

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 15th November, 2018

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

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

PRAYER

PAPERS LAID

REPORT ON THE PUBLIC PRIVATE PARTNERSHIP
(AMENDMENT) BILL (NATIONAL ASSEMBLY
BILLS NO.52 OF 2017)

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today Thursday, 15th November, 2018-

The Report on the Public Private Partnership (Amendment) Bill (National Assembly Bills No.52 of 2017).

(Sen. (Eng.) Mahamud laid the document on the Table)

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. (Eng.) Mahamud. Proceed, Sen. Khaniri.

REPORT ON THE LAND VALUE INDEX LAWS (AMENDMENT) BILL (NATIONAL
ASSEMBLY BILLS NO.3 OF 2018)

Sen. Khaniri: Mr. Deputy Speaker, Sir, Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Thursday, 15th November, 2018-

Report of the Standing Committee on Lands, Environment and Natural Resources on The Land Value Index Laws (Amendment) Bill (National Assembly Bills No.3 of 2018).

(Sen. Khaniri laid the document on the Table)

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well.

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Proceed, Sen. Kasanga.

REPORT OF THE POWERS AND PRIVILEGES COMMITTEE
ON THE ALLEGATIONS OF IMPROPRIETY IN RELATION
TO ACQUISITION OF LAND LR No.7879/4

Sen. Kasanga: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Thursday, 15th November, 2018:-

Report of The Powers and Privileges Committee on the allegations of impropriety in relation to the Senate County Public Accounts and Investment Committee inquiry (CPAIC) into the possible loss of funds through acquisition of land LR No.7879/4 by the National Land Commission (NLC).

(Sen. Kasanga laid the document on the Table)

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Kasanga. I commend you for having your shoes on today.

(Laughter)

The last time I saw you speaking from the Dispatch Box, you did not have part of your attire on.

Congratulations!

COMMUNICATION FROM THE CHAIR

REPORT OF THE POWERS AND PRIVILEGES COMMITTEE ON
THE ALLEGATIONS OF IMPROPRIETY IN RELATION TO
ACQUISITION OF LAND LR No.7879/4

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, I have a Communication to make on the Report of the Powers and Privileges Committee on the allegations of impropriety in relation to the CPAIC inquiry into the possible loss of funds through acquisition of land LR No.7879/4 by the NLC.

Hon. Senators, as you are aware, the matter of the Report of the CPAIC on the Ruaraka Land inquiry and the allegations during the exercise has been pending before the House.

You will also recall that the Chair put on hold debate on the CPAIC report on 20th September, 2018 pending the conclusion of the proceedings by the Powers and Privileges Committee.

The Powers and Privileges Committee considered the issues raised and has today tabled its Report. The Committee has determined in the Report that the allegations made against some Members of the County Public Accounts and Investments Committee

(CPAIC) were not substantiated. Therefore, they could not form the basis of an inquiry by the Powers and Privileges Committee.

The Powers and Privileges Act provides the manner of conducting an inquiry and in dealing with a report of the Powers and Privileges Committee as follows-

Section 15(5), (6) and (7) of the Parliamentary Powers and Privileges Act state that-

“(5) The Committee of Powers and Privileges shall, either of its own motion or as a result of a complaint made by any person, inquire into the conduct of a Member whose conduct is alleged to constitute breach of privilege in terms of Section 16, within fourteen days of receipt of complaint.

(6) The Committee of Powers and Privileges shall, within fourteen days of the conclusion of an enquiry, table its findings in the relevant House of Parliament together with such recommendations as it considers appropriate.

(7) Each House of Parliament shall consider the report and recommendations by the Committee of Privileges in the manner set out in the Third Schedule.”

Further, paragraphs (1) and (2) of the Third Schedule of the Act provides as follows-

“(1) Every Report by the Committee of Powers and Privileges concerning any inquiry into the conduct of a Member shall, as soon as possible after it has been completed, be laid by a member of that Committee on the Table of the House.

(2) If the Report does not recommend any disciplinary action there shall be no further proceedings whatsoever in respect thereof, other than (where necessary) further inquiry and report by the Committee of Powers and Privileges.”

Consequently, I wish to inform the House that previously, we have had reports of this nature, where allegations made are not substantiated. In the case of the proposed removal of the Governor for Kericho County, the allegations were not substantiated. As such, the Report was tabled by the Special Committee and the Speaker gave a Communication stating that further to the County Governments Act and the Senate Standing Orders, no further proceedings could be taken in respect of the allegations. However, owing to the importance that the House vested in the Special Committee and the overwhelming public interest in the matter, the Speaker allowed remarks by the Chairperson of the Committee in respect of the assignment the Committee undertook on the instructions of the House. The Speaker further permitted a few interventions of a general nature on the Report without going into the merits or demerits of the findings of the Special Committee.

Hon. Senators, in the same breath, and in accordance with Paragraph (2) of the Third Schedule of the Parliamentary Powers and Privileges Act, I direct there shall be no further proceedings, whatsoever, in respect of this matter. However, I will allow

interventions of a general nature on the Report, which comments should not go into the merits or demerits of the observations and conclusions of the Committee.

Thank you.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, first of all, I congratulate the Powers and Privileges Committee for working expeditiously to dispose of this matter. We are in a country with too many allegations flying around about all public officers, including those in Parliament. This matter is now put to rest by this investigation by the Powers and Privileges Committee. It is not just to rest, but to rest positively in the sense that it has proven beyond reasonable doubt that our House and Committees are committed to perform their duties diligently and above board.

It is in the same breath that we must always tell Kenyans to know that there are mechanisms in Parliament for investigating Senators and Members of the National Assembly. If applied diligently, it can provide checks and balances in so far as the responsibilities that each one of us performs in this House. It also shows that parliamentarians do not fear to be investigated when allegations are raised. Those provisions are in our Standing Orders and they are useful.

I know that we are not immune from criminal investigation for any crime committed in this Republic. The persons who made those allegations were given an opportunity to appear before the Committee. I know we are not supposed to discuss the contents of the Committee, but those who had nothing to fear would have used the opportunity as a mechanism for settling whatever disputes they had. When the time comes for dealing with the substance of the matter, all of us will be involved.

Once again, I congratulate the Speaker and the Powers and Privileges Committee for dealing with this matter courageously and expeditiously for the best interest of our Republic.

Sen. Kasanga: Mr. Deputy Speaker, Sir, thank you for giving me this opportunity. I serve in the Powers and Privileges Committee. In fact, I want to take this opportunity to thank the Speaker for having nominated me to sit in it. Indeed, it is a privilege.

In as much as we were taken through our mandate during induction, when this matter came to the Committee, it was too soon, so to speak. It is not easy when we have to investigate our fellow colleagues.

I thank the Senators for their patience as they waited for the verdict. I also thank them for the cooperation they showed. I assure the Senate that our Chairman is guided by the wisdom of God. He guided this matter ably and we reached the conclusion. I urge a few Senators amongst us who felt that we were not moving with the speed that we were supposed to that such things are delicate and sensitive because they touch on us, as senior Members of this country. Therefore, the need to interrogate matters to their depth and full conclusion was absolutely necessary.

I thank you all and our Speaker, who is the Chairman, for his able guidance and stewardship of the matters.

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, thank you for this chance. First of all, I agree with colleagues who have appreciated that the Powers and Privileges Committee has done expeditiously well, though some people may have had varied opinion on the

period of time they took. However, they eventually made their determination in the manner they tabled it before this House.

It is unfortunate that I did not have the chance to read through the entire Report.

(Sen. Murkomen stood in his place)

Mr. Deputy Speaker, Sir, protect me from the Senate Majority Leader.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Sen. Cheruiyot, have you concluded your remarks?

Sen. Cheruiyot: No.

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

Sen. Cheruiyot: I have asked for your protection from the Senate Majority Leader.

The Deputy Speaker (Sen. (Prof.) Kindiki): I do not see any obstruction or interference.

Sen. Cheruiyot: He was standing between you and I.

The Deputy Speaker (Sen. (Prof.) Kindiki): The Chair did not see that. Therefore, the matter aborts.

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, many things have been said about the allegations and what is in the Report. It is my desire that in one way or the other, following your ruling, I hope it will eventually put this matter to rest and Senate continues to have its place.

It was unfortunate that a time when our colleagues in the National Assembly were battling serious allegations that this matter came to the fore. Every time we tried to speak up, fingers were pointed to us and we were told we had unfinished business.

In conclusion, I agree with the route this matter has taken here. We can expeditiously put all facts on the table and rest it. We want to make a determination and the Senate continue to have its moment of glory.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you. Finally, Sen. M. Kajwang'.

Sen. M. Kajwang': Mr. Deputy Speaker, Sir, I also wish to thank the Powers and Privileges Committee for tabling this Report. Yesterday, there was a brief debate about when the Report would be tabled. I thank the Committee and the office of the Speaker for keeping the promise that they made to this House.

I was one of the persons of interest in that particular enquiry. As you have guided, I shall not get into the depth and details of the allegations. I must say that I am very relieved because some of us have been walking around this town with a cloud of suspicion over our heads. It has not just been suspicion out in the streets, but even within the House. Hon. Members have required an assurance from us that the allegations that were made in the media were baseless. Today, the Powers and Privileges Committee has given that assurance.

I supported the Motion that the Powers and Privileges Committee look into this matter because I believed that Parliament had internal mechanisms that could be used to resolve issues of integrity. There were those who had called for establishment of an

ombudsman in Parliament. However, my conviction is that the Powers and Privileges Committee, if it continues with diligence in the manner in which this particular one has proceeded, we will not have to set up a separate *ombudsman* to look at issues.

Mr. Deputy Speaker, Sir, as an institution, we need to take a position to protect our oversight Committees. Invariably, oversight Committees will rattle powerful persons who want to violate the law and who want to dip their hands in places that they are not supposed to. We need to have that conversation and find a way of buttressing these oversight institutions to ensure that when Parliament indicts certain persons, those people then do not use internal mechanisms to delay.

Finally, I am very happy that having looked at the Supplementary Order Paper, the tabling of this Report by the Powers and Privileges Committee gives us a golden opportunity to conclude the work which the Committee on Public Accounts and Investment (CPAIC) has done and has captured public attention and imagination. Today, I am a happy man.

Even though I seem to have expressed some concern at the pace of matters, it was just anxiety because we wanted the matter to be resolved. I will tell the Powers and Privileges Committee; well done, what you have done is the right approach. By the time we are discussing the Ruaraka Report, there will be no argument that it was a Report that was procured illegally.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you. On that note, Hon. Senators, you will see that we have a Supplementary Order Paper, particularly to accommodate that matter about which the Chair has just made a communication. That is the matter of the Report of the Senate's Committee on County Public Accounts and Investment on the issue of Ruaraka land.

This is a matter that has been held in abeyance for a very long time. There has been a lot of concern that we should have disposed of this matter a long time ago. You also recall that I made a ruling from this Chair that until we get a report from the Powers and Privileges Committee, we will not transact this business.

Now that that Report is with us, there is no obstacle. Therefore, why we should not dispense this agenda even before we go to any other agenda. On that basis, I direct for convenience of the Senate, that we go straight to Order No.9 on the Supplementary Order Paper.

BILL

Second Reading

THE COUNTY ALLOCATION OF REVENUE (AMENDMENT) BILL (SENATE BILLS NO. 29 OF 2018)

(Bill deferred)

Next Order.

(Sen. Cherargei consulted loudly)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator for Nandi County! This is not a place to gastulate and behave like a trade unionist.

I call upon the Chairperson of the Committee on County Public Accounts and Investment, you may have the Floor.

MOTION

ADOPTION OF CPAIC REPORT ON INQUIRY INTO POSSIBLE LOSS OF FUNDS THROUGH ACQUISITION OF LAND BY THE NLC

Sen. M. Kajwang': Thank you, Mr. Deputy Speaker, Sir. I beg to move the following Motion-

THAT, this House adopts the Report of the Sessional Committee on County Public Accounts and Investments, on the inquiry into possible loss of funds through the acquisition of Land LR.No.7879/4 (part) by the National Land Commission, for use by two public schools (Ruaraka High School and Drive-In Primary School), Nairobi City County, that was laid on the Table of the House on Wednesday, 8th August, 2018.

Let me start by reiterating my thanks and compliments to the Powers and Privileges Committee that has expeditiously resolved some of the issues that have prevented us from moving this Motion and debating this Report in the House.

The CPAIC tabled in this House on 8th August, 2018, the Report of the Committee on the inquiry into the fraudulent acquisition of land in Ruaraka.

By giving a background without necessarily reading through the document and I hope that now that we have a Supplementary Order Paper---

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Members! The consultations are a bit too loud.

Proceed, Sen. M. Kajwang'.

Sen. M. Kajwang': Thank you, Mr. Deputy Speaker, Sir. I hope that having updated the Order Paper, that copies of this Report shall be available on the table so that Members can go through.

As a background, before devolution, primary schools in Nairobi City and seven other municipalities were managed by the defunct Nairobi City Council and the respective municipalities. The process of the transfer of assets and liabilities of these defunct authorities to county governments is still ongoing. If this process is not superintended or supervised, then counties stand to lose lot of assets, particularly land that belongs to schools.

It is for this reason that CPAIC sought to establish the legality and prudence of the acquisition by the National Lands Commission (NLC) of 13 acres on which two public schools – Ruaraka High School and Drive Inn Primary School – stood.

In carrying out our inquiry, our specific objects were-

(1) To establish whether there was loss of public funds in the acquisition of LR.No.7879/4;

(2) Who owns the land; and,

(3) To understand the circumstances within which the schools were established on land that was later considered to be private.

Mr. Deputy Speaker, Sir, it is important to note that the land in question, LR.No.7879/4, has featured prominently in the past with regard to compulsory acquisition and compensation by the Government.

(Sen. Cherargei consulted the Chair)

If I give an example of just a few of the cases that have involved this parcel; in 1981, the distinguished Senator for Nandi County who is now distracting your attention, was either in liquid form or completely non-existent. In 1981---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. M. Kajwang'! No one has the infrastructure or capacity to distract the Chair.

Proceed.

Sen. M. Kajwang': Thank you, Mr. Deputy Speaker, Sir. I thought you were going to object to the state of Sen. Cherargei in 1981; whether he was liquid or solid.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): I have no capacity to deal with that.

Sen. M. Kajwang': Mr. Deputy Speaker, Sir, probably, he was gaseous.

In 1981, the Government paid Kshs64 million for construction of 500 houses through the defunct Kenya Post and Telecommunications Corporation (KPTC). Only 196 houses were completed.

Later on, in 2012, the Ministry of Interior and Coordination National Government acquired 35 acres for the area in which the General Service Unit Headquarters (GSU) stand. This was acquired at a cost of Kshs4.806 billion. That is enough to finance the operations of Tharaka-Nithi County for a year.

Later on, in year 2016, the Kenya Urban Roads Authority (KURA) acquired 3.259 acres for roads and easement on the land at a cost of Kshs786 million.

In the year 2018, the Ministry of Education (MOE) acquired 13.7701 acres for Ruaraka High Scholl and Drive-inn Primary School.

(Sen. Kihika consulted with Sen. Kinyua)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Majority Whip. Even if the rules do not describe how you go about whipping or de-whipping, what you are doing does not include any of those. You have to devise mechanisms of doing your duties within the Standing Orders.

Proceed, Sen. M. Kajwang'.

Sen. M. Kajwang': Thank you, Mr. Deputy Speaker, Sir, for protecting me. We shall know in what form the Majority Whip was in 1981.

In the year 2018, the Ministry of Education acquired 13.7701 acres of land at cost of Kshs3.269 billion and Kshs1.5 billion has already been paid. There are outstanding claims running into billions of Kenya shillings for Outer Ring Road expansion, chief's camp, Seventh Day Adventist (SDA) church, DO's office and illegal squatters on the land. These claims have been put at a conservative estimate of Kshs26 billion.

Mr. Deputy Speaker, Sir, When the County Public Accounts and Investments Committee (CPAIC) initiated its inquiries, we decided to limit our scope to the land that was acquired for purposes of the school because we realised this was a Pandora's Box which we could not effectively execute. We limited our mandate to protection of the assets of the defunct authorities. We, therefore, focused on the Kshs3.2 billion.

It is instructive to note that this land LR 7879/ 4 has so far received Kshs8 billion from the Consolidated Fund.

One of the objectives was to establish who owned the land. If we look at the chronology of events, we find that back in 1981, this land was bought by a company called Afrison Import Exports Limited and Heuland Limited.

Mr. Deputy Speaker, Sir, it is important to lay this background because it is this that people are taking advantage of to say that certain things were not undertaken.

