

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

**Tuesday, 16<sup>th</sup> February, 2016**

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

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

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### PROCESSING OF THE BUDGET POLICY STATEMENT 2016

**The Speaker** (Hon. Ethuro): Hon. Senators, I have a Communication to make on the processing of the Budget Policy Statement 2016. As you are aware, Section 25 of the Public Finance Management Act requires the National Treasury to prepare and submit the Budget Policy Statement to Parliament by 15<sup>th</sup> of February each year. Consequently, by a letter Ref.COF83/02 dated 12<sup>th</sup> February, 2016, and received in the office of the Clerk on 15<sup>th</sup> February, 2016, the Principal Secretary for the National Treasury submitted the following documents for consideration and approval by Parliament:-

- (a) The Budget Policy Statement 2016
- (b) The Medium Term Debt Management Strategy 2016
- (c) The Draft Division of Revenue Bill 2016
- (d) The Draft County Allocation of Revenue Bill 2016

Hon. Senators, at Order No.5 in today's Order Paper, I will allow the Chairperson of the Standing Committee on Finance, Commerce and Budget to formally table these documents.

The Budget Policy Statement is an important tool as it sets out the broad strategic priorities and policy goals that will guide the national Government and county governments in preparing their budgets both for the following financial year and over the mid-term. It contains among other things:-

- (1) An assessment of the current state of the economy and the financial outlook over the medium term, including the micro economic focus.
- (2) The financial outlook with respect to Government revenues, expenditures and borrowing for the next financial year and over the medium term.
- (3) The proposed expenditure limits for the national Government, including those of Parliament and the Judiciary and indicative transfers to county governments.

(4) The fiscal responsibility principles and financial objectives over the medium term, including limits on total annual debt.

In a nutshell, it means that any proposals that Senators have regarding the Division of Revenue Bill and the County Allocation of Revenue Bill, including funds for conditional allocations to the counties, should be canvassed and forwarded to the National Treasury for possible factoring in the Budget Policy Statement, failure to which it will be difficult to be accommodated later on.

Hon. Senators, Section 25(7) of the Public Finance Management Act provides as follows:-

“Parliament shall, not later than 14 days after the Budget Policy Statement is submitted to Parliament table and discuss a report containing its recommendations and pass a resolution to adopt it with or without amendments.”

Based on the importance of the Budget Policy Statement and the above timelines, I direct that once tabled, the Budget Policy Statement be considered by all standing committees, each concentrating on its mandate. The standing committees will then forward their recommendations to the Standing Committee on Finance, Commerce and Budget for consideration and tabling of the report not later than Thursday, 25<sup>th</sup> February, 2016. The Senate will be required to debate and approve the report by Tuesday, 1<sup>st</sup> March, 2016.

Please note that pursuant to Section 25(8) of the Public Finance Management Act, the Cabinet Secretary of the National Treasury is expected to take into account resolutions passed by Parliament in finalizing the Budget for the relevant financial year. I, therefore, wish to urge all the hon. Senators to prioritize the scrutiny of the Budget Policy Statement, taking into consideration our most important function of safeguarding devolution.

I thank you.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. Allow me to thank you for that Communication. The Budget Policy Statement, amongst other things, will have information on the issue of borrowing by the national Government. Through that *communiqué*, put it on record that it will be more useful both to the National Assembly and this Senate if the Auditor-General can expedite the audit on the Eurobond. This is so that as we discuss the borrowing in the Budget Policy Statement, we see exactly what this “animal” called Eurobond is all about and what recommendation that information will inform us.

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Khalwale, I am afraid I cannot be of much help to you because the Budget Policy Statement is not the audit statement. The Budget Policy Statement and the attendant documents which are outlined are given according to Section 25(7) and (8). I am sure from where you sit you will be accorded plenty of opportunities to deal with the matters you may be interested in.

**Sen. Wangari:** Mr. Speaker, Sir, I also want to join my colleague, Sen. (Dr.) Khalwale, in thanking you for that communication. The Budget Policy Statement is an important document that shows how Ministries get funding in this country. I further wish to congratulate you for referring the Budget Policy Statement to all the standing committees. This was a very important task that had been left to the Committee on Finance, Commerce and Budget. It is time this becomes the tradition of this House; that

the Budget Policy Statement is scrutinized by all committees so that we can flag out the issues that we want to raise and be able to act accordingly.

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, it is a great breakthrough for the Committee on Finance Commerce and Budget to bring the Budget Policy Statement in advance in comparison with last year when the timelines were a bit delayed. This did not give us a good chance to discuss the Budget Policy Statement in terms of giving a concrete way forward. This time we have that chance.

The fact that the Budget Policy Statement has been referred to the standing committees, I request that we expedite this process. We should look through this document as early as possible so that we can see what to improve in terms of budget lines. That becomes critical for us. It also gives us a chance to look at the document within a timeframe that is adequate and that will allow more input.

**Sen. Kittony:** Mr. Speaker, Sir, I also join my colleagues in congratulating you. We are almost late, but we have done it at last.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, thank you for the Communication. All the recommendations we made last year never found their way into the final document. We ask you to use your good office to ensure that our recommendations are not ignored. Whereas we complain about domestic and foreign borrowing, the fact of the matter is that once the document left the Senate and went to the National Assembly, the National Assembly increased the limit both in domestic and foreign borrowing and many other issues that affect counties. From the Committee on Finance, Commerce and Budget, we are concerned as to whether people are listening to us.

**Sen. Kagwe:** Mr. Speaker, Sir, I also applaud the Communication. However, I would like to take this opportunity to remind my colleagues that while considering what will happen to 40 per cent of the budget, we should remember that there is another 60 per cent of the Budget that is out there. Therefore, it is very important for us to start looking at conditional grants. This is an area we have not given serious thought to. We have not really made any proposals on conditional grants from this House, except for Level 5 Hospitals. I urge my colleagues, as you make your recommendations, to please consider raising the issues pertaining to conditional grants for the various areas that you are handling.

**The Speaker** (Hon. Ethuro): The last two; Sen. Nabwala and then Sen. Murungi.

**Sen. Nabwala:** Mr. Speaker, Sir, I would also like to congratulate you for the Communication about the Budget Policy Statement. It is very important for us to scrutinize this document in various stages because it affects us. We know our mandate as stipulated in Article 96 of the Constitution is to oversight and protect interests of counties. Therefore, it is critical for us to know how much of the money will be channeled to counties.

The health sector has been so much affected. We must see to it that when counties will be leasing medical equipment, they get it right. This is because cancer is among the major diseases that are killing our people. We need to equip all hospitals with diagnosis machines in this country.

I beg to support.

**Sen. Murungi:** Mr. Speaker, Sir, I commend you for bringing the Budget Policy paper for scrutiny by our committees at this particular time. As Sen. Mutula Kilonzo Jnr.

said, this Budget Policy paper was brought to the Standing Committee on Agriculture, Livestock and Fisheries. We studied it and made very detailed comments. We were also assisted by the Parliamentary Budget Office in the analysis.

One of the key things we noted is that the Government's proposals fell short of the Maputo Declaration which has said that 10 per cent of the total national budget should be allocated to agriculture. When the final budget was approved by the National Assembly, only seven per cent of the total budget was allocated to agriculture.

Therefore, our concern is whether this is another mere public relations exercise to say that even the Senate looked at it and nothing happened. Is there a mechanism for us to ensure that the very useful ideas that come from this senior House find their way to the budget and not merely fulfill the regulatory requirements?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I also laud you for the communication. I take this opportunity to urge committees, particularly the leadership of committees; that is the chairpersons and their deputies, and all members, that we have seen a serious attempt to claw back the gains of devolution by undermining functions that are devolved or trying to shift them to the national Government.

Your Communication is very clear; the policy statement will be debated and approved with or without amendments. I urge colleagues to look at this very carefully, especially the committee in charge of roads. You can see what is happening to the roads sector. There is a mischievous upgrade of all Class D roads to Class C in the country without any justification. This is simply because they want to shift them from the counties to the national Government for them to continue manipulating tenders and perpetuating corruption.

Mr. Speaker, Sir, on the roads sector, even if you shift maliciously all Class D roads to Class C, the impact will be negligible because they are less than 50,000 kilometres. Even if we shifted Classes A, B and C of our roads to the national Government, the impact will not be felt much because they are less than 10,000 kilometres. Therefore, we expect the bulk of the roads money to go to Turkana, Marsabit, Moyale, Bomet, Nyangores ward and all these places, so that the county governments can manage roads for the benefit of the people of Kenya.

I was part of the team that resolved that each African Government was obligated to assign a minimum of 10 per cent of the national budget to agriculture for food production, food preservation, food marketing and so on. We want to see this done. The Standing Committee on Agriculture, Livestock and Fisheries led by the distinguished Sen. Murungi, must bring very cogent arguments to this House for us to achieve that AU resolution.

**The Speaker** (Hon. Ethuro): I hope the Senate Minority Leader is also aware that there is another commitment to the health sector.

**The Senate Minority Leader** (Sen. Wetangula): Yes, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Therefore, interrogate all of them.

Next Order!

**MESSAGE FROM THE NATIONAL ASSEMBLY****CONCURRENCE OF THE SENATE ON THE PHYSICAL  
PLANNING BILL (NATIONAL ASSEMBLY BILL NO. 46 OF 2015)**

Hon. Members, I have a Message from the National Assembly on the Fiscal Planning Bill (National Assembly Bill No.46 of 2015).

I wish to report to the Senate that Pursuant to Standing Order No.40(3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the passage by the Assembly of the Physical Planning Bill (National Assembly Bill No.46 of 2015).

Pursuant to Article 110(4) of the Constitution and the provisions of Standing Orders 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly;

“Whereas the Physical Planning Bill (National Assembly Bill No.46 of 2015), a Bill concerning county governments was published by the Kenya Gazette supplement No.130 of 11<sup>th</sup> August, 2015, as a Bill concerning county governments in terms of Article 109(4) of the Constitution and; whereas the said Bill whose objective is to give effect to Article 66 of the Constitution was considered and passed by the National Assembly on 16<sup>th</sup> December, 2015 with amendments. Now therefore, the National Assembly seeks concurrence of the Senate on the said Bill.”

Hon. Senators, Article 110(3) of the Constitution provides as follows;

“Before either House considers a Bill, the Speakers of the National Assembly and Senate shall jointly resolve any question as to whether it is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill.”

Hon. Senators, I also wish to report to you that concurrence of the Senate as contemplated in Article 110(3) of the Constitution was not sought by the Speaker of the National Assembly in respect to the Physical Planning Bill (National Assembly Bill No.46 of 2015). However, in his Message, the Speaker of the National Assembly has indicated that the Physical Planning Bill as passed by the National Assembly, now affects county governments in terms of Article 110 of the Constitution.

Be it as may, and pursuant to Standing Order No.148 which requires that a Bill that originates from the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Orders No.129. I, therefore, direct that the Bill be listed for First Reading in the Order Paper of tomorrow, Wednesday 17<sup>th</sup> February, 2016.

I thank you.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I have listened to you very carefully. I congratulate you for your candor in your Communication.

However, I want to know from the Chair, whether in the matter of Article 110(3) which obligates the Speakers of both Houses, and the wording is;

“Before either House considers a Bill, the Speakers of the National Assembly and the Senate shall jointly resolve any question as to whether it is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill.”

Can that apply retroactively? Does a Speaker of one House have the discretion to be wiser after the event that he proceeds as if Article 110(3) is not there and then after passing the Bill, he realizes the Article is there and forwards the Bill to the other House's Speaker, belatedly saying that, in fact, Article 110(3) should have been applied.

If we continue rubberstamping this kind of mischief, we are also undermining our own authority and that of the Office of the Speaker of the Senate; that the Speaker of the National Assembly can do what he wants, and along the way realizes mistakes and says that the Senate should take the Bill because he has realized that it concerns the counties.

We need clarity to this and we need things to be done differently. In my humble view, I do not think this Article does apply retroactively. It says before any Bill is tabled in any House, it must have a concurrence of both Speakers of Parliament. It is not after a Bill is debated, passed and then it is forwarded to another House. I need clarification on this because we have to set precedence that will guide future relationships between the two Houses of Parliament.

**Sen. Ong'era:** Mr. Speaker, Sir, I rise to support Sen. Wetangula's assertions. We cannot work in an *ad hoc* manner because this is a House of rules. We cannot have a situation where one Speaker wakes up one morning and decides that he made a mistake and, therefore, he needs to correct it. We must abide by the rules and by what is on record.

The Constitution is very clear. Before any Bill is considered the two Speakers must meet and agree on whether the Bill affects counties or not. We cannot have a situation where to date, the National Assembly has "sat" on our Bills, 18 of them, and have never approved them. This is a non-satisfactory situation which cannot be acceptable. We are here not by choice or chance. We are elected Members of Parliament who have come here to represent the people's rights under Article 96. We cannot have a situation where another House feels more important than this House. We know clearly that this is the "Upper" House.

This matter must be brought to rest before we finish our session. We cannot have a situation that for three years, most of the Bills that we have passed have never been passed into a law, except a few which were money Bills. Therefore, this Bill needs to be completely ignored.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I join my colleagues in saying that this Constitution is very clear. Everybody has a copy. In fact, we found them in our pigeon holes. I suppose the same applies to the pigeon hole for the Speaker of the National Assembly. It defeats logic that we have been given the story that you have just read: "That a Bill is being brought after it has been processed yet they knew that this was supposed to be done."

