

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 21st March, 2019

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

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

PRAYER

PAPERS LAID

REPORTS ON THE FINANCIAL STATEMENTS OF VARIOUS COUNTY ASSEMBLIES/FUNDS

The Senate Majority Leader (Sen. Murkomen): Madam Temporary Speaker, I beg to lay the following papers on the Table of the Senate, today, Thursday, 21st March, 2019 -

- (a) Report of the Auditor-General on the Financial Statements of Machakos County Assembly for the year ended 30th June 2018;
- (b) Report of the Auditor-General on the Financial Statements of Kitui County Assembly for the year ended 30th June 2018;
- (c) Report of the Auditor-General on the Financial Statements of Siaya County Assembly for the year ended 30th June 2018;
- (d) Report of the Auditor-General on the Financial Statements of Turkana County Assembly for the year ended 30th June 2018;
- (e) Report of the Auditor-General on the Financial Statements of Homa Bay County Assembly for the year ended 30th June 2018;
- (f) Report of the Auditor-General on the Financial Statements of County Executive of Uasin-Gishu Enterprise Development Fund for the year ended 30th June 2018;
- (g) Report of the Auditor-General on the Marsabit County Enterprise Fund for the year ended 30th June 2017;
- (h) Report of the Auditor-General on the Financial Statements of Meru County Assembly Staff Car Loan and Housing Fund for the year ended 30th June 2018;
- (i) Report of the Auditor-General on the Financial Statements of Uasin Gishu County Executive Mortgage and Car loan scheme for the year ended 30th June 2018;
- (j) Report of the Auditor-General on the Financial Statements of County Assembly of Kitui Members car and Mortgage Loan Scheme for the year ended 30th June 2017;
- (k) Report of the Auditor-General on the Financial Statements of Murang'a South Water and Sanitation Company Limited for the year ended 30th June 2017;

- (l) Report of the Auditor-General on the Financial Statements of Uasin Gishu County Assembly Mortgage and Car Loans Scheme Fund for the year ended 30th June 2017;
- (m) Report of the Auditor-General on the Financial Statements of Murang'a South Water and Sanitation company Limited for the year ended 30th June 2016;
- (n) Report of the Auditor-General on the Financial Statements of County Assembly of Narok for the year ended 30th June 2018;
- (o) Report of the Auditor-General on the Financial Statements of Meru Water and Sewerage Services Registered Trustees for the year ended 30th June 2017;
- (p) Report of the Auditor-General on the Financial Statements of Uasin Gishu County Bursary and Skills Development Fund for the year ended 30th June 2018;
- (q) Report of the Auditor-General on the Financial Statements of Uasin Gishu County Alcoholic Drinks Control Fund for the year ended 30th June 2018;
- (r) Report of the Auditor-General on the Financial Statements of Elgeyo-Marakwet Alcoholic Drinks Control Fund for the year ended 30th June, 2016; and
- (s) Report of the Auditor-General on the Financial Statements of Uasin Gishu County Executive Emergency Fund for the year ended 30th June, 2018.

(Sen. Murkomen laid the documents on the Table)

The Temporary Speaker (Sen. Nyamunga): The Senate Majority Leader, there is a Procedural Motion for you to move under Standing Order No.15.

PROCEDURAL MOTION

ELECTION OF A SENATOR TO PRESIDE OVER SITTINGS OF THE HOUSE PURSUANT TO STANDING ORDER NO.15 AND ARTICLE 107(1) OF THE CONSTITUTION

The Senate Majority Leader (Sen. Murkomen): Madam Temporary Speaker, I beg to move the following Procedural Motion:-

THAT, pursuant to Senate Standing Order No.15 and Article 107(1)(c) of the Constitution, the Senate elects Sen. (Dr.) Agnes Philomena Zani to preside over the sittings of the Senate for the remainder of the day.

This is a rather straight forward Motion. I moved a similar Motion earlier this week. Most of the Members of the Speaker's Panel travelled out of the country on official duty. Therefore, it is not feasible that it can be expected that you, Madam Temporary Speaker, will sit on the Chair for the rest of the day up to 6.30 p.m. It is humanly impossible to do so. It is only feasible that we have a Temporary Speaker for that position as permitted by the Standing Orders and the Constitution so that the business of the House can run smoothly.

Madam Temporary Speaker, we all know who Sen. (Dr.) Zani is. When the history of the women of this country will be written, there must definitely be some part for her, including yourself. I have my different quarrels with Sen. (Dr.) Zani which I will present at a different time. I watched her on television the other day demanding the removal of a lady who is a

Member of Parliament. That is not the person that I know because in many periods of her life, Sen. (Dr.) Zani stood for women empowerment.

Sen. (Dr.) Zani: On a point of order, Madam Temporary Speaker. Is the Senate Majority Leader in order to distort facts even as he presents his Motion for a temporary Speaker? He knows that when I say something, I am very clear and I weigh my words. My words were clear; that if somebody has found a place – they know the place that they have found - and want to be there – we are just saying all the best to them. That does not amount to anything that is in his mental mind. I know that for a long time---

The Temporary Speaker (Sen. Nyamunga): Sen. (Dr.) Zani, your point is noted.

Sen. (Dr.) Zani: Madam Temporary Speaker, I would like to finish this. I know that Sen. Murkomen can sometimes brainstorm from the ideas in his mind to a reality that is at times far extended from what is happening on the ground.

I thank you.

The Temporary Speaker (Sen. Nyamunga): Sen. Cheruiyot, do you have a point of order?

Sen. Cheruiyot: Madam Temporary Speaker, I wanted to disagree with what Sen. (Dr.) Zani has said. However, on second thought, given that she has tried to absolve herself of the blame and privately confided in me that she will not be taking that public position again, I would like to withdraw my protestations.

(Laughter)

The Temporary Speaker (Sen. Nyamunga): Those sentiments have been noted.

Kindly proceed, Sen. Faki.

Sen. Faki: Madam Temporary Speaker, I was surprised by the learned Senate Majority Leader canvassing an issue which is actively before a tribunal where he represents one of the parties in that matter. Is he in order to canvass an issue which is before a tribunal here?

The Temporary Speaker (Sen. Nyamunga): The Senate Majority Leader, are you in order?

The Senate Majority Leader (Sen. Murkomen): Madam Temporary Speaker, I never mentioned any issue that is before any court. All I said is that I generally believe Sen. (Dr.) Zani's history in leadership, including her attempt to be the Secretary-General in one of the top parties, will be written in the books of our Republic. When I was saying that, she was really smiling. However, when I pointed out that her illustrious career will be dented when history will be written about her support of women who are in trouble---

Madam Temporary Speaker, you know very well that the women in this country have reached where they are because they have had unity of purpose that is across political parties. They have stood for gender empowerment. Therefore, Sen. (Dr.) Zani, must accept that even though I praised her, she must accept when I minus a few of the praises because she recognises that at a time such as this, the women of this Republic look up to her.

The Temporary Speaker (Sen. Nyamunga): What is your point of order, Sen. (Dr.) Zani?

Sen. (Dr.) Zani: On a point of order, Madam Temporary Speaker. The Senate Majority Leader is out of order because, one, he is taking a stand and pushing an argument from a different point of view. Two, he knows very clearly that this is a political question where he has a lot of interest. He knows where he is coming from, how much he has canvassed for whatever

activities that are taking place and wants to take it to the next level. Therefore, to apportion blame, throw in comments and statements that completely mislead this forum is unacceptable.

Is that in order?

The Temporary Speaker (Sen. Nyamunga): The Senate Majority Leader, are you through with your Motion?

The Senate Majority Leader (Sen. Murkomen): Madam Temporary Speaker, I am still in the process of praising Sen. (Dr.) Zani. I am not even a quarter way in terms of recognising her efforts.

Madam Temporary Speaker, be it as it may, I think that my message to all the women and men in this House is that myself, together with Sen. Malalah, Sen. Sakaja and Sen. Cheruiyot, have been told over and over again that we should set a good example for young people. There is nothing wrong with me challenging Sen. (Dr.) Zani and all the women in this House to also set a good example for the women of this Republic and to show a good example that they can stand for each other.

I have seen Sen. Sakaja stand with young parliamentarians from the other political parties and defend them even when it could have been politically incorrect to defend someone who is in another political party having attacked your own political party. Sen. Sakaja stood firm to support hon. Babu Owino even when his mistakes were related to attacking the leader of our party. I expect the same from the women of this Republic. When fellow women are under similar attack, Sen. (Dr.) Zani and others – I cannot mention your name Madam Temporary Speaker – should also lead by example like Sen. Malalah, Sen. Cheruiyot and most of us have done before to take this debate forward.