In 1982, Drive-Inn Estate Developers on behalf of Afrison Export Imports Limited applied for subdivision of the 96 acres. Their subdivision plan was on the basis of the estate that they were going to put up on the land.

In 1983, Nairobi City Commission approved the subdivision plan on condition that the developers would surrender free of charge the land that was earmarked for nursery, primary, secondary schools and social amenities.

In 1984, Drive-Inn Developers accepted the conditions of subdivision and surrender. In the same year, the Nairobi City Commission issued a letter of reservation to the Permanent Secretary, Ministry of Education for the secondary school and Ruaraka High school was established in 1984.

It was, therefore, beyond any reasonable doubt confirmed by the Committee that there was, indeed, a subdivision plan that was approved and a surrender that was executed.

Mr. Deputy Speaker, Sir, in 1999, the Commissioner for Lands issued a letter of allotment to the Ministry of Education for Ruaraka High School. In the year 2016, 14 years since the surrender was done, Afrison Import Exports Limited wrote to the National Lands Commission (NLC) claiming compensation for the land on which the two schools stood, alleging that the Government was illegally squatting on private land. This was what set in motion the process of compulsory acquisition.

In the year 2016, the NLC carried out a ground inspection and requested the Ministry of Education to make arrangements to compensate Afrison Import Exports Limited in spite of Section 107 of the Lands Act that required the Cabinet Secretary (CS) or the County Executive Committee (CEC) Member initiate the process of compulsory acquisition.

The report is very detailed. If you have it, I would invite you to look at the very last pages that have the chronology of events. We have laid out every single

correspondence we received. Most of the letters and correspondences that led us to our conclusion came from the Ministries themselves.

Mr. Deputy Speaker, Sir, what went wrong in this compulsory acquisition in Ruaraka? The Committee concluded that the land that the Government bought already belonged to it. The land was surrendered in 1984 and remained public property. It is the conclusion of the Committee that the entire transaction was a fraud.

Mr. Deputy Speaker, Sir, there are persons of interest in this matter. First is the NLC. The NLC insisted that the schools were on private land. They declared the surrender process and letters of allotment null and void and allowed that process of compulsory acquisition to proceed.

Yesterday, we were having a debate when going through the Land Value Index Bill. We are saying that NLC is the gatekeeper and body that is constitutionally empowered to advise national and county governments on matters to do with land. The NLC sat without having a plenary, without producing any minutes and proceeded to say that the letter of allotment that was issued by the Commissioner of Lands in 1999 was an illegality. They went ahead and ignored all the other correspondences that were brought before us by the Ministry of Lands, Ministry of Education and the Governor of Nairobi City County and declared the subdivision and surrender as illegal.

Therefore, NLC bears the greatest responsibility in this matter because they are the experts in matters to do with land. By confirming and taking the side of the developers that this was private land, they allowed the subsequent actions that led to the illegality that we are talking about.

Secondly, the NLC anticipated the compensation claim. In this House, we have a rule that we shall not anticipate debate. How then do you explain that the NLC received on 29th August, 2016 a claim by Afrison Import Exports Limited indicating that they needed to be compensated for historical injustices and, on the same day, the NLC wrote to the Ministry of Education indicating that they had already conducted an inspection and advised Ministry of Education to make arrangements for compensation? Even if one wants to defraud the Government, they need to be cleverer than that.

Thirdly, Mr. Deputy Speaker, Sir, the NLC unilaterally and arbitrarily decided the acreage to be acquired. In a letter, they set the acreage at 13.5364 acres and also established the cost at Kshs3.269 billion. They established the acreage and the cost even before gazetting the intention to acquire the land.

It is interesting that the average cost of land per acre in question is Kshs241,500,000. That is what the Government paid. In Ruaraka, land is going for Kshs241,500,000 per acre. This House needs to quickly pass the Land Value Index Bill so that we provide guidelines on values for compulsory acquisition compensation.

The NLC awarded a 15 per cent disturbance allowance. However, at the point when that award was being made, the old land laws had been repealed and the disturbance allowance had not been restored. In fact, the disturbance allowance had been repealed and was only reinstated on 21st November, 2017 by the Land Assessment of Just Compensation Rules of 2017. It is something that the Senate Committee on Lands, Environment and Natural Resources needs to inquire whether during the period between the repeal of the old law and reinstatement of the law of the disturbance allowance, there

could have been other compulsory acquisitions where the NLC paid the 15 per cent disturbance allowance.

The NLC failed to gazette and carry out inquiries as per Section 112(1) of the Lands Act. Part VIII of the Lands Act require that if you are going to conduct compulsory acquisition, you must first do a notice of intention to acquire and serve all parties relevant to that matter; the schools, the community and everybody else. Later on, you must conduct an inquiry which must be gazetted. They failed to do so, hence violated the Lands Act.

The NLC never bothered to engage the administration or the boards of the schools concerned. When we visited the schools, the principals and the chairpersons of the boards of management told us that the only time they saw NLC was when they went to put up the beacons. They were hopeful that they were finally going to get their title deeds. Little did they know that they were to be used as pawns in a very complicated case of corruption.

Finally, NLC approved the acquisition of 13.7701 acres whereas the original claim was for 13.5364 acres. The decimal point difference sounds like nothing. However, at an average cost of Kshs241,500,000 per acre, even a few decimal point differences can mean a lot of money. That decimal point difference constitutes Kshs51,363,000 which was a loss that was occasioned as a result of that variation.

The second person or the second constituencies of interest are the officers within the Ministry of Education, Science and Technology. The Cabinet Secretary (CS) for Education, Science and Technology set up a task force which was chaired by the Nairobi Regional Education Coordinator, a Mr. John Ololtuaal Lekakeny. This task force did a comprehensive report and advised the CS that the schools were built on public land and even made the conclusion that what the Government should be doing is not buying the land, but processing the title deeds. The CS, Dr. Fred Matiang'i, ignored the recommendations of the task force and instructed NLC to commence the process of compulsory acquisition.

The Ministry of Education, Science and Technology did not have an approved budget for compulsory acquisition. In fact, we were told that the Kshs1.5 billion that was ultimately paid for was money that was reallocated from other votes. The Ministry had to struggle to reallocate funds in a year when there was a financial crunch and at a time when we were going through general elections. Again, the Ministry paid for 13.77 acres despite the original claim being 13.5364 acres. That difference cost the taxpayers Kshs51 million.

The third person and constituency of interest are the companies that lay claim to the original title, 78794. These are Afrison Export and Import Limited, Huelands Limited, Drive In, Whispering Palms and Equator Brent. They were about five companies that had the same shareholdings. They accepted terms and conditions of surrender given by Nairobi City Commission way back in 1983.

They proceeded to develop the land and established residential estate that was eventually bought by the Government of Kenya. Fourteen years down the line, they came back saying that their subdivision was not approved yet those buildings were based on the subdivision plan that they had submitted to the Nairobi City Commission.

Afrison Export and Import Limited failed to indemnify the Government of Kenya for the payment of Kshs1.5 billion. This might sound technical or academic, but the deed of indemnity that was executed bore the name of Afrison Export and Import Limited although the payment was ultimately made to Whispering Palms Limited. What then would happen is that Afrison Export and Import Limited would come up later and say that they were never paid and that can open a backdoor for a future compensation. When we talked to Kenya Revenue Authority (KRA), it was established that Afrison Export and Import Limited are not tax compliant. I said in my earlier comments that this 78794 has earned the owners close to Kshs8 billion in various claims. We have the Kenya Ports, General Service Unit, Kenya Urban Roads Authority (KURA) and now Ministry of Education, Science and Technology.

In the course of this inquiry, Afrison Export and Import Limited went out of their way to frustrate the Committee. They sought and they were granted a court order to bar the Committee from summoning them. I am glad to report that the courts have decided on this matter. Therefore, it is important for us to study that judgment for it will empower Committees in future with regard with its powers to invite and summon witnesses.

Secondly, they sought and obtained a court order barring media houses, particularly Nation Media Group. They were very specific on the journalist. There was one gentleman called Oruko who was barred from reporting parliamentary proceedings of inquiry. As if that was not enough, Afrison Export and Import Limited wrote letters of protest to the Speaker several times saying that the Chairperson and other Members were harassing and extorting them. Today, I stand here proudly because the Powers and Privileges Committee has tested those allegations and has found that they are completely baseless.

We recommend that the Chairman of NLC, Prof. Mohamed Swazuri, be investigated and held responsible for violation of the Constitution, the Land Act and the National Land Commission Act. The process of compulsory acquisition is a process that is mentioned and the role of NLC is mentioned in the Constitution and it is further expanded in the Lands Act and the NLC Act. He violated the Constitution and statute. More specifically, he should be investigated and held responsible for the loss of Kshs1.5 billion and for conspiring to defraud a further Kshs1.7 billion of public funds. The Kshs1.5 billion that was paid was part payment. There is a claim for Kshs1.7 billion. When we started the inquiry, we wrote to Treasury and gave them direct instructions not to release further funds until the Committee completed its inquiry. If we adopt our Report today, it will provide clarity on the way forward.

The directors of the companies involved; Afrison Export and Import Limited, Whispering Palms, Drive In Developers and Equator Brent should be investigated and held responsible for fraudulently acquiring Kshs1.5 billion of public funds and for conspiring to defraud a further Kshs1.7 billion.

The Ethics and Anti-Corruption Commission (EACC) and relevant authorities should trace and recover the Kshs1.5 billion that was fraudulently paid to Whispering Palms and to ensure that the beneficiaries are brought to book and where necessary, assets frozen. We saw in the public domain how this money was treated as soon as it hit the accounts. A sum of Kshs1.5 billion went into bank accounts. Later on, it was

transferred to various accounts. I hope that no one here is associated with any of those accounts.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! You are out of order!

Sen. M. Kajwang': Thank you, Mr. Deputy Speaker, Sir. I was getting carried away.

The Deputy Speaker (Sen. (Prof.) Kindiki): What you are engaged in amounts to imputing improper motives on Members? You need to withdraw your last sentence.

Sen. M. Kajwang': Mr. Deputy Speaker, Sir, let me then restate my last sentence.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! You have no business trying to imagine that there could be any person in this Chamber who is associated with the proceeds of crime.

Sen. M. Kajwang': Mr. Deputy Speaker, Sir, I withdraw.

The Deputy Speaker (Sen. (Prof.) Kindiki): And apologise.

Sen. M. Kajwang': And apologise, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you. Proceed.

Sen. M. Kajwang': Mr. Deputy Speaker, Sir, I would have said as Sen. Wetangula says, 'I withdrew and apologized, but I will make it in the---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Kajwang! Proceed.

Sen. M. Kajwang': Thank you, Mr. Deputy Speaker, Sir. I will proceed with your guidance.

We have said that the EACC should recover the funds. We have further said in our recommendations that the CS and the Permanent Secretary in the Ministry of Education, Science and Technology, Dr. Fred Matiang'i and Dr. Belio Kipsang, respectively, must be held responsible for ignoring the recommendations of the ministerial task force that established that the land was public and ought not to have been purchased and for failure to carry out due diligence as required in the Lands Act.

We have also recommended that the CS and the PS in the Ministry---

(Several Senators spoke to Sen. Kajwang')

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senators! No shouting across the aisle. You know what you are supposed to do. You can rise on a point of order or information, but you cannot shout.

Sen. M. Kajwang': Thank you, Mr. Deputy Speaker, Sir. It is the Principal Secretary. Where I have said Permanent Secretary, the HANSARD should strike out Permanent and put in Principal.

The CS and PS, Ministry of Education, Science and Technology should be held responsible for the loss of Kshs1.5 billion and for conspiring to defraud a further Kshs1.7 billion of public funds.

The Intergovernmental Relations Technical Committee (IGTRC) must hasten the process of identification and verification of assets and liabilities of defunct authorities so as to stop any further loss of public property.

If you put it in context of the seven municipalities that used to run public schools, including Nairobi, Mombasa, Kisumu, Nyeri and several others, the primary schools were assets of those councils. Have they been transferred properly to the national Government? Where the national Government or those councils used to run nursery schools, is that transfer process complete? The IGRTC recently told us that they have established about Kshs200 billion in form of land that has not yet been accounted for previously.

Mr. Deputy Speaker, Sir, we have recommended that the KRA must assess the tax obligations of Afrison Imports and Exports Limited and related companies so as to ensure that action is taken promptly to bring into place tax compliance.

I will let a few of other issues to be handled by my Committee Members and the House because this inquiry generated great interest from the members of public. At the best of times, it elevated the role of the Senate as an overseer and defender of public funds. However, I must admit that there were low moments. I am glad that those moments have now been dealt with properly and in a definite manner by the Powers and Privileges Committee.

Mr. Deputy Speaker, Sir, we must ask the EACC, the Director of Criminal Investigations (DCI) and the Director of Public Prosecutions (DPP): What is so special about this Ruaraka matter? This is because on more than two occasions, we have been told that the files have been sent back to the EACC by the DPP. The DPP came before a Committee of this House – I believe it was the Committee on Legal Affairs, Justice and Human Rights – where he gave assurances that within a defined timeframe, prosecutions would commence. Why this taking so long, yet other matters are being handled with gusto? That is a question that these bodies must answer to this Country.

As I said earlier, Parliament must also protect it is oversight committees from attacks by persons who have been indicted. The delays by the IGRTC in identifying assets and liabilities of the defunct local authorities, is also a major fiscal risk.

Finally, Mr. Deputy Speaker, Sir, as I said earlier, the Government has paid almost four times for this land. Consequently, there is currently an outstanding claim exceeding Kshs26 billion that has been made to Nairobi City County with respect to persons who have settled on that parcel of land. I, therefore, want to encourage the Committee that deals with security to look at the matter of compensation for the General Service Unit (GSU) land of Kshs4 billion, which was paid to buy houses that the Government commissioned in 1981 and paid for fully.

The Committee on Roads and Transportation need to look at the payment of Kshs700 million by Kenya Urban Roads Authority (KURA) for roads and easements which were done on areas that were clearly designated on a subdivision plan. That money should not just disappear like that.

The Committee on Devolution must also find out more about this claim that Nairobi City County is sitting with of Kshs26 billion. If Nairobi was to pay this amount, it would be bankrupt because what we give them is not even close to that.

Mr. Deputy Speaker, Sir, oversight role is a shared responsibility of various Committees. Today, the CPAIC has submitted its report with respect to land. I also hope that the Committee on Lands, Environment and Natural Resources and the Committee on

Education will take up some of the loose ends that we have left open. For example, the Committee on Lands, Environment and Natural Resources should now make sure that the title deeds are issued in favour of the schools if this House confirms the reports and findings of the Committee that, indeed, that was public land.

Mr. Deputy Speaker, with those many remarks, I beg to move the Motion. I request one Member of my Committee, the Senator for Narok County and related Maasai territories, Sen. Olekina---

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Kajwang! Order! The Senator for Narok County remains to be so, and has no extra territorial jurisdictions. Nevertheless, well done, Sen. M. Kajwang.

Sen. M. Kajwang': Thank you, Mr. Deputy Speaker Sir, I beg that Sen. Olekina seconds.

(Interruption of debate on Motion)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM THE PARLIAMENT OF MALAWI

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon Senators, before I allow Sen. Olekina to second the Motion, I have a brief communication to make.

I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of a delegation visiting us from the Parliament of Malawi. The delegation is comprised of a Commissioner of the Parliamentary Service Commission of Malawi, Members, staff and representatives of their development partners. I request each member to of the delegation to stand when their name is called out so that they may be acknowledged in the Senate tradition. They are:

- (1) Hon. Ralph Jooma, Member of the Parliamentary Service Commission of Malawi and Leader of the Delegation;
- (2) Hon. Maxwell Thyolera, Chairperson of Legal Affairs Committee;
- (3) Hon. Lingison Belakanyama, Chairperson of Public Appointments Committee and Member of the Legal Affairs Committee;
- (4) Hon. Dr. Allan Chiyembekeza, Member of the Legal Affairs Committee;
- (5) Hon. Patricia Mkanda, Chairperson of the Privileges Committee;
- (6) Hon. Martha Lunji, Member of the Legal Affairs Committee;
- (7) Hon. Bonface Kadzamura, Member of the Legal Affairs Committee;
- (8) Mr. Jefferey Mwenyeheli, Assistant Clerk of Parliament, Table Office and Clerk to the Legal Affairs Committee;
- (9) Mrs. Tilly Likomwa, Assistant Clerk of Parliament, Legal Services Division;
- (10) Mr. Lovemore Nyongo, Controller of Planning;

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- (11) Mr. Frederick Kamwani, Clerk to the Privileges Committee;
(12) Mr. Martin Phiri, Programme Manager for Africa Institute for Development Policy (AFIDEP);
(13) Mr. Lucius Chipendo, Ministry of Finance;
(14) Mr. Richard Santhe, Ministry of Justice;
(15) Dr. Ronald Manangani, Consultant; and,
(16) Mr. Chikondi Kachinjika, Financial Controller.

