase immediately after the words “your nomination?”

If yes, explain: \_\_\_\_\_

I am proposing an amendment to Item 4 in the Schedule which seeks to separate the information relating to the date and place of birth. This is because these are distinct items of information that would be required from the applicant.

The proposed amendment to merge Items 6 and 7 is to ensure clarity, requiring a candidate to submit his or her mobile number through which the candidate may be reached easily.

Further, I propose that we amend Item 21(d) by requiring an applicant to attach a clearance letter from the Ethics and Anti-Corruption Commission (EACC) and Item 25 by requiring the candidate to attach their clearance certificate from the Kenya Revenue Authority (KRA). This is because these are the key factors that would guide the committee in determining whether or not a candidate is suitable for a particular appointment.

Mr. Temporary Chairman, Sir, lastly, I propose an amendment to Item 31 to give the candidate an opportunity to explain why he or she would have any objection to any inquiry being made with the candidates present employers or referee.

*(Question of the amendment proposed)*

**Sen. (Dr.) Khalwale:** Mr. Temporary Chairman, Sir, I agree with the Chairman. However, I appeal to him to think hard about the new insertion that requires the candidate to declare his or her place of birth. When you think about it critically, you will find that, that could be abused to this extent. A person might have been born in Kakamega County and that is the only attachment he or she has with Kakamega. He or she may end up being a resident of Uasin Gishu. When he or she is being vetted and a particular position is to be reserved for the locals, the person – purely because of the place of birth indicated in his or her identification card showing that he or she is not from the county in which he or she is being interviewed – could run the risk of losing the job. How I wish that the issue of “place of birth” be replaced with “place of permanent residence.”

**The Temporary Chairperson** (Sen. (Dr.) Machage): Sen. (Dr.) Khalwale, the Standing Orders allow you to even amend an amendment. If you are very passionate on that issue, you are allowed to do that amendment. The Chairman may not be convinced to do the amendment for you because that was his first suggestion. I can give a leeway on that issue if you so want. Despite the requirement of at least one hour, I can allow you to do that.

**Sen. (Dr.) Khalwale:** Mr. Temporary Chairman, Sir, I beg that we do it the easier way. Allow me the leeway of a few minutes to convince the Chairman to move it so that I do not go

through the procedures of giving notice and writing to you. Since he will be moving it himself, that way will be faster.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Very well. I will come back to the First Schedule later. Let us move on.

*Second Schedule*

*(Question that the Second Schedule be part of the Bill proposed)*

*Clause 2*

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

**The Temporary Chairperson** (Sen. (Dr.) Machage): Division will come later. Next!

*Title and Clause 1*

**The Temporary Chairperson** (Sen. (Dr.) Machage): Could the Chairperson approach the Table?

*(Sen. Madzayo moved to the Table and consulted with the Temporary Chairperson (Sen. (Dr.) Machage))*

### **PROGRESS REPORTED**

THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLY APPROVAL)  
BILL (SENATE BILL NO.20 OF 2014)

**Sen. Madzayo:** Mr. Temporary Chairman, Sir, I beg to move that the Committee of the Whole reports progress on its consideration on The Public Appointments (County Assembly Approval) Bill (Senate Bill No.20 of 2014) and seeks leave to sit again tomorrow.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Under what Standing Order is that?

**Sen. Madzayo:** Mr. Temporary Chairman, Sir. This is in pursuant to Standing Order No.139. I am obliged.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

**The Temporary Speaker** (Sen. Mositet): Could the Chairman of the Committee of the Whole give us a report?

**REPORT**THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLY APPROVAL)  
BILL (SENATE BILL NO.20 OF 2014)

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. With all due respect we might be killing a good tradition. The tradition has been that when the House reports progress to the Speaker, he is assumed not to have been in the House and that is why progress is being reported to him. The old tradition where the Speaker would come from the Speaker's Office to the Chair and receive progress seems to be changing. It is being replaced with the Speaker coming from the Plenary to receive progress. This might not be a very nice practice. I want to urge that the Chair reconsiders this, so that speakers should start conducting themselves with the decorum that has traditionally been there.

**The Temporary Speaker** (Sen. Mositet): Mr. Temporary Chairperson, go on and report.

**Sen. (Dr.) Machage:** Mr. Temporary Speaker, Sir, allow me to report progress---

**Sen. Okong'o:** On a point of order, Mr. Temporary Speaker, Sir. Sen. (Dr.) Khalwale has raised a very fundamental issue about what transpired. I, kindly request that you give directions or a ruling on the same before we proceed.

**The Temporary Speaker** (Sen. Mositet): Sen. (Dr.) Khalwale, you are very correct, but the Chair was also a delegate at that time. So, we cannot rule that the Chair, who was a delegate at that time should not have been in the House to deliberate in the Committee of the Whole.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I agree with you entirely, but if we were to respect that principle, which to me is important, then just before progress is reported and after participating in debate, the delegate would then retreat to the Speaker's room because he is a Member of the Speaker's Panel. For your information, when you come to take the Chair, the clerk is supposed to alert the House that the Temporary Speaker is now coming. That is the rule.

**The Temporary Speaker** (Sen. Mositet): Very well. That will be observed later.  
Temporary Chairperson.

**REPORT**THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLY APPROVAL)  
BILL (SENATE BILL NO.20 OF 2014)

**Sen. (Dr.) Machage:** Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered The Public Appointments (County Approval) Bill (Senate Bill No.20 of 2014) and seeks leave to sit again tomorrow.

**Sen. Madzayo:** Mr. Temporary Speaker, Sir, I beg to move that the House do agree with Committee in the said Report.

**Sen. Okong'o** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**COMMITTEE OF THEWHOLE**

*(Order for Committee read)*

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

**IN THE COMMITTEE**

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

**THE COUNTY EARLY CHILDHOOD EDUCATION  
BILL (SENATE BILL NO.32 OF 2014)**

**The Temporary Chairperson** (Sen. (Dr.) Machage): Order, Senators. We are now in the Committee of the Whole to consider The County Early Childhood Education Bill (Senate Bill No.32 of 2014).

**Sen. Mohamud:** On a point of order, Mr. Temporary Chairperson, Sir. I rise under Standing Order 139 to report progress and seek leave to sit again tomorrow because I have just received the notes on the amendments just two minutes ago.

**The Temporary Chairperson** (Sen. (Dr.) Machage): It is a matter of procedure. You cannot report progress now. Just approach the Table and we will show you what to do.

*(Sen. Mohamud moved to the Clerk's Table and consulted with the Clerk-at-the-Table)*

**PROGRESS REPORTED****THE COUNTY EARLY CHILDHOOD EDUCATION  
BILL (SENATE BILL NO.32 OF 2014)**

**Sen. Mohamud:** Mr. Temporary Chairperson, Sir, I beg to move that the Committee do report to the House its consideration of The County Early Childhood Education Bill (Senate Bill No.32 of 2014) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

**REPORT****THE COUNTY EARLY CHILDHOOD EDUCATION**

## BILL (SENATE BILL NO.32 OF 2014)

**Sen. (Dr.) Machage:** Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole is considering The County Early Childhood Education Bill (Senate Bill No.32 of 2014) and seeks leave to sit again tomorrow.

**Sen. Mohamud:** Mr. Temporary Speaker, Sir, I beg to move that the House do agree with Committee in the said Report.

**Sen. Madzayo** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, we had deferred Statements and maybe there are some Members and Chairpersons who may be having Statements to seek or issue respectively. We could do justice by allowing Statements to be issued before we move to the next Order.

Proceed, Sen. (Dr.) Khalwale.

## STATEMENTS

### STATUS OF VARIOUS PROJECTS IN NAROK COUNTY

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, a few weeks ago the Senator for Narok, Sen. Ole Ntutu sought a Statement which was referred to the Committee of County Public Accounts and Investments and he wanted a report on the projects listed, their status in respect of when the projects were launched, who were the contractors, the cost of each project and how much has been paid to them, what is the balance and the balance to date, what is the current status of each of the above projects and the expected completion date of the projects.

Allow me to answer the first aspect of his Statement as follows: I promised to this House that I would read this Statement after receiving a hearing from the Governor himself. The Governor declined to come and instead sent the Cabinet Secretary who submitted this report. The report has been discussed with my Committee. I live it to the Chair to decide what to do with the Governor who deliberately refused to come because, had he come we would have interrogated his answer further so as to have a more qualitative response.

If you allow me, I would read to the House the Statement as it is. There is no value addition from the Committee for the reason that the governor did not come.