I beg to move and request Sen. Malalah to second.

The Temporary Speaker (Sen. Nyamunga): What is your point of order, Sen. (Dr.) Zani?

The Senate Majority Leader (Sen. Murkomen): Madam Temporary Speaker, I am not on the Floor.

Sen. (Dr.) Zani: Madam Temporary Speaker, the Senate Majority Leader is not on the Floor because he cunningly ran off the Floor as I was asking for an opportunity to raise my point of order.

Is it in order for the Senate Majority Leader to tell us that good is a particular concept that is constant? He knows better because he has been a lecturer and done a lot of reading. He knows that good is relative. He also knows which side of the political divide he is.

Is he in order not to respect political parties and the decisions made by those political parties? Is he in order to canvass an issue and make it a national issue and divide the women of Kenya who are clearly standing together on very many issues? He thinks that is an issue that is dividing women.

Is it his opinion that, that matter can shape the views of Kenyans? Is he in order?

The Temporary Speaker (Sen. Nyamunga): The Senate Majority Leader, are you for the women of Kenya or against the women of Kenya?

The Senate Majority Leader (Sen. Murkomen): Madam Temporary Speaker, if there is a man who is known to stand by women, it is Sen. Kipchumba Murkomen. The record of this House, Madam Speaker, speaks for itself. Having been the mover, several times supporter of the constitutional amendment, to increase the number of women who come to this House, I deserve recognition in that direction.

Madam Temporary Speaker, I have never wanted to divide the women of this Republic. The thing I saw in the Kenya Women Parliamentarians Group, otherwise known as KEWOPA, was that one group the other day issued a Statement in support of women and another group, which included Sen. Zani, opposed that woman. I am not the one who divided, it is their own making.

Madam Temporary Speaker (Sen. Nyamunga): Sen. Mbogo George Ochillo-Ayacko.

Sen. Ochillo-Ayacko: Thank you Madam Temporary Speaker. The Senate Majority Leader seems to be discussing in low tones a matter that is actively before court. I believe that he is representing one person who has been accused of attacking her party and is misusing this platform to advance that matter. Is he in order to bring a matter where he is actively interested in, in court to be discussed here when others do not have opportunity to defend their parties here?

Madam Temporary Speaker (Sen. Nyamunga): I am not accepting any more points of order. The Senate Majority Leader, please conclude.

The Leader of Majority (Sen. Murkomen): Madam Temporary Speaker, I think on the issue of moving the Motion, I was done.

Madam Temporary Speaker (Sen. Nyamunga): Yes, you now get somebody to second.

The Senate Majority Leader (Sen. Murkomen): On the issue of court or no court, I have not discussed any particular case.

Madam Temporary Speaker (Sen. Nyamunga): Senator, that one has been put to rest. Just get a seconder.

The Senate Majority Leader (Sen. Murkomen): I have never discussed any particular case. I request Sen. Malala to second.

Sen. Malalah: Thank you. This is a straight forward Motion and much has been said about Sen. (Dr.) Zani. I believe she meets the prerequisite of sitting on that seat. I think it is high time for us in the spirit of “handshake” to start working together as both coalitions and even to extend to the leadership of Committees.

You notice that there are some Committees which have had moribund chairpersons, just in the name of Jubilee coalition. It is, therefore, important that we start thinking in the direction of “handshake” because this side has better brains which can help in the management of---

Madam Temporary Speaker (Sen. Nyamunga): Sorry Sen. Malalah. The Senate Majority Leader, what is your point of order?

The Majority Leader (Sen. Murkomen): Madam Temporary Speaker, I am almost regretting---

(Laughter)

I should have actually called Sen. Sakaja to second this Motion; did you hear the Senate Deputy Minority Leader - not just Senator, but Senate Deputy Minority Leader - insinuate that there are moribund chairmen and to say that there is lack of intellect in any person, who is a Senator? Is that in order? Is that really even feasible to be mentioned by any Senator in this House?

He must apologise and withdraw.

Madam Temporary Speaker (Sen. Nyamunga): Senator, can you please clear your statement?

An hon. Senator: Apologise to who?

Sen. Malalah: Madam Temporary Speaker, Sen. (Dr.) Zani is somebody---

The Senate Majority Leader (Sen. Murkomen): Sen. Malalah, just do the first things first; apologise and move forward.

Sen. Malala: Madam Temporary Speaker, I withdraw that statement and insist that Sen. (Dr.) Zani is best fitted to sit on that seat today and even forward, we want to encourage the leadership of the Majority side and the leadership of Minority side to have a harmonized way of--

Madam Temporary Speaker (Sen. Nyamunga): Sen. Sakaja, did you have a point of order, or it has been overtaken by events?

Sen. Sakaja: Madam Temporary Speaker, you know, I am really shocked with what my brother, Sen. Malalah, is doing. I was worried when he said that there is a moribund chair and, in fact, I am a Chair and a Vice Chair. I wanted to know whether he is referring to me. This is because, I am the nearest Chair from where he is standing and so, in as much as he has withdrawn, can he make it clear that the moribund chair that he is referring to cannot not be “super Senator Sakaja”, please?

Madam Temporary Speaker (Sen. Nyamunga): Sen. Malalah, can you conclude please.

Sen. Malala: Madam Temporary Speaker, I want to confirm without fear of contradiction that that chairperson who is moribund, is not Sen. Sakaja, “super Senator for Nairobi”. I second the Motion to ensure that we have a Temporary Speaker presiding over this House later this afternoon.

Thank you.

(Question proposed)

Sen. Poghisio.

Sen. Poghisio: Thank you very much, Madam Temporary Speaker. I would like to support the appointment or election of Sen. (Dr.) Zani to preside over today’s sittings of the Senate.

The best way to show that we care about women is to protect them when they are under attack and in this case, she has been under attack today in this House and we would like to protect her as well.

Madam Temporary Speaker, I would like to thank the Senate Majority Leader for thinking about nominating Sen. (Dr.) Zani but at the same time, I would really like her to be free to exercise her wisdom and intellect without fear or favor.

When you sit on that Chair, you do not want to go on that Chair with a particular profile that negates what you have. We would like her to sit on that Chair mainly so that she can exercise fair judgment and that she is not part of the narrative of referring to another political party. I am a defender of political parties as well.

If a political party chooses that they want to discipline their members, I do not think that can be a subject of discussion in such a way as to make it look like we really have no issues with our own parties.

(Applause)

I think every party has got their own issues; allow them to go through their motions and to finish with the best position for their party. I would like to support that and also persuade the Senate Majority Leader, who is my leader on this side, that he can let that go. He can still be a strong leader without having to join in the chorus.

(Applause)

Sen. (Dr.) Zani, as a proven leader and can definitely do a good job. I want to support her for the selection today. I want to convince my colleagues to support that selection and I hope that we can actually see her for who she is with her intellect.

Thank you very much and I support.

Madam Temporary Speaker (Sen. Nyamunga): Hon. Senators, I thought this was a very straight forward matter, but I see a lot of interest. I do not even know how to handle this. I give one minute to Sen. Seneta.

Sen. Seneta: Thank you Madam Temporary Speaker for giving me the opportunity to add my voice on this important Motion. I want from the onset to say that the nomination of Sen. (Dr.) Zani to the position of presiding over this House is very important. Having known her experience and commitment to this House as the Chair of the Kenya Women Senators Association (KEWOSA), on behalf of all women Senators, we want to support her. Congratulations.

(Question put and agreed to)

Madam Temporary Speaker (Sen. Nyamunga): Next Order.

STATEMENTS

BUSINESS FOR THE WEEK COMMENCING TUESDAY, 26TH MARCH, 2019

The Senate Majority Leader (Sen. Murkomen): Thank you, Madam Temporary Speaker. I would like to give my Statement.

Pursuant to Standing Order 52(1), I, hereby, present to the Senate the business of the House for the week commencing Tuesday, 26th March, 2019.

On Tuesday, 26th March, 2019, the Senate Business Committee (SBC) will meet to schedule the business of the Senate for the week. Subject to further directions by the SBC, the Senate will, on Tuesday, 26th March, 2019, 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, 27th March and Thursday, 28th March, 2019, the Senate will consider business that will not be concluded on Tuesday and any other business scheduled by the SBC.

