

The Clerk of the Senate,
Parliament of Kenya,
Parliament Buildings,
P.O. Box 41842 – 00100,
NAIROBI.



Wednesday 3rd October 2018.

Approved
[Signature] 4/10/2018

Dear Sir,

RE: PUBLIC PETITION BY RESIDENTS OF ISIOLO COUNTY REGARDING THE AGREEMENT BETWEEN THE COUNTY GOVERNMENT OF ISIOLO AND LIVING GOODS LIMITED FOR PROVISION OF COMMUNITY HEALTH SERVICES IN ISIOLO COUNTY

We
I, the undersigned,

DRAWS the attention of the Senate to the following:

1. **THAT** it has come to my attention that the County Government of Isiolo has negotiated an agreement with Living Goods Limited for 'strengthening provision of community health services in Isiolo, Merti and Garbatulla sub-counties of Isiolo County' effective 01 October 2018 for a period of four (4) years.
2. **THAT** the county government failed to conduct due diligence on Living Goods Limited; the country of incorporation of Living Goods Limited is not identified and the incorporation number and directors of the company are also not identified, and as such, the 'entity' is not a legally-recognised entity with the authority of law to engage in any manner.
3. **THAT** the project entails: situational analysis of existing healthcare infrastructure; developing methodology for assessing/measuring impact; providing material necessary for operational requirements; purchase, maintenance and insurance for vehicles and motor-cycles for the project; recruit, train, certify and supervise 920 community health volunteers on key health topics; purchase and supply mobile phones, data bundles and other equipment necessary for community health work; employ 21 project staff (field and community health managers and supervisors, pharmaceutical technologists, technical support officers and drivers); train community health extension workers on key health interventions; hire and supervise a consultant to develop a county community health policy/bill; conduct publicity, sensitisation and advocacy; support the county

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government with forecasting for procurement of essential medicines and supplies; and provide support with restocking essential medicines and supplies.

4. **THAT** the responsibility for delivery of healthcare services to the people of Isiolo and attendant responsibilities are constitutional obligations of the County Government of Isiolo as provided under article 186 and Schedule 4 of the Constitution of Kenya 2010. Private entities are not envisioned by the constitution as responsibility-holders in relation to the delivery of public healthcare services. Therefore, as the entity constitutionally responsible for healthcare services, the county government has no authority to relinquish this responsibility or part thereof to a private entity. At the very least, and as a last resort, the only avenue open to the county executive if it is objectively deems it necessary is to explore mechanisms for referral or cooperation with the national government as provided under articles 187 and 189 of the Constitution of Kenya 2010.
5. **THAT** the Agreement unconstitutionally delegates the power of developing legislation – the Community Health Bill – including the requisite public participation process to a private entity, a function that is jointly constitutionally carried out by the County Executive and the County Assembly.
6. **THAT** the Agreement confers extensive powers to Living Goods Limited over healthcare services provision without much practical control and participation of the county government, except for the provision of funds. As conceived, the Agreement envisions the county government's control over the project to only extend to 'overseeing implementation and receiving and analysing reports', meaning that the county government does not have any meaningful participation in and control of the actual implementation save for providing monetary and logistical support. Consequently, the county executive would not be in a position to know exactly what actions Living Goods Limited is taking in furtherance of the Agreement, neither would the county executive be able to influence the course of events in the implementation of the Agreement, thereby opening up Isiolo's healthcare system and the health of its people to unethical intrusions by entities that owe them no constitutional duty of accountability.
7. **THAT** the Agreement purports to bypass the process of including the project in the County Integrated Development Plan (CIDP) process and the constitutional budgeting processes by binding the county government to, among others: include the cost of the implementation of the

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project in its budget; commit to project-related procurement; and provide funds, office space, logistical support, drugs and supplies and staff necessary for the project.