Mr. Speaker, Sir, this brings to question how we have operated for the last four years. Many Bills have been generated in this House and have found themselves in the cold room of the National Assembly. Nothing has become of them. It is time that we pinpointed this problem rather than going round in circles. We need to name and shame those who have brought us to this situation. Sometimes some Bills find their way quickly to the President yet they have not passed through the Senate. None of the Bills generated by this House has ever seen the light of the day.

I support the view of Sen. Ong'era. This Bill should be returned as it is rather than entertaining it on the Floor of this House. It cannot come through the backdoor because the rules and regulations that are supposed to be followed are clear.

Lastly, some of the Bills that were generated by this House, for example, the one by Sen. (Dr.) Khalwale was somehow mutilated, then copied, plagiarized and a new name quickly attached to it. We just kept quiet and watched as it was presented for assent. It is time that we tell our colleagues to perform the roles that brought us here without playing some funny tricks in the process.

**Sen. Njoroge:** Mr. Speaker, Sir, I thank you for giving me this opportunity to contribute to a "life" matter. I see signs of arrogance coming from the National Assembly directed at this House. We have said these things time and again. This year, we do not need to take anything for granted. We do not need to discuss any Bill that comes from the National Assembly which you have not seen. As you may recall, we have several Bills which were passed in this House and forwarded to the National Assembly and have never been even discussed there yet they bring Bills which should be declared null and void through the backdoor. Those Bills are brought to this House unprocedurally. For example, the Persons with Disabilities (Amendment) Bill which was passed early last year, was taken to the National Assembly yet there is no word to date; then, we come and start discussing Bills which make the National Assembly steal the show and undermine the Senate.

I, therefore, request that, this House declares this Bill null and void.

**Sen. Okong'o:** Mr. Speaker, Sir, I join my colleagues to condemn this kind of contempt meted out to this House. Hon. Senators are not in this institution fighting to become saints or priests; we are politicians. I listened to you carefully, and heard you say "be it as it may." Those are legal terminologies. That we have messed here, but can go and deal with other issues. Let us look for the legal systems to deal with this situation and history will judge us correctly.

Mr. Speaker, Sir, I oppose this Bill. If we have a cold-room, we can put it there until we deal with some of these issues.

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. We seek your guidance on this matter.

*(Sen. Moi was applauded as he entered the Chamber)*

Congratulations.

Mr. Speaker, Sir, the procedure of handling Messages from the National Assembly, as you correctly quoted, is provided in Standing Order No. 40. At the end, paragraph six, gives you the discretion on how you want that particular Message from the National Assembly to be handled. In your Communication, you chose the option of appointing a day for consideration of the message when you said that it should appear on our Order Paper. I need your guidance.

This is not the first time that this is happening. We do not want you, as our Speaker, to join your colleague in violating provisions of Article 110(3) of our Constitution which is very explicit. I do not know at what stage your counterpart from the "Lower House" got to know the provisions of Article 110(3) because you told us that it was an afterthought. It is not acceptable. We would like you to rescind the decision you

took by appointing a day when the message can be considered and we resolve that we want to deal with this matter now. As a House, you can hear it very loud and clear; we will not accept this. So, rather than appoint a day that you have, we, as a House, are making a resolution that we reject this Bill vehemently in totality until the provisions of Article 110(3) of the Constitution are followed for us to consider this Bill. We reject it and we do not want it to appear on our Order Paper at any time.

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, one of the provisions that is so clear and we do not have any problem with, is the interpretation of Article 110(3) of the Constitution. It states clearly that the moment a Bill is presented; the two Speakers must sit together and decide. There are logistics about how that can be done. One that can be applied very easily is to have a document emanating, for example, from the Senate, you sign it, that this is a Bill concerning counties, take it to our counterparts at the National Assembly expecting him to sign it. If he does not, we proceed with it up to its conclusion and push it for enactment.

Mr. Speaker, Sir, we have more than five Bills that have been assented to. We have about 18 Bills that are in the National Assembly and much more that are being processed. We need to find a way to solve this problem once and for all. One of the things that the National Assembly tends to do more often is just to delegate and say that this is a money Bill. For example, how can The Natural Resources (Benefit Sharing) Bill, be a money Bill when we are talking about resources at the county? That is why that provision in the article has been put there; so that all these issues can be ironed out right from the beginning so that a way forward is found.

When such a Bill, the Physical Planning Bill, comes as a secondary report to the Senate, first of all, we have not gone by the provision of Article 110(3), and secondly, we are setting a very bad precedence. This is an issue that is long overdue for action. We need action that is very straightforward and clear so that we do not have this sort of a situation coming up. Indeed, we are finding ourselves in a quagmire; here is a Bill coming from the National Assembly and they expect us to debate it and yet we are not in a position to do so. That is why the provision was very clear. This determination has to be made at the beginning of the process and not somewhere in the middle or at the end.

We need to find a way forward and let Kenya understand that the Bills that we are formulating at the Senate are actually beneficial to them. We sit here and put in a lot of hours to ensure that this happens. We need those Bills to be prosecuted to the end. We do not want those Bills not to be prosecuted on the basis of technicalities. We need a realization that we are a bicameral system and the two Houses have specific responsibilities. In other countries like the United States of America (USA), Australia and in other countries where they have a bicameral system, it has clearly been streamlined. The reason and understanding of the “Upper House” is to scrutinize Bills from the “Lower” House. It is happening everywhere in the whole world.

Therefore, we need to move away from this sort of misunderstanding of how the two Houses should behave. We need to find a way forward to ensure that the provision of Article 110(3) is adhered to because it is the basis of the legislation that we are going to make in this House.

**The Speaker** (Hon. Ethuro): I will take the last three interventions and I ask them to be brief. We will start with Sen. Mutula Kilonzo Jnr., Sen. Ongoro and Sen. Hassan.



**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, somebody said that common sense is supposed to be common, but it is not. It is very unusual that somebody would say the Physical Planning Bill of this country does not involve counties. Like Saul in the Bible changed his mind at some point on his way to Damascus; there are two things I want to say. I have been on record in this House, saying that there is a ruling in your favour by the Supreme Court which suggested that you should appoint a committee of three persons from the Senate and then ask your colleague to do the same in terms of Article 110(3). This is the opportunity.

Mr. Speaker, Sir, you have an opportunity to cause a crisis which can be resolved as we go along. The 18 Bills including the one for Sen. (Dr.) Zani, we had no problem with you driving to State House so that they can be signed into law. I am saying so because if the Constituencies Development Fund (CDF) Bill, which concerns counties - and the court was very clear that it must come to the Senate - it has been signed into law by His Excellency the President; what are we waiting for? We pretend to be playing in the big league yet allow ourselves to be playing in Division One. We are appearing to be underdogs. We are suggesting that you do something drastic.

The reality on the ground is this. Since you became the Speaker of this Senate, only two Bills have been signed into law. We are spending so much time and public resources, discussing, sitting in public meetings and listening to views; but what is the end product? By mid-June, no one will be sitting here unless you do something that is drastic like what I have suggested. Let us deal with this in court or another place, but expecting that we are going to get some good manners from that House, is asking God for too much.

**Sen. Ongoro:** Mr. Speaker, Sir, mine is more of a question: In view of the foregoing and now that the National Assembly Speaker has accepted that either he made a mistake, an oversight or a misinterpretation of the Constitution and the Standing Orders, what is he presenting on the table as remedial measures? What happens to all those Bills that were forwarded to the President for consent without being referred to the Senate? What is he doing about all the Bills that he is holding even as he accepts this from the Senate and they are not discussing? This is a case of double speak. Actions speak louder than words. We should see him taking action by presenting in the Order Paper of the National Assembly all the Bills that are pending. We should see him advising the President that those Bills that were consented to without being brought to the Senate are invalid and should be brought here for validation. That would make sense and make us think that he is very serious.

**Sen. Hassan:** Mr. Speaker, Sir, I was listening to this debate as I drove here. First, the whole standoff which has been precipitated largely by the Speaker of the National Assembly has appeared to erode the credibility of Parliament as an Institution. Every time I go anywhere, people ask how come we cannot agree. It is not true that the Senate has refused to agree, but it is true that one Chamber and its leadership have decided to undermine the other Chamber. The Speaker must be told in no uncertain terms that he has procrastinated the promise of devolution in this country. Secondly, that he has undermined the Constitution of this Republic. He has also delayed the promise we had made to our Kenyan people to deliver on some elements of this Constitution through the legislative process.

Mr. Speaker, Sir, I want to jog your memories; when we were in the first Chamber which is sometimes referred to derogatively as “the garage” it was at that point that we made the mistake when we decided that we are a House of reason and beyond this or that. We did not want to engage these young boys in this or that. We wanted to maintain a certain level of decorum. That is when we lost our space.

Now three years on, despite using all forms of decorum, it has never appeared to them that, that is not an act of cowardice, but an act befitting the Senate of the Republic. At that point, I remember you holding me back; to my disapproval, but I respected you and I still respect you even now. You told me not to move in that trajectory. We wanted to convene press conferences there with “Sonko” so that he can do a few things and so that we can speak about these issues to the National Assembly in a language they best understand. I remember your intervention and that of some of the leaders here who told us that you will prevail on that matter through the approach that restores the dignity of the House, but they have undermined it repeatedly.

Mr. Speaker, Sir, we have two responsibilities; first, to secure this Senate now and for the other Senators that will come after us. We cannot accept to hand over a Senate that is not what is expected in the Constitution. It is important that this year, they either listen to us or we do battle to the very end. That battle could mean drastic action to an extent that we will not accept any legislation from them to us.

You told me that after you sought concurrence on certain Bills, The Speaker of the National Assembly did not respond and when we are processing a Bill in this Senate, he writes to you saying that the Bill is a Money Bill, after he went in excess of the seven day period for its concurrence. What else are we left with? Let us not go into history as a pioneer Senate that was based on cowardice. So, let us do battle in and out of this institution and politically. Therefore, whatever we can do drastically, we go and annul all these legislation. We must answer fire with fire. Ultimately, that is the only way we shall have respect.

There is a maxim I like so much that says “power only respects power”. Until we show Speaker Muturi that we have power--- Those people think we are nothing. They think they have the power, money, resources and everything. Unless we show them that this mighty Senate is where some of these people have been patrons for some of the elections. I know Senators here who will ensure that nobody can be re-elected to that National Assembly if they do not have patronage to those people. In here are holders of parties and buses.

How can he discredit the owner of a “bus”; the vehicle he used to get him to the House? Today he is sitting in another Chamber and he says others are in the “lower” House. That is why some of them are now seeking the same bus ticket to come here. These people must be taught the language of power. We must take this message to the voters in 2017; that every person will be elected on his commitment to devolution. In fact, these people are not for the devolution; they are undermining it. We must start that narrative.

Mr. Speaker, Sir, if we use a bad approach from now hence forth, please, do not restrain us because we know where we are headed. Look at where the governors and the National Assembly have taken us!

I beg to support and ask that drastic action be meted by the Senate on any person who we feel is errant to devolution.

**The Speaker** (Hon. Ethuro): That was supposed to be the last speaker, but I see Sen. (Dr.) Machage has requested to contribute. Therefore, I will allow him a minute to contribute.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, we make a lot of cries, speak a lot of English and Kiswahili languages in this House, but if the Constitution and the Standing Orders do not prescribe any mode of action, it is all zero. It is an exercise in futility. The best way forward for us is to look at pitfalls, loopholes, omissions and commissions in the Constitution. We should also review our Standing Orders so that we have a specific way of action.

The Speaker of the National Assembly has done whatever he did, but so what? Our cries will not do anything to change the situation. Let us have a sober approach to these issues. This is the moment to unify the Senate at the grassroots level and build a strong advocacy for a constitutional review because it is important. It does not matter whether you are talking of *Okoa Kenya* or *Punda Amechoka* initiatives and so on. We can come up with our own name and unify the process so that some of these issues can be addressed in a structured manner.

**The Speaker** (Hon. Ethuro): Hon. Senators, I have heard you. I agree with most of the things that you have said and I have also agonized in the same way. However, there is nothing much that is lost by First Reading of the Bill. The Bill does not have to proceed to the next stage. Let me reflect on this matter because it keeps on recurring so that we look at all the Bills that have come before us and agree on how to proceed. But I subscribe to the notion that it cannot be business as usual. The provisions of the Constitution are very clear as to what stage that concurrence can be sought. I have been faithful in letting you know exactly the record is. That record is not only useful to this House, but can be useful elsewhere. Therefore, let me leave it at that stage for now because the Bill will not come for Second Reading stage before my ruling.

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATION OF STAFF FROM BOMET AND KERICHO COUNTY ASSEMBLIES

Hon. Senators, before I call upon on the Members to lay the Papers, let me recognize a visiting delegation from Kericho and Bomet County assemblies who are on attachment at the Senate.

*(Applause)*

I would like to acknowledge the presence in the Speaker's Gallery this afternoon of visiting staff from Kericho and Bomet County assemblies. They are here on a five day attachment to visit similar departments at the Senate. I request each Member of the delegation to stand when called out so that they may be acknowledged in the Senate tradition.