Hon. Senators, there are 14 Bills due for Second Reading. In addition, there are nineteen (19) Bills at the Committee of the Whole stage. These are:-

- (1) The County Governments Retirement Scheme Bill (National Assembly Bills No.10 of 2018);
- (2) The Public Participation Bill (Senate Bills No.4 of 2018);
- (3) The Retirement Benefits (Deputy President and Designated State Officers) (Amendment) Bill (Senate Bills No.2 of 2018);
- (4) The County Governments (Amendment) Bill (Senate Bills No.13 of 2018);
- (5) The Impeachment Procedure Bill (Senate Bills No.15 of 2018);

- (6) The Care and Protection of Older Members of Society Bill (Senate Bills No.17 of 2018);
- (7) The Prevention of Terrorism (Amendment) Bill (Senate Bills No.20 of 2018);
- (8) The Petition to County Assemblies (Procedure) Bill (Senate Bills No.22 of 2018);
- (9) The Data Protection Bill (Senate Bills No.16 of 2018);
- (10) The County Planning (Roads, Pavements and Parking Bays) Bill (Senate Bills No.18 of 2018);
- (11) The County Outdoor Advertising Control Bill (Senate Bills No.19 of 2018);
- (12) The Treaty Making and Ratification (Amendment) Bill (Senate Bills No.23 of 2018);
- (13) The Local Content Bill (Senate Bills No.10 of 2018);
- (14) The Statutory Instruments (Amendment) Bill (Senate Bills No.24 of 2018);
- (15) The County Law Compliance and Enforcement Bill (Senate Bills No.25 of 2018);
- (16) The County Early Childhood Education Bill (Senate Bills No.26 of 2018);
- (17) The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No.27 of 2018);
- (18) The County Statutory Instruments Bill (Senate Bills No.21 of 2018); and,
- (19) The Tea Bill (Senate Bills No.36 of 2018).

I request Movers of Bills, Committee Chairpersons and Senators who have amendments to Bills to avail themselves during their consideration at the Committee of the Whole stage. This will facilitate effective navigation through the clauses and Divisions. I also request the Party Whips to ensure that Senators are in the Chamber whenever Divisions on Bills at the Committee stage are scheduled.

Hon. Senators, in order to also facilitate the House to effectively navigate the Committee of the Whole stage on a Bill and enrich debate at the Second Reading stage, I urge Standing Committees to expedite consideration of the Bills referred to them and table reports in the House.

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

(Sen. Murkomen laid the Statement on the Table)

(Interruption of Statements)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF STAFF FROM VARIOUS COUNTIES ON TRAINING AT THE CPST

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of a visiting delegation of staff from Isiolo, Wajir, Kirinyaga and Nyandarua counties who are undertaking training at the Centre for Parliamentary Studies and Training (CPST), on the future of security management competencies in a legislative setting.

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

- (1) Mr. Abdullahi Jillo Dadacha - Isiolo County Assembly

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|-----|---------------------------|---|---------------------------|
| (2) | Mr. Abdi Eno Mohammed | - | Isiolo County Assembly |
| (3) | Ms. Fatma Hibaq Ahmed | - | Isiolo County Assembly |
| (4) | Mr. Dahaba Abdullahi | - | Wajir County Assembly |
| (5) | Mr. James Njenga Kangethe | - | Kirinyaga County Assembly |
| (6) | Mr. Stanley Kimeria, HSC | - | Nyandarua County Assembly |
| (7) | Mr. Steven Mwangi Kairu | - | Nyandarua County Assembly |
| (8) | Ms. Leah W. Njenga | - | Nyandarua County Assembly |

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

Sen. (Dr.) Zani, just make brief comments, please. We are running out of time.

Sen. (Dr.) Zani: Thank you, Madam Temporary Speaker, for giving me an opportunity to join you in welcoming the delegation of members from Isiolo, Nyandarua, Kirinyaga and other counties.

The Senate is a House that takes care of counties and the interest of counties. As the Senate, we work very closely with County Assemblies. One of the elements that is---

The Temporary Speaker (Sen. Nyamunga): Sen. Sakaja, I can see you are on a point of order.

(Sen. Sakaja spoke off record)

Sen. (Dr.) Zani, continue.

Sen. (Dr.) Zani: Thank you, Madam Temporary Speaker. In the work that Senators and parliamentarians do, research is an important component. I think this is what you have been training on because then you are able to pass the information in a very valid and reliable way, do research, get the data and facts so that you are not making arguments on the basis of sectarian, political or otherwise, positions. You are accurate in the data you present.

You play a very important role by creating the necessary information and bringing the right knowledge that legislators can then take to push policy and especially in a democratic society like us, democratic ideals can be pursued by such a venture.

We appreciate the work that you do and welcome you to the Senate of Kenya.

Sen. Halake: Thank you, Madam Temporary Speaker. I would like to welcome the County Assembly delegation from Isiolo – my county – and also my neighbouring county of Wajir, as well as the counties of Nyandarua and Kirinyaga.

We are very proud of the primary oversight work that our counties are doing. I would like to remind them that they are the first line of defence in terms of defending devolution. They are in the right place and we look forward to working with them especially in terms of county legislation and oversight. As primary overseers, I know our counties are doing a great job to make sure that we are effective in overseeing counties but providing the first line of defence in terms of primary oversight.

I take this opportunity to congratulate them and welcome them to the Senate. I look forward to working with them. I wish them well.

The Temporary Speaker (Sen. Nyamunga): Sen. Poghio, it is your turn. Please, let us make the comments very brief.

Sen. Poghio: Madam Temporary Speaker, it is just to join you and my colleagues in welcoming our guests.

I encourage them that this is the place to come and train and the place where you can get best practices. I also encourage the CPST to keep building for a greater opportunity to train more and more.

May I use this opportunity to say *karibu*.

Sen. Ochillo-Ayacko: Thank you, Madam Temporary Speaker. I also join you and my colleague Senators in welcoming the delegations who have come to learn from the best House. I congratulate them on picking the Senate and a local learning institution. Most assemblies choose to benchmark beyond the borders and it is hard to domesticate that kind of knowledge

We welcome them and hope that whatever they learn from us will be useful.

The Temporary Speaker (Sen. Nyamunga): Finally, Sen. Haji.

Sen. Haji: Thank you, very much Madam Temporary Speaker. I think I am the most qualified person to welcome these three delegations. One, on Isiolo County, I have a sister and a brother born of a mother from there. Wajir is where I went to primary school.

Lastly, Nyandarua is my second home. I worked there as a District Commissioner (DC) for six good years; the longest serving DC in one station in Kenya. This is because of the good relations that I had with them. These are very hardworking people.

Only last month, I was there on the BBI Initiative meeting with the public and Members of the County Assembly (MCAs). All of them turned up and gave very good suggestions. *Karibuni*. You are among friends and we look forward to continue working with you.

Thank you.

The Temporary Speaker (Sen. Nyamunga): Sen. Malalah.

(Resumption of Statements)

STATEMENT

RENEWED WAR AGAINST CORRUPTION BY THE MULTI-AGENCY ANTI-GRAFT TEAM

Sen. Malalah: Thank you, Madam Temporary Speaker. Pursuant to Standing Order No.47 (1), I rise to make a Statement on an issue of national concern, namely; the renewed war against corruption by the multi-agency and anti-graft team.

Corruption in this county is a scourge that can never be tolerated. Parliament has come up with numerous laws and codes of conduct for public officials in an attempt to curb it, yet it remains endemic and a cancer in our country. We are, therefore, living during very thought-provoking times. Our generation however, has a single opportunity to fight institutional and grand corruption.

Madam Temporary Speaker, like all growing economies in the world, there comes a time when the country and its establishments must choose to combat white collar crimes and corruption. That becomes the turning point of a country. Singapore and South Korea are a close example of this. Singapore's success in minimising corruption was the result of its Government's strong political will, adequate budget, personnel and operational autonomy given to the Corrupt Practices Investigation Bureau. This was to enable it to enforce anti-corruption laws impartially.

Similarly, to improve South Korea's anti-corruption strategy, the Korea Anti-Corruption Agency established, adequately staffed and funded agencies that were meant to investigate corruption cases. Those found guilty of corruption offences were punished according to the law without suspending their jail sentences or being pardoned by the President.

Madam Temporary Speaker, corruption that involves members of the government is the ultimate cancer of development. It, therefore, must take concerted efforts to fight it. I am glad that His Excellency, President Uhuru Muigai Kenyatta is leading from the front in this fight and that the Leader of Opposition, the Rt. Hon. Raila Amollo Odinga is in full support.