Hon. Senators, in our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful stay in this Country.

Thank you.

(Applause)

The Senate Majority Leader (Sen. Murkomen): On a point of order, Mr. Deputy Speaker Sir.

The Deputy Speaker (Sen. Prof. Kindiki): What is it, Senate Leader Majority?

The Senate Majority Leader (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir. I also join you in welcoming our visitors from a friendly country to this Senate. I hope that we will have time soon to also visit or “to revenge” by visiting their country and their Parliament.

PROCEDURAL MOTION

LIMITATION OF DEBATE ON MOTION

Mr. Deputy Speaker, Sir, the reason I am rising on a point of order is that pursuant to Standing Order 106(3), I want to move a Motion that the debate on the Motion be limited into the following manner; that a maximum of ten minutes each for the Leader of Majority and the Leader of Minority; and a maximum of five minutes for all other Senators.

Mr. Deputy Speaker, Sir, I am mindful of the fact that even the Statement of the Senate Majority Leader has not been read and there is pending business on finance. Knowing that many Senators are expressing their desire to comment on this Report and the fact that all of us want to say something about it; I beg to move as such and ask Sen. Mahumud to second.

Sen. (Eng.) Mahamud: I second, Mr. Deputy Speaker.

(Laughter)

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

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

Sen. Khaniri: Mr. Deputy Speaker, Sir, I want your guidance on that particular Standing Order No.106 (3) that Sen. Murkomen stood on. I do not know whether he is in

order because the provision of that Standing Order, to my understanding, is that this kind of Motion cannot be moved when debate is going on.

It states that-

“A Motion under paragraph (2) shall not be made in the course of the debate to which it refers unless it is moved after the adjournment of such debate and before the debate is resumed”.

Can I get your interpretation on that?

The Deputy Speaker (Sen. (Prof.) Kindiki): You will certainly get it Sen. Khaniri. Debate has not begun; it begins after the Motion has been moved, seconded and a question proposed. Therefore, we want to get the feelings of Members. Otherwise, we will just dispose of that Procedural Motion in the normal manner.

(Question proposed)

(Question put and agreed to)

(Applause)

The Senate Minority Leader (Sen. Orengo): On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Senate Minority Leader?

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, I wonder whether you will give us a little more time, for example, 10 minutes. Not for me, but for everybody else to at least acknowledge the presence such a large delegation from Malawi. If it was a small delegation, I would, probably, overlook it.

The Senate Majority Leader was a bit restrained; you could give him more time.

The Deputy Speaker (Sen. (Prof.) Kindiki): He had already spoken to it. We do not have plenty of time. The Senate Majority Leader had expressed his sentiments. It is just a matter of showing courtesy to our colleagues. Therefore, we will not spend more than the Senate Minority Leader has requested for, that is a maximum of ten minutes for everyone who would want to welcome our colleagues in the Speaker's Gallery.

Proceed, Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Thank you, Mr. Deputy Speaker, Sir. I welcome our brothers and sisters from Malawi which is a great country. However, for those who were not alive when President Kenyatta was ruling this country, the closest Heads of States to President Kenyatta was Haile Selassie and Kamuzu Banda. This is a friendship that was establishment long before our two nations became independent.

I also want to acknowledge the presence of the delegation of hon. Members of Parliament for outdoing us by having a woman President for the Republic of Malawi. Next week, our National Assembly is dealing with issues of gender. I hope that in realization of what Malawi has achieved, we will join them in trying to pursue that particular legislation. Otherwise, we hope that in our lifetime, we will be able to move services and people from one country to another, not only in Central and East Africa, but the entire continent.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Senate Minority Leader. I see no further requests. However, in any case, the two leaders have spoken. Therefore, our colleagues should feel welcome.

Sen. Olekina, you can now second the Motion.

(Resumption of debate on Motion)

Sen. Olekina: Mr. Deputy Speaker, Sir, the time limit does not affect me or does it?

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

(Sen. Khaniri consulted loudly)

Order, Sen. Khaniri! You are one of the longest serving Members of Parliament (MPs) in this country. You have done so well in terms of adhering to Standing Orders. You have just risen on a point of order just now on a matter of procedure. You should be the last person to communicate by way of shouting.

Sen. Khaniri: Mr. Deputy Speaker, Sir, I did not shout.

The Deputy Speaker (Sen. (Prof.) Kindiki): I could see you advising Sen. Olekina from your seat. Just press the button and say what you want to say. It is simple and clear.

Sen. Olekina took the advice. However, the Chair knows that the limitation of time does not apply to him.

(Laughter)

Proceed to second, Sen. Olekina.

Sen. Olekina: Mr. Deputy Speaker, Sir, I rise to second the Motion that this House do adopt the report on the Sessional Committee on the County Public Accounts and Investment Committee (CPAIC) on the inquiry into the possible loss of funds through the acquisition of land for public use.

Mr. Deputy Speaker, Sir, I want to limit my remarks on three issues. From the onset, before I get into the substantive issues of this report, I would like to thank the Powers and Privileges Committee for having taken their time. This was a very emotive issue that brought a lot of questions in the integrity of this House.

Mr. Deputy Speaker, Sir, the reason we are called distinguished Senators is because the Senate is a House of reason that unites the entire Republic of Kenya. When we are here, we are tasked with one responsibility. The Constitution is clear that our role under Article 96 is to protect the interests of our counties and their governments.

Mr. Deputy Speaker, Sir, this issue of Ruaraka Land is something which has divided us. At one point, in this House, it was difficult to tell who is in opposition and who is in Government. However, today, I dare say that by the end of debate on this report, that division will once again be very clear.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! You cannot anticipate debate. You are out of order! Please, second the Motion.

(Several Senators rose on points of order)

The points of order are overruled.

Sen. Olekina: Mr. Deputy Speaker, Sir, I stand guided.

Martin Luther King once said that in the end, we will remember not the words of our enemies, but the silence of our friends. The most important issue here is the issue of fiducial responsibility. The question which we were tasked as a Committee is to investigate whether public lost money. That is the task we were given and that is what we set out to do. As a Member of that Committee, I had anticipated that once we conclude our investigation, we would be able to bring our report to this House and give the Members an opportunity to be able to interrogate the report, so that when each Member stands here, they can refer to it.

Yesterday we were discussing about the issue of compulsory acquisition of land, while passing the new law. That is one of the issues that we focused and conversed on, in the process of acquiring the Ruaraka land. During the time of our inquiry, we invited and visited all the stakeholders in this matter. One of things we found was that the NLC, the PS and CS of the Ministry of Education, Science and Technology came in here and presented their own direction. So, what we are presenting here, is what the Committee observed. These recommendations are the facts as were presented before us. There was nothing personal, but the issues of fiducial responsibility.

Mr. Deputy Speaker, Sir, when we interviewed the PS, Dr. Belio Kipsang', he presented the documents on the process of acquiring that land for the two schools. However, we poked holes in his submissions. One of the things that was very clear he had set up a Committee headed by a gentleman called Mr. John Ololtuaal Lekakeny. That is where I want to begin my submissions in the issue of this transaction.

Mr. Deputy Speaker Sir, I thought the Ministry would have implemented the report by the taskforce for the following reasons. First, when you establish a taskforce, you are using public funds for them to go out and investigate whether that piece of land belongs to the public or it is a private land.

At that point, the taskforce found out the following:

“The Nairobi Regional Coordinator for Education, Mr. John Ololtuaal Lekakeny, filed a letter Ref No.CQAS/KAS/8/16 dated 3rd February 2017, which is annexed to this report, writing to the Principal Secretary, Ministry of Education, Dr. Belio Kipsang, forwarding a copy of the assessment report on quality assurance and standard of the Ruaraka High School.”

In one of the recommendations he made in the report was that the land on which the school was situated was a surrendered portion of land, for public utility. The claimant had, therefore, no basis for compensation.

Mr. Deputy Speaker, Sir, I would have expected my good friend, Dr. Belio Kipsang, because he is the Accounting Officer, to halt the process immediately because the taskforce had established the land in question was a public land. However, when we

have a situation where as the Accounting Officer pressure is put from all corners, the next move Dr. Belio Kipsang did was to write the CS, then Dr. Fred Matiang'i and Treasury about the findings of the task force.

However, I do not understand what made the CS to ignore the report and the recommendations of the taskforce. Subsequently, according the documentation presented by Dr. Belio Kipsang when he appeared before us, the transaction proceeded.

Mr. Deputy Speaker, Sir, when we look at the current Land Act and the process of compulsory acquisition, there is a particular process that ought to be followed. I do not want to belabour on those annexures. However, they are in this report. Any Kenyan can come to Parliament and get a copy of this report. He will be able to see that there was a rush in the Ministry of Lands, particularly from the NLC, to ensure that this transaction took place.

The Ministry of Education did not have money to buy this land. So, they involved the national Treasury. I would have thought that before Treasury makes any move forward, the first question they would have asked themselves is the instruments of ownership. They would have carried out due diligence before the purchase was done. I am sure the distinguished Senators here from both sides of the aisle, are business people or have engaged in a transactions of buying property. Before you proceed and you pay money which you have worked so hard to earn, you ought to carry out r due diligence. One of the most important things that you must have, are the instruments of ownership. In this case, it is a title deed.

Mr. Deputy Speaker Sir, the Chairperson of the Committee submitted here that, the process of the subdivision of the land---

(Loud consultations)

Mr. Deputy Speaker, Sir, please, protect me from the Majority Leader.

The Deputy Speaker (Sen. (Prof.) Kindiki): Easy, Sen. Olekina.

Sen. Olekina: I was asking you to protect me from the Senate Majority Leader.

The Deputy Speaker (Sen. (Prof.) Kindiki): What has the Majority Leader done?

Sen. Olekina: Mr. Deputy Speaker, he was disrupting me when I was speaking. I want to concentrate because I believe that Kenyans who pay me a salary ought to know what I do in this House. I would beg that the Senate Majority Leader listens because I have not pointed---

The Senate Majority Leader (Sen. Murkomen): On a point order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! What is it, Sen. Murkomen?

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, is it in order for Sen. Olekina to insinuate that when he sees me he loses concentration? I just walked in and sat on my seat. Where will I go and I am supposed to be here? He can as well look elsewhere, he does not have to look at me.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Olekina, proceed.

Sen. Olekina: Thank you, Mr. Deputy Speaker, Sir. I can look at the distinguished Senator at any given time and I will not get confused. However, when he is talking to me and I am really trying to follow through, then it brings in other issues.

Mr. Deputy Speaker, Sir, during a process of compulsory land acquisition, the law provides various steps to be followed. For example, all stakeholders must be involved. During the submissions of the NLC to our Committee, our Committee observes that NLC did not follow the all steps in order to ensure that anyone who had a stake in this land could lay claim to it. That point was re-emphasized by the head teacher and the Board of Management of Ruaraka High School during our visit to the school.

When we visited the school, we were lucky to find one person who has been on the board for a very long time - it dates back to when I was a young boy when the school was started - and his memory was clear. He said that there was no way the land could be private because they have been there for long and they know that it is public land. He added that the law provides that various notices have to be published so that they can also lay a claim.

If you look at the annexures, documents and *Gazette* notices which were presented by the National Land Commission (NLC), you will realise that the NLC deliberately failed to carry out due diligence to ensure that if there was anyone with a claim on the property, they were given opportunity to lay their claim.

Regarding the issue of instrument of ownership, which my good friend, Dr. Belio Kipsang raised a question on, currently as we sit in this House, no one knows whether the interests of the taxpayers were taken care of. No one can tell whether the Kshs1.5 billion which was paid to the directors of Huelands Limited and Afrison Export and Import Limited has been protected.

During the presentation by the Governor of Nairobi City County, he clearly indicated that that piece of land was surrendered to the public. However, no one, not even the National Treasury before releasing the money or Parliament before coming up with the Supplementary Budget, ensured that before any payment was made, at least they had the title deed of that land. That is why it is important for distinguished Senators in this House today to divorce themselves entirely from any political interest, so that we prosecute this matter squarely based on facts.

Nothing would have stopped the directors of Huelands Limited and Afrison Export and Import Limited from going into any particular commercial bank knowing that--- One of the observations was that about 35 acres of land was sold to the Ministry of Interior and Coordination of National Government, where the General Service Unit (GSU) houses were built. It is also worth noting that the Government also bought some land which was reserved for roads.

I dare say that even as we speak right now, if it was not for the move by the current Cabinet Secretary for Lands, Hon. Farida Karoney who I thank so much for putting a caveat on that portion of land of 96 acres, maybe the owners of Afrison Export and Import Limited and Huelands Limited would have gone to any commercial bank with

the title deed and gotten a loan. The issues here are very sensitive because we are dealing with public money.

We recommended that Dr. Matiang'i, the former Cabinet Secretary for Education, should take personal responsibility because he had been informed by a task force that that piece of land was public land. However, he went ahead and confirmed the transaction.

We also met officers working for the Kenya Revenue Authority (KRA). In their submission, they clearly stated that the two companies were not registered with the KRA and as such they are not tax compliant. What exactly are we doing when we say we want to protect public money? On one hand, we are borrowing money left, right and centre but on the other hand, officers of the KRA are saying they cannot raise the money. In fact, before releasing the Kshs1.5 billion, the first thing I would have expected to happen was that hypothetically, if that land was private land, the taxman should have got his share. When the taxman comes before us and says that the two companies are not registered with the KRA, what exactly are we doing? What stops anyone out there from getting friends all over and committing public funds?

Mr. Deputy Speaker, Sir, Kenyans will judge us. I want to repeat the quote that I started with; that in the end, as Martin Luther King Jnr. said, we will remember not the words of our enemies but the silence of our friends. The friends we have right now are those kids in Ruaraka who have been living there. For many years, that community has believed that, that is their land.

(Sen. Olekina's microphone went off)

The Deputy Speaker (Sen. (Prof.) Kindiki): Your time is up because you misused it doing unnecessary things. You have one more minute.

Sen. Olekina: Mr. Deputy Speaker, Sir, as I conclude, I would like to go straight to our recommendations, which I stand by. I believe that the only way we can get justice is for the Directorate of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC) to move expeditiously to recover the Kshs1.5 billion and put it back into the public coffer. I strongly believe that the Chairperson of the NLC should take personal responsibility like we have recommended in the Report. I believe that the then Cabinet Secretary for Education, Dr. Fred Matiang'i, should also take personal responsibility on this matter because he ignored the report by the task force that was formed.

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

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Olekina, I will excuse you. Normally, when you have important business to transact, the best way is to do it within the rules.

Hon. Senators, I will now propose the question.

(Question proposed)

The Senate Minority Leader (Sen. Orenge): I thank you, Mr. Deputy Speaker, Sir. First of all, I would like at the very onset to congratulate the Committee for the work

they have done in record time. Looking at what they had to do in that period, they have done a wonderful piece of work. Just going by the documentation they had to go through and knowing how complex land issues are, to that extent, these Members deserve a pat on the back.

Mr. Deputy Speaker Sir, I begin by saying that it is in the Bible where it is said that it is impossible for a rich man to go to Heaven and if he is going to go to Heaven, it is like going through the eye of a needle.

In this country, we have cartels and cabals that however small the eye of the needle is, they will always get through. The saga surrounding this piece of land clearly shows that these characters, whatever you do, they will always get a way out.

I want to remind us that it is for these reasons in both the pre-colonial and post-colonial periods that we had legislation to ensure that public resources and assets are dealt with in a particular way. That is why we now have the Public Procurement and Disposal Act. In relation to land, not only in the old days but even in the current regime of land laws, there was a particular process for the acquisition of public land and the rest.

Therefore, in looking at this Report, I do not want to go through the details and the facts because they are there. There are paragraphs dealing with the facts as presented, findings from the facts and the recommendations. This Report was done in such a way that it is easy to read and make a determination whether there is substance on this Report or not. For that, I think the Committee should be commended.

Having said that, I want to invite my dear friends and Senators in this Chamber that this Report as it stands, has made findings and recommendations. Our role includes that of oversight which is very important. I would want to urge the House that these recommendations that have been made by this Committee are recommendations that follow the facts and the findings of the Committee. I think the Committee has not arrogated to itself the responsibilities to give directions, let us say to the Director of Public Prosecution (DPP). They have not taken upon themselves to make directions to the Ethics and Anti-Corruption Commission (EACC) or for that matter to other State institutions.