(a) Roads Grading and Bridges

(i)The Eoori-Ekule-Sakutiek Road - We are told that there is no answer on this project because Narok County does not have such a road.

(ii)The Siaipei-Olchoro Road commenced on 30<sup>th</sup> April, 2014 and was expected---

**Sen. Musila:** On a point of order, Mr. Temporary Speaker, Sir. I am sorry to interrupt the able Chairman of the Committee but he said that what he is reading to us is not a report of the Committee because they could not make a report due to the absence of the governor. The Chair

is reading to us what was delivered to the Committee, and I stand corrected, by the secretary. Is he in order to read us verbatim what he got from the secretary for Narok rather than his Committee sitting down and examining the report to determine whether it is true or not? We are now being treated to a raw report from the governor and the Committee has not had time to cross-examine him. This would have enabled them to bring us a refined response which the Senator for Narok can also cross-examine.

I am asking that if the Committee has been unable to get the governor, there are machineries to be used to get him. He should use the machinery that is there in the Standing Orders to get the governor to come and give them the position before they can form an opinion and bring the report to the House. I am saying that what we are getting from the Chair is not from the Committee but from the governor.

**Sen. Madzayo:** Kwa hoja ya nidhamu, Bw. Spika wa Muda. Ningependa kuuliza kama ni sawa kwamba Mwenyekiti wa Kamati hii, Sen. (Dr.) Khalwale, ambaye tunasikilizana sana, kusoma jibu kutoka kwa mtu ambaye hana mamlaka hayo. Juzi nilikuwa ninataka kusoma jibu kutoka National Hospital Insurance Fund (NHIF) ambalo lilikuwa limeandikwa na Mkurugenzi Mkuu. Wa kwanza kupinga kwamba nisisome nakala hiyo alikuwa Sen. Khaniri na aliyemfuata ni Sen. (Dr.) Khalwale. Leo yeye anarejelea msimamo ule ule wa kusoma barua. Seneti si mahali pa kusoma barua za watu hivi hivi. Hapana!

Yeye alete barua ya gavana na tutajua vile tunaweza kuihoji. Lakini akituletea barua ambayo imeandikwa na *county secretary* ama watu wengine, sisi hatuitambui hapa kama Seneti. Wewe mwenyewe Bw. Spika uliamua hivyo. Ulisema kwamba barua ya NHIF haitasomwa hata kama imeandikwa na Mkurugenzi Mkuu. Barua itakayosomwa ni kutoka katika Wizara ya Afya na sahihi ya Waziri wa Wizara hiyo. Mimi ningependa kuuliza kama ni haki kuisoma barua kama hiyo.

**Sen. G.G. Kariuki:** On a point of order, Mr. Temporary Speaker, Sir. We are passing the blame to the Chair for no reason. Before he read the Statement, I heard him asking if he could do it with your permission. He was given a go ahead. Sen. (Dr.) Khalwale was on the right path because he had been given a go ahead. He got a go ahead from your silence. That is the same as saying go on. I do not think he has committed any crime. He has not infringed on any Standing Orders.

**Sen. Mungai:** On a point of order, Mr. Temporary Speaker, Sir. I rise to also seek some clarification from the Chair. This is on matters touching on our counties' finances. On several occasions, when we Senators raise issues in the House or in the Committees, they are misunderstood by the Members of the County Assemblies (MCAs) and others. The implication is that the Senator from a particular county is instigating questions or investigations touching on that. Therefore, I would like the Chairman to make a clarification in that any time his Committee is requesting the governors and other persons to come and answer questions touching on counties, it is not because a particular Senator has instigated that and even if it is so, what I believe is that his Committee is doing investigations on the audit reports from the Auditor-General--

**The Temporary Speaker** (Sen. Mositet): Sen. Mungai, we are not debating.

**Sen. Mungai:** Mr. Temporary Speaker, Sir, I was just concluding. Therefore, I am seeking that clarification.

**Sen. (Dr.) Machage:** On a point of order, Mr. Temporary Speaker, Sir. Although Sen. Mungai was also on a point of order, Sen. Madzayo did rise on a point of order on matters that I think were very important that deserved to be disposed of first and Sen. Musila also raised the

same concern. Would I be in order to demand that you dispose of that first before you entertain Sen. Mungai's request?

**Temporary Speaker** (Sen. Mositet): Sen. (Dr.) Khalwale, you want to attempt before I do it? Let me give you some minutes.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I find nothing offensive from all that the Senators have raised through the points of order and my Committee is perfectly capable of handling those points of order. Starting with "Sen. PC"---

**Temporary Speaker** (Sen. Mositet): Order, Senator. We do not have a Senator PC here.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, many times Sen. Musila calls me "doctor" and I call him "PC". It is true that I am reading the raw Statement as submitted to the Committee by the Cabinet Secretary. I was aware of the bottle-neck that has since been unraveled by Sen. Madzayo. That is why I said the Senator got it right, but with your permission, I would like to read the Report.

Yes, indeed, we subjected this report to the Committee Sitting this morning and it was our decision as a Committee that this matter of Narok County is going round. It looks like people are buying time. So, we looked at the County Governments Act. *Sijui kama nizungumze kwa Kiswahili kwa maana sasa ninataja yale maneno ambayo Sen. Madzayo ameuliza kwa Kiswahili.*

**Temporary Speaker** (Sen. Mositet): Just continue in English.

**Sen. (Dr.) Khalwale:** Okay. Mr. Temporary Speaker, Sir, in the County Governments Act, it is provided that the official recipient and correspondent on behalf of the County Government is the Cabinet Secretary. Going by that Act, the Committee then decided that whatever the County Secretary said were not his words. He was merely writing or responding to the Senate the position of the County Government of Narok.

*(Loud consultations)*

**Temporary Speaker** (Sen. Mositet): Let us be a bit patient and let him explain. I am going to rule exactly what he---

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, based on that understanding, we resolved to read because it is on the letter signed and because it is the official correspondence, he is, therefore, giving us the position of the county government. We agreed in the Committee this morning - it has a sitting majority of six - that should the Chair direct otherwise, we shall stand so directed.

Finally, the issue of Sen. Mungai is real. Sen. Mungai, we have set a standard now because this thing is very sensitive. People are fighting in counties because of how resources are being abused. So, we have changed now and what we have been doing is that, when we invite a governor, we alert the area Senator and if there are other members of delegation of that county, they are also alerted.

We have even gone further and we are also alerting Members of the National Assembly so that they come and sit in the Committee. Where Members of the National Assembly have an issue, they pass their issue through the Senator because the Senator can be able to address the Committee. We have successfully done this with Turkana County where all the six Members of Parliament sat in the Committee meeting led by Sen. Munyes.

Mr. Temporary Speaker, Sir, we have also done it successfully with the County Government of Kajiado where the Speaker chaired the proceedings. We have at every sitting explained to governors that there are two ways through which they will be invited here. The first



one is to come and respond to reports of the Auditor-General. Secondly, is if there is a petition on any matter like in this case, it is a Petition by the Senator of Narok. It is admissible or if there is a petition from any other member of the public be it from Narok or any part of the country.

**Temporary Speaker** (Sen. Mositet): Let me dispose of what you had asked earlier.

**Sen. Madzayo:** Hoja ya nidhamu, Bw. Spika wa Muda. Nimemsikiliza Sen. (Dkt.) Khalwale akiongea. Ninamshukuru kwa maana alikuwa anajaribu kujibu, lakini katika msembo wake, amesema wamekaa kwenye Kamati yao wakiwa Waheshimiwa sita na wakapitisha kuwa ripoti iletwe Seneti. Sen. (Dkt.) Khalwale, Seneti hii na Spika ni huyo huyo, aliamua kwamba itakuwa barua kutoka kwa yule mtu ambaye ni mkubwa katika ile Wizara ndiye atakayejibu. Hii, inajibiwa na gavana, leo tunaambiwa ni *county secretary* ndiye ana uwezo kwa sababu ilipitishwa.

Ni hapa tena nikitoa mfano wa pili kwamba, magavana walikuja hapa na tukawahoji, kama vile *impeachment* ya Gov. Wambora, tulisema gavana ndiye mkurugenzi mkuu wa ile kaunti anayeongoza na yeye kitu chochote kitakachofanyika kaunti yake ataulizwa. Tulifanya kesi yake na tukapitisha hapa. Leo, tunasema kwamba sio gavana tena; ni *county secretary* wa hiyo kaunti. Je, hizi si sura mara mbili? Kuvuta pumzi ya moto na ya baridi mdomo huo huo mmoja ni sawa?