1. Kenneth Kosonoi;
2. Julius Kurgat;
3. Andrew Kipkirui;

4. Wesley Langat;
5. Sarah Maiwa;
6. Silas Rop; and
7. Stanly Maritim.

I hope that you will enjoy your programme.

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

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, I wish to join you to congratulate and wish the visitors from my county well in their visit to the Senate. Today was an important day for my county because the Governor for Bomet County was in the Senate playing his role as required by the Senate regulations to answer to a Petition. I thank the delegation from Bomet County because they are people we work together with in the entire county, including Nyangores, which is part and parcel of Bomet County. I assure the House that all the wards in Bomet County, including Nyangores ward, are doing very well.

### PAPERS LAID

#### REPORT ON PETITION: LEGISLATIVE INTERVENTIONS TO ADDRESS THE PLIGHT AND WELFARE OF FORMER COUNCILORS

**Sen. Madzayo:** Mr. Speaker, Sir, I beg to lay the following paper on the Table:-  
The report on the Petition for legislative interventions to address the plight and welfare of former councilors.

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

#### BUDGET POLICY STATEMENT AND ATTENDANT DOCUMENTS

- Sen. Mosistet:** Mr. Speaker, Sir, I beg to lay the following papers on the Table:-
1. The Budget Policy Statement of 2016;
  2. The Medium Term Debt Management Strategy of 2016;
  3. The Draft Division of Revenue Bill 2016; and
  4. The Draft County Allocation Revenue Bill of 2016

*(Sen. Mositet laid the documents on the Table)*

**The Speaker** (Hon. Ethuro): What is it, Sen. Moi?

**Sen. Moi:** Mr. Speaker, Sir, I take this opportunity to welcome the delegation from Bomet and Kericho counties, especially the great people of Nyangores ward in Bomet County. “*Koyai kasit ne mie*” The people of Kericho County should also *fuata hiyo nyayo*.

**The Speaker** (Hon. Ethuro): Sen. Moi, are you in this House? That order was passed. We are now on Papers.

Next order!

**NOTICE OF MOTION****ADOPTION OF MEDIATION COMMITTEE REPORT ON COUNTY  
GOVERNMENTS AMENDMENT BILL (SENATE BILL NO. 1 OF 2014)**

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Mediation Committee on County Governments Amendment Bill (Senate Bill No.1 of 2014) laid on the Table of this House on Wednesday, 18<sup>th</sup> November, 2015.

I thank you.

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

**STATEMENTS****CAUSE OF LACK OF CASH FLOW AT THE HIGHER  
EDUCATION LOANS BOARD**

**Sen. Wangari:** Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No. 45 (2) (b) to seek a Statement from the Chairperson of the Standing Committee on Education regarding the alleged lack of cash flow at the Higher Education Loans Board (HELB) which resulted in protests by some students across the country. In the Statement, the Chairperson should:-

(a) Enumerate the total amount of cash request the HELB received from students in the last three years.

(b) Enumerate the total amount of money that was available for allocation to students from the HELB budget in the last three years.

(c) State the amount of cash disbursement request that HELB made to the National Treasury in the last three years vis-à-vis the amount that the National Treasury released to HELB indicating the amount released per every request.

(d) State the proportion of the HELB budget that is funded by the National Treasury and the amount that is funded by the HELB Revolving Fund.

(e) Explain the steps the Government is taking to meet the rising need for Higher Education funding.

Thank you.

**SHOOTING OF *BODA BODA* RIDERS BY  
POLICE AT KILINGILI**

**Sen. Khaniri:** Thank you, Mr. Speaker, Sir. Pursuant to the provisions of Standing Order No. 45 (2) (b), I rise to seek a Statement from the Chairperson of the Standing Committee on Legal Affairs and Human Rights concerning the shooting of *boda boda* riders by police at Kilingili during a peaceful demonstration on the 11<sup>th</sup> February, 2016. One person died and two others were fatally injured. In the Statement, the Chairperson should:-

(a) Explain the circumstances that led to the shooting of Victor Enonda, the now deceased and two others by the police.

(b) Explain the action taken by the Independent Police Oversight Authority (IPOA) to ensure that the officers involved are held accountable for their action.

(c) Explain the measures undertaken by the Government to ensure that the affected families are compensated.

Thank you.

**The Speaker** (Hon. Ethuro): Order Members. I direct that Sen. Wangari's Statement goes to the Chairperson of the Education Committee and the response to be within 14 days. The Statement sought by Sen. Khaniri goes to the Chairperson of the National Security and Foreign Relations Committee and the response to be within 14 days.

Next Order!

## BILLS

### *Second Reading*

#### THE EMPLOYMENT (AMENDMENT) BILL (SENATE BILL NO. 1 OF 2015)

*(Sen. Wangari on 10.2.2016)*

*(Resumption of Debate interrupted on 10.2.2016)*

## DIVISION

### ELECTRONIC VOTING

*(Question, that the Employment (Amendment) Bill (Senate Bill No.1 of 2015) be read a Second time, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. Kivuti, Embu County; Sen. Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. Madzayo, Kilifi County; Sen. (Dr.) Machage, Migori County; Sen. Moi, Baringo County; Sen. Munyes, Turkana County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mositet, Kajiado County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Njoroge, Nakuru County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Sang, Nandi County; Sen. Wangari, Nairobi County; Sen. Wetangula, Bungoma County; and, Sen. (Dr.) Zani, Kwale County.

**NOES:** 0

**The Speaker** (Hon. Ethuro): Hon. Senators, I wish to announce the results as follows:-

**AYES:** 27

**NOES:** 0

**ABSTENTIONS:** 0

*(Question carried by 27 votes to 0)*

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

**The Speaker** (Hon. Ethuro): Order! You may now draw the Bar and open the door.

Hon. Members, we will now proceed to Order No.9 but you should remember that Order Nos.10, 11 and 12 are deferred. So, after Order No.9, we will go to Order No.13.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. May I comment on Order No. 9 although you are deferring it?

**The Speaker** (Hon. Ethuro): We are not deferring Order No. 9.

## POINT OF ORDER

### REQUEST FROM THE COG TO DEFER THE WATER BILL TO ALLOW FOR MORE CONSULTATIONS

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I am happy that you have allowed me to make a point on Order No.9. The Water Bill (National Assembly Bill No.7 of 2014), has been on this Floor several times. Last time we did not proceed because we raised some fundamental issues as to the content and character of the Bill. Yesterday I received a phone call from the Chairman of the Council of Governors (CoG) who informed me that the Council feels that their views on this Bill - knowing that the management of water resources has been devolved - have not been taken on board.

They had sent a Memorandum and having looked at our raft of amendments brought by the Committee, it is clear that they do not adequately address their issues. This is the point I have belaboured before. This morning, in furtherance of that call, I received a letter addressed to the Hon. Speaker of the Senate, the Senate Majority Leader and myself, echoing the same issue. My request is that - I can see the Chairman of the Committee is here - the management of water resources is a critical function. Many countries are in conflict because of water.

I can see the counties getting in conflicting situations because of water. Already there are arguments between the Nairobi and Murang'a counties over water. There are counties that rely on water from highland counties. In my humble view, and having gone through the Bill as currently constituted, drafted and brought to this House, it amounts to a claw-back on constitutional gains on the management of water resources.

Mr. Speaker, Sir, this House is the custodian, protector and defender of counties and their governments which include the natural and non-natural resources. I urge the

Chair, with greatest respect to the Chairman of the Committee, that we are neither here to prosecute a cause nor are we defending a position, but we are dealing with matters that affect counties. I pray that we stay this matter and go a little further as we did before and request the Chair to constitute a workshop between the Senate and the governors or their representatives so that the Members will fully appreciate and understand the importance of water resources within the context of devolution and how these resources are to be managed.

Apart from hearing from the Chairman of the Council of Governors, several other governors have reached out to me in the same vein. I am aware that the Chair of the Committee called me before requesting that we meet and hear my view on the proposed amendments and the structure of the Bill as a whole. I have not created time to see him because I was jostled by the events of 16<sup>th</sup> December, 2015 that happened in this House and I felt that our side had not been given a fair hearing. However, that is behind us and we must look forward. We shall not drive with our eyes in the rear view mirror. We shall look forward to develop this country and to support counties. I encourage that we step down this matter and get a chance to consult with the CoG..

Mr. Speaker, Sir, philosophers like Prof. Ali Mazrui predicted that while in the last century, conflicts among nations and peoples of the world was about oil, in this century, it will be about water. We have to be careful on how we legislate on water and especially in a devolved system. I do not believe that somebody can sit in Nairobi and set up a committee to manage a wetland in Kisii, Vihiga or anywhere else in this country. As a leader of one side of the House, I urge the Chair that you step down the matter.

**The Speaker** (Hon. Ethuro): Order, Senate Minority Leader. I do not want to use the other word, but let me put it to you that you take advantage of my lunches. Kindly conclude, but I have heard you.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, when there is generosity in abundance, you benefit from it in abundance as well. That is my humble request to the Chair and the House. It is neither for me nor either side of the House, but for all of us and for devolution in this country.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I would like to join Sen. Wetangula in requesting, most humbly, that you step down this Bill. The institution asking us to hear them is an organ recognised by the Constitution; the Council of Governors (CoG). The CoG is also directly recognised by the same Constitution as shareholders. Ask Sen. Muthama if you want to know the pain of being locked out of a national conversation by being denied an opportunity to be consulted.

On 18<sup>th</sup> December, 2014, Sen. Muthama was denied an opportunity to be heard by the National Assembly because he wanted a Bill to come here. He went there and was, God forbid, stripped naked. I do not know whether his sons-in-law or daughters-in-law had an opportunity to see him. Let us not allow ourselves to be given an opportunity to strip governors in this House, so as to persuade us to listen to them. They are not asking for too much and the House is not going to die if we wait. More importantly, we did not come here to legislate for Parliament or for ourselves but for the 45 million Kenyans.

Mr. Speaker, Sir, I beg you. Thank you.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, we did something very unusual last year. Last year, there was a Gazette Notice on 17 water bodies. In the Committee on Finance, Commerce and Budget, we had requested the national Government to provide a



transition, so that the national Government entities that provide water, which is a devolved function, could become county government authorities.

Mr. Speaker, Sir, I have looked through the amendments and I want to agree with my Leader about this, that I have not seen a schedule of how that can happen in this Bill. I agree and propose, in addition to what the CoG is saying - this is one of the Bills that would make a mark for the Senate. Therefore, we would be doing an injustice to ourselves if we allow the 17 national entities that should be county entities not to be subjected to this Bill insofar as county governments are concerned. I am affected, as the Senator for Makueni County; please allow us to sit somewhere where we can put these people together.

Thank you.

**The Speaker** (Hon. Ethuro): Let me hear from Sen. Obure before the Chairman.

**Sen. Obure:** Mr. Speaker, Sir, thank you very much for this opportunity. I happen to be a Member of the Committee on Land and Natural Resources which dealt with this Bill. From the outset, I want to say that I have no objections, whatsoever, in having this Bill reviewed further if that will enhance the value of the Bill and possible consequences in the future.

Mr. Speaker, Sir, every possible opportunity was given to all the stakeholders to look at this Bill. First, it was through public participation where a number of members of the public attended and gave their input which was incorporated here. Then, a workshop was organised in Naivasha by the Committee and attended by the major stakeholders in the water sector. The CoG was invited to attend the workshop in Naivasha but it was not represented.

I recall that we set a day specifically to listen to the CoG in Nairobi. The CoG was represented by Governor Cheboi of Baringo who happens to be the Chairman of the sector that looks into matters of water. They gave us their input including a written presentation. If you look at a number of amendments proposed here, you will find that they actually emanate from the CoG themselves. Whereas there might be a need to look at this Bill further – as I said - to enhance its value and ensure that it guides the water sector more meaningfully – as a Member of the Committee, I feel that everything was done to accommodate the views of the stakeholders. Furthermore, if you look at these amendments, they actually make actual references to county governments arising out of the presentation made by the representative of the CoG.

Mr. Speaker, Sir, that is what I felt I needed to clarify to this House before my Chairman does. Thank you.

**The Speaker** (Hon. Ethuro): Chairperson.

**Sen. Kivuti:** I am sorry about the state of my voice because I am a bit unwell.

Mr. Speaker, Sir, first of all, I like what the Senate Minority Leader said about the quality of debate and laws that we make in this House and I support the quality.

Mr. Speaker, Sir, this law has been around for two years now. The Bill came here for First Reading and all the Members of this House had an occasion to contribute and give their views about the importance of water in this country. This Bill went for Second Reading and I know that whoever was not there during the First Reading came back and contributed. That is the contribution of the hon. Senators of this House.

Mr. Speaker, Sir, we did carry out public participation. We put out notices in all newspapers and got many comments; including the international community, embassies

and people from the villages. I can assure this House that the contributions which came were not few. We went through each and every one of them. My Committee did not see and wish away a contribution because it came from whatever source. We actually went through each one of them. The result we got was included in the wishes of Kenyans.