They have given recommendations. On that basis, I would presume that nobody in this House would be afraid or reluctant to allow a process after this, if we approve this Report, where these matters are fully investigated in the realm of various legislation including the land laws, the laws applicable to the criminal justice system and the other statutes that govern procurement and disposal of public assets, so that we know the complete truth based on the facts and recommendations made by this Committee.

From this Report, you will realize that a lot of this information did not even come from private citizens. It came from public offices, state offices, public bodies and the documentation, which are part of the public record. Therefore, for us to disagree with this Report, it will be terribly unfortunate because what they are saying is that, having made these findings and recommendations, the state institutions charged with the responsibility of investigation and prosecutions should take over this matter. I think to that extent, nobody should find fault with this Report.

This Report came at a time when the main saga was being discussed in the National Assembly. Simultaneously, we are also dealing with the issue of land and this

particular land that affected the life and interest or education of young people who were students in the particular schools involved. The public there is waiting to find out what we will do with this Report.

The Report will also enable us, in this new dispensation or new climate where we are saying there are no sacred cows---- I think now I have the confidence that unlike in the past, there is no sacred cow. We need to go an extra mile to ensure that what the Government is currently doing in fighting graft and grand corruption is carried on without fear of favor. Certainly, the recommendations that have been made by this Committee are matters that cannot be wished away and the students in these schools will expect not only a full inquiry but also action to be taken by the responsible institutions of Government.

I also hope that the timelines given in this Report, and they are very reasonable, I think they were made on the basis that if this Report is passed, then these recommendations should be implemented or be attained within the timelines that have been given in the recommendations. Those are very reasonable timelines. There are also recommendations to do with ourselves that certain committees of Parliament should follow certain matters that are clear from the Report within certain timelines.

At the end of the day, and my final remarks is that, if you elect to be a public officer in a democracy which has a constitution like ours, with Article 10 as it is, and also you have the Chapter on Leadership and Integrity, Chapter 12, which deals with the principles of public service, you should expect that your life will never be easy because you know whenever such reports come out and somebody's name appears, then it suddenly takes a very different perspective.

People begin to take positions which are ethnic and parochial. For us to deal with this animal called graft, if there are any suspicions or inquiries being made on anybody who is in the public service, including myself, public officers should be the first to offer themselves to that process of inquiry. That way, at the end of the day, we can then be confident that we have people in public offices who are ready to live by the dictates of the law of the land, and ensure that we have strong institutions which will do justice to the people.

Therefore, Mr. Deputy Speaker, Sir, the names of the people who have been mentioned here, and there are several names of people of interest, should not be worried. Even in the United States of America (USA), President Trump is a person of interest in some of the inquiries that are ongoing. However, if you mention the name of somebody in Kenya, it is like you have committed treason. Other than River Jordan, this is another river that we should cross.

(Laughter)

I can assure my friend from Kericho County that there are no crocodiles in this particular river.

(Laughter)

I beg to support.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Minority Leader! You cannot have crocodiles on dry land; there is no water around Ruaraka.

The next speaker will be Sen. Cherargei.

Sen. Cherargei: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I have gone through the Report and I agree that protection of public land is very important. Just the other day, I heard the President indicating that most of the schools should be given ownership documents. I agree that most public institutions in this country only have possession, but not ownership.

Mr. Deputy Speaker, Sir, I have heard one colleague discussing about ownership and possession. I know that ownership means that you should prove it by having the instruments of ownership. I also agree that any public institution should have their land secured. I know the Constitution has provided for public institutions to get public land and also on the issues of private land. I have also seen that the Report says that we need to protect the interests of our public institutions. Many recommendations have been made and I have heard the Chairperson, Sen. M. Kajwang', has tried giving us a snap shot of what this Report is all about. I agree that there are so many recommendations about various Committees. The Committee that has received a lot of attention, just like graffiti on a *matatu*, is the Committee on Justice, Legal Affairs and Human Rights.

Mr. Deputy Speaker, Sir, as the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, I assure this House, that whichever decision this honourable House and the distinguished Senators will take on this Report, we are ready to ensure that we follow up on the timelines that have been provided for the various committees. The committees that have been mentioned are: The Committee on Education; The Committee on Land, Environment and Natural resources and the Committee on Justice, Legal Affairs and Human Rights. I have seen a raft of recommendations.

Mr. Deputy Speaker, Sir, this Report will form a basis and a standard of how we can ensure that the land of our public institutions is not encroached on. I assure this House that our Committee will look through it to ensure that we follow up on the decision of the Senate.

I agree that the Committee has tried to do a lot. They have spoken to the relevant agencies and they have done their work. I commend Sen. M. Kajwang' and Committee Members for taking their time and talking to the relevant people. This is one of the reports that has shown the seriousness of this House, and Sen. M. Kajwang' has risen to the occasion. As the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, we shall take the recommendations upon the decision of the Senate.

Finally, Mr. Deputy Speaker, Sir, we need to protect the public. I commend the President because the just other day, during the funeral of Bishop Njenga, he directed that any sponsor to public institutions, especially schools, should be given instruments of ownership. I do not know why the Chairperson, Sen. M. Kajwang', is smiling sheepishly as I express this.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Cherargei! Neither does the Chair know.

(Sen. M. Kajwang' stood up in his place)

What is it Sen. M. Kajwang'? Could you address us on the 'sheepish' smile?

Sen. M. Kajwang': On a point of order, Mr. Deputy Speaker, Sir. Even if it was a matter of imagery, at least Sen. Cherargei ought to have said that I am smiling 'fishily.'

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Cherargei, what has sheep got to do with the Senator for Homa Bay?

Sen. Cherargei: Mr. Deputy Speaker, Sir, the Senator for Homa Bay appears innocent on the issues that I am raising.

Let me conclude by saying---

The Deputy Speaker (Sen. (Prof.) Kindiki): Your time is up; you have one minute.

Sen. Cherargei: Mr. Deputy Speaker, Sir, this Report should form the basis of how we engage in future in terms of ensuring interests on public property and institutions are protected.

Thank you, Mr. Deputy Speaker, Sir.

Sen. Pareno: Thank you, Mr. Deputy Speaker, Sir. I rise to support this important Motion and Report. Looking at it, I was wondering how important this report is to this country. Looking at the recommendations that have been made by this Committee, I wonder whether we should have given more time for this debate on this particular matter.

Mr. Deputy Speaker, Sir, I applaud the Powers and Privileges Committee for clearing the Members of the Committee on Public Accounts and Investments on the allegations that had been made. If anybody had evidence pointing to any malpractice, then those people should have come forward. There was no such a good opportunity other than being given a hearing by the Powers and Privileges Committee. Therefore, the fact that they did not turn up shows that they were trying to intimidate this Committee from performing its duties.

Mr. Deputy Speaker, Sir, Members of this Committee informed me that they were also being threatened. This is not the first time that Members of a Committee are being threatened when they are performing their duties. You heard that letters were written, even to the Speaker, on mere allegations. You heard that even the press was being intimidated not to cover what was happening within the Committee, and names have been given.

Mr. Deputy Speaker, Sir, we also saw in the newspapers that those who are used to impunity in this country were actually busy trying to intimidate this Committee through newspaper reporting these false allegations. Why did they not come before the Powers and Privileges Committee to bring forth their concerns? The conclusion I can make is that they had no allegations. They were only trying to intimidate this Committee not to perform its duties.

Mr. Deputy Speaker, Sir, I do not know what else we can say for this country on matters corruption. How can a government or a Ministry purport to compensate for land

that belongs to the Government? How can a government compensate or purport to buy land from itself? What other levels of impunity do we want exposed or shown in this country?

I am so happy that this Committee has come out so boldly to the extent that they have mentioned names. That, the Cabinet Secretary, Dr. Fred Matiang'i, the former Chairman for the National Lands Commission (NLC), Mohammed Swazuri and several other officers, by name, should be investigated and prosecuted. The issue is, will they be investigated and prosecuted as recommended by this Committee? It is upon us, as the Senate, to follow up on the resolutions of this Report after we pass it today because I believe we will pass it. Shame on anybody who would want to divert---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! You are out of order.

Sen. Pareno: Sorry, Mr. Deputy Speaker, Sir. I withdraw the word "shame".

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you. Not the word "shame". What you should withdraw is to direct debate by saying anybody who has a certain opinion is categorised in the manner of shame.

Sen. Pareno: That was not my intention, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): In fact, withdraw the entire sentence

Sen. Pareno: Mr. Deputy Speaker, Sir, I withdraw the entire sentence because it did not really reflect my intentions

The Deputy Speaker (Sen. (Prof.) Kindiki): And apologise to the House.

Sen. Pareno: I apologise, Mr. Deputy Speaker, Sir.

I applaud the Cabinet Secretary (CS) for Lands, Madam Farida Karoney, who happens to be a schoolmate. The report that we have is that she actually upon suspecting foul-play---

The Deputy Speaker (Sen. (Prof.) Kindiki): Senator, are you applauding the CS because she is a schoolmate?

Sen. Pareno: No, I am proceeding to say why I am applauding her.

The Deputy Speaker (Sen. (Prof.) Kindiki): So, it is just by coincidence that you went to school together?

Sen. Pareno: Mr. Deputy Speaker, Sir, I am simply just happy that a schoolmate has come out strongly on this one.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Your time is up. I will give you one minute to conclude with your schoolmate's issue.

Sen. Pareno: Thank you, Mr. Deputy Speaker, Sir. I wish to applaud her because immediately she suspected that there was foul-play she put a caveat on this land. We would have lost much more money than we are claiming right now. For that cause and her actions, public money was not lost.

Finally, upon the Kenya Revenue Authority (KRA) realising that these alleged fraudulent companies were not registered, what did they do? Have they followed up? Do we have any cases to recover the money owed to the taxman from these companies? It is

time we acted and I urge this House to approve and positively support this Report. We should follow up to ensure that those mentioned are prosecuted upon investigation.

I support.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well, Sen. Pareno, even if you did not say, you will not disclose the school you went to with the CS for Lands?

(Sen. Pareno spoke off the record)

Order, Senator! You cannot speak after we have spoken on a Motion. Now, next I will give the floor to the Senator for Kericho County, Sen. Cheruiyot.

Sen. Cheruiyot: Thank you, Mr. Deputy Speaker, Sir, for giving me this chance to also share my thoughts on this brilliant work done by our colleagues in the Committee on County Public Accounts and Investments (CPAIC). Despite all the tribulations and the things that have been said about you, I want to say that, on this one, you have navigated smoothly and well. You are a good driver, Senator for Homa Bay.

I want to congratulate you because this is a matter of extreme public interest. Many people were looking at the Senate wondering if we would be able to live up to our billing as being the House of order and honour by doing the kind of work that you have done. I have read through almost 100 plus point by point issues, the way you have brought them out in your Report.

I must commend you and wish that we could perhaps have the same kind of expose in many of the CPAIC issues especially things to do with how public funds are spent in counties so that we get to debate matters to finality and with better information.

I know it is never an easy thing to do the right thing in this country because many a time we have been told that corruption fights back. When you try to do the kind of thing that CPAIC was doing, allegations are bound to be made, mud is bound to be thrown your way and the kind of things that we have heard about this Committee are bound to come out. Therefore, I commend you.

I have read through the recommendations about how taxpayers' money was fraudulently lost and how these institutions – the two schools involved in this saga – ended up losing their land and having to buy it back, of course being paid through taxpayers' money.

I want to proceed further and say that there are maybe one or two things that are still not clear in my mind. Sen. Moses Kajwang', I do not want to take the shine off you at this particular moment and the kind of work that you have done. I agree with you entirely that the Kshs1.5 billion must be reverted to taxpayers. On that one, I am with you 100 per cent. However, you know the philosophy of law is that you would rather have 99 criminals roaming around in the streets than one innocent man being sent to jail.

Sen. Kabaka: Without evidence!

Sen. Cheruiyot: Yes, without proper evidence. Reading through your recommendations and that---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. (Dr.) Kabaka. You cannot carry out tuition in the Chamber. You are engaging in tuition. I do not know where the Senator for Kericho has paid fees!

(Laughter)

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, you know I advise Sen. (Dr.) Kabaka on many other things. So this is one of the moments he gets to advise me.

(Laughter)

Mr. Deputy Speaker Sir, anyway, just in quick conclusion, because I know my time is about to be up, it is curious to me that in all the actors and those involved in this particular process, the recommendation is that they be investigated to see what was the culpability; what their role was.

However, on recommendation No.9 it says that that Dr. Matiang'i and the Permanent Secretary, Dr. Belio Kipsang should be held responsible then further be investigated. I thought the neater thing to do would have been just like for the rest of the people mentioned in this Report, let them be further investigated just like you have recommended for the NLC who you have pointed out very clearly in your Report, that even before they made the payment, there were instruments they were supposed to have had in their possession, which they did not have.

Therefore, if there was an issue of being held responsible, those should have been your first culprits that you should have held responsible then investigated. It is my humble submission that, if possible, please amend recommendation No.9 so that the CS and PS should be investigated just like the rest of all those mentioned but do not hold them responsible.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Sen. (Dr.) Kabaka, you may proceed.

Sen. (Dr.) Kabaka: At long last, thank you, Mr. Deputy Speaker, Sir. I have earnestly waited for this opportunity so that I can add my voice to this monster of land fraud in this country.

I support the other Senators who have spoken before me with regard to the Ruaraka land saga. The money which was obtained fraudulently ought to be recovered and the thieves put behind bars. The problem in this country is that land fraud menace must be eliminated to protect the wealth of the nation. This is because we know that wealth is derived nowhere other than from land.

It is within the public domain that the headquarters of the Ministry of Lands, situated at Community's Ardhi House has 12 floors. However, more often than not, you hear parties talk about documents that have been manufactured or prepared on 13th floor. Once those documents, which are fake titles, are prepared and some conveyance is done it means that, therefore, like we say in law, no one can give better titles than where it belongs or than he has. The principle of *nemo dat non quod habet*.

(Loud consultations)

I saw the honourable Speaker appreciating.

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The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Leader of Majority. There is no intimidation here.

Sen. (Dr.) Kabaka: Absolutely!

The Deputy Speaker (Sen. (Prof.) Kindiki): Any Senator who is facing difficulties can seek a clarification.

Proceed Sen. (Dr.) Kabaka. You are doing very well.

Sen. (Dr.) Kabaka: Thank you, Mr. Deputy Speaker, Sir, for that appreciation.

These counterfeit titles which are prepared by cartels along River Road are fake documents. The operation involves the entire range of transactional stationery used in Ardhi House. Those guys are completely equipped with rubberstamps. They even have experts who forge the signatures of senior officers of the Ministry of Lands and the registrars. These cartels are very sophisticated. With due respect to my learned colleagues, they also have very good lawyers. When these matters are taken to court, lawyers will apply for injunctions and so forth. It will be a ping pong game.

In the meantime, these cartels, especially in Nairobi, are known to move around identifying some properties whose owners are either deceased or those who have relocated to foreign countries especially targeting the Asian Community and *Wazungus*. They ultimately forge their documents and “sell”, because that sale is illegal, those properties at very hefty proceeds. Those are the proceeds which are used to run the rings around the cartels for many years.

Mr. Deputy Speaker, Sir, since they are now known, they have moved to other big towns such Eldoret, Nakuru, Mombasa and Kisumu where we have very old land registries and they are doing exactly what they have done in Nairobi.

Land fraud is widespread and has inflicted suffering and loss to many families as well as investors who have either lost land or money to these fraudsters. I can say with confidence that these fraudsters have created a parallel registration system to that of the Government. I was watching the Senate Minority Leader, Sen. Orendo, when he was talking at length about what is happening. I would especially have wanted him to mention something when he was a Minister for Lands, what exactly happened but he kept away from that reality.

Mr. Deputy Speaker, Sir, it is very interesting to note that---

(The red timer went off)

The Deputy Speaker (Sen. (Prof.) Kindiki): Your time is up, Sen. (Dr.) Kabaka.

Sen. (Dr.) Kabaka: Give me two minutes to conclude.

The Deputy Speaker (Sen. (Prof.) Kindiki): You have one minute.

Sen. (Dr.) Kabaka: These cartels are known by those in the Government. They actually act in cahoots with them to prepare those documents. As Sen. Orendo has said, with a revitalised investigative arm of the Government whether it is prosecutorial agencies, it is high time that the war is upped so that we can have these people behind bars. They should not enjoy the sweat of those who own the land legally.

The Deputy Speaker (Sen. (Prof.) Kindiki): Proceed, Sen. Ndwiga, the Senator of Embu County.