**Temporary Speaker** (Sen. Mositet): Kwanza tusikie hoja za nidhamu zingine kabla nijibu.

**Sen. Wako:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity. I stand a bit hesitantly because I am a Member of County Public Accounts and Investments Committee and I was not in attendance because I was chairing the Committee on Legal Affairs and Human Rights.

The issue of Narok County is an issue that has been before this House for a long time and, therefore, may be the Committee wanted to dispose of it, one way or another. But, is it really in order, in disposing it, to do it in furtherance of impunity? To me, taking into account what Sen. Madzayo has said, I support him; it is the governor who ought to have come. The Committee summoned the governor. Until the governor comes in, we have a Statement from the county secretary and, therefore, we are saying the governor is right, we shall continue with the county secretary's statement.

I was not there but I am surprised that the Committee did not see it fit to immediately order some arrests through the procedures for the governor to come. To recommend that we have received a statement but we cannot read it because of the precedent from the ruling of the Speaker on the matter, and though it may take time, we feel that the governor should be summoned so that we can interrogate him and to guide the Senate as a Committee on steps that ought to be taken. It is as if we are abandoning our responsibility; we say, okay, we have got a letter; it is up to you now to see what to do. Whereas, as a Committee, we ought to have taken some action and summoned the governor so that we can interrogate him and give some guidance to this Committee on the way forward.

So, is it in order that we should continue to further impunity on this matter by allowing such a Statement to be read on the Floor of the House?

**The Temporary Speaker** (Sen. Mositet): Sen. (Dr.) Khalwale, before you respond, let us get the point of order from Sen. (Dr.) Machage.

**Sen. (Dr.) Machage:** On a point of order, Mr. Temporary Speaker, Sir. If you listened to Sen. Wako carefully, the gist of the words he said, in my interpretation, is that the Sen. (Dr.)

Khalwale led Committee is refusing to take up its mandate and act accordingly. Is he in order? If he is, then, Sen. (Dr.) Khalwale must tell us whether he is compromised not to act.

**The Temporary Speaker** (Sen. Mositet): I can see that quite a number of Senators have an interest in this matter. Let us give Sen. Njoroge an opportunity.

**Sen. Musila:** Mr. Temporary Speaker, Sir, Sen. Ntutu wants to say something.

**The Temporary Speaker** (Sen. Mositet): We will also give him an opportunity to inform the House.

**Sen. Njoroge:** On a point of order, Mr. Temporary Speaker, Sir. This matter has taken too long. I can remember that at one time I went to Maasai forest to investigate the Narok issue yet up to now we are still dilly-dallying. I know Sen. (Dr.) Khalwale, and this is not a matter that will be in their hands for more than one month. He really needs to dispose of this because his Committee has the capability. They should come up with a final result rather than letting this House talk about the Narok issue day in day out.

I wonder what could be happening between the Governor for Narok County and some Members of this House. Something has not been adding up. I am not referring to Sen. (Dr.) Khalwale. This thing has dragged on so much. He is almost becoming untouchable. The message we are getting is not what we should be getting now. This matter needs to be disposed of. We do not need to keep on talking about the Governor for Narok time and again. Things have to move.

**The Temporary Speaker** (Sen. Mositet): Sen. Ntutu, do you want to inform the House?

**Sen. Ntutu:** Yes, Mr. Temporary Speaker, Sir. It is important to mention that the County Government of Narok has moved to court to get orders to stop the Senate from pursuing this issue. Good enough and unfortunately for them, they were denied the orders until Monday 12<sup>th</sup> October, 2015 when the *inter parties* hearing will be before a High Court judge. So, this is how tricky or slippery the County Government of Narok is. It is good for the House to be informed on this.

**The Temporary Speaker** (Sen. Mositet): That is very good information to the House.

Proceed, Sen. (Dr.) Khalwale, clear the issues raised before I dispose. The matter is very clear.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I am glad that you have allowed this ventilation. Our decision to have this Statement read was because in that Committee, we are all men and women of this country. What happens in this country - including the remarks by Sen. Njoroge, that why should one little thing drag in this Senate almost for a year? You, Sen. Njoroge and I sit in the Committee on Finance, Commerce and Budget. That, Sen. (Dr.) Machage fears the possibility of compromise; is real. The attempt to go to court has been communicated to me by the people of Narok County telling me that I must unlock this problem.

Therefore, we decided that we make this move - for your information, Sen. Madzayo, the County Governments Act gave us an entry point. It recognizes the county secretary as the official recipient of any communication and official correspondence on behalf of the county. So, if he is the official, it therefore, means when Mr. Lenku Seki signed this Statement, he was merely doing so because he was transmitting to the Senate the position of the county government.

Since we know that this matter will not end today, we wanted to enjoin the whole House in interpreting, not just the behaviour, but the content of this Statement. When I will read this whole Statement, you will discover that besides him refusing to come before us and trying to block Senate by going to court, he has also deliberately refused to answer the Statement and he has put that in writing.

If you allow me, you will see that then you will make a global decision that will guide my Committee on how to deal with the governor. I want the House to be involved because---

*(Sen. Musila consulted loudly)*

If you allow me Sen. Musila, this is because it is on a sensitive issue where you can hear in the background, the word “possibility” of people getting compromised. If you do not put everything on the table, people will say that either you are rushing because Sen. Ntutu, who happens not to be a poor man, is pushing you or you are dragging your feet because Gov. Tunai is dragging the process by owning you. So, we want to put everything on the table and get fresh instructions from the Chair.

My idea is, if you accept that the County Secretary is the official person who is supposed to communicate to this Senate the position of the county government, accept what he has communicated and then, allow my Committee and I to seek directions from the Chair on what I should do on the aspects of the Statement that he has held back information.

Mr. Temporary Speaker, Sir, you can then rule.

**The Temporary Speaker** (Sen. Mositet): What is your point of order, Sen. G.G. Kariuki? I want to rule on this matter.

**Sen. G.G Kariuki:** Mr. Temporary Speaker, Sir, I am now getting concerned that the matter is getting deeper than what we expected. Did Sen. (Dr.) Khalwale know that somebody somewhere will go to court to try to stop the Senate from discussing issues of Narok?

When I became a Member of the Committee, I attended three meetings and the Narok issue was almost coming to an end but I do not know what happened immediately after that. The issue of people being accused of having been compromised cannot be taken easily. I think something has happened somewhere. The reason why the governor did not come to the meeting is because he was going to sabotage his stand on matters affecting the County of Narok. Perhaps, his lawyers advised him to the contrary.

Mr. Temporary Speaker, Sir, this matter should be opened again for debate. Otherwise, we will be ashamed as a Senate for dealing with a matter like the Narok issue for such a long time without a resolution. I have a lot of faith in Sen. (Dr.) Khalwale in terms of dealing with committee Members but that faith will be eroded. Let us start asking ourselves whether we will operate as though the public does not know what we are doing. The people of Narok are as intelligent as Sen. (Dr.) Khalwale’s people, my people and the people of Kajiado.

Let us be honest today and say that this matter is of grave concern. We need to sort out this matter, otherwise if we wait, we will hear that someone has died in Narok. All these things will follow if a situation like this one takes a lot of time. We can expect bad things to happen.

The governor for Narok knew what he was doing. The people who were concerned about his activities in Narok are very much aware of what the governor is doing as well. As far as I am concerned, we left this matter to the Auditor-General and he was to clarify certain issues. I am sure even if I was not in the next meeting, issues were clarified. From there, what have we been doing because it cannot be solved by Sen. (Dr.) Khalwale? It can only be solved by the Committee on Finance, Commerce and Budget which was to report to Senate and say exactly what happened. As far as I am concerned, that report has been avoided.

Mr. Temporary Speaker, Sir, time has come for this matter to be given priority.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. Thank you for allowing me. The Senator for Laikipia has raised observations remotely suggesting the

possibility of compromise. I want to stand before this House and the public to confirm to the country that as far as the interrogation of the Statement by Sen. Ntutu is concerned, my Committee has not been approached at all, not individually or collectively.

The reason I am pushing that you allow us to do something today and not just adjourn, is because in the answer, the governor has refused to answer and said that all he would have to say was concluded by the Committee on Finance, Commerce and Budget. He said that this Committee filed a report on 30<sup>th</sup> April, 2015.