However, there seems to be blatant 'tribalization' of this noble cause. A section of leaders, especially from government, have been at the forefront in name-calling and undermining institutions and holders of constitutional offices charged with the onus of making this fight a success.

Madam Temporary Speaker, it need not be gainsaid that the framers of our Constitution envisaged and engineered it with safeguards and independence of constitutional offices. The offices of the Directorate of Criminal Investigation (DCI), Directorate of Public Prosecution (DPP) and the Ethics and Anti-Corruption Commission (EACC), were all established for the sole purpose of fighting this vice.

It is, therefore, extremely disheartening that for over three decades, Kenyans had yearned to see the so-called 'big fish' being arraigned in courts to answer to graft charges. When this has begun to take root, a section of the political leadership is beginning to politicise it.

Madam Temporary Speaker, the country must be told that the war against corruption targets no one specifically and no tribe in particular but the corrupt individual. Therefore, let us stop misleading the country that this war targets some individuals or tribes and give the DCI, DPP and EACC time to continue with this fight to finality.

For a very long time, the fight against corruption was killed by absolute lack of political goodwill. This is not the case today. There is a strong and unwavering commitment by members of the 'handshake' team to shake free this country from the shackles of unprecedented grand theft of public money and resources.

Scanning through the recent cases of corruption in Government, one gets astounded. We are speaking of astronomical figures; billions of Kenya shillings that have gone down the drain in the Dams Saga and similar amounts that remain unaccounted for in the Jet Fuel Scandal. We are talking of the billions of Kenya Shillings of taxpayers' monies that vanished in the maize payment impasse, *et cetera*.

Madam Temporary Speaker, history is not written in futuristic terminologies. It can only be understood retrospectively. As a junior politician, beginning my political career, I was always awed by the concerted efforts of the Government to strengthen and equip constitutional institutions with powers to prosecute proponents of grand graft just like the cases of Singapore and South Korea. Every single speech by the President was laced with a desire to have independent institutions that would work without the control of the Executive to achieve a corruption free country. It is now shocking to see and hear the very protagonists of this expedition turning themselves into antagonists to bash and disrespect the very institutions they wanted Kenyans to have faith in not so long ago.

Madam Temporary Speaker, Kenya is bleeding and hurting from corruption. Kenyans affected by the ravaging drought and famine in the northern part of the country are raising poignant questions regarding the moral values of the corrupt public servants. Our committed

doctors, nurses, teachers, policemen and women and all others working under unfavourable conditions are living in despair, yet few individuals want to illegally benefit from taxpayers' money. This must stop.

In my conclusion, I speak without any fear of contradiction that as elected leaders, we have a choice to make on which side of history we desire our names to be written. Whether we want to be on the side that supports corruption but fights it incognito or whether we want to take the bitter pill of supporting the fight against corruption, ramifications notwithstanding.

I thank you.

The Temporary Speaker (Sen. Nyamunga): I will now allow a few comments. Let us begin with Sen. Cheruiyot.

Sen. Cheruiyot: Thank you, Madam Temporary Speaker, for this opportunity. I wish to react to the Statement by my good friend, the Senator for Kakamega County, a man that I know so well. He has raised good questions and that is something that I as a young leader had thought about in the past few days. As a country, we have been having the debate on the war on graft and how it is being executed and many people have issued statements on what they think about this particular issue.

A German physicist called Albert Einstein reminded us that insanity is doing the same thing over and over while expecting different results each time. We will be insane as a country if we pursue the war on corruption the same way we have pursued it in the past while knowing very well that the reason we have never achieved any tangible or meaningful result is by doing exactly what the Multi-Agency Team is doing.

As a young leader, I am concerned about my country. I would wish to live in a country where systems work. I would wish to live in a decent society where hard work pays and everybody can demonstrate that whatever they own is because of their sweat and not because they took a shortcut somewhere. However, it is not proper for me to abrogate my responsibilities and celebrate that we should support something that has been put together. I need to be convinced that the effort and actions that are being taken will bear fruits, and once and for all, we shall slay the dragon of corruption and live in a corruption-free country because that is what we all desire.

Every action undertaken by the Multi-Agency Team ought to be backed by the Constitution because it is the only thing that gives us the power to do all the things that we do in this country, including gathering here every Tuesday, Wednesday and Thursday afternoons to deliberate on issues that affect Kenyans.

A good reading of Articles 244 all the way to 249 of our Constitution will tell you that the Inspector-General of Police should work independently and should not be under the directions of anyone. When you form a multi-agency team and you sit there together with the Attorney-General and the Director of Public Prosecutions (DPP) who is constitutionally supposed to audit the work of the Ethics and Anti-Corruption Commission (EACC) and the Directorate of Criminal Investigations (DCI) and you participate in investigations, what will you be telling us? The reason why the drafters of our Constitution saw it fit that we have bodies and organs that check on the actions of each other was so that we do not lose sight of the things like it used to be in the past.

As a country, we must not forget that the war on corruption has been used as a political tool from back in the days where if I held a different view from yours or I did not agree on the

things that you did politically, all I needed to do was to jump on a platform and declare that you are corrupt.

It is extremely unfortunate that what is currently happening is nothing other than a political war. I do not support the kind of war that is being wedged yet we are being reminded that it is war against corruption.

Article 79 of our Constitution speaks of us as a country establishing an independent institution called the Ethics and Anti-Corruption Commission that is supposed to investigate and charge people for economic crimes. It was extremely important for us to have a body that is free from the influence of the Executive. If we are not careful, then we will lose this war and only use it to victimise our opponents.

Strictly speaking, according to our Constitution, no politician has any role in the war against graft, not even the President, because the institutions that are supposed to be carrying out this work constitutionally are supposed to be independent. The only thing that we can give is moral support.

Let us examine---

Sen. Halake: Point of order!

The Temporary Speaker (Sen. Nyamunga): What is your point of order, Sen. Halake?

Sen. Halake: Madam Temporary Speaker, is the Senator for Kericho in order to insinuate that politicians have no role in the fight against corruption? What is our role in ending impunity because we are part of this society? Could he elaborate that?

The Temporary Speaker (Sen. Nyamunga): Hon. Senator, I will give you one minute because we have several Members who would like to give their comments.

Sen. Cheruiyot: I request that you give me three minutes.

The Temporary Speaker (Sen. Nyamunga): To be on a middle ground, I will allow you two minutes.

Sen. Cheruiyot: Madam Temporary Speaker, if Sen. Halake had followed my argument logically, she would have realised that I am speaking to the dictates of our Constitution. As leaders, of course we can provide a conducive environment against the war against corruption but we cannot pretend to be the champions and people with the constitutional duty on the war against corruption.

The reason we have many politicians trumpeting and telling us that we need to support the war against corruption is because it only appears to be targeted at certain people that they have political grudges with.

I saw the list of scandals that my good friend, the Senator for Kakamega, has presented and I know that they are selective. I would have expected him to include Mr. Rai, a businessman, who I know is his good friend, in the list of people with scandals. This is just another opportunity to throw political mud at people and that is why we will never win the war on corruption.

Sen. Ochillo-Ayacko: On a point of order, Madam Temporary Speaker. I have been listening to my good friend, Sen. Cheruiyot and he has been talking about politicizing the war against corruption. He cited the Multi-Agency Team, which I believe comprises the DCI and the DPP and he has reckoned that they are political offices. Is it in order for him to mislead the House that the holders of those offices are politicians like us?

The Temporary Speaker (Sen. Nyamunga): Senator, try to conclude.

Sen. Cheruiyot: Madam Temporary Speaker, I never said anything like that. I think my good friend had a good lunch and probably missed a few words that I said.

The point that I am making is that the easiest way for us to lose the war on graft is when politicians pretend to be the champions. As a politician, I can only support the war against corruption as far as it advances my political course.

As a country, if we are serious on the war against graft, let politicians keep off. Let the independent institutions do their work. That is my point.

The Temporary Speaker (Sen. Nyamunga): Next, I will allow Sen. Faki three minutes only because there is a lot of interest. We would like to allow as many Senators as possible to contribute.

Sen. Faki: Asante, Bi. Spika wa Muda kwa kunipa fursa hii kuunga mkono *Statement* ya Sen. Malalah kuhusu vita dhidi ya ufisadi. Ni lazima tupambane na ufisadi kwa sababu ufisadi umekuwa donda sugu katika nchi yetu. Kila mwaka tumekuwa tukilalamika kuhusu ufisadi lakini hatujaona matokeo yoyote ya vita dhidi ya ufisadi.