Mr. Speaker, Sir, we got information that other quarters and stakeholders, particularly the governors, were still unhappy. In fact, I want to be very open and state that I got comments from two other Members of this House who relooked at the Bill and felt that some clauses needed to be changed. I took time to talk to the Ministry. I wanted to know if they felt that we needed to interrogate this Bill further. Because of that, we had another high level consultative seminar in Naivasha for three days. We went through this Bill word for word; from page one up to 118. I still have my copy of everything that was discussed in that seminar.

In that seminar, the key players were meant to be the Council of Governors (CoG) because they had given their views through their memorandum, which we still have. They did not attend. I, personally, was not happy that they did not attend although they were invited. All the other stakeholders including Senators attended and we made a lot of changes in order to principally make sure that the interest of the counties are included in the Bill. If Sen. Boy Juma Boy and Sen. Chelule were here, they would attest to the issues that were for counties.

**The Speaker** (Hon. Ethuro): Sen. Kivuti, you are pointing at an empty seat which cannot help you.

*(Laughter)*

**Sen. Kivuti:** Mr. Speaker, Sir, I remember where she sits. We did not stop the ball there. I felt that we still needed the Council of Governors (CoG). I reached out to them and the Chairman of the water sector in the Council of Governors (CoG) made appointments to come and meet the Committee. We called all the Members of the Committee and Governor Cheboi came with two lawyers. We also invited our legal department because I had seen their document was big. We listened to them and we again scrutinized it, point by point. It took five hours until we finished all the points on the memorandum. We did not just take a decision out of that day. We tasked our legal department to look into all the comments which were made by the lawyers of the Council of Governors (CoG) and the Chairman himself. We had another sitting whereby we were guided through by our legal department with the Bill and the comments from the Council of Governors (CoG). All these comments were included in our Committee submission to this House.

Whereas I do not want to say we can hold another seminar a third time, I do not know how many more seminars we need to hold and what will make--- Shall we have another document other than the one submitted by the Council of Governors (CoG) and shall we have another set of lawyers from the Council of Governors (CoG) and another legal department from this House to relook into their comments? My humble request would be, if there is any amendment pending that needs to be introduced, it can still be introduced at the Committee Stage. Since we have already taken care of the comments from the Council of Governors (CoG), ministries and all the stakeholders, it is my

humble submission that we do not keep this House looking at a Bill for more than a year when we have collected all these comments.

It is my humble submission that we proceed.

**The Speaker** (Hon. Ethuro): Order, Members! I hope that you appreciate that there is no debate by the way. While some of you appreciate that when you had the opportunity to benefit from my generosity, you also do it in the most generous manner. I cannot allow that one for the second time.

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. After listening to the Senate Minority Leader and his reasons for wanting the Bill deferred, and also having listened to the Chairperson of the Committee, I am convinced that they both have material and reasons for their decisions. However, I would want to be guided by this point of order. Would I, therefore, be in order to request that the Chair defers this Bill for, may be, only this week so that the Senate Minority Leader may relook into it and be convinced that the inclusion of governors' recommendations has been made, and then next week, we will not entertain any other points of order to hinder the progress on this Bill?

*(Sen. Wetangula raised his hand)*

**The Speaker** (Hon. Ethuro): Order, Sen. Wetangula! Hear me and hear me loudly. I rose to leave the Chamber. You wanted a clarification whether I had deferred Order 9. I said: "No". So, it was on course and you assumed your seat. When I was to leave again, you came back and said that you did not want me to leave. I have heard you. I think I have exercised enough generosity which I think has limits.

If you heard the Chairperson talking, I mean, you can only show sympathy. This House has been arguing that people must process business and here is one Committee that seems to have done its homework. I remember I deferred this Bill last time, again, because you, Senate Minority Leader; as you were looking for information. For how long can we have the business pending on the Order Paper? I am, therefore, going to give one more chance, one, is to appreciate that for once, the tone and pleading of the Senate Minority Leader was good.

*(Laughter)*

Except for the matter of referring to some date of 16<sup>th</sup> December, 2015. As a leader for this House, we believe in maximum participation. The other consideration is because our important stakeholder called the Council of Governors (CoG) –although I must admit that the letter seems to have reached the Senate Minority Leader before it reached the Speaker

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*(Sen. Wetangula spoke off record)*

Order, Sen. Wetangula! I have the Floor. I really want to do this as an exception. I want the Council of Governors (CoG) to know that this House takes them seriously and I said as much on Friday when I was launching the countdown to the devolution conference. However, it also begs a natural question; do they listen to you?

**The Senate Minority Leader** (Sen. Wetangula): Two wrongs do not make a right.

**The Speaker** (Hon. Ethuro): Answer my questions before you reach conclusions. Do they listen to you? So, I submit that we continue listening for all the reasons that we have said before, but there are limits.

Chairman of the Committee, Sen. Kivuti, I know how you feel. You have been supported by another Member, Sen. Obure, and we must make a decision between processing the argument. You can also organise yourselves to vote and shoot down the amendments that you do not like. That is a possibility.

*(Sen. Wetangula spoke off record)*

I am just giving you the option available, Senate Minority Leader. I am not going to entertain you interjecting when I am speaking. You are either the Senate Minority Leader or the Speaker. You cannot be both.

*(Loud consultations)*

This is because I have a tracker of all the Bills and in all fairness, we passed this Bill on 3<sup>rd</sup> December, 2015. There were plenty of opportunities for whoever was interested to make the necessary approach with the committee. The Committee has belaboured the fact that they actually gave more than enough opportunities to do so. Therefore, we were under a lot of stress and duress. However, we appreciate the sober approach we have attempted to pursue and we will continue pursuing it. We cannot be persuaded otherwise. If you decide to be on the right course, do what is right, we must do what is right even under extreme provocation.

I am, therefore, willing to allow for the remainder of this week and next week, so that we conclude this matter in the beginning of March. I will encourage the Senate Minority Leader with his passion that it is not enough to talk on the Floor. Go ahead and make what needs to happen, happen. We also have that obligation to ensure that whoever wants to talk to the Committee can talk to it.

The Committee is available so I ask the Chairperson and the rest of the membership, with your indulgence, one more opportunity to do any good will never do any harm. I direct that you do whatever you can to get in touch with all the actors. For now, it is just the Council of Governors and any other person so that you conclude the matter by the end of February. On the first day of business in March, this will be in the Order Paper.

Therefore, we will defer the rest of the Bills and go to the item listed as Order No.13 on the Order Paper; Committee of the Whole.

*Second Reading*

THE EMPLOYMENT (AMENDMENT) BILL (  
SENATE BILL NO.1 OF 2015)

*(Bill deferred)*

**COMMITTEE OF THE WHOLE**

THE WATER BILL (NATIONAL ASSEMBLY BILL NO.7 OF 2014)

THE COUNTY INDUSTRIAL DEVELOPMENT BILL (SENATE BILL NO.7 OF 2014)

THE COUNTY ASSEMBLIES SERVICES BILL, (SENATE BILL NO.27 OF 2014)

*(Committee of the Whole deferred)*

**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. Mositet) took the Chair]*

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

*(Resumption of Consideration in the  
Committee interrupted on 7.10.2015)*

**The Temporary Chairperson** (Sen. Mositet): Hon. Senators, we are now in the Committee of the Whole to consider The Public Appointments (County Assembly Approval) Bill (Senate Bill No.20 of 2014).

Hon. Senators, as pertaining to the amendments of the clauses, almost all had been considered at the Committee of the Whole on 7<sup>th</sup> October, 2015; awaiting for division except for Clause 8 and then First Schedule which was recommitted to date.

*Clause 8*

**Sen. Ndiema:** Mr. Temporary Chairperson, Sir, I beg to move:

THAT, Clause 8 of the Bill be amended in paragraph (b) by inserting the words “including the values and principles of public service set out under Article 232(1) of the Constitution” immediately after the words “in question”.

**The Temporary Chairperson** (Sen. Mositet): could you explain further?

**Sen. Ndiema:** Mr. Temporary Chairperson, Sir, the amendment is meant to ensure that the county assemblies take into considerations the values and principles of public service whenever they are approving appointments. Having seen what is happening in many counties, it leaves a lot to be desired.

I sit in the Standing Committee on National Cohesion and Integration. We have moved to certain counties and realized that some counties are approving appointments without considering issues like merit, transparency, gender and ethnic backgrounds as stipulated in Article 232(1)(ii) to ensure that representation of Kenya’s diverse communities is considered.

This is particularly in those counties like mine which have diverse communities. This amendment is just meant to restate that whenever they are appointing staff, they consider these very important matters that are stipulated in the Constitution.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Mositet): The division will come at the end.

#### *First Schedule*

**Sen. Ndiema:** Mr. Temporary Chairperson, 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: \_\_\_\_\_

**Sen. Madzayo:** Mr. Temporary Chairperson, Sir, that is enough. It is okay.

*(Question of the amendment proposed)*

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Chairperson, Sir, I am extremely concerned about the amendment proposed in item 21(d); “Attach a clearance letter from the Ethics and Anti-Corruption Commission (EACC).”

The EACC does not have a mandate to give clearance on anything to any person. We are, in fact, giving them a mandate to do something that does not exist in law. If you are looking for a criminal record, it would be at the Criminal Investigations Department (CID) offices. The sort of letter that is being proposed here has been issued to, for example, the former Cabinet Secretary, Ms. Anne Waiguru. That is not what is required by law.

Mr. Temporary Chairperson, Sir, assuming just for the sake of it, for instance, the list that was read by His Excellency the President in Parliament; if somebody had named you and you had not been investigated and there is no claim against you and they say that you have not been cleared; there would be a question mark about that. It would interfere with the process in the Constitution which says that you are innocent until proven otherwise.

So, unless it is clear what sort of clearance is being sought, I would object to this amendment.

**The Temporary Chairperson** (Sen. Mositet): Do you wish to move an amendment to that effect?

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Chairperson, Sir, I do not know whether I am within the Standing Orders.

**The Temporary Chairperson** (Sen. Mositet): Yes, you are. You can move your amendment.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Chairperson, Sir, I move that we delete this proposed amendment, unless, of course, the Chairman states specifically what sort of clearance is being sought for. I have explained it. Clause 25 states that the Kenya Revenue Authority (KRA) gives a compliance certificate. There is no such process with the EACC.

*(Question of the further amendment to the First Schedule proposed)*

**The Temporary Chairperson** (Sen. Mositet): Chairman, do you want to speak on the proposed amendment by Sen. Mutula Kilonzo Jnr.? It is an amendment to an amendment.

**Sen. Madzayo:** Mr. Temporary Chairperson, Sir, I do not have any objection to that. It is okay.

**Sen. Obure:** Mr. Temporary Chairperson, Sir, now that there is no objection to deleting that, I have no problem. I support Sen. Mutula Kilonzo Jnr.'s argument. The requirement to have the EACC give letters is completely unnecessary. For the same reason, even this requirement to attach a clearance certificate from the KRA is unnecessary. I do not know why we are going this direction because these institutions are there to do their work. We will not do their work yet they exist. We are imposing unnecessary impediments to people who are seeking appointments to the county assemblies.

**The Temporary Chairperson** (Sen. Mositet): Division will be at the end. I call upon the Mover.

**Sen. Madzayo:** Mr. Temporary Chairperson, Sir, pursuant to Standing Order No.139, I beg to move that the Committee of the Whole report progress and its

consideration of The Public Appointments (County Assembly Approval) Bill (Senate Bill No. 20 Of 2014) and seek leave to sit again tomorrow.

**The Temporary Chairperson** (Sen. Mositet): Since there are no numbers to take the vote, I will put the question.

*(Question put and agreed to)*

*(The House resumed)*

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

### **PROGRESS REPORTED**

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

**Sen. Mositet:** Mr. Temporary Speaker, Sir, I beg to report that a Committee of the Whole has considered The Public Appointments (County Assembly Approval) Bill (Senate Bill No. 20 of 2014) and its approval thereof with amendments and seeks leave to sit again tomorrow.

**Sen. Madzayo:** Mr. Temporary Speaker, Sir, pursuant to the Standing Orders No.139, I beg to move that the House do agree with the said Report.

**Sen. Ndiema** seconded

*(Question proposed)*

*(Question put and agreed to)*

### **COMMITTEE OF THE WHOLE**

*(Order for Committee read)*

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

#### IN THE COMMITTEE

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

#### THE HIV AND AIDS PREVENTION AND CONTROL (AMENDMENT) BILL (SENATE BILL NO. 4 OF 2015)

*Clauses 3 and 4*



**The Temporary Chairperson** (Sen. Mositet): There are no amendments to these clauses. Therefore, we will vote on them at the end.

*(Question, that Clauses 3 and 4 be part of the Bill, proposed)*

*Clause 5*

**Sen. (Dr.) Machage:** Mr. Temporary Chairman, Sir, I beg to move:-  
THAT clause 5 of the Bill be amended—

(a) in the proposed new section 12A by deleting subsection (2) and substituting therefor the following new subsection—

(2) The county HIV and AIDS prevention and control committee shall consist of—

(a) one person appointed by the county governor who shall be the chairperson to the committee;

(b) the county executive committee member for health or a person designated by the county executive committee member in writing who shall be the secretary to the Committee;

(c) one man and one woman with knowledge and experience in matters relating to health within the county nominated by the Council;

(d) one man and one woman appointed by the county governor to represent the youth and persons with disabilities within the county;

(e) one person to represent people living with HIV and AIDS nominated by an association representing persons living with HIV and AIDS within the county; and

(f) one person to represent faith based organizations nominated by an association of faith based organizations within the county.