Sen. Ndwiga: Thank you, Mr. Deputy Speaker, Sir. I stand to support the work done by the Committee. What this Committee had done makes one proud to be a Member of the Senate at this time. We were elected to protect the interests of Kenyans at a time when nobody else can. This Committee has before been accused of so many things but they have got over it.

Mr. Deputy Speaker, Sir, as we talk about the Ruaraka land matter, I was hoping that my friend from Narok County would tell us that his people are dying of poverty because we now cannot export beef out of this country. The reason is that the Kenya Meat Commission (KMC) is in-operational. As we debate this important Report today, the land of KMC in Athi River is in jeopardy. The Committee on Agriculture, Livestock and Fisheries visited KMC two weeks ago and we saw beacons on the land of KMC, which is public land yet, that is going on as we debate this Report.

Last week, the Committee on Agriculture, Livestock and Fisheries visited the Kenya Veterinary Vaccines Production Institute (KEVEVAPI) in Embakasi where they produce vaccine that is meant to create disease free zones so that we can get disease-free beef for export. We cannot do that today. Why? KEVIVAPI has lost almost half of their land. Right now, fellows are moving towards the main laboratories and the production plant of KEVEVAPI.

We have got to put a halt to this nonsense and the country expects that this House will move steadfast. I salute Sen. M. Kajwang' and his Committee for the good work that they have done through a lot of intimidation. We want to prove to this country that no amount of intimidation will stop the war on corruption. This House has set the right mood in that direction. We will support the Government in its war against corruption.

The Report says that we expect the Director of Public Prosecution (DPP) and the Director of Criminal Investigation (DCI) to move with speed. We do not expect less.

Mr. Deputy Speaker, Sir, having said what I have about the two pieces of land, I hope that because it is public land, your Committee will move in and safeguard it.

The Deputy Speaker (Sen. (Prof.) Kindiki): Who's Committee? Is it the Speaker's Committee or whose is it?

Sen. Ndwiga: The County Public Accounts and Investments Committee.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Ndwiga, you are a very experienced parliamentarian. I know you are gesturing at Sen. M. Kajwang'. So, you assume the HANSARD will capture that when you say, "Your Committee" it is the one of Sen. Kajwang'. Unless you clarify perhaps the HANSARD will put it as if you are saying - the Speaker's Committee.

Sen. Ndwiga: Mr. Deputy Speaker, Sir, I apologise because I should be addressing the Speaker not his Committee. We hope that CPAIC will move with speed now that we have given them that insight.

The managers of those institutions have come to us and told us that they can provide enough vaccine in this country. There is nothing happening at the KMC. Herders and livestock breeders are in total poverty because they have no market yet. That is what is happening.

Mr. Deputy Speaker, Sir, with those few remarks, I very strongly support this Report.

Sen. Shiyonga: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity---

An hon. Senator: *Supuu!*

(Laughter)

Sen. Shiyonga: Mr. Deputy Speaker, Sir, protect me, because a Senator here is calling "*Supuu*"---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator!
Proceed, Sen. Shiyonga.

Sen. Shiyonga: Thank you, Mr. Deputy Speaker, Sir. First of all, I would like to congratulate Sen. M. Kajwang' and the Committee that worked on this Report. They have done an excellent job and they have represented this House well. If you look at the recommendations given, we salute the team. This team has worked under frustrations, intimidation and all manner of humiliation, but they stood their ground to defend their work and bring this Report to this House. We are happy that we are discussing it today.

Mr. Deputy Speaker, Sir, land is an investment; it is potential money and wealth. However, looking at land in Kenya nowadays, you will find that people have taken advantage of land that belongs lawfully to other people or to the Government. These people, as we have seen, have taken land that does not belong to them and they want to investment in it and make wealth out of it.

Mr. Deputy Speaker, Sir, this Report has made several recommendations. This is public land where public funds of over Kshs150 billion have been spent. This is enough money to pay workers of this country in a ministry, and we can even remain with some change. We cannot be suffering and talking about a ballooning wage bill when such an amount of money has been lost.

Mr. Deputy Speaker, Sir, we are talking about 96 acres of land which has been subdivided. Up to now, 35 acres is being occupied by the General Service Unit (GSU); while 13 acres is being used by the public and the rest has been subdivided. However, the title deed of the land still reads the original owner's name. Where on earth does any land owner divide his land, and gives it to different individuals and still owns one title deed? It does not happen and it cannot happen. This is fraud of the highest order which needs to be looked into. If there is any recommendation to be made, it is that money has been lost here and needs to be recovered.

Mr. Deputy Speaker, Sir, I want to congratulate the Cabinet Secretary (CS) for Lands, Hon. Farida Karoney, for issuing a caveat on this land. This action has saved the children of Kenya a lot because that land was going to be stolen or it had been stolen. I applaud her for her action.

Mr. Deputy Speaker, Sir, if you look at the corruption that is taking place in terms of land and land ownership, a lot needs to be amended. As lawmakers, we are going to be judged harshly in this House. However, we thank God because we are able to discuss, disclose and applaud those that are working against any ill motive.

Mr. Deputy Speaker, Sir, money has been stolen through this land. How do we pay for one property double or triple its value in billions, yet on the other hand we are

talking of preserving and protecting Kenyans against corruption? I, therefore, applaud and support this Report. People, whether in the Government or in the private sector, should stop from taking advantage or making use of Government properties and money and anything that belongs to the common *mwananchi*.

Thank you, Mr. Deputy Speaker, Sir.

(Applause)

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well.

Proceed, Majority Leader.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, permit me to, first of all, congratulate the Committee and its Chairperson, Sen. M. Kajwang', for doing a very good job despite my reservations on some of the recommendations made. I applaud their overall commitment to serve and the desire and passion they have exhibited, despite all the challenges they endured to get to the truth of this matter.

Mr. Deputy Speaker, Sir, land issues are emotive and are part of the problems of this country. I agree with Sen. (Dr.) Kabaka, who has said that even in Nairobi, we have witnessed many situations where private members of the public are being fleeced of their property. This is especially so with the ending of leases and the discussion about lease period and so on and so forth. This has become a problem and a cancer in the land sector in this country.

Mr. Deputy Speaker, Sir, I also want to thank the Committee for going further ahead to look at the historical situation related to this land and even coming to the conclusion that payments have been made previously, and not just the Kshs1.5 billion. The Report has captured that there have been other previous compensations related to the property, which is along that road, and not just the Kshs1.5 billion. In addition, it has also been established elsewhere that the compensation is not just the school, but also for the roads related to the same person and land. Therefore, it seems as if that property has become a cash cow for the same people such that when they do not have money, they resort back to the same issue.

Having said that, Mr. Deputy Speaker, Sir, I have been a victim of such recommendations. Sometime last year, a committee of the National Assembly provided a report where one said "investigate" and another one said "indict so and so." I, therefore, found it strange that our Committee would say that further investigation need to be done, but also that somebody should be held responsible.

Granted that Parliament does enquiries on various issues that take place, however, it does not have prosecutorial powers; neither does it have the power to investigate crime for purposes of charging anybody. It is, therefore, true and right for the Committee to say that there should be further investigations, and if found culpable, people should be charged. However, to make a conclusion that this or that person should be held responsible is prejudicial. This is particularly so considering that while the Committee was making this recommendation, investigations were already ongoing by with the Directorate of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC). We all know this because we take judicial notice of what has been

happening out there in the public space. Therefore, what else would make this Committee to hold anyone responsible that is far beyond the institutions provided for in the Constitution that finds criminal culpability of any individual?

Mr. Deputy Speaker, Sir, I am saying this with utmost respect because I had the same problem with the Public Accounts Committee (PAC) of the National Assembly. There was a client who was represented by a firm that I have an interest in and the Committee said that the client was good, committed no mistake or made no offence; the contracts were fine and that they were paid rightly so. However, there was no relationship between the findings of the report and its conclusion. They went ahead and said that the law firm must be held responsible for money laundering and, consequently, that the partners and management of the law firm must be charged. Therefore, you wonder about some conclusions that are made in this country. I know how it pains to live out there with a report that seemingly indicts you, even though the capacity of that institution to indict you does not exist. You will have to live with a report that says that you should be held responsible, yet the persons who are supposed to hold you responsible and investigate are already investigating and could find that you are not responsible.

Secondly, Mr. Deputy Speaker, Sir, I have read some of the documentation in this Report. Looking at the layers of approvals that are required for purposes of submitting that land, it is not just the CS who was involved in the approvals. An opinion came from the Attorney-General's Office and the National Land Commission (NLC). However, they are now saying that we should investigate that Commission. The Land Act, 2012, is clear that all compulsory acquisition of land is not done by the parent Ministry, the parent national organization or the organ of Government. We read this yesterday when we were attempting to amend the land law. It is the duty of the NLC to acquire land on behalf of both the national Government and county governments; it is not the duty of the individual institution to do so.

That is why, in the letters that have been provided, the Principal Secretary and the Cabinet Secretary (CS) wrote to the Commission and told them to investigate if they should pay those people and if that is the right way to regularize the school. Once the Commission gives that okay and the Attorney-General gives an opinion, I think that it will be extremely unfair to leave those institutions then generally investigate and say that the people to be held responsible are the third party or the beneficiaries of that process, who sought the proper legal processes.

I would never want our Senate to be part and parcel of a process that encourages mob justice for purposes of looking like we are a good place. Yes, we have done a good job and most parts of the Report are good. I make my views public. When those issues were happening in the National Assembly Committee, I asked myself when a Committee turns itself from being an inquiry Committee into an investigative Committee for purposes of criminal culpability. Those are constitutional issues that we must find ways of separating. The duty of our House is to inquire and to provide information that will be used by the institution of the Director of Public Prosecution (DPP), who cannot be directed not even by us, to do proper investigations that will find criminal culpability of any individual.

I am alive to the fact that the Ethics and Anti-Corruption Commission (EACC) or the DPP might be watching what we are saying. Let them do a thorough job in the investigation which has been going on. Let them find those who are culpable. The problem with this country is that in every corruption or purported corruption investigation, there is always a desire to find what is called the 'big fish'. So many people have suffered reputation wise and in their careers. This is because when culpable people are found, people say that: "He or she is too small; we are looking for a bigger fish." A human being has a similar life line. The Bible says---

The Senate Minority Leader (Sen. Orengo): On a point of information, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Prof. Kindiki): Are you willing to be informed by Sen. Orengo?

The Senate Majority Leader (Sen. Murkomen): Yes, Mr. Deputy Speaker, Sir. I have not said anything that would make me expect adverse information.

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, the information is a friendly one. I like what he is saying. People are always looking for the big fish but the DPP is now saying that he is not looking for the big fish; he is looking for the whales. Who are we not to look for the big fish?

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I have a lot of respect for the DPP and I agree with Sen. Orengo. As a lawyer and a person who is likely to be called a whale or a big fish, when you are a Member of Parliament---

The Deputy Speaker (Sen. Prof. Kindiki): Senate Majority Leader, in the context of that information, you have already accepted that you are a whale.

The Senate Majority Leader (Sen. Murkomen): Not necessarily, Mr. Deputy Speaker, Sir. The point that I am making is that I have a problem with investigations and prosecutions that are looking for big names and not looking for the truth. It is not true that this country fails mostly because of the big people.

People have died on roads that have been badly constructed because the road engineer, who is a small person in the context of the big fish, engaged in corruption. The CS may not know that in Nairobi but somewhere in Loiyangalani or Isiolo, someone who is a small person is making a mistake. A person who is not necessarily a big fish might cause the death of so many people. We have to stop the obsession of getting a big person so that you look like you are doing something.

With respect to the EACC and the DPP, let them do their job but let them stop insisting that they will only do a good job when they are seen arresting the Managing Directors, the Governors or certain individuals even when the charges are so flimsy. I know of some governors who were arrested and charged for a Memorandum of Understanding (MOU) which says that we intend to later make an investment in a certain area. There is now a competition to see who is catching the biggest fish or who is catching the whale. That is not how we should operate as a country. I believe in a nation where the evidence will lead one to the criminal. If the evidence eventually says that this person is culpable, whether it is a small whale, small fish, *omena*, *mbuta* or a whale, that person must be held culpable and it should not be because of how big he or she is but because of the evidence.

I respectfully disagree with the Committee when it comes to such a conclusion despite the fact that they are saying that investigation must still go on.

The Deputy Speaker (Sen. Prof. Kindiki): Thank you, the Senate Majority Leader for your remarks. I am wondering, the Senate Majority Leader and the Senate Minority Leader have talked about the fish and the whales in their debates, but where does the crocodile apply because they had a discussion on crocodiles earlier on?

I appreciate all the comments that you have made on this important matter. I can see one more request but we have been on this Motion the whole afternoon. I am afraid that we have to cut it there. I want to appreciate every Senator who has contributed including the Mover and the Seconder. Today, Sen. Shiyonga did not recommend or did not ask for an amendment to the recommendation for scooping anything like she did yesterday.

Mover, I will give you less than five minutes because we have gone way out of time.

Proceed. Sen. M. Kajwang'.

Sen. M. Kajwang': Mr. Deputy Speaker, Sir, I join you in appreciating all the contributions that have been made on the Floor of this House. Generally, all the Members who have contributed have supported the general findings and recommendations of the Committee on County Public Accounts and Investment (CPAIC). I do not expect that a House of eminent men and women like this will have people who will all think alike. As they say, fools rarely disagree and it is great minds that sometimes have different perspectives. I appreciate the perspective of the Senator for Kericho and the Senator for Elgeyo Marakwet.

I think that the general principle in the Report of CPAIC is that as a House, we cannot send someone to jail and a Report cannot be the basis for prosecution. However, you recall that when the CPAIC became seized of this matter, it was already in the public domain and that the Directorate of Criminal Investigation (DCI), EACC and the DPP were also seized of the matter. I hope that whatever findings that we have come up with will help them to hasten the process of bringing closure to this matter.

The question is: What can Kshs3.2 billion do? For example, when the Senate was seeking a Fund for monitoring and oversight, we only wanted Kshs2 billion. Therefore, this pay out to the Ruaraka land dealers could have accommodated what the Senate wanted, that is, to carry out effective oversight and save billions of shillings that get wasted in counties. The Chairperson of the Committee on Agriculture, Livestock and Fisheries has stepped out. I sat with him and members of the coffee sector taskforce who said that for them to improve Kenya's productivity from 40,000 to 100,000 metric tonnes, they require about Kshs2 billion yet we paid Kshs3.2 billion to land dealers.

Mr. Deputy Speaker, Sir, there is so much. I know you are on record for building low cost schools which do not cost Kshs100 million.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. M. Kajwang'. What did you just say? Who was building schools and where? Is it the Speaker?

Sen. M. Kajwang': Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Did you say the Chair was building schools?

Sen. M. Kajwang’: Sorry, Mr. Deputy Speaker, Sir. The distinguished Senator for Tharaka Nithi County has made serious investments in low cost schools in his county which do not cost more than a Kshs100 million.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is that supposed to be?

Sen. M. Kajwang’: Mr. Deputy Speaker, Sir, it is a statement of fact and congratulations.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Proceed.

Sen. M. Kajwang’: Thank you, Mr. Deputy Speaker, Sir. Therefore, with Kshs100 million, we will still end up with 32 schools. Therefore, Kshs3.2 billion is a lot of money that can finance the budget of Lamu County for a year.

We visited the children of Ruaraka Primary School and assured them that their learning shall never be disrupted. That is our message to them as the Senate. Those who disrupt the activities of little boys and girls deserve nothing else than what Sen. Shiyonga proposed yesterday. Therefore, people who use school land as pawns in a game of economic crime are sabotaging the future of this nation and serious action should be taken against them.

Mr. Deputy Speaker, Sir, Cabinet Secretaries Farida Karoney and Amina Mohammed appeared before the Committee and they were very candid. However, I want to mention one particular individual, the Principal Secretary (PS) Ministry of Education, Dr. Belio Kipsang, who appeared before our Committee, even though we ended up holding him responsible and recommended he be investigated. When he appeared before us, he made us aware of the taskforce that was established. In fact, it looked like he was shooting himself on the foot. However, we took it that he was being honest and for that, we recommend him even though it is that honesty that has now landed him into trouble.

Mr. Deputy Speaker, Sir, on the issue of responsibility, Section 107 (1) of The Land Act says that the process of compulsory acquisition of land must be initiated by a Cabinet Secretary or a County Executive Committee (CEC) Member and not the National Land Commission (NLC). Secondly, the NLC does not have a budget for compulsory acquisition; the budget comes from the parent or acquiring Ministry. That is why we cannot pin the NLC and the land sellers without assigning responsibility to the persons responsible for the main Ministry.