Tumekuwa na taasisi kadhaa za kupambana na ufisadi kama vile Kenya Anti-Corruption Commission (KACC) na EACC lakini hatujaona matokeo ya kazi zake. Mwaka huu, kidogo kazi imeanza kufanywa.

Kama ilivyo kawaida, lazima wanasiasa walete siasa mahali ambapo hakuna siasa. Yeyote anayetuhumiwa kwa ufisadi ana haki ya kwenda mahakamani na mahakama ina fursa ya kuangalia kesi na kuhakikisha kwamba haki inatendeka. Kwa hivyo, hakuna sababu ya watu kupinga vita dhidi ya ufisadi.

Ikiwa mtu anatumuhumiwa kwa madai ya ufisadi, ni vyema kujiuzulu mamlakani ili uchunguzi ufanywe. Endapo atapatikana bila makosa, ana haki ya kuendelea kufanya kazi yake. Ukitoa madai kuwa mimi ni mfiadini, una haki ya kutoa ushahidi utakaochunguzwa na mahakami ili ukweli upatikane.

Tusitupie mawe ofisi za DCI, EACC na DPP kwa sababu ya tuhuma za ufisadi dhidi ya jamaa zetu. Uchunguzi unafaa kufanywa na wale watakaopatikana na hatia wapelekwe mahakamani.

Bi Spika wa Muda, juma lililopita, tulikuwa na mkutano na maafisa wa DCI, EACC, pamoja na Mkuu wa Sheria. Wote walisema kwamba vita dhidi ya ufisadi havina kabila, jamii, wala sura ya mtu yeyote. Kwa hivyo haiwezi ikaonyesha ya kwamba hawa ndio wanaotumiwa kwa ufisadi. Kwa hivyo, ni lazima tuunge mkono vita dhidi ya ufisadi. Zile pesa zinazoliwa kwa ufisadi zingeweza kutumika kufidia watu ambao wamepata shida ya ukame. Hilo halitendeki kwa sababu tunajaza matumbo yetu nakusahau maskini ambao wametuleta mamlakani. Tunaendelea na ufisadi na ndio maana nchi yetu iko katika hali atiati.

Sen. Ochillo-Ayacko: Thank you, Madam Temporary Speaker. I wish to laud my colleague, Sen. Malalah, for bringing this very important subject.

Section 117(c) of the Penal Code is very clear. All of us are precluded from threatening officers who are enforcing the judicial process. The kind of rhetoric that politicians in this country are issuing, particularly those who enjoy immunity and privilege of office, is threatening. They use the privilege that is given to them by virtue of the taxes that they purport to defend to threaten officers who are doing patriotic work on behalf of the public. That shows that there is no commitment on the part of those officers who heap blame and cast aspersions on the good work done by those who administer justice. I believe that the courts of law in this country are capable of knowing or distinguishing suits that are brought in bad faith, those that are political and those without evidence.

I support this Statement. I urge the politicians, me included, who defend their people when we know that money has been lost or those who say that their communities are being targeted, to wait for their day in court. They can go to court and show that the processes were instituted on the basis of malice, ill will or that they were politically instigated. That is possible and a case in point is the former Member of Parliament called Githunguri. When he was prosecuted, he raised the matter in court so many times and a *nolle prosequi* was brought because the charges were not initiated in good faith.

If we want to support the war on corruption, let us empower our institutions and give them the correct atmosphere for them to do their work. Let us encourage the media to continue exposing what is there for the guilty to be punished and the innocent to be set free at the end of the day.

Sen. Halake: Thank you, Madam Temporary Speaker. I will be very brief. Allow me to congratulate Sen. Malalah for bringing this topical Statement.

I would like to refute the claim that politicians have no role. We have a role to play. The number one driver of corruption is decision making at political, executive and other levels hence we do have a role to play. We are defining corruption and the fight against corruption as a criminal act and forgetting prevention. We talk about the rule of law and the application of the rule of law, what about the circumstances that enable corruption to happen?

While I laud the Directorate of Criminal Investigations (DCI) and the Director of Public Prosecutions (DPP), who are doing their jobs, we also need to do our job. As leaders, our work is to legislate, oversight, end impunity, make sure that people have access to information and to make sure that our people are empowered to a point where they can demand for accountability. During elections, who comes out as corrupt? We do bribe people and people do not vote for somebody who is not corrupt. We do have a role to play. In fact, we play a major role and the earlier we recognise this, the better.

Who makes the decision in an institution? Corruption is not about an individual, it is institutionalised. Who has captured those institutions? It is the people in decision making positions, and that is us, who are sitting here. Let us not absolve ourselves from our roles. We do have a role and we are part of the rot. We have to change and talk about corruption. Corruption affects the most vulnerable people, the poorest. That is because they are the ones who depend on public goods and services more than anybody else. We all go to Nairobi Hospital but who depends on the public service in terms of health? It is the poor.

Therefore, the war against corruption is not going to become tribal. It is going to be a war against the haves and the have nots. It will get to a point where they will say; 'I do not care who you are. You are robbing from me the services that I need as a poor person because I am the one who needs the public goods and services'. Let us recognise the fact that corruption is driven by the decisions made. Therefore, we should end that impunity and should stop absolving ourselves.

I support.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF STAFF FROM VARIOUS LEGISLATURES ATTENDING THE INAUGURAL APR CONFERENCE

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, I have the following communication to make.

I wish to acknowledge the presence in the Speaker's Gallery and the Public Gallery of delegates attending the Inaugural African Parliamentary Research Conference. I request each member of the delegation to stand when called out, so that they may be acknowledged in the Senate tradition.

They are:-

- | | | |
|------|------------------------------|--------------------------------|
| (1) | Keorkeng P. Moastwi | - Botswana |
| (2) | Titus M. Lenwatabe | - Botswana |
| (3) | Mugabi John Bagonda | - Democratic Republic of Congo |
| (4) | Ntela Kiama Jean Claude | - Democratic Republic of Congo |
| (5) | Mban Yav Germain | - Democratic Republic of Congo |
| (6) | Dr. Leah Komen | - Kenya |
| (7) | Mohamed Hassan Musee | - Somalia |
| (8) | Ahmed Yusuf Abdulle | - Somalia |
| (9) | Awongine M. Wester | - South Africa |
| (10) | Ribdwaan Baboo | - South Africa |
| (11) | Teddy M. Luvisia | - Kenya, Vihiga County |
| (12) | Masenate Molapo | - Lesotho |
| (13) | Nuwabiine Meshach Bayarukayo | - Uganda |
| (14) | Tunyamwela Medod | - Uganda |
| (15) | Namugenyi Mariam | - Uganda |
| (16) | Kyangonza Moses | - Uganda |
| (17) | Jesin Ismail | - Uganda |
| (18) | Tonny Okwera | - Uganda |
| (19) | Kobere Betty Nayah | - Uganda |
| (20) | Sunday Apolo | - Uganda |

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

I thank you.

Sen. Sakaja: Thank you, Madam Temporary Speaker. Allow me to join you in welcoming the delegation of parliamentary researchers who are here for the Inaugural African Parliamentary Research Conference. I would want to especially welcome my good friend, Dr. Leah Komen, who I worked with many years ago. *Karibuni sana*. For those of you who are not from Kenya, I am the Senator for Nairobi County hence I am welcoming you to Nairobi. I hope that you have had a good time and fruitful engagements.

I cannot underscore the importance of parliamentary research work. We need more of it so that we can enrich the kind of debate and policy analysis that we do to help formulate better legislation and debate better. I wish that we get much more support within our Committees. I have seen the difference of being in a Committee or being a legislator backed up by a good

researcher and one who is not backed up by a researcher. Therefore, I thank them for the work that they are doing and wish them a fruitful stay in Nairobi.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, we go back to the Statement by Senator for Kakamega, Sen. Malalah. I wish that we make our comments very brief because time is not on our side and there is a lot of interest.

(Resumption of debate on Statements)

STATEMENTS

RENEWED WAR AGAINST CORRUPTION BY THE MULTI-AGENCY ANTI-GRAFT TEAM

Sen. Poghisio: Madam Temporary Speaker, I support this Statement. However, before that, I welcome researchers on parliamentary matters. Sen. Sakaja has mentioned Dr. Leah Komen and being his senior, I recognize that name.