Mr. Temporary Speaker, Sir, I have received documents from the people of Narok which were also given to the Committee on Finance, Commerce and Budget. The sensitive issue from the people of Narok is that millions of shillings were collected and not banked. I have received bank statements and there is no evidence of banking. In the same documents, I have received confirmation that the money was collected. So, I want to be given an opportunity for us to unlock this thing which somebody does not appear to want to pursue. It is only by unlocking that discrepancy that we shall prove that there is corruption going on in Narok.

**Sen. Madzayo:** On a point of order Mr. Temporary Speaker, Sir. At no stage have we suggested that Sen. (Dr.) Khalwale is incapable of handling this matter. We have full confidence in his top priority to fight corruption. I should rank him as number one in this country and he is also my friend.

We should draw a thin line whether we are following the ruling of the Speaker as provided to the Senate on that day or because of the weightiness of this matter, we will not bend procedures or the rulings of the House simply because there is something to be rushed. The law is the law and there should not be something like *Animal Farm*.

I read a book entitled *Animal Farm* which clearly states that there are some who are more equal than others. All these committees are the same. If there is any ruling done in this House by the Speaker, it applies to all the committees equally and not necessarily my brother Sen. (Dr.) Khalwale's Committee. There should not be any exception to that effect.

*(Sen. (Dr.) Khalwale stood up in his place)*

**The Temporary Speaker** (Sen. Mositet): Sen. (Dr.) Khalwale, please be seated. I want to dispose of this matter.

**Sen. (Dr.) Machage:** On a point of order, Mr. Temporary Speaker, Sir. If you listened to Sen. (Dr.) Khalwale carefully, he seemed to have forgotten or has not read the powers bestowed upon him as the Chair of the Committee on matters of summoning people and taking action in his Committee which is both constitutional and provided for by the Standing Orders. Which further powers is he seeking from you?

**Sen. Musila:** Mr. Temporary Speaker, Sir, on what Sen. (Dr.) Machage has said, I have never heard of a Chair of a committee coming to the House to ask what he or she should do because a witness has failed to appear before a committee. There are clear instructions. We are creating a dangerous precedence here, where there are some people who can be summoned by a committee and fail to come and we do nothing but lament.

Let the Chair use the rules as set in the Standing Orders. The Powers and Privileges Act also gives them the powers to order anybody to appear before them. Incidentally, you remember that the governors went to court to argue that they did not need to be summoned by the Senate and they lost the case. I do not know what we are doing because we have the mandate. We have

all the rules in our hands and we are lamenting here that the governor has refused to come. Therefore, the Chair knows what to do.

**The Temporary Speaker** (Sen. Mositet): When Sen. Ntutu sought a Statement; he was seeking it from the Chairman. So, when you come and read a Statement from the county secretary or even the governor, that will not still be holding, because this House will be expecting a Statement from the Chair. If you want to own up now and tell us that as Committee you had agreed that, that is your Statement and you want to read it, then I will allow you. But if you feel that there is a lot of information and you have not interrogated the Statement enough, then you have the powers. The Constitution gives you the powers to summon and if that person refuses to come he is liable for a jail term.

This Senate has a lot of confidence in your Committee and I order you to use the Chair and all the tools you need from the Senate, to make sure that you go deeper and get the information that the people of Narok need to know. So, just go back with the Statement to the Committee, sit and make sure you have interrogated it enough.

If you summon people and they do not come, the Constitution and the Standing Orders give you powers and I do not think that there is anyone who will be above that. Even if they were to go to court, they cannot gag you. Even if it means going to Narok to get the information there, go and do your job because you know it better. That is my direction and ruling

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

**The Temporary Speaker** (Sen. Mositet): How do you again challenge the ruling? You cannot do that.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker Sir. I want to thank you for that clarity in your directive. I was itching that we must do something on this Floor, like we have done today, lest somebody thinks he could stop me. I am alive to the fact that the Constitution, in Article 125, gives me the powers of the High Court in summoning anybody to come before the Committee.

But because some people are playing the merry-go-round, I wanted them while watching live, to know that if you allow me to say it in Kiswahili so, that the good Maasai people can hear - it is not that they do not hear English - *wajue kwamba sasa gari limeondoka kutoka stesheni na kwamba yeyote yule ambaye atalala, kukaa ama kusimama kwenye reli, tutapita na yeye. Ni lazima wizi ukiwapo kule Narok, walipe pesa ambazo wameibia wanainchi.* Thank you.

**Sen. Ntutu:** Thank you very much, Mr. Temporary Speaker, Sir. Concerning this question which has taken about three months, we have enough evidence to prove that the money was not banked. According to Annexure 32 of the Narok Petition, which was signed by one Chief Executive Officer of Mara Conservancy, Brian Heath, he has admitted in writing that the money was not deposited into their account. The Auditor-General also confirms in his report that the money was not deposited into their account. What else does the Committee need? I raised these issues with the Committee on the issues that were not addressed.

**The Temporary Speaker** (Sen. Mositet): Sen. Ntutu, we referred the matter back to the Committee. If you will appear before the Committee and tell them what you are saying now, I think that would be the right procedure, not in the House now.

Next Order!

**BILLS***Second Reading*THE HIV AND AIDS PREVENTION AND CONTROL (AMENDMENT)  
BILL (SENATE BILL NO. 4 OF 2015)*(Sen. (Dr.) Machage on 1.10.2015)**(Resumption of Debate interrupted on 6.10.2015)*

**The Temporary Speaker** (Sen. Mositet): The last speaker was Sen. Chelule and she is not in the House. So, those who did not contribute now have a chance to contribute to this Bill. Who is No. 42?

**Sen. Musila:** Mr. Temporary Speaker, Sir, I stand to support this Bill because of the importance that I attach to this matter. Indeed, this is national problem. As you will recall, this is not the first time that we have the opportunity to discuss about matters concerning HIV/AIDS which has become a major problem for many years in this country. Many lives have been lost, and we have not seen the end to this scourge despite the efforts that we have been making.

As of now, the matter has been basically at the national level and we have not done much at the county level to appear to be fighting this scourge which is a national disaster. That is why I stand to strongly support this Bill. Now that the health function is devolved to the county level, the county AIDS control committees should be established so that counties can play their role. This is what is covered under Part 2A, of the Bill; that county AIDS control committees be established, funded and facilitated, so that they can play their role in this matter.

While still on this, we are lamenting about lack of performance in the health sector by county governments. We have seen, for example, in some hospitals, my county included, cases where governors have gone ahead and erected very huge gates at health institutions to hoodwink the public that there is something going on inside. A huge gate costing Kshs7 million is erected at a health facility and there is no fence. But when you go inside these hospitals, there are no drugs. You wonder whether the priority is to do a gate and you do not supply drugs to the health institution. This is not a joke, but what is happening.

Unless we do something serious, as the Senate, to ensure that the county governments take health matters seriously, we are doomed to fail the public in service delivery, more so, when we are talking about HIV/AIDS, which as I said earlier has become such a huge problem which, admittedly, even the national government has failed to control. We have even been involved in seeking help from outside like the Global Fund and every time the funds are withheld because of accountability reasons in the national Government.

So, I fear that unless we, as the Senate, put our foot down, people in the counties are going to continue suffering. Therefore, I think this Bill is timely. I congratulate Sen. (Dr.) Machage for bringing this matter so that county governments wake up to the issue of HIV/AIDS. We have already seen patients in counties suffering from simple diseases such as malaria. The other day, children in Busia County were given a wrong injection. Therefore, health matters in county governments must be put very clearly so that we ensure that this Government delivers. After all, what is the priority of county governments if it is not the health of the people who are living in counties?

Mr. Temporary Speaker Sir, I know that anti-retroviral drugs have become a serious matter where many people who are suffering are not receiving these drugs on regular basis. One of the reasons is that the bureaucracy at the national Government does not allow people to receive these drugs quickly. Therefore, with the devolved system of Government, purchasing drugs directly from the Kenya Medical Supplies Authority (KEMSA) and with added responsibility as given in this Bill, I see no reason and there will be no excuse for counties not to take the matters of HIV/AIDS seriously.

The committees which are proposed to be formed will guide county governments in ensuring issuance of drugs, testing and ensuring that even those patients eat nutritious food. Last time, I said that there are certain patients who, because of the poverty that is at the grassroots level, the powerful drugs are not effective. When you give them to a patient who has not eaten, they do not help.

Therefore, there is need for nutritional food to be equally provided to HIV/AIDS patients so that they eat food with vitamins – I understand *omena* is very good for that matter - and energy so that when the drugs are taken, they are useful to their bodies. It is only in this and other poor countries where people living with HIV/AIDS are known because they have no access to drugs and they do not have nutritious food to keep them healthy. In developing countries, you cannot recognise an HIV/AIDS patient, because they are looked after and eat very well and take the drugs regularly.