Finally, we hope that when this House adopts this report, the necessary constitutional institutions and statutory bodies shall ensure that their recommendations are implemented in good time. We have gone ahead and defined which Committee of the House should follow up on implementation.

Mr. Deputy Speaker, Sir, I thank you and the House for overwhelmingly supporting this Motion. I hope that the verbal support shall also translate into the votes that we are about to take at the end of this debate.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. M. Kajwang.’ Retreat to your seat.

The Deputy Speaker (Sen. (Prof.) Kindiki): I also thank everyone for the debate this afternoon. You have tried to manage the issues within the Standing Orders. Therefore, you did not make my life as difficult as I thought. The life of an umpire can be difficult when there are contestations.

Hon. Senators, Article 123 (2) of the Constitution states that-

“When the Senate votes on a matter other than a Bill, the Speaker shall rule on whether the matter affects or does not affect counties”

I have looked at the Report and the circumstances in which this matter was seized of by the CPAIC. I have also looked at the Fourth Schedule of the Constitution Part 2(8)(b). Therefore, I determine that this matter concerns counties. For that reason, I ask the Mover, in our usual tradition, whether he would like the voting to proceed in which we will go to the voting procedure subject to the ringing of a quorum Bell or he would want to make an application?

The Mover is also guided by the Chair of the consequences of proceeding to ring the Bell. Therefore, himself and the Whips should be very sure on what they want us to do.

Sen. M. Kajwang’: Mr. Deputy Speaker, Sir, I am advised by the Whips in the House that we defer the putting of question in line with the relevant Standing Order No.61(3). Therefore, with your indulgence, I beg that you defer putting the question to a later date.

The Senate Majority Leader (Sen. Murkomen): On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Senate Majority Leader?

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, the tradition we have established in this House is that when we have a vote, we ensure that we are at least more than 24 Senators or above although the Constitution and Standing Orders do not require that. However, it is a tradition so as to avoid a technical failure of debate.

Mr. Deputy Speaker, Sir, the Senate Majority Whip and I have counted and we sort of have the numbers. If you can give us two minutes, we can confirm the numbers to you.

The Senate Minority Leader (Sen. Orengo): On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is your point of order, Senate Minority Leader?

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, you had proposed to the Mover whether the vote should go on or not.

(Sen. Murkomen stood up in his place)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senate Majority Leader! Carry whatever transaction you are carrying in accordance with the Standing Orders. Proceed, Senate Minority Leader.

(Sen. Cherargei consulted loudly)

Order Sen. Cherargei!

Hon. Senators, you have done very well. Do not spoil the afternoon. The Senate Minority Leader shall be heard.

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, during the debate, it was quite obvious in the contributions of Members that there was a bi-partisan position being taken by both sides of the House.

Secondly, this determination has been made towards the tail-end of the debate on this Motion. So, in the similar fashion where some people came at the end without having participated in the debate, other people who did not participate in the debate should be given a chance to take part in voting if all we want is to vote.

In this House, many times, consensus is reached on a bi-partisanship basis. If there is no agreement, like in this case, we better give both sides of the House a little time to whip Members. We let many Members go because we did not know that this determination will come at the end. Otherwise, we would have asked everybody to stay until the vote is taken. We have been working well with Sen. Murkomen. This time round, he did not warn--- If you were keen, you should have noticed that I sat with the Whip and the Senate Majority Leader. They should have told me that they have taken a position.

Mr. Deputy Speaker, Sir, I beg that we defer voting on this matter.

The Deputy Speaker (Sen. (Prof.) Kindiki): Before the Senate Majority Leader says what he wants to say, the Chair is not engaged in helping either side to achieve any purpose. Therefore, Senate Minority Leader, your comment about non-partisanship is a political issue between you, your counterparts and the troops you lead in this House, which the Chair is oblivious of.

What guides the Chair in a very impartial manner is the application of the rules, the Constitution and Standing Orders. For that reason, I want to clarify that---

(Sen. Cherargei consulted loudly)

Order, Sen. Cherargei! You are extremely disorderly.

Even the courtesy we normally give the Mover to request for deferment is actually aimed at achieving the noble objective of ensuring that no agenda collapses simply because of a technicality. For that reason, having listened to both the Senate Majority Leader and the Senate Minority Leader and spent the entire afternoon transacting this important matter, the only thing that can stand between the House and voting is the technical issue of numbers, but not the political issue of mobilisation.

For that reason, could the Whips confirm whether we have the threshold? If we have, then we have to dispose this agenda, so that we can also deal with other equally important agendas that have stalled over time. Senate Majority Whip, do we have numbers?

Sen. Kihika: We do not have numbers.

The Deputy Speaker (Sen. (Prof.) Kindiki): Senate Minority Whip, do we have numbers?

(Sen. Mutula Kilonzo Jnr. spoke off record)

Order! You are off record. You have just arrived, but you were part of the---

(Laughter)

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I could not help because we had a small issue about the Building Bridges Initiative.

Mr. Deputy Speaker, Sir, we do not have numbers. Part of the reason is that we did not alert our Members that we would vote on the Motion.

The Deputy Speaker (Sen. (Prof.) Kindiki): On that point alone, which is the confirmation by the Whips of both sides that we do have threshold, I would not wish that this agenda collapses on a technicality of numbers. Therefore, accordingly, I direct that the Division on this matter be deferred to a later date as requested by the Mover. It is so ordered.

(Putting of the Question on the Motion deferred)

The Senate Majority Leader (Sen. Murkomen): On a point of order, Mr. Deputy Speaker, Sir. There is a matter that should not be on record. Sen. Orengo said that we should not allow people who did not participate in the debate to vote. That is a dangerous line because, even next week, those who will give us the numbers will not have participated in the debate.

Secondly, as an established tradition, the number of 24 is the basis of postponing a Division, which you have captured it well, and not necessarily whether or not one knew that we will vote.

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, hon. Senators. Sen. (Eng.) Mahamud, you want to delay this process, but the next agenda is sponsored by your Committee, and it is urgent as well.

Senate Majority Leader, it is true that there is no connection in the law and the Standing Orders between participating in debate and voting on the matter debated. Secondly, it is true that even the tradition we have established – I think it is good for us, as a House, not to proceed on voting when we do not have the threshold – is not even a requirement of the law or the Standing Orders. It is just a custom to ensure that technicalities do not defeat this process.

Having said that, I think we should end there. Senate Minority Leader, do you still want to say something?

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, I am in total agreement with the Senate Majority Leader that there is no rule that says that if you do not contribute to a debate, you cannot vote. In fact, we have the right to vote. What I meant is that there are those who supported this Motion, but did not know whether it

would be determined as a matter concerning counties and walked out. We have the likes of the Senator for Embu who talked emotionally about this.

I do not want to be misunderstood. The position is quite right, but the determination should have been made at the beginning, so that people do not go away, like others did.

The Deputy Speaker (Sen. (Prof.) Kindiki): Senate Minority Leader, you are out of order. The determination cannot be made at the beginning; it is at the time of voting. You should read Article 123 of the Constitution.

(Sen. Orenge spoke off record)

Order, Senate Minority Leader! You have been doing so well until now. Whips and Leaders, you need to do your job. You should make sure that you have numbers when we have an agenda where either side has an interest. It is simple and clear. Everything else is semantics.

Hon. Senators, before we call out the next Order, I want to apply Standing Order 40(2) which says-

“Business shall be disposed of in the sequence in which it appears in the Order Paper or in such other sequence as the Speaker may, for the convenience of the Senate, direct.”

Accordingly, I direct that the agenda appearing as Order No.11 be deferred.

MOTION

REMEDIES FOR CLOSURE OF SCHOOLS DUE TO FLOODS AND INSTANCES OF INSECURITY

THAT, AWARE that Article 43(1)(f) of the Constitution of Kenya provides that every person has a right to education and Article 53(1)(b) of the Constitution states that every child has the right to free and compulsory basic education;

COGNIZANT that on 5th January, 2018 during the flagging off of national delivery of core course books for schools at Cemastea Karen, His Excellency the President Uhuru Kenyatta stated that his administration has focused on initiatives that ensure every Kenyan has access to quality education, so they can acquire appropriate skills and knowledge that make our country globally competitive;

FURTHER AWARE that recently the country has suffered floods in many parts of the country leading to deaths and people being displaced and rendered homeless;

DEEPLY CONCERNED that some schools have also remained closed even after other schools reopened while others have been closed as a result of floods and instances of insecurity;

FURTHER NOTING that closure of schools due to the said floods as well as insecurity places students and pupils in those schools at a disadvantage as they are unable to access education which is their right, while some of the students in those schools are expected to sit for their national exams at the end of the year and their performance risks being negatively affected by the lost time out of school;

NOW THEREFORE, the Senate resolves that the Committee on Education, investigates this matter with a view to-

1. identifying strategies to ensure that the affected students are able to access education as soon as possible;

2. outlining preventative measures to ensure that more students are not affected by the floods and insecurity; and

3. Submitting a Report to the Senate within sixty (60) days outlining the short and long term strategies, that are being put in place to ensure that schools in flood and insecurity prone areas are not affected in the future.

(Motion deferred)

I further direct that we proceed, in the Supplementary Order Paper for today, with Order No.8 and time permitting, because Sen. Kwamboka is back, we can proceed thereafter with Order No.10.

(The Deputy Speaker consulted with the Clerk-at-the-Table)

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, I want to review what I have just said now. We will skip the two Notices of Motions as the Senators are not present.

How many other Statements do we have on the Order Paper? Yesterday, we deferred the Statements by Sen. Mwaruma and Sen. Dullo to today. The two Senators will request their Statements, and there will be no further comments from any other Senator. Just make the requests in a maximum of 10 minutes. After that, we will go to Order No.8, and time permitting, deal with Order No.10.

Senate Majority Leader, proceed.

STATEMENTS

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 20TH NOVEMBER, 2018

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I beg to make a Statement on the business of the Senate for the week commencing 20th

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November, 2018. Pursuant to Standing Order 52(1), I hereby present to the Senate, the business of the House for the week commencing Tuesday, 20th November, 2018.

On Tuesday, 20th November, 2018, the Senate Business Committee (SBC) will meet to schedule business of the Senate for the week. Subject to further directions by the SBC, the Senate will on Tuesday 20th November, 2018 consider Bills scheduled for Second Reading and those at the Committee of the Whole. The Senate will also continue with consideration of business that will not be concluded in today's Order Paper.

On Wednesday, 21st November, 2018 and Thursday, 22nd November, 2018, the Senate will consider business that will not be concluded on Tuesday and any other business scheduled by the SBC.

Hon. Senators, the following Bills are due for Second Reading stage-

(1) The Public Private Partnerships (Amendment) Bill (National Assembly Bills No.52 of 2017);

(2) The Local Content Bill (Senate Bills No10 of 2018);

(3) The County Statutory Instruments Bill (Senate Bills No.21 of 2018);

(4) The Treaty Making and Ratification (Amendment) Bill (Senate Bills No.23 of 2018);

(5) The Statutory Instruments (Amendment) Bill (Senate Bills No.24 of 2018);

(6) The County Compliance and Enforcement Bill (Senate Bills No.25 of 2018);

(7) The County Early Childhood Education Bill (Senate Bills No.26 of 2018);

(8) The Preservation of Human Dignity and Enforcement of Economic and Social Rights (Senate Bills No.27 of 2018); and,

(9) The County Oversight and Accountability Bill (Senate Bill No.28 of 2018).

Hon. Senators, in addition, there are several Bills at the Committee Stage. I continue to urge Standing Committees to expedite consideration of Bills referred to them and table reports in order for the House to effectively navigate the Committee of the Whole stage on the said Bills. Likewise, I urge Standing Committees to expeditiously consider pending Petitions and table reports on them.

Hon. Senators, Pursuant to Standing Order 51(1) (b) a Committee Chairperson shall at least once in every three months, on such day as shall be assigned by the Senate Business Committee, and at any other time if so required by the Speaker, make a statement relating to the activities of the Committee. This provision came into force after the recent amendment of the Standing Orders on 9th August, 2018, thus the reporting for the first quarter is due.

In this regard, at its 28th sitting held on Tuesday, 13th November, 2018, the SBC considered and approved the schedule of reporting by Committee Chairpersons, to facilitate the aforementioned statement. The approved schedule of reporting is attached to this Statement.

For next week, the following Committee Chairpersons shall make statements as follows-

No.	Standing Committee	Date of Reporting
1.	Agriculture, Livestock and Fisheries	Wednesday, 21 st November, 2018
2.	Devolution and Intergovernmental Relations	Wednesday, 21 st November, 2018
3.	Education	Wednesday, 21 st November, 2018
4.	Energy	Thursday, 22 nd November, 2018
5.	Finance and Budget	Thursday, 22 nd November, 2018
6.	Health	Thursday, 22 nd November, 2018

I, therefore, urge the respective Chairpersons to prepare accordingly, so as to issue statements in accordance with Standing Order 51(2).

Thank you and I, hereby, lay the Statement on the Table of the House.

(Sen. Murkomen laid the document on the Table)

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Senate Majority Leader. Sen. Mwaruma, proceed.

DIVISION OF REVENUE OBTAINED FROM
MINING IN TAITA-TAVETA COUNTY

Sen. Mwaruma: Thank you, Mr. Deputy Speaker, Sir. Pursuant to Standing Order No.48(1), I rise to seek a Statement from the Committee on and Environment and Natural Resources on the division of revenue obtained from mining in Taita-Taveta County between the County government and the national Government.

In the Statement the Committee should-

(1) State the economic value of the minerals that are found in Taita-Taveta County, indicating the total income from mining activities in Taita-Taveta County for the last three years.

(2) State whether the income received from mining in Taita-Taveta County is directed to the national Exchequer as required by the Mining Act.

(3) Table a report indicating the ratio of income between the national Government, the county government and the community, and indicate whether the sharing complies with Section 183(5) of the Mining Act.

Mr. Deputy Speaker, Sir, the Mining Act clearly stipulates the revenue sharing or royalties between the national Government, county governments and communities. There are a lot of mining activities in Kenya, whether in Athi River where cement is mined; Elgeyo-Marakwet County where fluorspar is mined; Magadi or Taita-Taveta where there is a lot of green and ruby red granite; Kwale where there is titanium; or Nandi County where there is a lot of gold. The law stipulates that there shall be revenue sharing between the national Government and counties.

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As it is now, the Treasury has not opened the Royalty Fund Account (RFA), yet this law was passed in 2016. I am asking specifically for Taita-Taveta County, to know whether the companies that are mining there are remitting the royalties to the national Government. If they are being remitted, how much has been collected? How and when will that revenue be remitted to the county government and the communities?

I wish to ask for that Statement.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Sen. Mwaruma, have you made any specific request?

Sen. Mwaruma: Mr. Deputy Speaker, Sir, maybe you should commit it to a Committee. I have a second one, which I can request---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! The Chair has noted under our new rules that we should pursue the matter with the Chairperson.

Chairperson, would you want to say something?

Sen. Mwangi: Yes, Mr. Deputy Speaker, Sir. Sen. Mwaruma happens to be a Member of the same Committee and knows the new Standing Orders. We shall do what the Committee should do together.

I hope that he will satisfy himself within the workings of the Committee.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Pursue it accordingly.

CSR PROJECTS AND PROGRAMMES UNDER THE SGR

Sen. Mwaruma: Thank you, Mr. Deputy Speaker, Sir. Pursuant to Standing Order No. 48(1), I rise to seek a Statement from the Standing Committee on Roads and Transportation on the Corporate Social Responsibility (CSR) projects and programmes under the Standard Gauge Railway (SGR) by the Kenya railways. In the Statement, the Committee should-

(1) List the CSR projects and programmes that have been implemented under the SGR by the Kenya Railways, indicating the cash value for each project and programme.

(2) Explain the progress made towards the relocation of Voi Girls' High School in Voi under CSR by the Kenya Railways.

(3) State the amount of money allocated for the relocation of the school, indicating the commencement date and the expected date of completion of the relocation.

Mr. Deputy Speaker, Sir, during Phase I of the SGR, it came to our notice that SGR and China Road and Bridges Company had not done any CSR to the communities where the railway line was passing through. At one time, we were with the Managing Director (MD) Kenya Railways in our Committee on Land, Environment and Natural Resources when we were dispensing a petition by a petitioner from Narok, during Phase II of SGR. The MD indicated that there has been at least some CSR and mentioned the one of Voi Girls High School.