Madam Temporary Speaker, I acknowledge that the war against corruption cannot be won if we are divided. We must agree on one thing. Political will has been missing but when it has been found, things are moving faster. I acknowledge that politics plays a big role in ending corruption just as much as in starting it. Therefore, now that we have decided to end corruption, we must have a political will and be together politically.

Therefore, I dissuade those who think that bashing political participation will help. It does not help. It is the politicians who vote for all the money that they need to fight corruption. We are gathered here to talk about it. We must protect the weak. I heard one of the Members mention a name of a person. However, we cannot mention names of people who cannot defend themselves. This House should maintain the dignity it has. For that reason, it is in bad faith.

Finally, Madam Temporary Speaker, I acknowledge that something has to give. If we have to fight corruption, we have to decide once whether we will go to this war together or we simply fight separately. However, if we fight separately, we lose. Something will have to give and fall through the cracks.

The President and the right hon. Former Prime Minister agreed that the Handshake will help us to move forward. Therefore, the rest of the leaders should come together alongside the Building Bridges Initiative (BBI) and move together in one direction.

Madam Temporary Speaker, these two young people who have spoken today, that is Sen. Malalah and Sen. Cheruiyot do not have any differences in what they are saying. The future belongs to the young people. Therefore, both of them should be at the fore front fighting corruption. They are the people who should be shouting in one voice against corruption and not against each other. What is wrong in fighting corruption and not fight each other? That is why the Director of Criminal Investigation (DCI) is fighting crime and not Sen. Poghisio. If there is crime in Sen. Poghisio, he will fight both Sen. Poghisio and the crime. Sometimes---

(Sen. Poghisio's microphone went off)

Sen. (Dr.) Zani: Thank you, Madam Temporary Speaker. Could I just use a few minutes, even though the delegation has left, to put in a word about the important work that they do. I was

at their closing ceremony a few hours ago and they have done so well. They started as a national initiative and now it is an international initiative. There were 13 countries present. They are really working hard to ensure that research and the quality of legislative work improves because of the research capacity that they are putting into it.

Madam Temporary Speaker, on the issue of corruption, I was listening to my colleague Sen. Aaron Cheruiyot who is always very eloquent as he presents his views. However, today I wanted to hear his eloquence as he speaks about the need to fight corruption rather than apportioning blame to one party or the other.

This thing is so clear and open that if somebody is listening to us from another country, for example, Uganda or Tanzania, they will wonder what we are discussing. Has money disappeared? Yes it has. I read a report that says that we have lost up to almost Kshs3 trillion. We will probably never know where that money has gone to. However, where should it have gone to? It should have gone to make sure that people do not starve in Turkana County and that we have quality education. Sen. Cheruiyot faces these issues within his county the same as Sen. Sakaja and other Senators.

We should not say that the issues should go to the Ethics and Anti-Corruption Commission, (EACC). This is because we have been here in Kenya and we have seen the effort that EACC has done as far as corruption is concerned. Probably, EACC is not enough. Are we talking about fighting the scourge or how to fight it? Therefore, we should not talk about it in this roundabout and moribund way. A lot more is happening every single day.

When Sen. Malalah started his Statement, he talked about countries like Singapore who borrowed the sessional paper that Kenyans had developed for their own development. When we went there as a delegation 10 years later, we asked how come they are doing so well and they said that we are the ones who gave them a template. So, there is no rocket science about this. As Kenyans, we have to make a decision to fight corruption. If we do not, we will continue to do what we are doing. It is not difficult to fight corruption because institutions and the people to do it are there. We also have a general spirit and understanding that there is a real problem. We cannot take away politicians from it because they represent their constituents who are complaining about the same thing.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, it is almost 20 minutes to 4.00 p.m and we still have two more Statements to make. So, time is not on our side. We move on to the next Statement.

Proceed, Sen. Faki.

HALI YA UCHUMI WA KAUNTI YA MOMBASA
NA KAUNTI JIRANI

Sen. Faki: Asante, Bi. Spika wa Muda. Nimesimama kuambatana na Kifungu 47(1) za Kanuni za Bunge la Seneti kutoa taarifa hii kuhusu hali ya uchumi wa Kaunti ya Mombasa na Kaunti njirani za Kilifi, Kwale, Taita Taveta, Makueni, Kajiado na Machakos.

Bi. Spika wa Muda, kaunti hizi ziko katika Ukanda wa Kasakazini au *Northern Corridor* ya barabara ya Afrika. Ukanda huu unaanzia katika Bandari ya Mombasa na kuelekea mpaka Nairobi, Kampala, Kigali, Bujumbura, Goma na Juba katika nchi jirani ya Congo na Sudan Kusini mtawalia. Kwa hivyo, ukanda huu ni muhimu kwa biashara na makazi ya watu.

Bi. Spika wa Muda, Bandari ya Mombasa ni kiungo muhimu katika uchumi wa kaunti za Pwani hususan Mombasa. Asilimia kubwa ya watu wa Pwani wanategemea Bandari ya Mombasa kwa njia moja au nyingine. Hivyo basi, mama mboga anatarajia mfanyikazi wa bandari kununua mboga zake jioni. Dereva wa lori anatarajia kubeba makasha kutoka Bandari ya Mombasa na wauzamaaji barabarani pia wanapata biashara kutokana na bandari hiyo.

Bi. Spika wa Muda, mchakato huu wote unaleta mapato kwa kaunti za Mombasa, Kwale, Kilifi, Taita Taveta, Kajiado, Makeni na Machakos. Iwapo biashara bandarini itapungua, mapato ya kaunti hizi yataathirika kwa sababu kaunti hizi zinategemea pakubwa mapato ya biashara pamoja na pesa zinazotoka kwa Serikali Kuu.

Bi. Spika wa Muda, japokua Bandari ya Mombasa imepanuka pakubwa na kujenga kituo cha kisasa cha kupokea makasha yani *container terminal* na pia ina reli mpya ya *Standard Gauge Railway (SGR)*, kusafirisha makasha kutoka bandarini hadi sehemu zingine nchini, wakaazi wa Mombasa wameathirika pakubwa na maendeleo haya kwa sababu hawapati faida yoyote kwa bandari hiyo na kwa shirika ambalo haliwajibikii Mombasa kwa njia yeyote.

Bi. Spika wa Muda, swala la ajira kwanza limekuwa donda sugu. Ijapokuwa makao makuu ya Shirika la Bandari ni Mombasa, wakaazi wa Mombasa hawapati ajira kutoka kwa shirika hilo. Hakuna uwazi katika uwajiri katika Shirika la Bandari la Mombasa. Vile vile, kituo kipya cha makasha kinafanya kazi hivi sasa lakini asilimia 70 ya wafanyikazi walioajiri sio wakaazi wa Mombasa.

Vilevile, wakaazi wa Mombasa wamepokonywa biashara. Makasha yakiteremshwa katika meli, yanapakiwa moja kwa moja kwenye reli au mabohari ya *SGR* na kusafirishwa moja kwa moja hadi Nairobi. Hii imesababisha kampuni hizo kufunga biashara. Madereva wengi na wasaidizi wao wamekosa ajira na hii imesababisha mapato ya kaunti kupungua kwa asilimia kubwa, kwa sababu haya mashrika hayataweza kulipa ushuru kwa Kaunti ya Mombasa.

Bi. Spika wa Muda, vile vile, zile kaunti jirani ambazo zinategemea biashara pia; biashara hiyo imepungua. Serikali Kuu haijatoa mwongozo ni vipi wafanyi biashara watalipwa ridhaa kwa hasara wanazopata wala kupewa miradi mbadala kuendeleza biashara zao.

Bi. Spika wa Muda, tumeona katika sehemu nyingine nchini, wakaazi wakifadhiliwa pakubwa na Serikali. Kwa mfano, Serikali ya Uingereza ilipopiga marafuku kuingizwa kwa Miraa nchini humo, Serikali ilitoa pesa nyingi kuwafidia wakulima wa miraa katika sehemu zile zinazokuza miraa.

Vile vile, viwanda vya sukari, ambavyo vingi viko katika hali mahututi; vimefadhiliwa pakubwa na mabilioni ya pesa na Serikali ili kuwalipa wakulima wa miwa. Mipango kama hii haijakusudiwa katika Kaunti ya Mombasa wala kuwasaidia wakaazi kwa jambo hili. Jambo la kuhuzunisha kabisa ni kwamba Waziri wa Uchukuzi, Mheshimiwa Macharia, alijipiga kifua akisema kwamba amefaulu kuyaondoa magari 3,000 ya mizigo barabarani, na hivyo kuwafuta kazi zaidi ya watu 6,000 waonaotegemea kazi hizo.