Mr. Temporary Speaker Sir, I am advocating that the committees should not only be formed, but they should also be given resources. Again, I have said “resources” because the committees that were formed by the national Government in districts have failed because they were not given resources. So, these committees must be given resources and their recommendations must be implemented effectively. One of the recommendations I am sure must be the provision of drugs, testing and – though it may sound very far-fetched – the provision of food for those who are unable to be given food by the county governments.

County governments have money for disasters, but instead of using that money on the people, governors use it for campaigns. They use it to transport people to rallies and carry red carpets and toilets for governors. So, it is high time that we took the necessary action to ensure that county governments do the right thing and give priority to health matters. There is no other priority that is more important than looking after our people as far as health matters are concerned.

I support.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Temporary Speaker, Sir. I congratulate the distinguished Senator for Migori for bringing this Bill. I support the Bill for reasons that health is a devolved function. Being a devolved function, we must – as the Senate that defends and protects counties and their governments – ensure that devolved functions are properly and truly devolved to counties to help the people of this country.

HIV/AIDS has been a cash cow and you know that there have been many questionable transactions and audit queries surrounding the management of HIV/AIDS funds, largely brought in by donors. Many donors, like the distinguished Senator for Kitui has said, have stopped funding HIV/AIDS activities because of the opaque manner in which it has been run, to the extent that money that comes into the country to help the sick ends up helping those who are not sick, who pocket the money and do all manner of things.

Mr. Temporary Speaker Sir, this is a Bill that I have no doubt is popular and every Member and head of delegation, including the distinguished colleagues from Laikipia, Nakuru

and Garissa counties sitting in front of me, would want to see that funds and functions are equitably distributed and managed so that people can benefit. You will notice that in the last five or so years, the campaign and advocacy for HIV/AIDS has gone down. People are now focusing on different things and one can understand that the enthusiasm for advocacy was because it was a gravy train. Now that the money has dried up, those beneficiaries start looking for areas where they can make quick money and HIV/AIDS is no longer one such area. This is because the national Government has not been putting sufficient funds in the management of HIV/AIDS.

If you want to know that HIV/AIDS remains a pandemic alongside serious killers like malaria, vector borne diseases and so on, visit any ward in the rural areas or the outlying areas outside Nairobi. You will find a ward full of tuberculosis (TB) patients which is an opportunistic infection after HIV/AIDS. You will find people suffering from severe diarrhea which again is an opportunistic infection after HIV/AIDS. Many people are dying out there.

Mr. Temporary Speaker Sir, as we laud this, we must also be extremely cautious because governors have gone rogue. As we want to devolve this function and we must because like one distinguished person said, we do not have governors who are thieves, but we have thieves who have found their way into the offices of governors and they are doing havoc. The Office of the Governor as constitutionally designed is a distinguished office. It is an office of honour; an office of service, but when you see a governor buying a wheelbarrow that costs Kshs3, 000 for Kshs109, 000, then you know that this is a thief that has found his way in the office of the governor and not a governor. This is replicated all over.

Mr. Temporary Speaker, Sir, these obscenities are repeated everywhere you go. You remember cases of governors carrying toilets to public meetings, governors carrying chairs to funerals to go and sit on, and all manner of outrageous obscenity. As we devolve this, the Mover of this Bill must be ready to make things tight, to make sure that the Committees that we want to set up are Committees that are going to be represented by people of integrity, to make sure that governors are not going to appoint their cronies and unqualified people who will be put there just to earn money.

I want to invite the sponsor of the Bill to go to Clause 5, on page 46. Clause 5 establishes County AIDS Control Committees. I want Sen. (Dr.) Machage to pay attention to the following and try to bring changes at the Committee Stage. This is about the composition.

1. Clause 5 (2) (a) states:-

“One person with knowledge and experience in matters relating to HIV/AIDS prevention and control appointed by the county governor shall be the chairman”.

Such a weak provision will allow the governor to appoint anybody. Anybody can draft curriculum vitae and say he has experience and knowledge in matters relating to AIDS even without the requisite knowledge, professionalism and qualifications. I want the sponsor of the Bill to tighten this by specifically saying that the person who will chair this Committee must be a medical doctor with sufficient experience in matters relating to HIV/AIDS, who shall be appointed by the governor but with the approval of the county assembly, so that we do not leave a window for governors to appoint their cronies and say the person has been running a Community Based Organization (CBO) to do with Aids, therefore, he has sufficient experience. When you look at the fellow, you find he is just a briefcase CBO, he has never run anything and there he is, put to chair a Committee that requires a discharge of professional service and professional experience.

2. Clause 5 (2) (b):-



“One person nominated by the county executive committee member in charge of health in the county who shall be the secretary to the Committee”.

Mr. Temporary Speaker, Sir, this person’s qualifications must be described so that we do not just have anybody. We have had a situation where people are appointed to positions they do not merit. You have seen members of the public going to courts and challenging appointments of County Executive Committees Members (CECs) with fake degrees. We have seen vetting with people with fake degrees. We need proper qualifications to be described.

The sponsor of the Bill should also indicate that such persons must be qualified and display their qualifications from recognized institutions so that people do not just go to River Road and manufacture degrees, come and present their graduates and then get appointments that they cannot merit.

Mr. Temporary Speaker, Sir, we always say you can go and forge a degree in Geography or History but you cannot forge a degree in a profession where you are going to determine the lives of people. A degree in Medicine, a degree in Architecture, a degree in Engineering where you are going to design a bridge that will be used to cross big rivers, a degree in law where you are going to court to defend somebody for whom your professional services can determine his life - We must be very careful when we are dealing with those kind of qualifications. If you are looking for somebody who has a degree in Geography, he can lie that Mt. Kilimanjaro is not the highest mountain in Africa. That will not hurt anybody. But when you are dealing with somebody who is going to design a 28-storey building, you need to be very careful, because he is going to determine peoples’ lives.

Mr. Temporary Speaker, Sir, Clause 5 (2) (c) states; “One man and one woman with knowledge and experience in matters relating to AIDS”, I want to encourage Sen. (Dr.) Machage that these vague statements in law are not good. You must be precise; say what you mean and mean what you say, so that nothing is left to any doubt that this is what you intended. So, I encourage that one man and one woman is okay but they must be qualified in some particular way that is relevant to the management of HIV/AIDS. If you are looking for social workers, because it is not just about treatment, it is about management, you are looking for nurses, nutritionists, then describe them as such so that we do not leave it to the discretion that can be abused.

Mr. Temporary Speaker, Sir, Clause 5 (2) (d) states: - “One man and one woman appointed by the county governor to represent such special interests within the county as the governor shall determine”. Again, what are special interests? You may find the governor appointing his son or wife to represent special interests. We must define what special interests are, and if you want to lift the definition in the Constitution, so be it, so that special interests are not used to reward cronies, sycophants, cheerleaders and people who will just go there and do nothing. If we are talking about persons living with disabilities, let us say so. If it is the youth, let us say so. If it is people living with disabilities of the skin like albinos, let us say so, so that we do not leave it to the discretion of governors who have seriously eroded the discretion that we gave them in managing some of these matters by doing things that are not right.

Mr. Temporary Speaker, Sir, Clause 12 (b) states: - “Such persons to be appointed for three years renewable”. For continuity, I have always said, and this is something I have debated with my brother, Sen. Wako, when he was the Attorney-General, that when you want continuity, you must have a law that provides for staggering of appointments, so that when you are appointing 10 people, the first five, should serve a term different from the second five. So that when the first five bow out, you have the other five to carry out continuity and memory of what

the board does. What happens is, you have a board of 10, starting at the same time and ending at the same time. When the time ends, they all leave. You bring in a new team and that is why we have this manner of Kenyans, every time a new board is appointed, they are going to benchmark in Australia, they are going to benchmark in Israel and everywhere.

Mr. Temporary Speaker, Sir, you find a board doing farming in well watered areas like Nyandarua, Kakamega or Kericho going to benchmark on agriculture in a country that does not receive any rains. What do you go to benchmark about farming in Israel, when you are from Nyandarua or Kirinyaga? If there was a delegation from Garissa, Wajir or Mandera to go and look at dry farming, you can understand. When you have five or half of the board left, the incoming five will learn from those who are there. County governments must learn to benchmark from relevant sources. They have invented all manner of words that aggregate in spending public funds; funds that are so much needed in helping sick people.