(b) in the proposed new section 12B by-

(a) deleting subsection (1) and substituting therefor the following new subsection—

(1) The persons appointed under subsection 12A(2)(a) and 2(d) shall be competitively recruited by the county public service board and appointed by the county governor by notice in the county gazette.

(b) inserting the following new subsections immediately after the proposed new subsection

(1)—

(1A) A person qualifies for appointment under subsection 12A(2)(a), if that person is a trained health professional with knowledge and at least five years experience in matters relating to HIV and AIDS prevention and control.

(1B) A person qualifies for appointment under subsection 12A(2)(c) and 2(d), if such a person possesses a certificate of secondary education and has knowledge and at least one year experience in matters relating to HIV/AIDS prevention and control.

(1C) The persons appointed under section 12A(2) shall serve office for a term of three years, renewable for one further term of three years.

(c) in the proposed new section 12E(1) by inserting the following new paragraph immediately after paragraph (c)—

(ca) is convicted of an offence under this Act;

This amendment will include part (d), (e) and (f) so that we have more inclusion of the youth, women and persons with HIV/AIDS into this committee.

*(Question of the amendment proposed)*

*Clause 6*

**The Temporary Chairperson** (Sen. Mositet): There is no amendment to this clause. Therefore, we will vote on it at the end.

*(Question, that Clause 6 be part of the Bill, proposed)*

*Clause 2*

**The Temporary Chairperson** (Sen. Mositet): There is no amendment to this clause. Therefore, we will vote on it at the end.

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

*Title and Clause 1*

**The Temporary Chairperson** (Sen. Mositet): There are no amendments to the Title and Clause 1. Therefore, we will vote on them at the end.

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

Since we do not have the requisite numbers to vote, I call upon the Mover to reply.

**Sen. (Dr.) Machage:** Mr. Temporary Chairman, Sir, I beg to move that the Committee do report to the House its consideration of the HIV/AIDS Prevention and Control (Amendment) Bill (Senate Bill No. 4 of 2015) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## **PROGRESS REPORTED**

THE HIV AND AIDS PREVENTION AND CONTROL

(AMENDMENT) BILL (SENATE BILL NO. 4 OF 2015)

**Sen. Mositet:** Mr. Temporary Speaker, Sir, I beg to move that the Committee of the Whole has considered the HIV/AIDS Prevention and Control (Amendment) Bill (Senate Bill No.4 of 2015) and its approval thereof with amendments and seeks leave to sit again tomorrow.

**Sen. (Dr.) Machage:** Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the said Report.

**Sen. Madzayo** seconded

*(Question proposed)*

*(Question put and agreed to)*

## BILL

### *Second Reading*

THE CANCER PREVENTION AND CONTROL  
(AMENDMENT) BILL (SENATE BILL NO. 3 OF 2015)

**Sen. (Dr.) Kuti:** Thank you Mr. Temporary Speaker, Sir. I beg to move:-

The Cancer Prevention and Control (Amendment) Bill (Senate Bill No. 3 of 2015) be read a Second Time.

The purpose of this amendment is to improve on the Cancer Prevention and Control Act 2012 which is a very good act. As you know, cancer is now becoming a major problem in Kenya and it is affecting all the socio-economic levels in our society. It is just appropriate that an Act was enacted in 2012 to address the cancer challenges that our citizens face.

Mr. Temporary Speaker, Sir, with devolution, this amendment that we are making today will be more appropriate and applicable at the county level. There are two major improvements to the Act. The first one is the fact that while the Act already established the National Cancer Institute, there is no provision for its headquarter and it being a national institute. It needs to have headquarters from which to operate and to be able to guide other activities within the county.

So, this amendment provides for the creation of the headquarters at the national level so that the control of the activities within the counties could have a coordinated approach at the national level. This also involves matters like setting standards and the rest.

The second important thing that this amendment establishes is the formation of the County Cancer Prevention Committees. Their function is to carry out activities to ensure the prevention, detection and control of cancer within the county, promoting the implementation of cancer prevention initiatives within the counties, including public, private, national and international research and screening programmes, collaborating with the institute at the national level to establish counseling centers and palliative care facilities and homes for cancer patients and evaluating the performance of the county in

implementing policies formulated by the national Government for the prevention and control of cancer.

Mr. Temporary Speaker, Sir, this committee is supposed to report quarterly to the county and also annually to the national institute. Therefore, the consequence of this Bill is to ensure the direct involvement of counties in the prevention and control of cancer, considering the increased number of cancer cases in the country. The establishment of committees at the counties will ensure that cancer patients and persons affected by cancer access appropriate health related services at the county level.

I beg to move.

**Sen. (Dr.) Machage:** Mr. Temporary Speaker, Sir, I second. Cancer has grown to a level that may be called a pandemic in our country if at all it was not reported on so much. The prevalence rate of many cancers has increased. We do not know why but maybe it is because of the advent of HIV/AIDS and the associated cancers which include cancers of the blood and the skin and the lymphatic system. It could also be due to improved diagnosis due to the availability of machines that we have now in the country; level of knowledge, existence of some oncologists in the country or just sheer change of attitude on the population in reporting cancers.

Mr. Temporary Speaker, Sir, this is a grassroots problem. Cancer patients tend to come from the villages. It was long ago known that some cancers only affected the affluent. That is not true. If you read the earlier text books, they would consider some cancers to have existed only in the Caucasian groups and Asians but now we are seeing the existence of cancers across the board. I think that explains the availability of medical systems and diagnostic centers mainly for the black population in this country.

Mr. Temporary Speaker, Sir, we therefore, receive cancers from the villages at very advanced levels. In most cases, if you study three stages of cancer, cancers are mild at stage one and extreme at stage four. Most of the cancer patients that we receive from the villages are at the third or fourth stages of cancer which is not usually easy to treat despite having a few cancer treatment centers in our country now, hence the necessity to amend the cancer Act of 2012 to include a few things that need to be considered, especially at the village level. Since we have counties at that level in devolution, it has become important to have county committees. The county committees have to report somewhere for proper data collection and collation and hence the creation of the central country committee.

Mr. Temporary Speaker, Sir, what Kenya is going through is dependent on our passing of this Bill so that we have faster diagnosis and management of existing cancers. We have had an increase of throat, skin, colon cancers and, leukemia which is cancer of the blood. We have also seen a trend in the increase of cancer of the lymphatic system. This must be checked.

I beg to second.

*(Question proposed)*

**Sen. (Prof.) Anyan'g-Nyong'o:** Mr. Temporary Speaker, Sir, I support this Bill for a good reason. In the Memorandum of Objects and Reasons, the Committee of Health through their Chairman, stated that this Bill is expected to ensure that the provision of services as relating to control and prevention of cancer are accessible at the county

government level. In addition, the provision of health services is a function that falls within the ambit of the county governments as specified under Part Two of the Fourth Schedule of the Constitution.

One of the most important things about the fight against cancer is prevention and control. Substantial knowledge and literature is available to the public as well as to health practitioners and professionals. However, the first line of prevention of cancer is nutrition and the environment. If we live in an environment which is unhealthy in terms of cancer causing fumes and material or interacting with a polluted environment and taking highly carcinogenic foods and fluids, we shall be preparing the body for a possible cancer attack.

Mr. Temporary Speaker, Sir, the second statement that is related to prevention and control is diet and or nutrition. As part of propagating knowledge about cancer which is envisaged under this Bill, I hope that substantial information will be available to Kenyans that the first line of attack against cancer is nutrition. It has unfortunately been misunderstood that when talking about nutrition, it is all about expensive foods. On the contrary, in pre-capitalist African societies where the population was small, the environment was clean and families survived on subsistence farming. People accessed organic foods much easier at costs they could afford. When I was growing up, wild berries and fruits were available in the forests when we were looking after animals.

It was surprising that you would not eat much substantial food in the morning but you could go into the woods the whole day looking after cattle and come back in the evening without feeling hungry. This is because we would go to the river and drink clean spring water with a lot of minerals. Today, if you dare drink water from the river, those minerals have disappeared and instead the water is polluted by all kinds of carcinogenic materials including feaces which make one amenable to typhoid. The good organic mineral laden river water is no longer available to herders to access and get the good kind of water, good for their bodies.

Access to wild berries and fruits was good because they were organic and nutritious fruits that the bodies need. Back home, our mothers prepared flour for cooking from fresh millet that was grounded as we looked. They cooked ugali and porridge from that whole meal of millet. In the backyard, they had vegetables of many descriptions. These vegetables, if available in the market today, are expensive.

Mr. Temporary Speaker, Sir, the information should go out to the counties that people should begin to grow the organic foods that we did before than thinking that we can only access good nutritious food in supermarkets. We must understand that a lot of supermarket foods are highly processed. In order to have a long shelf life, preservatives which are not good for our bodies have been put in. Therefore, one line of prevention is to encourage supermarkets to state clearly the nutrition content of the foods that are sold to consumers.

In the United States of America (USA), it is mandatory that the food vendors state clearly on the packet covers what nature of food is on sale. There are many stores that sell these organic foods but in many instances, they are expensive and only accessible to the middle class and above. In rural areas in the USA, rural folks are highly sort after because they grow organic foods.

Prevention and control is important because this Bill takes it back to where people live; in the counties. One important thing about this Bill is that it requires that we deal with issues of health from where people live. The government's health responsibility

should not be in form but in content. I also refer to a provision in the Bill that deals with the control committees.

Clause 12C (2a) states that:-

“The county cancer prevention and control committees:-

(a) Shall be under the control and direction of the county governor in the implementation of their functions in accordance with the policies of the national Government and collaborate with the institute in the carrying out of its functions under sub-section 1.”

Mr. Temporary Speaker, Sir, the institute here refers to the cancer institute which is a national body. We hope it will have its branches in the counties. The committee that is established is more of a co-ordination committee that ensures that the county governments perform their functions properly. The County Governments Act specifies what the executive responsibilities the governor has. In this case, it is said that this committee will be under the control and direction of the county governor in the implementation of their functions.

I know for certain and those of us who are in critical Senate Committees know that the governors are overwhelmed with responsibilities. Talking of “control and direction”; it should not mean micro-managing cancer. Cancer requires a lot of professionalism and a governor who is not trained as a professional may not necessarily know what it takes to handle cancer patients who need palliative care. That is a special branch of treatment. Such a non-professional will not know the kind of nutrition that is needed to strengthen the body in prevention of cancer.

I would like to interpret this particular clause sparingly; that control and direction does not mean micro-managing but it means giving broad policy guidelines and concerns for this committee. For instance, I envisage a situation where in our counties, we are going to have bureaus of statistics collecting specific statistics relevant to the counties. We have a National Statistics Authority which deals with nationwide macro statistics. I propose to the Committee on Health, especially when we have the Prevention and Control Committees; that the responsibility of gathering micro data at the village level is taken seriously.

In Cuba, there are polyclinics in every village. Polyclinics are an equivalent of our health centres because each polyclinic has little clinics under it, scattered around one particular village or local parish. In each polyclinic, there is data about every resident of that parish regarding their health status. If you go to a polyclinic, you will find a chart telling you exactly how many people smoke, how many people are obese and how many people have problems of eating in a particular parish, because there are people who have problems of eating and they can never stop eating. They have health statistics to detail of residents of a particular parish. These health statistics are necessary because by getting them, you can more or less predict – if you are medical practitioners – how many people in a parish are predisposed to getting cancer as they get older.

Mr. Temporary Speaker, Sir, one of the data important in understanding cancer is that if you are obese – if your Body Mass Index (BMI) is higher than it ought to be – then, you are a good candidate for getting cancer sometimes in the future. In fact, the older you grow, the more likely it is that you will get cancer. If you smoke, there is likelihood that sooner rather than later, you will be another candidate. If you drink beyond social drinking, you are also likely to be a candidate for cancer. If you are too

much indulgent in *nyama choma* and beer for a good part of the week, you are yet another candidate. There are health statistics that will need to be collected at the micro level by the committees if, indeed, they will take the responsibility of control and prevention seriously.

Fourthly – I am glad this responsibility is in the hands of the counties and we just talked about it earlier – I want to talk about water. Scientists tell us that 75 per cent of body is water. God knew why He did this. It was not because of any other reason that water is extremely essential to the health of any living thing, be it plants or animals. If access to water is a dangerous enterprise and if you are much more likely to drink water that is not good for the body, again, you are a possible candidate for cancer.

Mr. Temporary Speaker, Sir, we live in a dangerous world. I am told that the water that we drink here---. In fact, the Kenya Dental Association (KDA) was requested by one of the water companies to endorse it. The KDA then send water from that company to South Africa to find out whether it was good for drinking or not. The South African company tested the water and brought back a report that, that water is not very good 30 per cent of the time. I will not tell you which company that is because you may be drinking the water as I do very often. However, know ye, therefore, that it has some health hazards which should be advertised on the bottle so that when we drink it, we know the risk we are taking.

I beg to support.