Bi. Spika wa Muda, hatukatai kwamba reli ya *SGR* imesaidia pakubwa biashara ya kuleta makasha Nairobi. Kitu ambacho tunasema ni kwamba lazima *SGR* iruhusiwe kufanya biashara sawa na wafanyi biashara wengine, kwa mfano; biashara ya kusafirisha mizigo, isitolewe kwa *SGR* pekee yake, itolewe kwa biashara za watu kibinafsi ambao walikuwa wanaleta mizigo hiyo Nairobi na kwingineko bila kushurutishwa na Serikali.

Hivi ninavyoongea, ni kwamba shirika la Bandari la *Kenya Ports Authority (KPA)* wametoa arifa kwa waleta mizigo aina ya sukari, mchele, ngano na vinginevyo, kwamba hawana

ruhusa ya kupeleka mizigo hiyo kwa zile CFS ambazo zilikuwa zimefunguliwa kupunguza msongamano katika Bandari ya Mombasa.

Bi. Spika wa Muda, tuna changamoto nyingi Mombasa. Kuna changamoto za kiusalama, madawa ya kulevya, itikadi kali na ugaidi, uhalifu wa aina mbalimbali; na isipokuwa hatuna ufisadi wa hali ya juu kama vile wizi wa pesa za mabwawa, matatatizo mengi ni ya kijamii.

Jiji la Mombasa linaendelea kufa polepole na iwapo hatua za haraka hazitachukuliwa, mji utakuwa gofu. Biashara ya utalii ilikufa zamani. Sasa utalii uliopo ni wakenya kutoka sehemu nyingine nchini kutembelea Mombasa. Hii Bandari ndio tegemeo kubwa. Mradi wa Dongo Kundu *Special Economic Zone*, bado umekuwa ndoto kwa watu wa Mombasa. Iwapo mradi huu utafanywa kwa haraka, itasaidia pakubwa kuongeza mapato ya Kaunti ya Mombasa. Kwa hivyo napendekeza suala hili lipewe kipaumbele na uzito.

(Sen. Halake, Sen. Poghisio and Sen. Cheruiyot consulted loudly)

Bi. Spika wa Muda, naomba unilinde kutoka kwa Sen. Cheruiyot, Sen. Poghisio na dadangu, Sen. Halake.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, the Statement that is being made is very important, so it is good that we discuss or consult in low tones.

Sen. Faki: *Thank you Madam, Temporary Speaker.*

Bi. Spika wa Muda, napekendezwa kwamba suala hili lipewe kipaumbele, kwa sababu mapato ya Kaunti ya Mombasa yakipungua, ina maaana kwamba huduma kwa wakaazi wa Mombasa zitapungua, na lengo la kuleta ugatuzi kuleta maendeleo katika maeneo tofauti tofauti halitatimia.

Naionba Kamati ya Fedha na Bajeti na Kamati ya Ugatuzi, zichunguze suala hili kwa kindani kabisa kuona kwamba hatua mwafaka zinachukuliwa kuikoa Mombasa. Tuisubiri mpaka mji ufe ndio tulete mitambo ya kufufua na kuchunguza ilikufa vipi.

Asante Bi. Spika wa Muda, kwa fursa hii.

The Temporary Speaker (Sen. Nyamunga): Hon Senators, I have a Communication to make.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM TANGAZA UNIVERSITY COLLEGE

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery, this afternoon, of visiting Masters in Social Transformation students and faculty members of Tangaza University College.

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

I thank you.

Hon senators, time is not our side. We still have another statement to make, so I am giving only one Senator an opportunity to make comments on Sen. Faki's Statement.

Sen. Seneta.

Sen. Seneta: Thank you, Madam Temporary Speaker, for giving me a chance to add my voice to Sen. Faki's Statement. It is an important Statement concerning our counties. Kajiado is also mentioned alongside Mombasa. We appreciate the SGR project. It is a very important Government project but it should also take in account many other needs of the counties that are along its corridors.

The SGR train should also operate for many hours within our counties. It should also open business to the locals such that those who are selling water along the Mombasa Road are be allowed to do so in the SGR stations. This will grow business in those counties.

Madam Temporary Speaker, I beg to support.

The Temporary Speaker (Sen. Nyamunga): Finally, Sen. (Dr.) Zani. You have two minutes, Senator.

Sen. (Dr.) Zani: Asante Bi. Spika wa Muda, kwa nafasi hii. Kwanza nawasalimu na kuwakaribisha wageni wetu wa Chuo Kikuu cha Tangaza. Hili ni Bunge la Seneti ambapo tunayazungumzia mambo katika kaunti zetu. Leo tunalizungumzia jambo muhimu ambalo limeletwa na Sen. Faki.

Nataka kumshukuru Sen. Faki kwa kuleta taarifa hii ambayo inahusu hali ya uchumi za kaunti ambazo ni jirani na Kwale. Kaunti hizi ni Mombasa, Kwale, Kilifi na Taita Taveta. Ni kweli na ni kwa muda mrefu, tunatoa kilio kuhusu Bandari yetu, vile ambavyo mambo yamefanywa, kwamba sasa bidhaa zikifika zitaekolewa kwa magari, ziletwe upande wa Naivasha. Katika hali hii, mambo kama ajira yanahusika, watu wa Mombasa na Kwale, sasa hawapati kazi kwani Bandari ndio ilikuwa mahali bora na mahali pa kwanza ambapo watu walikuwa wakitafuta kazi.

Mambo yameenda kombo upande wa biashara kwa sababu Bandari ilipokuwa ikifanya kazi, watu wa Kwale na Mombasa walipata manufaa. Kulikuwa na biashara nyingi ambazo zilikuwa zinaendelea. Kwa upande wa utalii, pia hapo tumepata shida. Kwa jumla, ingawa Bandari lile ni la kujivunia kama watu wa Mombasa na watu wa kaunti jirani kutoka Kilifi, sasa limekuwa kama donda sugu. Limekuwa ni kwamba ni watu wengine ambao wamekuja na wamepata manufaa.

Kwa hivyo, ni muhimu hasaa tuangalie upande wa uchumi na kuendeleza mbele kaunti hizi husika, ambazo Bandari ni jambo muhimu kwao, ni jambo linatakana kuangaliwa. Hata kama SGR iko na bidhaa nyingine itatolewa, lazima tuangalie njia vipi ajira itabaki pale pale nyumbani, vipi biashara itaendelea, hawa vijana ambao wanakuzwa kila siku, Mombasa, Kilifi, Kwale; watatafuta kazi wapi?

Bi. Spika wa Muda, hili ni jambo sugu na nafikiri ni lazima tulitazame kwa umuhimu na umakini. Asante, Bi. Spika wa Muda.

The Temporary Speaker (Sen. Nyamunga): Two minutes Sen. Ochillo-Ayacko.

Sen. Ochillo-Ayacko: Thank you, Madam Temporary Speaker, for the opportunity to make remarks on this matter. First, I congratulate my colleague, Sen. Faki, for raising this fundamental matter.

I have heard an occasion to discuss this concern informally with the Managing Director of KPA. I did so because we went to school together. We also later studied for advanced degree together. The information that I was able to get from him, is that we need, as a nation, and particularly as the affected region, to prepare to make our port services competitive.

There are ports that are being modernized in Dar es Salaam. Somalia is also becoming stable and competitive, and if we do not improve the efficiency and competitiveness of our port

services, then we are likely to lose business, as a nation. That would negate the strategic position that our country enjoys, having Mombasa, as a port, and also having access to Eastern Congo, South Sudan, Uganda, Rwanda and Burundi.

I know as these changes are being implemented, there may be short-term hiccups. I encourage the county governments of our coastal counties to prepare to adjust to these changing times. I believe this introduction of technology, Standard Gauge Railway (SGR) included, is intended for the general benefit of the nation. As we adjust, we should be able to also benefit these counties.

Madam Temporary Speaker, I beg to support.

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION FROM KENYATTA UNIVERSITY

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Kenyatta University Taita Taveta Group, Nairobi County.

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

VISITING DELEGATION FROM FOUNTAIN GROUP OF SCHOOLS, KIAMBU COUNTY

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Fountain Group of Schools, Kiambu County.

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

Thank you.

Sen. Wamatangi: Thank you Madam Temporary Speaker, for indulging me.