During the building of Phase I of the SGR, it took part of the school compound, and the school was supposed to be relocated. I am calling it CSR, but it is supposed to be part of compensation because the school cannot exist very close to the SGR line. We do not know when that school will be relocated because Phase II is on and, up to now, that relocation process has not begun.

Initially, there was a problem of identifying land. It has now been identified, but one year down the line, there is no process of relocation that has begun.

The Standing Committee on Roads and Transportation can maybe answer that.

The Deputy Speaker (Sen. (Prof.) Kindiki): Chairperson, Committee on Roads and Transportation? Is the Vice Chairperson or any Member here?

Proceed, Sen. Lelegwe.

Sen. Lelegwe: Thank you, Mr. Deputy Speaker, Sir. We take note of the Statement. The Committee will meet and give our response in two weeks.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Mwaruma.

(Sen. Mwaruma nodded)

Very well. It is so ordered.

The other Statement by Sen. Dullo is deferred at her request.

IMPLEMENTATION OF UNIVERSAL HEALTH CARE IN COUNTIES

(Statement deferred)

I also clarify that we will defer the item appearing under Order Nos. 10 and 11.

MOTIONS

MEASURES TO ADDRESS THE PLIGHT OF STREET FAMILIES

THAT, AWARE THAT the Street Families Rehabilitation Trust Fund (SFRTF) was established on 11th March, 2003 by the then Ministry of Local Government to address the concerns of all homeless, destitute and vulnerable persons in urban areas, and was registered as a body corporate in August, 2010 under the Trustees (Perpetual Succession) Act, Cap 164, Laws of Kenya;

FURTHER AWARE THAT the mandate of SFRTF includes coordinating rehabilitation activities for street families; conducting public education on street families issues; mobilizing resources and fundraising as well as receiving donations and funding street families rehabilitation programmes; managing donations for the rehabilitation of street families through a trust fund; monitoring expenditure and disbursement of donations; and advising the Government and other relevant agencies on matters relating to rehabilitation of street families;

NOTING THAT Article 43 (1) of the Constitution of Kenya provides for the right to every person to the highest attainable standard of health, accessible and adequate housing, adequate food of acceptable

quality, clean and safe water in adequate quantities, education, and social security;

CONCERNED THAT the street family phenomenon has persisted despite the existence of the SFRTF and street families do not enjoy the rights enshrined in the Constitution due to lack of a national policy on the rehabilitation of street families, with women and children being the primary victims;

COGNIZANT THAT the Ministry of Devolution and ASAL Areas through the SFRTF supports children and youth through charitable and community based organizations which are vetted and approved for funding under the rescue, rehabilitation and reintegration of street families programme;

NOTING THAT both the national and county governments have a role to play in addressing the plight of street families across the country;

NOW THEREFORE the Senate resolves that the Ministry of Devolution and ASAL Areas in collaboration with the Council of Governors:

(1) conducts a census of street families in all urban centres in the country to determine their numbers and demographics;

2. develops a clear policy on street families rehabilitation and reintegration at county level; and

3. tables an audit report of how funds allocated to the SFRTF have been utilized since the Fund was established, indicating the impact of the rehabilitation exercise.

(Motion deferred)

REMEDIES FOR CLOSURE OF SCHOOLS DUE TO FLOODS AND INSTANCES OF INSECURITY

AWARE that Article 43(1)(f) of the Constitution of Kenya provides that every person has a right to education and Article 53(1)(b) of the Constitution states that every child has the right to free and compulsory basic education;

COGNIZANT that on 5th January, 2018 during the flagging off of national delivery of core course books for schools at Cemastea, Karen, His Excellency the President Uhuru Kenyatta stated that his administration has focused on initiatives that ensure every Kenyan has access to quality education, so they can acquire appropriate skills and knowledge that make our country globally competitive;

FURTHER AWARE that recently the country has suffered floods in many parts of the country leading to deaths and people being displaced and rendered homeless;

DEEPLY CONCERNED that some schools have also remained closed even after other schools reopened while others have been closed as a result of floods and instances of insecurity;

FURTHER NOTING that closure of schools due to the said floods as well as insecurity places students and pupils in those schools at a disadvantage as they are unable to access education which is their right, while some of the students in those schools are expected to sit for their national exams at the end of the year and their performance risks being negatively affected by the lost time out of school;

NOW THEREFORE, the Senate resolves that the Committee on Education investigates this matter with a view to: -

1. identifying strategies to ensure that the affected students are able to access education as soon as possible;
2. outlining preventative measures to ensure that more students are not affected by the floods and insecurity; and
3. submitting a Report to the Senate within sixty (60) days outlining the short and long term strategies, that are being put in place to ensure that schools in flood and insecurity prone areas are not affected in the future.

(Motion Deferred)

We now go to Order No.8 and proceed accordingly for the rest of the afternoon.

BILL

Second Reading

THE COUNTY ALLOCATION OF REVENUE (AMENDMENT) BILL (SENATE BILLS NO.29 OF 2018)

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, I beg to move that The County Allocation of Revenue (Amendment) Bill (Senate Bills No.29 of 2018) be now read a Second Time.

This House initiated amendments to the Division of Revenue Act, 2018 and the purpose was to include Ksh3.74 billion additional conditional grants to counties in the Financial Year 2018/2019 from the three development partners: The Government of Sweden, European Union (EU) and the World Bank (WB).

The Bill---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator. You are off record. You need to repeat that sentence.

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, The Division of Revenue Bill (Senate Bills No.14 of 2018) was considered by both Houses of Parliament and assented to by His Excellency the President on 5th October, 2018. Subsequently, The County

Allocation of Revenue Act, 2018 (CARA) has to be amended to reflect the funds that will be generated from these development partners.

Therefore, this amendment is important so as to regularise and facilitate the equalization of these funds by the respective beneficiary counties in the Financial Year 2018/ 2019.

Mr. Deputy Speaker, Sir, the proposed allocations among the beneficiary counties has resulted in an increase in the allocation of conditional allocation as loans and grants from development partners by Kshs3.74 billion, from the current Kshs33.24 billion to Kshs36.98 billion.

The financial agreement has already been signed between the National Treasury and development partners. The programmes to be funded have been included in the proposed amendment Bill which is before the House.

Mr. Deputy Speaker, Sir, the conditional grants from development partners are mainly three. The first one is Agricultural Sector Development Support Programme by the Government of Sweden that has been increased to Kshs1.005 billion. The second one is the Water Tower Protection and Climate Change Mitigation and Adaption Programme by the EU that has been increased to Kshs880 million. The last one is the Kenya Urban Support Project (KUSP) Urban instructional grant allocation of Kshs1.85 billion from the International Development Association of the World Bank.

The Agricultural Sector Development Support Programme will benefit 47 counties and be implemented through the national Government State Department of Crops Development. The Water Tower Protection and Climate Change Mitigation and Adaption programme will benefit 11 counties and be implemented in Cherangany Hills and Mt. Elgon ecosystems, and includes lakes Turkana and Victoria basins. It will also address a number of crosscutting issues such as climate change, gender equality, good governance and human rights.

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

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

Through the national Government and Ministry of Environment and Forestry, the money will benefit 11 counties: Bungoma, Busia, Elgeyo-Marakwet, Kakamega, Kisumu, Nandi, Siaya, Trans Nzoia, Uasin Gishu, Vihiga and West Pokot. The other grant, Kenya Urban Support Project (KUSP) - Urban Institutional Grants (UIG) allocation of Kshs1.85 billion - will cover 45 counties excluding Nairobi and Mombasa. The allocation for the UIG will be implemented through the national Government's State Department of Housing and Urban Development.

We are bringing this at this stage because there was a disconnect on the time of signing of conditional allocation agreements with the development partners and the inclusion of this conditional allocation in The Division of Revenue Bill and The County Allocation of Revenue Bill, at the time when these two Bills were inactive. This has resulted in the increase of the number of proposed amendments after the enactment of the aforementioned Bills.

As we moved on, there was need for a harmonized timeframe for this conditional allocation, so as to ensure productivity and credibility of the budget process. At the beginning, Treasury wanted us to include this money in The County Allocation of Revenue Act without being in The Division of Revenue Act, but we stood our ground and said that whatever would be in The County Allocation of Revenue Act had first of all to be enacted in The Division of Revenue Act, and that is why we are here.

The conditional allocation from loans and grants from development partners to the county governments have increased over the years. Therefore, there is need for a framework for reporting to the Senate. Currently, we do not see any framework of supporting. In fact, the reporting is only on the shared revenue, hence there must be a framework put in place. The conditional allocations by the implementing national Government Ministries must be looked at and reported on.

Noting the increased number of projects funded through conditional grants, I implore the various Standing Committees of this House to take keen interest in the implementation of projects funded by conditional grants. They should engage respective state agencies and ministries charged with implementing specific projects with a view to determine the effectiveness of discharged funds.

Last time, we heard that there were some changes in the allocation to the counties. I am glad that nothing has come to us so far. In fact, once we enact this Bill, this House should resist any amendment that will come without the support of this House. This is a very important amendment to the Bill and we should fast-track it, for these funds to be channeled to the counties because we are almost halfway into the Financial Year.

While on this Floor, I want to Report that the counties have reported receipt of some funds from the Treasury. I was told that, for now, they are about two-and-a-half months behind. Going forward, as the Committee on Finance and Budget, we will ensure that counties get the money they are supposed to get as per the Schedule that this House passed.

With those few remarks, I beg to move and I ask Sen. Cheruiyot to second.

Sen. Cheruiyot: Thank you, Mr. Temporary Speaker, Sir. I beg to second that the County Allocation of Revenue (Amendment) Bill (Senate Bills No.29 of 2018) be read a Second Time.

This is an extremely important amendment that we are making to the earlier Bill that was passed - The County Allocation of Revenue Bill - for the reasons that have been ably shared or deliberated by my Chairperson. I do not want to repeat what he has said, but just to bring to the attention of this House that when we did public participation for this Bill, I was part of the Committee Members who sat in the Old Chamber and listened to the members of the public. Interestingly, on that day, only two gentlemen showed up before our Committee. By face value, we would have easily dismissed them as busybodies or some of those people who just show up to be a nuisance or just to listen. It was not until they engaged us that we realized that there is an increasing concern from the members of the public on what the exact position of the Senate is on matters of holding county governments to account with regards to how public funds are being spent.

The two gentlemen who appeared before us told us that they had not come to either oppose or raise issues on how the funds, such as the additional grants and loans

that are being added to The County Allocation of Revenue Act, have been allocated. What was of concern to them was our stand, as the Committee on Finance and Budget, on the issues that they were reading in the media about governors buying palatial homes and billions of money being looted in our counties. They engaged us for about 15 minutes. We realized that there is a growing sense of desperation amongst our population.

I want to propose that during the long recess, the Senate Business Committee should rack its brain and think through our organization and the speed with which we are looking into audited books of accounts for our counties. We are still considering the 2014/2015 Financial Year. What audacity or courage can one have, as the Senator of a particular county, to go and say: "I am the person charged with the responsibility of providing oversight for the funds that are being sent to my county?"

It is something that we should be careful with, especially now that we have politics going round about the Senate being a toothless dog that people can easily do away with. I sometimes think that we are shooting ourselves in the foot by not coming out strongly. That is why when I was making my contribution earlier on to the Report that we were debating, I asked the County Public Accounts and Investments Committee (CPAIC) to give us a detailed report, like what they did for Ruaraka. They need to point out where the errors are when handling reports of audited accounts from our counties.

It is no longer an issue of CPAIC. The time has come for us to question the whole organization and whether it is prudent for us, as a House of oversight, to charge the responsibility to a group of five to 10 Senators and ask them to take charge. This is work that we should divide amongst all the 47 delegations that are in this House. I should be able to sit in the Committee that reads through the audited accounts of Kericho County, so that when I stand in a public *baraza* in Kericho, I know what I am speaking about. I should not just go before the Committee as a friend on the day when they have invited the governor. I should be able to interact with the report that is being brought.

I look at a county government as a company, where the governor is the chief executive officer and the Senator is the chair of the board. The Senator is the person charged with the responsibility of giving strategic direction and ensuring that the person who has the accounting powers spends the money on what it was meant for. If you set an exam in this House and ask each of our 47 Senators to give you a breakdown of the financial year that ended in 2017, how many can tell you the resource allocation to their counties? How many of them can tell you how much money their counties collected in terms of revenue, what the expenditure on remuneration was and how much went to actual development or in acquiring of assets, and yet that is a simple breakdown that any person running a business can tell you? Even *mama mboga* running a kiosk can tell you what it costs to run and operate her business.

Unfortunately, for us Senators, we have not risen to that level; to know that we are charged with the responsibility. Some 20 to 30 years from now, when we will be in our counties as retired politicians, people will want to know what some of these grants and debts that are being accrued by counties did. We should be able to provide the answer and do it accurately and justifiably. We should tell them that they are paying a certain amount of money because, at that time, the money was used to equip the local referral hospital or conserve the forest, like the grants that are being given here will do.

The truth of the matter is that, in future, residents of our counties will pay and want to know the person who was supposed to look and ensure that the residents got value for money. Are we not abdicating our responsibility when we allow ourselves to just come and issue statements, feel nice about it and then call it a day? Why is it that we do not get the kind of interest that we got a few minutes ago when we were discussing a matter like the report on Ruaraka, when reports of CPAIC are tabled? It should be the duty and concern of each and every of our colleague to debate the Auditor General's reports about our counties and raise specific tangent issues.

After the passage of this Bill, can the Senate Business Committee retreat and devise a better formula than what is currently being used? We have tasted this method for the last six years and the truth of the matter is that it is not working. We need to find a better formula for holding our governors to account for them to know that, when they appear before the Senate, they are appearing before a very informed Committee that will put them to task. Once we are done with the paperwork, a Senator can then retreat to their counties to go and see what has been done.

When a governor says that they did water reticulation projects of up to "X" amount of money, the Senator can physically go to inspect those projects and see if there was value for money. If we have not done the simple oversight that can be done with pen and paper in the Senate, can we claim any form of responsibility that needs physical inspection?

I, therefore, challenge us, as a House, to pay great attention and focus to the oversight role that is expected of us, so as to ensure that funds – like these ones that we are passing for our county governments – are put into proper use. That way, our future generations can know that the Senate made a pronouncement; that they took the governors to task during the time they were in office and stood their ground when issues did not go right. That way, we, as the Senate, can finally assert ourselves and ensure that Kenyans get value for money.

Finally, Mr. Temporary Speaker, Sir, I look at the Senate as the last wall of defence for devolution. The minute the Senate crumbles and the citizens give up on us, it will be the end of devolution. This is because when you engage many members of the public on the fruits and benefits of devolution, they generally share with you their feelings of frustration about the huge amounts that they hear counties receive. For instance, when they hear that Kericho County received Kshs6.2 billion in last financial year, they ask: "Can you physically point out where this money went to by way of specific projects that affect our daily lives?" If we, as Senators, lack answers to such questions, then we are not doing justice to the people we represent in this House.

Mr. Temporary Speaker, Sir, with those many remarks, I beg to second.

(Question proposed)

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Temporary Speaker, Sir. I rise to support this Bill. This Bill has set a good precedent because I moved the amendment to The Division of Revenue Bill, and there was concern that the National Assembly would not accept us to originate that Bill. Therefore, for the first time, the Senate has complied

with the Supreme Court Advisory Opinion to the extent that The Division of Revenue Bill is an ordinary Bill and can commence either from the Senate or the National Assembly. We have, therefore, set a good precedent, which means that before there is any reduction of the money that is allocated to the counties, the first point of call is an amended Division of Revenue Bill; while the second one would be the County Allocation of Revenue Act.

Mr. Temporary Speaker, Sir, while I support the increase here, I must admit that it is extremely disappointing. We are now in November, and possibly all counties except a few, have already agreed on their budgets by this time. According to the Controller of Budget – and I have received a letter issued to my governor on these conditional grants – they must be included in the budget, so that these counties can then receive the funding that comes from the national Government.

Whereas the Chairperson of the Committee on Finance and Budget, in his wisdom, has separated sharable revenue and conditional grants, the position is that there are still other conditions when the matter goes to counties. Therefore, we must expedite this and tell the National Treasury that any other grant that comes after we have passed the County Allocation of Revenue Bill, sometime in April, May or much later, just about July, should wait for the next financial year. This is because this sort of budgeting is interfering with the county budgets.

To that extent, I think we should, as the Senate, set some policy other than what Sen. Cheruiyot is talking about, which I want to deal with. There must be guidelines to the National Treasury. You cannot enter into grants, conditional or otherwise, continuously past the budget cycle. It could be nice that we are receiving money, but it is disruptive both to the business of this House and county assemblies.