**The Temporary Speaker** (Sen. Sang): Sen. Musila.

**Sen. Musila:** Mr. Temporary Speaker, Sir, I wish to first congratulate you, this being your first time to chair this House. I can testify, having sat on that Chair for five years before as the Deputy Speaker, that you are doing very well.

*(Applause)*

Having said that, I support this Bill. I also wish to congratulate my friend, Sen. (Dr.) Kuti, for coming up with this very timely Bill. I say “timely” because having a system of devolved governments, we do not as of now, have these institutions at the county level. Therefore, it is very important that this amendment be passed so that the committees are inaugurated in the counties to do the necessary work. I also congratulate Sen. (Prof.) Anyang-Nyong'o for the insight that he has given and Sen. (Dr.) Machage, a professional doctor, who also gave this Bill the much required input.

Mr. Temporary Speaker, Sir, we all come from rural areas and we know the challenges that our rural communities face in as far as cancer is concerned. There are so many cancers in our rural setting. However, the sad thing is that people are not aware. They do not even know the signs of cancer. Therefore, it is very important that people are informed what signs are there if cancer is present.

The other day, a lady visited me seeking help with a breast that was almost falling off. She did not know what it was all about. I took her to Kenyatta National Hospital (KNH) but she died two weeks later. Therefore, awareness is very crucial. Early diagnosis is also important. In the rural areas, people are not aware and by the time they come to know that they have cancer, they have been treated of all kinds of diseases by health professionals who are not qualified. They treat very many diseases until somehow a person ends up in a place where he or she is diagnosed to have cancer. By that time, it is

late. I dare say that others are even not diagnosed and they just die thinking that they were bewitched or it is just like any other disease. It is very crucial that the committees be formed at the county level so that people can be sensitised.

Mr. Temporary Speaker, Sir, you will remember that there was hype about cancer diagnostic equipment to be sent to counties. I am told by the Chairman of the Council of Governors (CoG) that even though there was so much pressure for governors to sign for the equipment, as of now, the equipment is not there. It is very important that diagnostic equipment for cancer be sent to counties. Even if you have the committees and they do not have the facilities, it would be an exercise in futility.

In terms of prevention, bad environment is one of the key causes of cancer. For example, we are told about pollution of our water sources. In November last year, following the request by the Senator for Makueni, we visited part of his area where a river had been polluted through leakage of fuel into the water by the Kenya Pipeline Corporation (KPC). It was established that the leakage had gone to about 10 to 15 kilometres downstream but people were not aware and continued to drink the water as usual, although they said that it had some funny taste. As we speak, I am told that the people around the area are already suffering and it will continue for years to come, possibly with serious consequences of this cancer. However, they do not know.

Mr. Temporary Speaker, Sir, it is very important we ensure that our environment is protected and that water resources, as Sen. (Prof.) Anyang'-Nyong'o has so much elaborated, are taken care of. Our rivers are so polluted. For example, River Athi which is the source of water in most parts of Ukambani is so polluted. If you go to River Athi, you will find industries pouring toxics into the water. The water goes downstream and people drink it without boiling, thinking that it is good water. If we have these committees, they will inform our people of the dangers of drinking this water.

When people are diagnosed with cancer, they should not think that that it is the end of the world. We should have counselors available – I believe through these committees – to counsel patients who are suffering from cancer. I am told – I have every reason to believe it because it is from experts – that by the mere fact that you have been diagnosed as a cancer patient, you just die because of that depression. This is because you think that there is no cure. However, we are told that with proper diagnosis and treatment, cancer is now curable. These are things that our people do not know.

There is also the issue of the hospice. When patients are diagnosed and are terminally ill at home, there is a lot of pain associated with cancer and the drugs are expensive. We need care. We need these patients to be identified and followed up with proper care as human beings. At the moment, our income levels are so low. Once you are diagnosed with cancer, you will require strong medicine to control pain but you cannot even afford pain killers associated with cancer. I see Sen (Dr.) Kuti nodding because he is a professional. Where do our people in the rural areas get the money to buy this medicine? It is only through organisations and a network of hospices that we will be able to take care of these patients, even in their homes and provide them with the much needed medicine to relieve the pain that accompanies this disease. It is very important that we have a body at the county level that will create awareness, ensure there is proper diagnostic equipment and early diagnosis of cancer patients.

Mr. Temporary Speaker, Sir, issues of prevention initiatives like early diagnosis, environment, pollution of water and also, Sen. (Prof.) Anyang'-Nyong'o talked about a



very important part of cancer prevention; that is, the issue of nutrition. A cancer victim requires healthy and nutritious food in constant supply. Again, like we said when we were talking about HIV/AIDS prevention, this must be accompanied by support to families who have patients with this condition. Right now, for example, we have put in place measures to prevent and even take care of terminally ill HIV/AIDS victims. I think that is the way to go now in as far as cancer is concerned.

That is why, again, the issue of taking statistics comes in to ensure that every community in a county or - I believe that this committee will go down to the grassroots - every village is aware of the victims of this calamity and that they are taken care of by way of counselling and ensuring that they get the necessary medicine to relieve the pain. If we do that and cover counties very well, we will certainly be serving the people that we are supposed to serve.

Let me say that let it not just be another Bill to be passed by this House. Let us see action being taken because it is so critical that we have these people who are victims of disease, not of their making, taken care of. We must also have proper budgets to provide medicines for relieving pain. Is it possible to do that now and yet when I go to some health institutions I find that even Panadol is not available? The other day my driver was suffering from severe headache and I stopped at a health centre in my county. I was shocked to be told that there was no Panadol in the hospital. What about medicine for relieving cancer pain? This is why I say we must have proper budgets that will ensure that all people who suffer from cancer are taken care of, from diagnosis to counseling at hospices level, so that they may live comfortable lives just like others. Early diagnosis is important because if cancer is diagnosed early, cure will be found.

I beg to support.

**Sen. (Prof.) Lesan:** Thank you, Mr. Temporary Speaker, Sir. From the outset, I wish to congratulate my colleague, Sen. (Dr.) Kuti, for bringing this important Bill to the House. All of us are aware about the seriousness of the level at which the cancer epidemic is ravaging our communities and country. It is good that this Bill is in this House so that we can address ourselves to some of the issues that appertain to this problem.

Cancer cuts across communities, ethics, ethnic groups and all the boundaries. In fact, it is an international phenomenon that we must address from that level. When we had the HIV/AIDS epidemic throughout the world, I think the response was terrific and significant. In fact, we have a certain level of control of HIV/AIDS because of the way all countries responded to it. Cancer is one of those diseases that need that kind of response, if you are expected to control it.

Diagnosis is one of the very important things about cancers. One of the unfortunate things about cancer is that at the initial stages, it might not cause any pain and then reporting it will be a very slow process. In fact, this is one of the major reasons why it is a killer disease; that we are unable to detect it in the early stages. So, diagnosis is very important and this Bill proposes that we set in place bodies or institutions in form of these committees to report some of these cases at the outset. I think it is very important that we are able to detect some of these things early enough.

Mr. Temporary Speaker, Sir, one of the very crucial things about managing cancer cases is the timing at which the diagnosis is done. If the diagnosis of any of these cancers is done late, the outcome of managing that condition is really different from if it

is discovered early. So, delayed diagnosis is very significant in the survival of these individuals or persons who get affected by cancer. So, it is very important that we have committees or bodies that can sensitize the communities to look out for some of the first signs of cancer. That is an important thing that this Bill comes up with. That is one of the reasons I support it.

Mr. Temporary Speaker, Sir, the other thing is that cancer at later stages is painful not only to the cancer patient but also to close family members. Therefore, it is important that we have advanced organized groups of counselling. We should have counselling centres with counselling and pain management experts. These places will be rescue centres for some patients who will spend their last days on earth with excruciating pain. This can be managed only if we can counsel the individuals and psychologically prepare them for the consequences of these cases.

I am aware and appreciate that this Bill presupposes and suggests formation of counseling centres where these individuals can get some counselling to alleviate their suffering. We also know that the number and the time at which cancer appears in individuals is moving from the elderly. Cancer used to be a problem for the elderly but now, we are finding it in paediatrics in Kenya. This is where we lose individuals who could be very useful to society for a long time. Paediatric cancer is one of those things that we will look at very quickly because these are individuals who cannot tell us what the problem is. We need to have high acumen in diagnosing these cases and discover them early in children and manage them.

Mr. Temporary Speaker, Sir, I support this Bill because it will add a few days to many patients who experience this hard situation. I hope that this Senate will continue to support and suggest the best ways in which we can manage this horrendous thing called cancer.

**The Temporary Speaker** (Sen. Sang): Very well.  
Proceed, Sen. (Prof.) Zani.

**Sen. (Dr.) Zani:** Mr. Temporary Speaker, Sir, I would not mind being a professor as well.

I thank you for this opportunity. Levels of cancer are increasing at an alarming rate. The type of people who are being affected by cancer is also different. Sometimes back, it looked like an affluent man's disease. Not anymore. Women, to a large extent have been affected by ovarian and breast cancer. It has become one such common disease. It is becoming like malaria. Every other day you hear that somebody has died of cancer. A lot of information is going out for early testing but I think people are either, first, not taking it seriously. Secondly, maybe, they do not have the money to go for some of these tests. Even though there is information that if you go early enough you can be cured, there is still a lot of work to be done in that area.

So, it becomes very expensive for those who are finally afflicted. Many people have to go to hospital and undergo chemotherapy. Some of them have to travel abroad. As you may be aware, India has become one of the destination points. This is what is called "medical tourism." People go there to get help. It is becoming quite a problem.

There must be something wrong somewhere. I do not think we have yet as researchers put our finger on it. It could be something to do with the environment, for instance, pollution. I am worried because I remember in the *ad hoc* Committee on Natural Resources, when we went to Mrima Hills in Kwale, we had inhabitants complaining

about the level of lead pollution, for example, but what options do they have? You have a river flowing and it is your only source of water, you drink it. We are killing ourselves.

There are also other reports in the media regarding vegetables that we buy even in supermarkets: A study recently showed high levels of pollution. So, somebody somewhere is sleeping on their job. Either there is not enough scrutiny that is going on to clear the products that we are eating and maybe even importation of products. So, something has to be done.

However, this Bill and the amendments thereof are critical. First, the change of venue; this might be because of having a system of ensuring that we have a pinnacle to where everything comes to, and, a clear assertion that it has to be at the capital. Then, there is a big contribution in terms of the county committees, their functions and membership. Most of these amendments have been driven by various factors. First, is the fact of devolution and the need to therefore, come up with structures that will enable the *Mwananchi* right at the ward level to have his or her issues addressed. The spread of cancer has become severe. It is almost afflicting everybody. It is more likely now to hear that somebody is suffering from cancer and before you know it, that person is dead.

The main thrust of this Bill is in the creation of the cancer prevention and control committees right at the counties. It is imperative to ensure – I was discussing earlier with Sen. Mutula Kilonzo Jnr., that, we can have all these Bills and create all these structures but if they are not supported at the counties, especially, by the governors and the county governments, it will be an exercise in futility. Therefore, right from the onset, there needs to be a lot of information and dissemination on what these committees are all about so that county governments become interested in what is going on there so that they can support them.

Clause 12(a)(2) talks about the committee. I am worried about Clause (2)(a) which talks about “one person with knowledge and experience.” Knowledge and experience are completely different. You could have a lot of knowledge but what sort of experience do you have in terms of health matters? It talks about knowledge and experience generally but I thought we need to be very specific about the sort of person who will be appointed by the governor to become the chair of the committee. We need to find some qualifications that are critical for this person who will have such an important mandate in this committee. I found it a little bit wishy washy; not defined.

That is important because if I am the governor or I am aware that this is the governor making the appointment, one person with knowledge and experience, I will just pick one of my friends who I will assert has knowledge and experience. How will you determine whether this person has knowledge and experience? Though, in all fairness, and the same is replicated for the county executive committee member who will also appoint one person, but, again; on the basis of what sort of knowledge and experience.

Clause 12(b) addresses this. It states that there will be a competitive process by the County Public Service Board (CPSB) but again, that is neither here nor there. If you have not given the parameters for the competitiveness, then you are putting yourself in the same situation of lack of clarity. Could we have those positions and qualifications streamlined and tightened so that we get competent and dedicated people, even the number of years of experience? Could we think of cancer survivors, for example? Those who have survived have the passion, dedication and first-hand knowledge. We can make considerations and make sure that process is competitive. However, looking at some of

the functions, they are important. Previous Senators who spoke on this have outlined them. For example, the issue of training and skills; making sure health professionals know what is going on in the area of cancer so that they can give the right recommendations and quality screening.

I have a friend who walked into one of the hospitals in Nairobi for a routine check up to ascertain if she had cancer. She went through her routine check and left. She went to India to visit somebody else and she just decided to pop into a hospital. She was surprised to discover that she had stage four cancer. The shocking thing was how everybody missed to notice it when it was in the initial stages. We are told how it is good for patients to undergo chemotherapy. Some people undergo it, but end up dying immediately. Some people argue that chemotherapy is what kills people faster.

Mr. Temporary Speaker, Sir, a lot of research needs to be carried out so that we get information on cancer screening. It may be expensive, but we know that county governments have been allowed to have equipment. They have been supported in the budget to have the necessary equipment. Many people go for screening, but they will not be sure what the results of the screening is; the exact situation.