8. **THAT** the Agreement binds the county government to co-fund the cost of the project which is projected to be Kenya Shillings Four Hundred and Forty-Three Million, Two Hundred and Ten Thousand, Two Hundred and Twenty-Four (**Ksh.443,210,224**).
9. **THAT** the Agreement requires the money to be deposited in a joint special purpose account between the county government and Living Goods Limited, thereby exposing public funds to private management in contravention of constitutional principles of financial management.
10. **THAT** the Agreement provides that monies from the special purpose account shall be disbursed only to Living Goods Limited accounts, thereby exposing public funds to private management in contravention of constitutional principles of financial management.
11. **THAT** the Agreement requires Living Goods Limited to provide an accurate record of assets purchased using the common funds only if such record is demanded, thereby contravening the constitutional principles on transparency and accountability and the legal requirements of the Public Procurement and Asset Disposal Act of 2015 on acquisition and disposal of public assets.
12. **THAT** the Agreement is silent on the responsibilities of Living Goods Limited to the county government in relation to funds upon termination of the Agreement.
13. **THAT** the Agreement has been negotiated without the requisite public participation as envisaged by the constitutional and statutory provisions cited above.
14. **THAT** being an essential public service whose policy-development mandate is constitutionally exercised by the national government in accordance with the Fourth Schedule of the Constitution of Kenya 2010, the county government should have consulted the relevant national government organs, specifically the national Ministry of Health.
15. **THAT** being an essential public service, the county government should have consulted local stakeholders including the general public.

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16. **THAT** further, the Agreement is a thinly-veiled attempt to enter into a Public Private Partnership (PPP) engagement without following the procedure provided in the Public Private Partnerships Act, specifically sections 4, 11, 16, 17, 20-25, 29, 31-35 and 37-57, and the Health Act, specifically sections 15, 23 and 92.
17. **THAT** overall, the process has failed to appreciate the legal requirements on public participation, prudent fiscal management and principles of devolved government including the oversight role of the Senate.
18. **THAT** the Agreement irresponsibly exposes public funds to potential misuse, misappropriation, embezzlement and corruption in contravention of the constitutional and statutory principles of fiscal management cited above.
19. **THAT** the Agreement potentially exposes an essential public service to unregulated capture by private entities and poses a health risk to the people of Isiolo County.
20. **THAT** healthcare is a crucial county government devolved function and very significantly impacts the lives of the people of Isiolo and as such, the county government should not casually and arbitrarily divest itself of this essential responsibility to the public by delegating it to private sector actors who have no direct responsibility and accountability to the public.
21. **THAT** the actions of the county government contravene the legal provisions enumerated above and are therefore unilateral and unlawful, hence null and void.
22. **THAT** ^{we} have made the best efforts to have these matters addressed by the relevant authorities all of which have failed to give a satisfactory response.
23. **THAT** none of these issues raised in this Petition is pending in any court of law, constitutional or any other legal body.




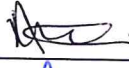

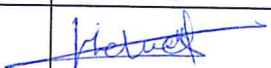


WHEREFORE your humble petitioner Prays that the Senate—

- a) asserts its constitutional functions under article 96 of the Constitution of Kenya 2010;
- b) urgently investigates the conduct of the Isiolo County Executive in relation to the Agreement negotiated with Living Goods Limited;

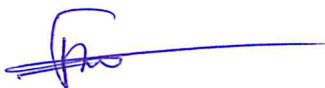
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- c) ensures that all public funds utilised during the negotiation of the Agreement are reimbursed to the county government and that those who are responsible are held accountable;
- d) passes a motion censuring the county officials involved in negotiating the Agreement;
- e) passes a motion requiring the county government to desist from taking any action in relation to the Agreement and to halt any action it may have already commenced; and
- f) takes any other appropriate action.

Petition dated this 22nd day of September.....2018 and signed by:

Name	National I.D No.	Signature
Anwar Muhamud Abdikadir	28910485	
Ibrahim Abdi Wako	22492433	
Adan Ibrahim	13443934	
Mohamed Golicha	26963767	
Musa Issack	32763404	
Halima Dida Golicha	24315937	
Hassan Balla Guyo	1090472	
Dibo Sankala	31706581	

Counter signed by Senator Fatuma Adan Dullo, CBS, MP, Senator for Isiolo County.



**Sen. Fatuma Adan Dullo, CBS, MP,
SENATOR, ISIOLO COUNTY.**