Mr. Temporary Speaker, Sir, something that we take for granted is the lack of specifically mentioning that the gender rule must be observed. This should not be left out to the good sense of the appointing authority because, at times, it is not forthcoming. Therefore, in every law, we must be very clear that we must balance the gender parity that we want the country to achieve. We want to get to where Rwanda and some Scandinavian countries have reached. We should not tire in repeating over and over that in public appointments, we must have gender balance.

If we do not do this, we shall witness what we recently saw in the appointments by State House where women got a totally raw deal. If you read through that list of appointees, you will see that, mostly, it consisted of men, failed politicians and others with all manner of characters.

Mr. Temporary Speaker, Sir, as I said, health is very critical. I urge the Senate Committee on Health, more than any other Committee, to work. People can live with bad roads and dilapidated infrastructure but they cannot live without the provision of adequate health facilities. When you go to the countryside, some of our governors are busy churning out bogus statistics on how well they are doing. The distinguished Senator for Kitui County talked of a governor erecting gates at the hospital in his county, yet there is nothing functioning. The hospital has a beautiful gate and a board reading that it is a referral hospital. There is nothing to refer to because there are no doctors, health technicians or equipment.

If governors spend 30 per cent of their money on health, we will forgive them for having bad roads. We will also forgive them for not planting enough trees although the environment is critical. Peoples' health is of importance; a healthy nation is a working and a happy nation. I visited the district hospital in my county, Bungoma. It is called County Referral Hospital. What I saw there was shocking; dead bodies lying side by side for two or three days, flies moving from corpses and landing on food that has been given to a patient who was admitted there.

I saw a woman who had just delivered a little innocent child, about six or seven hours old, lying in a ward full of Tuberculosis (TB) patients. We all know that TB is an airborne disease. Therefore, that child will leave the hospital infected with TB. As soon as I left there, the governor rushed there the next day and said that I should have consulted him. How do I consult him on matters of that nature? Politics or no politics, the question should be whether or not there are such glaring issues; dead bodies, sick people, malfunctioning equipment and doctors looking sicker than the patients. Those are the big question which we must address.

Mr. Temporary Speaker, Sir, that situation is replicated everywhere. Nurses are on strike all over. If the governors took our advice seriously about the endless trips that they make abroad, the situation could improve. All of us represent rural or *quasi*-rural constituencies, even if you represent Nairobi, there is as much rural in Nairobi as anywhere else. When you visit health

facilities, people are suffering from very preventable diseases. They do not need consultants or serious doctors; they just need a nurse to look after them. When the temperature is high, maybe it is because of malaria or pneumonia. If they are diarrhoeing, it could be because of dirty water or they ate bad food. When they have incessant headaches, it could be anxiety. All those diseases can be prevented very easily yet people just degenerate and die.

When someone goes to hospital with second or third degree burns, they find out that there is no medicine. They end up getting infections and die. Some people go to hospital because of snake bites, instead of being treated, they are left unattended and the leg ends up being amputated. All manner of things are going on in the health facilities. I, therefore, urge the county governments that as the Senate pushes for the national Government to wake up and release funds to them, they must also stand up and be counted in terms of efficiency, responsibility and responsiveness to the people of this country. I know of a governor who, as the hospital was dilapidated, he was away in Los Angeles, spending Kshs.43 million in the name of learning how to manage waste. Does one really need to go to Los Angeles to know how to manage waste? It is really an affront to the knowledge of Kenyans yet even after coming back, I have not seen any waste managed. The situation is replicated everywhere

Mr. Temporary Speaker, Sir, the narrative about devolution today is that of theft everywhere. However, a few governors are doing a good job. For instance, I have seen reports from Wajir County. They do not look too bad, but there are other counties that are doing poorly. I do not know what the Senator for Nakuru County will say, but the governor has made Nakuru look very attractive as you drive through. I do not know if that is a public relations (PR) exercise. When you drive through Nakuru, all the way to the turning in Njoro, Nakuru looks like it is reclaiming its former glory that it was the cleanest town in Kenya. However, there is a story from where I come from that there are some wives who sweep the entry to the house and the sitting room to look very clean, but if you go beyond that, it is appalling. All in all, Nakuru looks very good. I do not know what the Senator has to say about that.

**Sen. Mungai:** On a point of information, Mr. Temporary Speaker, Sir. I appreciate the Senate Minority Leader for the kind words that he has for my county. However, it is unfortunate to judge a county by the way the roadside looks like. It could be quite different from what is happening in there. I believe that when you have a governor who says that he is going to clean a town and the kind of dirt that he is referring to are human beings, I do not believe that is cleaning. Therefore, I would like the Senate Minority Leader to withdraw. He has a lot of support in Nakuru County. It is, therefore, unfortunate when people tell him off openly that he is wrong.

**The Temporary Speaker (Sen. Mositet):** Sen. Mungai, you are completely out of order! I also think that the Governor has made the town to be clean. You should appreciate him. We do not need people running everywhere in the town. If they have been put in the rightful areas, we should commend him. Moreover, you have never brought a petition or sought a statement against him, maybe everything is well.

What is it, Sen. (Dr.) Machage?

**Sen. (Dr.) Machage:** On a point of order, Mr. Temporary Speaker, Sir. If you listened carefully – which I believe you did – to the point of information by Sen. Mungai, you must have heard him say that the Governor for Nakuru does not clean dirt but people. Would I, therefore, be in order to request that Sen. Mungai elucidates or substantiates that very serious allegation that is worrying, abhorring and traumatic to some of our thinking?

**The Temporary Speaker** (Sen. Mositet): To save on time, even if Sen. Mungai said “cleaning people,” I think he meant that the governor has cleaned or removed people along the roads, and, to an extent of, maybe, making them clean.

**Sen. Musila:** On a point of order, Mr. Temporary Speaker, Sir. There is a matter of procedure here. The distinguished Senator stood to inform the distinguished Senator for Bungoma. Instead of informing him, he asked him to withdraw. Is he in order?

**The Temporary Speaker** (Sen. Mositet): He is not in order. That is why I ruled him out of order.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, you can take judicial notice of the fact that the distinguished Senator for Nakuru County is hardly in this House. Therefore, probably, procedure eludes him.

*(Laughter)*

**Sen. Mungai:** On a point of order, Mr. Temporary Speaker, Sir. It is unfortunate that the Senate Minority Leader can utter such words. Any time that I am out of this House, I normally do so with permission from the Speaker. At the same time, I happen to be a Senator with nominees that represent me. Therefore, whether I am here or not, the Nakuru vote is always here.

*(Laughter)*

**The Temporary Speaker** (Sen. Mositet): Go on, Sen. Wetangula.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I was saying that I drive through Nakuru Town every week. The town actually looks clean from Kunste Hotel all the way to the Njoro turn off. That is the impression I have. I do not know if that cleanliness is limited to the highway.

Mr. Temporary Speaker, Sir, I have also drawn some parallel. Every other day, I see the Governor of Nairobi on the roads of Nairobi with one car in front, his car and another one behind him. When you go the counties, including my own, you will find that when the governor is on the road, there will be 20 four-wheel-drive vehicles with the obscenities of sirens, knocking down pedestrians and *boda boda* people and doing all manner of things. You may think that comedians are on the road yet it is the governor moving from one point to another. Why would he want to move with 20 four-wheel-drive vehicles when the county needs that money to treat HIV/AIDS patients? That is what goes on out there. The Senate must step up its oversight role.

The other day, I found that service of a vehicle---. Each of these Senators has four-wheel-drive vehicles. If you take your four-wheel-drive vehicle to the garage, you could do everything including changing brakes using about Kshs62,000. Ordinarily, the normal service costs between Kshs12,000 to Kshs18,000. I found that my county services four-wheel-drive vehicles for Kshs500,000 each. If 10 cars are taken for service, that is equivalent to buying a new car and that is money wasted. These kinds of obscenities and wastage are actually criminal activities because that money could help save life. As we spend Kshs500,000 to service one car, hospitals do not have drugs for malaria, needles or gloves for women to be assisted to deliver. That is appalling. These are things that we need to really – as Sen. (Dr.) Machage brings this Bill – make very watertight so that what it intends to do is what will be done.

Mr. Temporary Speaker, Sir, I wish that the Senator even went further and determined that some percentage of the county funds must be put in this, even if it is 1 or 2 per cent. If a

county gets Kshs10 billion, 1 per cent of Kshs10 billion, which is Kshs100 million, should go to the fight against HIV/AIDS. That could be done on pro rata down, depending on how much money you have. You can also, then, by law, encourage the national Government to assist donors to deal directly with county governments because, donors have lost faith in the monolith at the centre because of corruption. I hope that agencies that fight corruption will then, step in, not to fight corruption at the end of corruption but make it not to happen.