We need to support and promote implementation of preventative diseases. When Sen. (Prof.) Anyang'-Nyong'o was contributing, he mentioned the propensity for food, disposition for the type food and sort of life style. A lot of that information is not out there in the public. I would recommend the Committee be very proactive in this because people have a tendency to wait until they come before the Committee to give information yet there are people who might not know about this Committee. There is need to be proactive. We should go out there and advertise that there is a Bill that Sen. Mutula Kilonzo Jnr. has come up with and tell people of the provisions that he is giving in that Bill so that people can know rather than relying on word of mouth from one person to another.

The beauty in this Bill is that the coordination aspect within all these issues will be handled by the committees. That is essentially what is missing in the structure. At least, we will now have a body that will give all this information and ensure that they have disseminated it. They should hold a lot of conferences and seminars and get people involved. They can even have an advance team of people who can go out into the community even as volunteers and hope that if they hear there is somebody with cancer, reach out to them and give them information and assistance that is necessary. This committee can also ensure that hospitals are equipped with medication that is acceptable and not the business of Panadol.

Mr. Temporary Speaker, Sir, the worst thing about cancer patients is the pain and suffering they have to undergo before they die. Sometimes there is a delicate balance between keeping patients alive and reducing the pain. Sometimes, the more drugs are given to reduce pain, the less the time the patient will have to live. Cancer patients should have a choice to get the medication and the palliative care that is very important.

All these programmes and strategies have to be incorporated by the county committees where two people are elected by the governor and the County Executive Committee (CEC) member for health depending on their level of education. However, that is not enough. Therefore, moving forward, it would be very important that this committee's work is integrated completely within the county government. The county

government must be very proactive. They must scrutinize the budget to see how much of it can go to these committees even as a secondary measure.

Mr. Temporary Speaker, Sir, I like the part of this Bill that deals with the secretariat because that means that they will be enabled to do their work well and that their salaries will be regulated by the Salaries and Remunerations Commission (SRC). The technical aspect of this board will be handled by the secretariat.

Clause 12(e) deals with the issue of vacancies which is straightforward. Clause 12(f) says the report will be submitted to the institute. This is a great idea. However, the annual report needs to be actionable. I would like to make an amendment so that the annual report is very specific because it allows for some action. At the end of the day, if you have this report, it will not catapult us to the next level where we are addressing key issues that are very essential. There is a lot of information that needs to go to that report so that it is clear that it is not just a report of *status quo*, but on improvement and a way forward and making things better.

The question of cancer and its prevention as an effort towards curing the disease is very important. I hope that the implementation committee will pick up on this and ensure that it is implemented. On our own, we need to make a direct connection between the counties and explain what is going on so that by the time this Bill is passed, there is enough sensitization. I do not know what effort you have made in terms of reaching out to the public because this is very critical as this Bill is being discussed. Let us urge the media outlets to pick up on this. Let us also encourage the communities to be empowered enough to see this as life and death because that is what cancer is.

**Sen. Wangari:** Mr. Temporary Speaker, Sir, thank you for this opportunity and I also offer my congratulation to you although we had done that last week in absentia and I had indicated to the House that I had known you before we came to this House and that I am very proud of you because you will do justice to that position.

**The Temporary Speaker** (Sen. Sang): For the interest of some Members, could you clarify yourself? It appears that they are keen on understanding what you mean.

**Sen. Wangari:** Mr. Temporary Speaker, Sir, what part of my statement should I clarify?

**The Temporary Speaker** (Sen. Sang): The part of knowing the Chair before you came to this House.

*(Laughter)*

**Sen. Wangari:** Mr. Temporary Speaker, Sir, last week, while you were away, I said that I knew you when we were real hustlers and it generated quite a debate. However, the Chair ruled that I do not need to breakdown the meaning of the word "hustler".

I congratulate you and I believe that your star will keep shining. I also congratulate Sen. (Dr.) Kuti for this Bill because it is critical. We know that globally, the deaths that occur from cancer are more than the deaths resulting from HIV/AIDS, Tuberculosis (TB) and Malaria combined. It is quite a shocking revelation that 70 per cent of the deaths are in underdeveloped countries, including the low and middle income level countries where Kenya lies.

Cancer does not know age, tribe or class. It affects all of us. In fact, if you do a quick study in this House, you will find that almost all of us have been affected in one way or another by cancer. The pain that families go through is quite indescribable. I know that most Members of this House go to constituencies over the weekend to attend fundraisers, most of which are out of the death of cancer patients or the medical Bills that are out of reach that cannot be handled by affected families because a majority of the population is below the poverty level index. We are still doing badly as a county and having this additional burden does not help matters.

Mr. Temporary Speaker, Sir, 10 to 20 years ago, the cancer disease was still very alien. People did not understand exactly what cancer was. We gave hype to Malaria and HIV/AIDS and had many campaigns. However, the deaths that are occurring from cancer are shocking. It is gruesome to know that if you go the Kenyatta National Hospital Children's Ward, you cannot stand the pain that those children go through. It is a sad scenario and a sorry state knowing that this is something that can be avoided because 30 per cent of cancer cases can be cured if they are diagnosed early. Those are the statistics but we are doing badly in terms of this education. How do people know that they can be tested and cured of cancer? In Kenya, cancer is the third in causes of morbidity. In fact, it is after infectious and cardiovascular diseases that cancer is discovered.

Mr. Temporary Speaker, Sir, there are many myths that are associated with this. I know Sen. Musila has already alluded to some of them that you will get cancer and people will say you are bewitched, others will say you ate someone's money that is why you are suffering, and most importantly is that there is miscommunication about cancer. It is stigmatizing because people do not know. They think that if you sit with someone who has cancer of the throat or share a plate, you will be infected. This stigma is not going well especially in the villages where people think it is communicable while it is not. These are the myths that these committees that we see being established should be able to break. They should be able to explain to the communities what cancer is and what it means and explain to them that it is not communicable so that they do not stigmatize those that are already going through the problem of cancer.

Mr. Temporary Speaker, Sir, I want to touch on two issues. First is the report. The other issue that I want to touch on is the amendment. May be the Chair and his committee can think about it in terms of the submission of this report to the county executive. In a way, we need to rope in the county assembly. I do not know whether when they are presenting the Bill, they can explore whether they can present this annual report to the Health Committee or to the Clerk's office so that it is debated in the county assembly.

How do we oversight these county assemblies? If we want to anchor it, then we should be able to include the county assemblies so that they buy into the idea, and being the primary oversight at the county level, they should be able to not only allocate money if they understand it better, but let us break it down so that they are able to feel a part of it.

Mr. Temporary Speaker, Sir, the other issue is that we do not have a problem with laws. I think we have excess laws in this country. We have many Papers and Bills. What matters is the implementation. We already have some of these strategic plans that have been developed by the Ministry, the National Cancer Control Strategy 2011 and the National Guidelines for Cancer Management 2013. So, what we need is the implementation of this Bill. I hope that after we have passed it, we should be able to

follow with the Implementation Committee so that we ensure that it is implemented to the letter.

Mr. Temporary Speaker, Sir, we will be able to break so many myths at the community level and we will reduce the rate at which this disease is devouring our country. If you look at cancer in children, in the developed world, we are able to save many because seven out of ten survive. In developing countries like Kenya only one out of ten survive. I think these are very gloomy statistics. With prevention, we can be able to save more souls and enlighten members of the community and ensure that we have a healthy nation so that we make progress.

The other issue is the budgeting in terms of health. We know the limitations that we have in terms diagnosis is not only the machine but also the manpower. We have less than 10 oncologists in this country. I think we are doing badly in terms of human resource and most importantly the funding. If we follow the Abuja Declaration, we should be able to compel the counties through the county assemblies to allocate at least 25 per cent of their budget to health because if we have a sick nation, even if we build good roads, they will not make sense. We must be able to push not less than 25 per cent in terms of the budgetary allocation. I know we have not been able to push it at the national level but we can try it at the county level.

Mr. Temporary Speaker, Sir, the other issue is the one for part 12 (a) in the Bill about nomination. I am actually confused because if the CEC is the appointee of the governor and has the power to appoint into this control committee and the governor still has the power to appoint under Part IIA (12A) (2) (d) which says:-

“One man and one woman appointed by the county governor to represent such special interest within the county as the governor shall determine”.

Part IIA (12A) (2) (b) of the Bill says:-

“One person nominated by the county executive committee member responsible for health in the county who shall be the secretary to the committee”.

I think we should streamline it so that we leave it with the county governor's office or we decide that the CEC can act for the governor so that we do not have conflict in terms of executing.

I beg to support.

**Sen. Elachi:** Thank you Mr. Temporary Speaker, Sir. I also rise to thank the Chairman of the Health Committee. In our country, the month of October is a month where everyone rises up with a pink ribbon and either creates awareness on cancer or breast cancer but I want to thank the Senate that we are talking about it in the month of February when the country is still quietly waiting until the month of October which is the cancer awareness month. It is only during this month that we talk about cancer yet we know that it is one of the diseases that is really killing people in our homes. People are facing various challenges and they do not know what to do. They look at their family members who are ailing and they wonder what they can do. Some of them even do not understand that it is cancer.

Mr. Temporary Speaker, Sir, we know that the Government promised to buy the facilities and the equipment to put in the hospitals. I know it has taken a while. When you go to Kenyatta National Hospital (KNH), you find a patient who is supposed to go through dialysis is supposed to stay for three months. That patient already has an appointment but that appointment will wait for three months for him to see a doctor and

yet when I look at KNH, I ask myself - I hope the Health Committee will do that - that it is supposed to now be a hospital of in-patients and not out-patients.

We must stop this thing of people thinking they can walk to KNH and to the casualty and be treated so that we also give a bigger leverage to those who are suffering from “big” diseases. I hope as we move on, Sen. (Dr.) Zani talked about Panadol. It is unfortunate that the governors themselves have decided that when they are requesting for their medical facilities, there is a footnote that you must give them drugs of this pharmacy. It means it is business as usual.

Mr. Temporary Speaker, Sir, we also need to ask ourselves what happened to our Pharmacy and Poisons Licensing Board. Is it doing its work? Today when you look at the medication we are taking, it is part of the reason why we are also going to get cancer. Asians in this country – I am sorry to say so on the Floor of the House - have industries that are doing crazy things in our country. We need the Pharmacy and Poisons Licensing Board to come out and tell us what they are doing to ensure Kenyans are safe, we are able to get quality and to ensure---

**The Temporary Speaker** (Sen. Sang): What is it Sen. (Dr.) Zani?

**Sen. (Dr.) Zani:** On a point of order Mr. Temporary Speaker, Sir. I think what Sen. Elachi is saying is very important and it needs substantiation. Could we have a substation of the crazy things that are being done by Asians?

**Sen. Elachi:** Thank you Mr. Temporary Speaker, Sir. What I meant - I believe if we leave it to the board to go to Industrial Area and do their own research in all those pharmaceuticals that we have, I believe the way we did with Kenya Airways, we can get a report that can sensitize Kenyans just to know when they are taking the drugs, some are generic, some are original but you are not told how you will differentiate between the original and the generic. It is only a pharmacist who tells you if you want the generic or the original. As a Kenyan, I would wish to have the original.

Mr. Temporary Speaker, Sir, the Committee has the powers to summon the Board and represent the interests of all Kenyans.

**The Temporary Speaker** (Sen. Sang): Sen. Elachi, the point of order was with regard to Asians. You have mentioned Asians and their companies doing crazy things. Can you substantiate that particular element?

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I withdraw and apologise. However, I have said that the Committee on Health must do something.

**The Temporary Speaker** (Sen. Sang): So, you have withdrawn?

**Sen. Elachi:** Mr. Temporary Speaker, Sir, yes, I withdrew. Let them bring us a report first. On the issue of cancer, we used to know and it is still a fact that cancer cells are a product of a lineage of a family, but nowadays, even those without that hereditary nature are also diagnosed with risks of cancer. This is because of what we eat. If we do not take a step and sensitise people on the management of chemicals that are used to spray crops, we run the risk of being infected by cancer. We should know the period that some of these chemicals used to spray vegetables should take before consumption.

The current statistics are wanting. When I look at the Bill and its Memorandum of Objects together with the establishment of a committee, my question is on the exodus of doctors because of the devolvement of health services. How shall we ensure that the Members of the committee understand and have expertise in dealing with this disease?



When we dealt with HIV/AIDS, many people were taken for training and, therefore, this committee should also be trained in order to manage cancer.

They should be trained on how to deal with families that are affected and to provide programmes just like patients suffering from tuberculosis undergo. The community health workers go for serious health programmes to help these patients. Doctors should have the skills and if they lack such skills, a programme should be put in place to equip them.

Mr. Temporary Speaker, Sir, people should gain confidence in our health centres. Everyone visits Kenyatta National Hospital because of the able doctors. How shall we create an incentive that will bring back the doctors to the county hospitals? This will help us to gain confidence because people will know that if I walk, for instance, to Kakamega County Hospital, I will get dialysis services. Patients normally find themselves at stage four of cancer because of doctors who administer wrong treatments. We should have trained doctors who can easily diagnose cancer diseases. I know they are there but they are expensive to the *wananchi*. I hope that as we put up these structures at the county level, we shall have people with expertise to provide the correct services.