Secondly, Mr. Temporary Speaker, Sir, the functions that are here, that is, of agriculture, water, and forests are all devolved. As we debate and pass this budget, I cannot tell this country and the people we represent the basis upon which, for example, Baringo County is receiving Kshs117 million under the World Bank Climate Smart Agriculture Project. Similarly, I cannot tell the country - and I am sure the Chairman also cannot - why the Bungoma County is receiving Kshs80 million under the Water Tower Protection and Climate Change Mitigation and Adoption Programme. That is the case for all the conditional grants.

Mr. Temporary Speaker, Sir, what does that make of us, as the Senate and Committee of Finance and Budget? We are just but a conveyor belt of national Government grants. They do not involve us in these things and our work is to stand, make noise, vote and that is the end. It is not exactly a very proud thing to say, but it is important that we say so. I say so because there is time where the Committee on Finance and Budget and Senators can engage with the national Government on these decisions. For instance, why did they decide that Bungoma County should receive Kshs80 million for Water Tower Protection and Climate Change Mitigation and Adoption Programme and not Mau Forest? Why did they choose that Elgeyo-Marakwet, Busia or Kisii County should receive Kshs80 million and not Chyulu Water Tower, which is already a declared water tower? This Country has six gazetted water towers. We have received a grant that

will benefit 11 counties, and some where gazetted water towers are do not have resources.

That is the sought of inquiry that the Committee on Finance and Budget ought to make, where Senators can understand. Why are we giving people money for agriculture? What are they supposed to do with forests? What is it that the Senate and the Senators can participate in?

Mr. Temporary Speaker, Sir, I am supporting this with a lot of restraint. I cannot explain to anybody why I have stood up today to support, except that there is more money to counties. There is the Kenya Devolution Support Programme where counties are supposed to receive money. While the budget talks about Kshs4 billion in the division of revenue, The County Allocation Revenue Act (CARA) talks about Kshs2.1 billion. What happens to the Kshs1.9 billion? Where is it? Who is keeping it and why are they keeping it? Thirteen counties have been given money as part of the Kenya Devolution Support Programme, and we do not know why they qualified and the rest did not. What is it that we can do, as the Senate, to expedite the release of money to the rest of the other counties? That information is important.

Mr. Temporary Speaker Sir, there was a Statement that was to be raised today on medical equipment, where this Senate has allowed the national Government by voting to deduct Kshs200 million per year in advance from every county irrespective of size. Therefore, Lamu County is paying Kshs200 million, like Makeni County, Nairobi City County, and Turkana County. We cannot tell anybody in this country why we have allowed that to happen. That is the difficulty that I have. I read a book that was produced by the World Bank called "*Devolution Without Disruption.*" It was done before the advent of devolution. One of the things they anticipated, and has happened, is that the conditional grants would claw back on the functions of counties.

The national Government is slowly taking over these functions and managing them in Nairobi because governors do not know where this money is coming from, and where they are getting equipment. Yesterday, we were arguing with Sen. Omogeni. They bought a machine and the national Government has bought a similar one. Now they have no room to keep it. They had no choice, and the governor was possibly forced to sign it. We have said nothing and all these things have become business as usual. It is the new normal.

Whilst counties are not receiving funds - and I am glad that the Chairman has reported that counties have begun to receive funds - the national Government is engaging on these other funds with donors on conditions we are not aware of as the Senate. Most likely, even the governors are not aware of it, and they are not sharing these documents. There is no framework, policy, and worse, oversight for conditional grants. I asked a question and have not been answered to date.

When the reports come to us, like the one that have been tabled here on the expenditure by counties, there is no column on these conditional grants. It means that even when Sen. M. Kajwang' and his Committee are interrogating governors, this particular subject disappears without any questions to those governors. Even if you did, they would not know what to say. It is not a nice way of doing things. I want to protest that I do not feel that this Senate ought to be taken for a ride, casually or lightly.

I am glad that the Chairman mentioned that when the national Government, through the National Treasury approached the Committee, they just wanted us to sneak in these figures in the previous County Allocation Revenue Act (CARA) of 2018, without going through the division of revenue. We can go a step further next time and ask them to bring the paperwork for all these conditional grants and the conditions they have imposed on the Kenyan nation. We would want to know how much they have committed in terms of debts to those counties and, lastly, who in the county or Treasury is oversighting the expenditure of these funds. That way, we will be useful to this country.

Lastly, I have been thinking seriously about the audit. I think it is time, just like we have a Parliamentary Budget Office, that this Senate considers a Parliamentary Audit Office; a full office of auditors who will help us interrogate these matters from time to time.

I am pleading with the Chairman, who is also the Senator for Mandera County, to help this Senate by beginning to interrogate the quarterly reports of the Controller of Budget. I think that is the starting point.

The second one is to compel the Controller of Budget to give us the reports they receive on quarterly basis, county by county, so that we can share with the rest of the Senators. Thirdly, they must give us the implementation of those budgets, county by county, so that we can arm the Senators who are seated here with the information they require. This is because if you open the booklets submitted to us by the Controller of Budget every quarter, under the County of Makueni, for example, the most of it will be in three pages. However, the quarterly report that comes from County Executive Committee (CEC) Member for Finance from Makueni is a whole booklet.

Therefore, Mr. Temporary Speaker, Sir, the Controller of Budget is summarising information for us, without us interrogating what information they received. It is no wonder that while we are seated here, a governor is being interrogated or investigated for misappropriation of Kshs2 billion. That money would have disappeared from Migori County and everybody in the system would not notice, including the Senate.

Mr. Temporary Speaker, Sir, the Article in the Constitution that allows the stoppage of funds to counties should be applied. It can only be applied once the information is in the Senate, and we can interrogate it. This is because at the end of this session, the 26 governors – who are now on their second terms and have Kshs2 billion or Kshs4 billion in their accounts in Kenya - will relocate to the Cayman Islands or the Comoros. We will then have zero that we can deal with, because we will be auditing their accounts while they are hiding in Comoros, Cayman Islands or some place in Panama. We must change the way we check the use of public funds.

We have given credit to those people who think that this House should be removed from the Constitution. Why? It is because they cannot see us on the ground. We have been denied funds and, therefore, cannot go to monitor what governors are doing. They appear here and leave, yet the people in our counties can tell you that these people are stealing because there is no money in their projects. The Members of County Assemblies (MCAs) are in bed, hook, line and sinker with the governors; they will, therefore, not do anything. They have become a club where they sing the same song; they are singing lullabies in their assemblies.

If the Controller of Budget, for example, did not bother to copy me the objections on the budget of Makueni County – and the things that she found absolutely out of tune with the Public Finance Management – I would not have known that the County of Makueni has put some things in their budget that they cannot explain. That is the problem about not interrogating these people.

Mr. Temporary Speaker, Sir, if we need to empower the Controller of Budget to do more, we can do so. But to stand here on 15th November, 2018, and say, “I support, please give counties more money and let us make sure we have prudent use of resources” is an extreme waste of our time, public funds and our brains in doing this sort of thing which has nothing. We are passing something we do not know or have information on. They say information is power. This Senate has no power because it has no information. What we are doing is unapologetically conveying things. It is like a tunnel of information for the National Treasury.

We must say no to this, because if we do not do so, Sen. Mahamud is will leave – maybe retire or something – and we will have set no precedent for the Third Senate. The First Senate had a difficult time and the Second Senate is having an even worse time; to try to monitor these governors, and it will get worse. In the end, devolution will have a bad name. The reason a county like Makueni has received so many delegations today – as I have learned – is because when devolution is doing well we get assistance and help. However, all these people who are coming into this country will demand that the Senate must show what role it has played in ensuring that their funds are spent well.

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

The Temporary Speaker (Sen. Lelegwe): Proceed, Sen. Seneta.

Sen. Seneta: Mr. Temporary Speaker, Sir, thank you for giving me a chance to add my voice on this important County Allocation of Revenue (Amendment) Bill. The people of Kenya voted for the Constitution, 2010 because of the hope they had in devolution. Therefore, this House should stand for devolution, so that the people of Kenya can get the gains they voted for Constitution, 2010. This is because the monies we allocate to the counties and give to them must be seen to develop those counties.

However, as we speak, we have quite a number of challenges, as the hon. Senator has said. There is either delay of disbursement of monies to counties or little money is going to development in our counties. Therefore, as a House, we should make sure that the monies allocated to these counties do not only appear in the Bill and the Schedules, but actually go to the counties and develop them.

The delay by the National Treasury to give money to counties is paralysing county activities. As I speak, there are many counties which have not received funds. We are only giving counties salaries and, therefore, development is at standstill because of the delay.

When I look at this amendment of the conditional allocation to counties, I am impressed specifically by the Kenya Urban Support Project that is targeting urban infrastructure. Today, when you visit the urban areas in our counties, many of them are in problems because of poor sewerage systems, traffic jams because of narrow roads, lack of recreational facilities, such as public social halls for meetings, sports facilities such as stadiums and public toilets. Thus, the big population that is in urban areas in our counties

is suffering. Therefore, I am happy to see that an allocation of Kshs1.85 billion will go to 45 counties in our country. I will support this Bill because of this. This is the second phase of this support.

I want to believe that these grants going to the urban support projects in our counties will serve the purpose intended. These grants are coming from development partners, that is, the Government of Sweden, the European Union (EU) and the World Bank. The development partners must see the benefit of the conditional grants and loans that they give to the people of Kenya whom they intend to help. Therefore, I hope that counties will target the priorities in their urban areas and use the money for urban support projects wisely. If an urban area does not have public toilets or recreational activities, they should be given first priority. We should not just put money into roads or bus parks when other urban areas do not have sewerage systems.

Mr. Temporary Speaker, Sir, if you go Kitengela, for example, it is very populated, yet it does not have a sewerage system. Therefore, investors in exhausters get a lot of profits. Therefore, the allocation for urban support project should benefit people in the counties.

Mr. Temporary Speaker, Sir, I am happy with these amendments because they propose to allocate Kshs1.5 billion to the Agricultural Sector Development Support Programme, which will go to the 47 counties. This money is intended to facilitate transformation of crops, livestock, and fisheries production into commercially oriented enterprises that ensure food and nutritional security.

Mr. Temporary Speaker, Sir, for us to be food secure, we need to support farmers who are producing food. Therefore, counties should look into ways of supporting their farmers. Equally, they should look at agricultural products that will thrive in their counties. This is because we have counties where livestock has a potential to steer economic development. We also have other counties that have fish production, which can also be supported, while others have crops. Therefore, our counties should be very creative in what to support.

I am happy with Makueni County. I recently watched a programme on Smart Farm where they talked about farmers being given subsidized Artificial Insemination (AI) services and educated on value addition in the production of mangoes. Therefore, we should encourage our farmers and give them subsidies, so that our counties can be food secure.

Our counties should also look for local markets for their people. Some sections of our country, for example, the North Eastern part of Kenya, may not have a lot of maize. Therefore, we should have inter-county trade to create market for the people.

As I support this Bill, I concur with my colleagues that conditional grants should be brought at the right time, when the Budget is being made, so that when we pass it, and counties can appropriate the money in their budgets. We should not have supplementary budgets in the middle of a financial year because counties might not have allocated the monies. That is why we find counties spending money even without looking at their priorities. When you are given money that was initially not in your County Integrated Development Plan (CIDP), you may end up misappropriating it.

I also concur with my colleagues that the Senate should oversight funds that go to our counties. We should not only allocate money, but also make sure that we follow up to ensure that it is used for the functions that it was allocated for. I urge colleagues that when reports are brought to this House, we should scrutinise them to see which projects were allocated money and how much was allocated. We also need to follow up on the implementation of the projects. We should also make sure that we look at the development versus recurrent expenditure allocations. A lot of monies go to recurrent expenditure rather than development.

I support this Bill and urge colleagues to not only support it, but also make sure that we correct the delay in releasing of funds to counties.

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, there being no other request to contribute on the Bill, I now call upon the Mover to reply.

Sen. (Eng.) Mahamud: Mr. Temporary Speaker, Sir, I thank Members for contributing effectively to this Bill. As I said, the aim of this Bill is to add some extra funding from three donors to support counties through conditional grants. One thing that Members have said, which is correct, is that grants are negotiated and agreed between the National Treasury and specific development partners, but we in the Senate, do not know the details.

Going forward, as a Committee, we will engage the National Treasury so that we understand the conditions of the grants. All I know is that before counties get those monies, they engage various departments of the national Government and specific donors. That is why some monies in the County Allocation of Revenue Act (CARA) are not disbursed as required to various counties, because they have to meet certain criteria before they get access to those funds.

With those remarks, I beg to reply.

Pursuant to Standing Order No.61 (3), I request that you defer putting of the question on the Bill to a later date.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, I defer the putting the question on The County Allocation of Revenue (Amendment) Bill (Senate Bills No.29 of 2018) to Wednesday next week.

(Putting of the Question on the Bill deferred)

Hon. Senators, the rest of the Orders are deferred.

MOTIONS

NOTING OF REPORT OF THE SIXTH ORDINARY SESSION OF THE FOURTH PAN-AFRICAN PARLIAMENT

THAT, this House notes the Report of the Sixth Ordinary Session of the Fourth Pan- African Parliament held in Midrand, South Africa, from 7th to 18th May, 2018, laid on the Table of the House on Tuesday, 24th July, 2018.

(Motion deferred)

NOTING OF REPORT OF THE SENATE DELEGATION TO THE
INAUGURAL COMMONWEALTH PARLIAMENTARIANS' FORUM

THAT, this House notes the Report of the Senate Delegation to the Inaugural Commonwealth Parliamentarians' Forum held at the Westminster Palace, London, United Kingdom from 26th February to 1st March, 2018 laid on the Table of the House on Thursday, 10th May, 2018.

(Motion deferred)

NOTING OF REPORT OF THE 138TH ASSEMBLY
OF IPU AND RELATED MEETINGS

THAT, this House notes the Report of the 138th Assembly of the Inter – Parliamentary Union (IPU) and related meetings held in Geneva, Switzerland from 22nd – 28th March, 2018 laid on the Table of the Senate on Thursday, 21st June, 2018.

(Motion deferred)

NOTING OF REPORT OF THE APNAC
CONFERENCE, 2018

THAT, this House notes the Report of the Senate Delegation to the African Parliamentarians' Network Against Corruption (APNAC) Conference held in Ghana from 17th – 18th March, 2018, laid on the Table of the House on Tuesday, 19th June, 2018.

(Motion deferred)

NOTING OF REPORT OF THE 62ND SESSION OF THE
COMMISSION ON THE STATUS OF WOMEN

THAT, this House notes the Report of the 62nd Session of the Commission on the Status of Women laid on the Table of the House on Tuesday, 17th July, 2018.

(Motion deferred)

NOTING OF REPORT OF 49TH SESSION OF THE ACPPA AND
INTER-SESSIONAL MEETING OF THE ACP-EU JOINT ASSEMBLY

THAT, this House notes the Report of the 49th Session of the ACP Parliamentary Assembly and Inter- Sessional meeting of the ACP-EU Joint Parliamentary Assembly held on 20th – 22nd March, 2018 in Brussels, Belgium, laid on the Table of the House on Tuesday, 31st July, 2018.

(Motion deferred)

NOTING OF REPORT ON THE 2018
COMMONWEALTH GAMES

THAT, this House notes the Report of the Standing Committee on Labour and Social Welfare on the 2018 Commonwealth Games held in Gold-Coast, Australia from 4th to 15th April, 2018, laid on the Table of the Senate on Wednesday, 1st August, 2018.

(Motion deferred)

NOTING OF REPORT ON ROLE OF PARLIAMENTARIANS IN POPULATION
AND THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT

THAT, this House notes the Report of the Senate Delegation to the Conference on Enhancing the Role of Parliamentarians in the Interlinkage between Population Issues and the 2030 Agenda for Sustainable Development, held in New Delhi, India from 13th – 15th September, 2017, laid on the Table of the House on Thursday, 2nd August, 2018.

(Motion deferred)

NOTING OF REPORT OF THE PROCEEDINGS OF THE
GLOBAL PARLIAMENTARY CONFERENCE (GPC)

THAT, this House notes the Report of the proceedings of the Global Parliamentary Conference (GPC), held at the World Bank Headquarters, in Washington DC, United States of America from 16th to 17th April, 2018, laid on the Table of the House on Thursday, 12th July, 2018.

(Motion deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Lelegwe): Having concluded the business of the day, it is now time to adjourn the House. The Senate, therefore, stands adjourned until Tuesday, 20th November, 2018 at 2.30 p.m.

The Senate rose at 6.30 p.m.