People spend or steal money and you will find that nothing happens two years down the line. I have been telling the Auditor-General, Mr. Ouko, that we do not want those long old days of Mr. Njoroge of bringing postmortems to Parliament. Three years ago, some officials in the Ministry misappropriated funds. Some have died, others have resigned, others have been dismissed while others have left the country.

**The Temporary Speaker** (Sen. Mositet): Sen. Wetangula, I would not like to cut you short. However, I know that you still have time but I can see that some other Senators also want to contribute. Could you be generous and use the time allocated to you?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I am about to finish. I am on my last two minutes.

**The Temporary Speaker** (Sen. Mositet): Okay.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, we need to have a doctrine called budget tracking. When you give money to a project, you must follow it as it is spent along the way so that, two years later, we do not say that money that was sent to Laikipia was stolen and the thief has moved out of the country and you cannot find him.

Mr. Temporary Speaker, Sir, this is a wonderful Bill. It is a furtherance of our responsibility as protectors of devolution to send devolution down to the counties. I urge my colleagues to support it. I also urge its sponsor to take into account, particularly, the composition of the board that I have pointed out, so that we have a board of professionals who can work.

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

**Sen. Wako:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to talk on this very important amendment Bill. The Bill seeks to amend the HIV and AIDS Prevention and Control Act. As I stand here, I am very happy that the main Act was moved in the National Assembly by none other than the then Attorney-General of the Republic of Kenya, who is now the Senator for Busia County, way back in 2009. It was one of my proudest Bills. It was not my product but a product of a task force that I set up to review all the laws relating to HIV. This is because at that time, HIV/AIDS was like a mysterious disease.

Not too much was known and there was a lot of mystery about the disease. Children were being stopped from going to school because they were HIV positive. People were being denied jobs because they were HIV positive. Even within families, people did not invite others because of their HIV status. If you were known to be HIV positive, people feared to even greet you at that time. Therefore, it was felt that we needed to have a Bill which would not only make people aware of what the disease was all about but, more importantly, how to prevent and control it.

I am pleased that I set up a taskforce that consisted of not only lawyers but also prominent doctors in this country who have contributed a lot in the treatment of HIV/AIDS. It is them, and not me, who came up with that Bill. We just refined it here and there and it was passed. However, at the time it was passed, we did not envisage that a new Constitution would have devolution and two levels of government. Therefore, it is because of this that I wish to thank Sen. (Dr.) Machage for having brought this amendment Bill which, in fact, now makes that main Act consistent with our new Constitution. Under the new Constitution, we have devolved

health and, therefore, it is only appropriate that, that Act be amended to be consistent with the new constitutional dispensation.

I appeal to my fellow Senators who are experts in various fields; for example, Sen. (Dr.) Machage is an expert in medicine, he even owns a hospital. He has taken the initiative to ensure that this Bill is consistent with the new Constitution. I appeal to them because there are literally hundreds of Acts on our statute books whereas up to now we have been focusing on enacting new Acts as required under the Fourth Schedule of the new Constitution to implement it and bring proper foundation to this Constitution, there are very many other Acts that need to be amended to be consistent with the new Constitution.

Therefore, the action that has been taken by Sen. (Dr.) Machage is appropriate and should be emulated by all other Senators who have expertise in various fields. I am proud to belong to the Senate because we have people of varied wealth of experiences in various fields. So, if each one of them took it upon himself or herself to look at one of the Acts and come up with amendments such as these, we, as a Senate, would have fulfilled our statutory and constitutional obligations to legislate on matters which touch on counties.

I will not take long because much has been said by the Mover of the Motion, the Senate Minority Leader and others; except just to bring to the attention of the House a few things that, if they consider them good, should be taken into account in making further amendments to this Bill.

Mr. Temporary Speaker, Sir, first of all, I am glad that this Bill now states that when the Cabinet Secretary is making regulations under the main Bill, he or she must consult these county committees, that is a step forward. However, going through it slowly by slowly, the County HIV/AIDS Prevention and Control Committee which has been established here, I agree with it as far as it goes but I also agree with the Senate Minority Leader that we need to be more specific and give particulars of the various qualifications of the people required to sit on this Committee.

I would also suggest the Committee to be slightly expanded because I do not see representation from persons from the religious community. I was taking into account how HIV is transmitted, how it is caused and the immorality that surrounds it. I know that various churches, religious groups and communities have taken upon themselves to deal with this issue. Therefore, they have a specific interest in this matter. I would want to see some representation of religious communities that are a majority in a particular county. There may be some counties where Muslims are a majority and they should be represented. There may be others where Catholics, Anglicans, independent churches and Pentecostals are a majority. Whatever religious community is predominant in a particular county and which may be providing health services, I would plead they should have a role on this committee.

The other ones are the civil society and the Non-Governmental Organizations (NGOs) which have received a lot of funding from donors like the Bill Gates Foundation. They are funding NGOs in this area. This means that there is some representation. In fact, some of the funding can be channeled through this committee so that they can undertake their work.

The work that this committee will undertake will involve a lot of funding. The agenda is long and it is more or less the same as that of the National AIDS Prevention and Control Council (NACC). It is basically the same if you read the objectives of the two commissions. They will be doing it at the county level. Therefore, a lot of resources will be required to do this.

There is a lot of demand on the amount of money that we give the county governments. Therefore, some representation from some of these important NGOs who are operating in those particular counties would be in order.

There is another group of counselors that are very important---

*(Loud Consultations)*

**The Temporary Speaker** (Sen. Mositet): Senators, please, consult in low tones.

**Sen. Wako:** Mr. Temporary Speaker, Sir, that is why I was speaking loudly so that they hear my voice in whatever they are consulting. Particularly, when the Leader of Minority, Sen. Wetangula and the tycoon from Nakuru are discussing and our gracious lady from Kakamega is there looking at me and talking. Please look at me but also listen to what I am saying.

I agree with you on the issue of particulars of qualifications. I have also said that religious communities and the big NGOs and professional counselors operating in that area should find a place because they have a role to play in this matter. For example, for counselors, in Clause 12 (c) 1 (f), one of the functions of the committee is to collaborate with the council in the establishment of counseling centres and support group centres. The role of the counseling centres is very important in this matter, in prevention, control and also in the treatment of those who have it, so that they are acceptable and know that this disease is just like any other and that while having it, they can realize their potential and make use of the talents that God gave them.

Mr. Temporary Speaker, Sir, it is also not very clear to me that the actual doctors who are in this field are somewhere here because this committee may very well end up being a committee but with no real doctor. For example, when you say that "somebody who knows matters relating to health", health is too broad.

We want people who are experts in this very field just as I would expect, for example, if it was cancer control, I would not just use the broad word of somebody who knows something about health. I would say somebody who knows about cancer causes and treatment. Therefore, may be, when you are particularizing his qualifications, just make sure that there is somebody who is a doctor. The Senator for Kakamega may be a general gynaecologist but he may not be an expert on health issues. If he is a gynaecologist, let him be a member of this particular committee.

The other point is that the functions and objectives have been borrowed from the Legal Notice that established the National Aids Control Council. It is proper that they also have those broad functions. I do not have a quarrel there. Their job is to collaborate with the Council and so on. However, I do not know how to phrase it but we need to look at it again. For example, on page 48 at the bottom, will you now talk of who is in control? Whereas the Committee has been given this broad mandate, it appears to me that it may not necessarily have the necessary independence and insulated a bit from the Government to carry out its work effectively. The words that have been used are a bit too strong, according to me; that the County HIV/AIDS Prevention and Control Committee shall be:-

a) Under the control and direction of the county governor.

To me, that is a very strong. No! The county governor should be obligated to assist the Committee to perform its functions which are broad enough---

**The Temporary Speaker** (Sen. Mositet): Your time is up but Sen. Elachi says she can give you two minutes from her time.

**Sen. Wako:** Mr. Temporary Speaker, Sir, in the next one, it states that:-

b) Shall collaborate with the Council.

So, you are collaborating with the Council but you are under the direction and control of the governor. What about if there are conflicting directions either from the governor or the Council, how will the committee operate?