The Bomet County Governor's daughter - I am sorry to use this example - was diagnosed with cancer after a long time. That is how we lost a young energetic girl. As soon as we had contributed the amount to enable her obtain medical services in the United States of America (USA), she died. The only other person who bravely fought cancer is Mary Onyango. You will remember she is the one who stood with the organisation that chose October as breast cancer awareness month. There are many other people who have succumbed to cancer. Therefore, I hope as we move on, we have learnt the lesson.

Many people die of cancer, not because they cannot afford the medical services but it is because of lack of immediate diagnosis. I lost a woman friend I trained with in Kisii yet she did not know that she had cancer. When she went for screening, she was diagnosed with breast cancer. First, you receive the news with shock when told directly. Therefore, we need to know how to approach a patient who is suffering from cancer so that when he or she goes back, one is not worse than before. After six months, we lost the lady.

Mr. Temporary Speaker, Sir, as the Senate legislates on this, we should rectify some of the small mistakes that will save our people from the disease and the waste of money that occurs. Some sell their lands, cows and other properties to get treatment but in the end, patients succumb. Nowadays patients are taken to India but we should change that and have doctors come to Kenya. It will be helpful for a county that can afford to hire the services of doctors from India to do so than patients going there. I hope that this legislation will help put in place that arrangement. Mediheal Hospital is already practicing that and we can partner with them so that many doctors can come to Kenya than patients travelling to India.

Lastly, as we amend the Bill, I hope that the resources will be available. If we change all these and not provide resources to deal with cancer, then all will be in vain. The treatment of cancer is expensive and it needs a lot of money. Therefore, if we are talking of the equipment that we should have in the hospitals, then they should be adequate. We must allocate enough resources to ensure that this work is done. Kenyans are willing to fundraise for this through *Mpesa* and other means. As we do this, we

should ask ourselves if we are raising monies to help patients or we are raising them to be misused in counties. Since Kenyans are willing, they also should have confidence and transparency. They need to know the transparency and accountability of every shilling that they contribute.

We will pass the Bill and I believe the structures are very well stipulated. All we need are the skills but more important, if we want to conquer this, we must be clear in our minds that we need resources to move this agenda to the next level.

With those few remarks, I beg to support.

**The Temporary Speaker** (Sen. Sang): Finally, Sen. Okong'o.

**Sen. Okong'o:** Asante sana Bw. Spika wa Muda kwa kunipa fursa hii ili nchangie pendekezo la kurekebisha sheria ya ugonjwa wa saratani. Kwanza kabisa, namshukuru Mwenyekiti wa Kamati ya Afya, Sen. (Dr.) Kutu, kwa kuleta Mswada huu wa kurekebisha vipengele vya sheria ili kusaidia kupigana na maradhi ya saratani.

Bw. Spika wa Muda, jambo hili ambalo limeletwa ni mwafaka. Miaka michache iliyopita, Wakenya wengi hawakujua kuwa maradhi ya saratani huuwa. Hawakujua kuwa maradhi haya humshika mtu kulingana na vile anavyoishi na vyakula vya kisasa anavyokula. Kwa hivyo, lingekuwa jambo mwafaka Serikali kuu na Rais wa Kenya, kutangaza hili kuwa janga la kitaifa ili Wakenya wote tufahamu kuwa ikiwa ni janga la kitaifa, pesa zitawekwa na wafadhili wataingilia maswala haya ili kusaidia wananchi kutokana na ugonjwa wa saratani.

Sijui kama Wizara ya Afya ina takwimu ya idadi ya wananchi wanaokufa kila siku au kila mwezi kutokana na maradhi ya saratani kwa sababu ni wengi. Kila wakati, tunafanya michango ya kutuma watu wetu kwenda India kusaidiwa huko kwa vile India inajulikana kuwa na umaarufu wa kutibu maradhi mengi. Hata hivyo, tunapowatuma huko, huwa wamefikia kiwango cha mwisho ambayo ni *Stage Four*. Linakuwa janga la kifamilia na kitaifa---

**Sen. (Dr.) Zani:** On a point of order, Mr. Temporary Speaker, Sir. Is the Senator on the Floor in order to mix two languages as he speaks? He should stick to either Kiswahili or English as he speaks.

**The Temporary Speaker** (Sen. Sang): Sen. Okong'o, you know that the Standing Orders require that you choose which language to use. From your initial remarks, you were proceeding on in Kiswahili.

**Sen. Okong'o:** Bw. Spika wa Muda, neno moja halimzuii Seneta---. Nitakuwa nimeenda kinyume cha sheria zetu nikingea Kiingereza katika sentensi nzima. Sen. (Dr.) Zani ni mwalimu wangu anayetoka eneo la pwani. Kwa hivyo, ni mweledi wa Kiswahili. Kwa hayo, nadhani sijakosea sana. Naomba niruhusiwe kuendelea kunena yale ambayo nilikuwa nanena kwa lugha ya Kiswahili.

**The Temporary Speaker** (Sen. Sang): Endelea, lakini usiwe na mazoea ya kuchanganya ndimi.

**Sen. Okong'o:** Nashukuru, Bw. Spika wa Muda.

Bw. Spika wa Muda, nilikuwa nasema kwamba wananchi wa Kenya wameathirika sana jinsi ilivyosemwa kwa vile hakuna elimu ya kutosha, hakuna vifaa vya kutosha na wataalamu wa kutosha. Ninapounga mkono pendekezo hili la kubadilisha sheria, Serikali kuu ikishirikiana na Serikali za kaunti inafaa kulipa jambo hili kipaumbele ndiposa wananchi waweze kushughulikiwa na kusaidiwa kutokana na

maradhi haya. Nimesema kuwa ni jambo la umuhimu Serikali kuu ama Rais wa Kenya kulitaja kuwa janga la kitaifa.

Nimeangalia mapendekezo kadhaa wa kadhaa ambayo yamewekwa hapa. Tutaangalia mapendekezo machache ambayo yatarekebishwa wakati tutakapokuwa tukijadili Mswada huu.

Bw. Spika wa Muda, kwa hayo machache, naunga mkono.

**The Temporary Speaker** (Sen. Sang): There being no other interest in this matter, I now call upon the Mover to reply.

**Sen. (Dr.) Kuti:** Mr. Temporary Speaker, Sir, I am very grateful to those who contributed to this very important Bill. Every speaker has acknowledged the impact that cancer has at all levels and socio-economic status of our citizens. Almost everybody is attesting to the fact that they know or they are affected in one way or the other. So, it is becoming very clear about the severeness and the seriousness that cancer affects our people and the economic, social and health impact it has on our citizens. It is very clear that we should double the attention given to cancer. The voice of the House is the fact that a county approach should be put in place; that a committee which creates more awareness among the people should be put in place.

It is also very clear that the lower socio-economically you are or the further you are in the villages, the more likely it is that you will be diagnosed with a cancer that is at a very advanced stage. This, therefore, makes the committee a very important structure that will create awareness because most cancers, if diagnosed early, can be cured. So, the committee could hold conferences and seminars and use various advertising or awareness creation methods to make sure that people know the various types of cancers, how they present themselves and what needs to be done.

Therefore, there is the importance of screening because many cancers do not have any symptoms. It is only during annual screening that people realise they have cancer as alluded to by Sen. Elachi. She said she had a friend who went for a check-up and realised that she had cancer. So, annual screening is a very important tool which the committees could create awareness about so that people can voluntarily go for self-testing and screening. By doing that, various cancers could be diagnosed early and, therefore, their chances of survival could be markedly improved.

Mr. Temporary Speaker, Sir, I also noted the comments made on the issue of appointment where there may be some conflict between the governor and the County Executive Committee (CEC) member appointing, whereas the CEC himself is also an appointee of the governor.

The issue of implementation was stressed a lot where most Members felt that passing this Bill is one thing but implementing it in liaison with the implementation committee is another. We shall see to it that my committee works very closely with the committee on implementation to ensure that this Bill is not just passed and becomes an Act but also acted upon and implemented at the county level, so that the benefit of the committees are realised as soon as possible.

In the amendment, I think we also need to come up with the contribution made by Sen. Wangari, where county assemblies can also commit funds to the function of these committees. The involvement of county assemblies in one way or another is very important. I have noted that and it should come up in the amendment.

Regarding the qualifications, Sen. (Dr.) Zani has indicated that the qualifications of the chairman and that of committee members have to be very specific so that it is not left to the governor to just pick friends. I think that is very important where we may say either someone who has had personal experience in terms of suffering from the diseases or may be a doctor, nurse or a minimum of a community or field worker.

Mr. Temporary Speaker, Sir, training of committees is a very important thing. These committees need people who are well versed with the topic so that when they go out, they can disseminate information that is beneficial and not contradicting. They need to be competent. Therefore, the training component is very good.

The issue of us, as a Committee, working with the Kenya Medical Practitioners and Dentists Board (KMPDB) to take the various contaminants that contribute to cancer such as medicine and working with environmental impact assessment organisations to check issues of food, drugs and things that predispose people to cancer is something that also came out very clearly.

On the issue of doctors, the fact is that hospitals are now being equipped with very advanced equipment but we have a runaway situation in terms of the doctors in the rural facilities. Just last weekend, a small accident happened where a friend fell. We went for an x-ray at the Coast General Hospital and the technicians were unfamiliar with the machines. We had to go back to the old ones which they are conversant with. This is because the new machines are computerised so, they need people who know how to operate them. Therefore, we need to train not just doctors but even radiographers and radiologists in hospitals since they need to be conversant with this equipment. We need to ensure that the equipment is put to good use instead of leaving it to gather dust after delivery.

The issue of resources came out very clearly and we will try to see how we can address it during the amendment. The issue of actionable reporting is a very important contribution. Reporting by the committee either to the County Executive Committee (CEC) or the National Institute has to have some actions to it and not just a routine practice that we were used to in Government in the past. It has to have a timeframe of action and who is to act. That way, when reviews are done, then people can be accountable for what report has been sent and what action should have been taken.

I am very impressed with the interest that this Bill has generated because it is a fact that is touching all of us.

With those few remarks, I beg to move.

**The Temporary Speaker** (Sen. Sang): Mover, you know the next procedure will be to vote on this Bill. So, you may need to request the House to defer the putting of the Question to another day because of the obvious reasons.

**Sen. (Dr.) Kuti**: Mr. Temporary Speaker, Sir, I agree that the putting of the Question be done later because we do not have the numbers.

**The Temporary Speaker** (Sen. Sang): I defer the putting of the question to Thursday.

**Sen. (Dr.) Kuti**: Thank you, Mr. Temporary Speaker, Sir.

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

**The Temporary Speaker** (Sen. Sang): Next Order.

**BILLS***Second Readings*THE COUNTY LIBRARY SERVICES BILL  
(SENATE BILL NO. 6 OF 2015)*(Bill deferred)*THE COUNTY OUTDOOR ADVERTISING CONTROL BILL  
(SENATE BILL NO. 11 OF 2015)

**Sen. Mutula Kilonzo Jrn.:** Thank you, Mr. Temporary Speaker, Sir. I beg to move that the County Outdoor Advertising Control Bill (Senate Bill No. 11 of 2015) be read a Second Time.

Let me confirm that the Committee on Information, Communication and Technology (ICT) in which I am the Vice Chairperson, has allowed me to sponsor this Bill. At the first instance, there was concern that this Bill was not supposed to be in the Senate. All those fears were allayed by Hon. Justice Lady Mumbi in her judgement which she passed last year on a matter concerning roads. She said that this Bill falls squarely in matters concerning counties.

Outdoor advertising is an area that has been left pending. In some cases, outdoor advertising in Mombasa, Nakuru and Nairobi counties is not uniform. This is one avenue that counties can use to make funds in terms of their kitty. There has been an ongoing dispute between the various bodies that are managing our roads about who should collect the fees. While we have allowed county governments to issue licences for the billboards and other methods of advertising, they are claiming other funds for purposes of advertising. Therefore, this Bill attempts to ensure that we have uniform legislation on how advertising will be done from Turkana to Lamu County.

Mr. Temporary Speaker, Sir, this being an industry that is rapidly growing, it is important that it is regulated. We have had concerns that some billboards are violating the environment and many other things including decency. It is because of that that we thought we should find this framework.

Let me confirm that after we did public participation, we received various views which will come during the Third Reading. For our purposes, we have provided a framework for licensing, where you should advertise and the place and methods of prescribing the application and who will pay that fee. We have also provided, in other methods, a consideration of the application, how and when it will be denied and what you should do when it is denied. For the committee that will sit, we have provided for who and how the committee will be composed, what they will do, how they will approve the application and how much you will pay for the outdoor advertising licensing. Of importance also is how the person will advertise and what will be allowed to be advertised on these billboards and other methods of outdoor advertising.

**The Temporary Speaker** (Sen. Sang): Order, Members! Sen. Mutula Kilonzo Jnr., you will have 57 more minutes to continue moving your Bill the next time it appears on the Order Paper.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Sang): Honourable senators, it is now 6.30 p.m. It is time to adjourn the Senate. Therefore, the Senate stands adjourned until tomorrow, Wednesday, 17<sup>th</sup> February, 2016 at 2.30 p.m.

The Senate rose at 6.30 p.m.