Two, on the issue of: If those who belong to that Committee are judged bankrupt, have committed an offence involving fraud and dishonesty--. Okay, fraud and dishonesty must be there but I would like a phraseology that talks about, "has committed an offence which is an offence under this Act." This is because the offences under the Act are more relevant than these other offences. Whereas that general one should be there, there should be a phrase that says that if you have committed an offence under this Act; then it cannot be said that you are committed to the prevention and control of HIV/AIDS. The offences under this Act deal with discriminatory acts towards the people with HIV/AIDS in schools, at the work place, in travel, in health institutions and many other places.

With those few remarks, I beg to support.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I thank the Senator for Migori County for bringing this Bill which is long overdue. We used to have the Constituency HIV/AIDS Board. However, we are now introducing the county committee.

Two weeks ago, a young man, a seven year old from Kenya, who has HIV/AIDS, gave a story in New York that moved us. His story was about stigmatization of children who are HIV/AIDS positive in schools. When we devolved health facilities, we did not set up structures to cater for HIV/AIDS counselors and community workers. We need these people to visit homes and assure our people infected with HIV/AIDS that they can live positively and normal life.

Mr. Temporary Speaker, Sir, Clause 12 says the functions will be to initiate, undertake and participate in the collection, production and dissemination of data that is useful in the prevention and control of HIV/AIDS within the country. While we are collecting and participating, we should bring in county workers to conduct civic education to ensure that people do not stigmatize those who are infected.

In many counties, HIV/AIDS prevalence has reduced. However, we do not have clear statistics that reveal to us why the numbers have reduced. Is it because people are no longer infecting each other? How is their CD4 count? It is very important for us to establish those facts. I believe that the committee that will be set up will start generating new data for us to understand better such issues. Dissemination of information will also be much easier in the counties unlike the former arrangements. We would like to know about projects that they are running to ensure the prevention of HIV/AIDS.

Mr. Temporary Speaker, Sir, many of our youths are faced with the challenges of peer pressure. The other day, we saw what happened in Eldoret. These are some of the worries that we carry on as parents. How can we make them understand the importance of being responsible? Sometimes back, we had a lot of advertisements asking youths not to use condoms, but abstain from sex and wait for the right time. I know that, that has gone beyond because of the eroded values. Today, the youth believe, which is good, that they must use condoms.

However, the most interesting part is that they prefer to use a condom not to prevent themselves from HIV/AIDS but from pregnancies. That makes the society to be more worried because they do not fear the disease. They will tell you that they can still live longer with the disease. We have to continue disseminating proper information to the people. We want to have a productive young generation that will pick the country from where we are and move it forward.

Mr. Temporary Speaker, Sir, it is also very saddening that even those of us who are married are the ones who engage more in extra-marital relationships with others. This is what we



refer to, in other words, as “*mpango wa kando*”. That is very common. If we do not change the situation, through what the Senator for Migori is bringing now, then, we face danger. There will be people in many families living with HIV/AIDS.

Therefore, Mr. Temporary Speaker, Sir, we must, as the Senate, start thinking about the future of our youth. It is important to come out clearly and tell our youth that if we do not change our moral values then, as a country, we would have lost what is in the Constitution and it will be of no benefit.

Today, we are moving very fast with the Western culture. Our youth find themselves in a very critical situation. It is normal for a person who is between the ages of 20 to 25 years to do as many mistakes as possible because they have the time. However, the moment you reach the age of 30, you have to focus and start thinking of how to move on in life. I know that the generation that gets itself into this challenge is within that age. We have the youth who engage in sex as early as at the age of 10. It is time we, as parents, asked ourselves – as we claim to be Christians who observe values – where we have lost the values that we used to respect. In the past years, a child could conduct himself or herself well up to the age of 16 or 17 years.

Mr. Temporary Speaker, Sir, I thank the Senator for bringing these amendments that will revive committees that have been dormant. I hope, as the Senator Minority Leader said, that a percentage will be put to ensure that the committees which will be established are well facilitated, to ensure that the work is done properly.

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

**Temporary Speaker** (Sen. Mositet): Order! Could the Mover now reply?

**Sen. (Dr.) Machage:** Mr. Temporary Speaker, Sir, the importance of the topic of HIV/AIDS in Kenya cannot be underestimated, with a prevalence rate of around 5.8 per cent at this time. Knowing that the range is wide, in some areas of this country, the prevalence rate is as high as 18 per cent, although we have some areas with as low as 1 per cent. This is something that we must focus our minds and get to the gist of how to tackle it. While this has reduced from a previous starting prevalence rate of about 19 per cent in the early 1980s to where we are now, the gains can be lost with the masking of the whole epidemic with the advent of Antiretroviral (ARVs) drugs.

May I appreciate the contributions of Members of this House who have given more insight and information on what should be incorporated in making the Bill even better. I will pray that Members take the opportunity to also guide on the amendments by submitting their thoughts on what should be amended.

Sen. (Dr.) Khalwale did suggest that it is important to incorporate in this Bill, the control and management of malaria and tuberculosis. Let us also know that HIV/AIDS pandemic was at one time declared a national disaster. Maybe, putting this together may dilute the magnitude and importance of this situation. What I would pick from him is that there is need also to amend the laws that manage malaria and tuberculosis. Tuberculosis is an opportunist infection that usually follows HIV/AIDS and is covered very well in this Bill.

I also thank Sen. Chelule for her contribution. Sen. (Prof.) Lesan appreciated the contributions of Prof. Koech and Prof. Obel on the issue. This was an attempt by Kenyans to come up with medication to this scourge. He, however, misunderstood what I said about the relevance and importance of opportunistic quacks who came up with herbs and other concoctions trying to steal from the Kenyans in the name of treatment of HIV/AIDS. I appreciate the contributions of these two people. Prof. Obel’s attempt to use Pearl Omega in the treatment of HIV/AIDS cannot be underestimated. He was my teacher.

Sen. Musila has been very concerned with the allocation of resources being diverted to other uses including; buying toilets for governors, instead of putting this money to proper use, including control and management of HIV/AIDS. I appreciate his concern and his warning to these people that they must use money appropriately.

Sen. Wetangula has put much of his concern on the qualifications of the people that are to be appointed into the committee. I considered this and also the regional distribution of intelligent learned people in this country. If I make the conditions too stringent, then some regions may lack members in this committee. However, I will consider strengthening the qualifications of members of this committee.

Sen. Wako has given a big insight on the law that manages the Act. He has thought on expansion of the committee. He suggested an inclusion of religious people in the committee. His contribution is very relevant. I will consider all the matters he has raised.

I cannot forget to thank Sen. Elachi for her concern on use of data collection. Indeed, this data will not only be kept, but has to be reported back quarterly so that it can be assessed to know the trends of HIV/AIDS infection and management so that we can intervene appropriately. She is concerned about the education, knowledge, attitude and practice of our youth. She is worried that youths use condoms for prevention of pregnancy rather than HIV/AIDS. Indeed she thinks that, in Kenya, indulgence in sex begin at 10 years. Let me tell her that the youngest age recorded for pregnancy in Kenya is 9 years. So, you can imagine when sexual indulgence begins.

With all this information, I thank everybody.

I beg to move.

I also request that under Standing Order No. 54(3), you do not call for vote until the next sitting because we lack quorum.

**The Temporary Speaker** (Sen. Mositet): I defer the division to an appropriate date when we will have the numbers in the House.

*(Putting of the Question deferred)*

Next order!

*Second Reading*

THE OFFICE OF THE COUNTY ATTORNEY BILL  
(SENATE BILL NO.37 OF 2014)

**The Temporary Speaker** (Sen. Mositet): The Bill is deferred to next week.

*(Bill deferred)*

*Second Reading*

THE NATIONAL EXAMINATIONS COUNCIL (AMENDMENT) BILL  
(SENATE BILL NO.7 OF 2015)

**The Temporary Speaker** (Sen. Mositet): This Bill is deferred to tomorrow.

*(Bill deferred)*

*Second Reading*

THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT  
OF ECONOMIC AND SOCIAL RIGHTS BILL  
(SENATE BILL NO. 8 OF 2015)

**The Temporary Speaker** (Sen. Mositet): This Bill is also deferred to tomorrow.

*(Bill deferred)*

*Second Reading*

THE COUNTY LIBRARY SERVICES BILL  
(SENATE BILL NO. 6 OF 2015)

**The Temporary Speaker** (Sen. Mositet): This Bill is also deferred.

*(Bill deferred)*

**ADJOURNMENT**

**The Temporary Deputy Speaker** (Sen. Mositet): Hon. Senator, it is now time to interrupt the business of the Senate. Therefore, the Senate stands adjourned till tomorrow, 8<sup>th</sup> October, 2015, at 2.30 p.m.

The Senate rose at 6.30 p.m.