As I welcome all our visitors this afternoon from all the institutions that are present to witness and benchmark with the Senate, I want to take the opportunity specifically to welcome the delegation from Kiambu County here as the Senator for Kiambu County. We have made a resolution in that county that we are changing the face of the county by beginning to change the attitude our people have had towards education and restore the glory of Kiambu County to where it was when education came to this country.

I want to congratulate them, welcome them and tell them that the steps they have taken are the right steps and this is the right place to be.

Welcome, thank you.

The Temporary Speaker (Sen. Nyamunga): Thank you Sen. Wamatangi and all the Senators who have contributed so far. I want to give an opportunity to Sen. Sakaja to make his Statement.

Sen. Sakaja: Thank you very much, Madam Temporary Speaker. On behalf of Nairobi City County I welcome all of these delegations to Nairobi City County.

I would have commented on Sen. Faki's Statement but with that kind of Kiswahili I think I only heard half of it. Next time he speaks please give us subtitles so that we can understand the translation.

The Temporary Speaker (Sen. Nyamunga): Sen. Faki, I believe you are listening to what Sen. Sakaja is saying.

Sen. Sakaja: Yes, he should give us the English version of his Statements. When you hear *mchakato* and *gofu*---

(Laughter)

STATEMENT

COMPENSATION OF RESIDENTS IN MIHANG'O WARD, EMBAKASI EAST CONSTITUENCY BY THE KPLC

Sen. Sakaja: Madam Temporary Speaker, pursuant to Standing Order 48(1), I arise to make a Statement on compensation of Nairobi residents in Mihang'o Ward, Embakasi East Constituency by the Kenya Power and Lighting Company (KPLC) for illegal demolition of their houses.

Between 15th and 18th of March this year, houses and properties belonging to residents of Mihang'o Ward, specifically *Chokaa Mradi* area, were demolished by officers from the KPLC under the pretext that they were encroaching on the power line wayleave.

According to the evidence and report of the aftermath - and I went there myself yesterday and met the residents together with the DCC and the area Member of Parliament (MP) and the Member of County Assembly (MCA) - it was revealed that the exercise went beyond the agreed 15 meters to 20 meters wayleave and destroyed property worth millions of shillings.

It is clear that where there is a 132 kV power line and the distance is 15 meters; and where there is a 220 kV power line, the distance is 20 meters. They demolished houses and property beyond those 20 meters. More than 300 innocent families have been left homeless and some have even lost their business premises and source of livelihood. There were reports that even one of the residents committed suicide because of frustration of losing his property.

Madam Temporary Speaker, this illegal act has robbed the residents of their dignity and subjected them to unwarranted trauma and stress, with children coming home in the evening not having a place to sleep. The demolitions were carried out in contravention of Article 40 of our Constitution that is clear on the protection of property and further goes against the spirit of the housing agenda under the Big Four Plan of the President.

I therefore, humbly request that the Standing Committee on Lands, Environment and Natural Resources looks into this matter urgently and with the sole intention of ensuring the following:-

- (1) The KPLC is held responsible and has to compensate residents whose houses were beyond the boundary, 15 meters to 20 meters away from the wayleave and were illegally demolished.
- (2) That the KPLC erects physical beacons on visible barriers that clearly marks the boundaries of the power wayleave to avoid future unnecessary loss of property and to discourage illegal encroachment and;

- (3) Finally, I need to make it clear that we do not support people staying under the power lines because it is dangerous. It can cause fires and it is dangerous for their lives.

There are limits and boundaries of 15 meters and 20 meters based on the voltage. Our issue is with those who are beyond the 15 meters to 20 meters whose houses have been destroyed. It takes so much for a normal Kenyan to get a loan to build a house, to put their family there only to come and find that what they have worked for, for so long has been destroyed.

Madam Temporary Speaker, if they do not compensate them I am filing a class action suit against KPLC for those who are beyond the limits and their houses were destroyed.

I urge that you direct that the Committee on Land, Environment and Natural Resources deals with this matter quickly because these demolitions are ongoing across the line all the way to Dandora and back down this side to Embakasi South.

Thank you.

The Temporary Speaker (Sen. Nyamunga): I will allow a few comments but please make them very brief because our time is spent.

Sen. Cleophas Malalah, Senator for Kakamega.

Sen. Malalah: Thank you. I want to join my brother, super Senator Johnstone Sakaja, to condemn that inhuman action that was done to those innocent citizens of Kenya and specifically Nairobi City County. We need to ask ourselves pertinent questions. One, who authorised the construction of those houses? I think this is the same thing that happened when we were demolishing houses built on riparian areas. We need to start interrogating on who gave the authority for those houses to be built in the first instance. We have the National Environment Management Authority (NEMA) officers who are very corrupt. We need to start digging deep into those offices and to identify who specifically authorised the construction of the same.

Madam Temporary Speaker, this reminds me of our current situation in Kenya whereby we have a lot of double standards in the sense that the rich are protected while the poor are being humiliated and oppressed. It is in the public domain that we have prominent people in this country, who have grabbed aviation land and come up with hotels. One hotel which is on Lang'ata road - and this information is in the public domain - is called Weston Hotel which we know the owner; yet, up to now that hotel has not been demolished.

It is unfair for us to go and demolish the structures of poor people of Mihang'o, Kibera, and Baba Dogo and yet, we have not demolished Weston Hotel.

I call upon the administration of this Republic of Kenya to ensure that justice is done both to the rich and the poor. It is very unfair for us to sit in the comfort of this Chamber yet some people will sleep hungry and in the cold tonight.

Therefore, it is important, as Sen. Sakaja has put it, let us advocate for the rights of these poor Kenyans and push this matter even beyond the Committee. I assure Sen. Sakaja that I am ready to stand with him, as he stands with the people of Nairobi.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Sen. Farhiya Haji, you may proceed.

Sen. Farhiya: Thank you, Madam Temporary Speaker, for giving me this opportunity. I also wish to thank the Senator for Nairobi, Sen. Sakaja for bringing this Statement to the House. It shows that he cares about his constituents. Last time when Sen. Mary Seneta brought another Statement on similar demolitions along Athi River, we were informed about an old man who had

built a house and it was demolished. With these demolitions, the dreams and savings of the poor people are shattered.

Some people will never make that kind of investment in their lives again. Their properties are destroyed and there is no backend accountability. Where was Kenya Power when these people were building those houses? This is a country where nobody cares about the citizens. People should be asking questions; what happened? When these people were building those structures, the same people who are demolishing them now were watching. Probably, some were given title deeds by either the City Council or Ministry of Lands and Physical Planning. As we were told before, Nakumatt Holdings had a title deed. Why should such things happen to Kenyans?

Let us not even look at it in the perspective of the rich versus the poor. Even the rich man does not deserve his investment to be destroyed. This country needs to develop; and, development is attained by the citizens making savings and as a result wealth and assets are built out of it. So, every other time we destroy people's dreams, what are we doing to this country and its citizens? Kenyans begin to think that they have sent their representatives to Parliament and yet they are not speaking for them. I am happy that Sen. Sakaja has spoken on behalf of his people to ensure that they get justice.

In addition, those demolitions may be attributed to corruption. Someone must have been bribed if one was allowed to build a house where he or she was not supposed to. So, corruption must be fought from all corners. Why? They say that politicians think about the next election and not about the next generation. The next generation of this beautiful country of Kenya is in danger if corruption is not tamed.

I thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Sen. George Ochillo-Ayacko, you may proceed.

Sen. Ochillo-Ayacko: Thank you, Madam Temporary Speaker. I congratulate my colleague, "super senator," Sen. Sakaja for raising this matter. In my previous life, I was the Minister for Energy, and during that time we received grants to work on power lines along this area where people have settled informally. When we tried to do that, the then Member of Parliament (MP) for Makadara, Hon. Ndolo said that '*Mkiwaona wao mwachome au mwashe taa.*'

I held consultations with the World Bank and they told us that there is no Government in the world that can think about giving some people power as they evict other people. We held consultations with the then President and it was agreed that before even thinking of supplying power to the privileged, it is important to discuss and see how to settle the under privileged.

I am in total agreement with my brother, Sen. Sakaja that there is need to take care of the welfare of those who are least fortunate before we think of giving light to those who enjoy the privilege. I encourage him. I know that before he initiates the suit that he intendeds to; to bring compensation to these people, Kenya Power is unlikely to respond. I encourage him to proceed with dispatch to ensure that the most affected people are compensated. Even if other privileged persons go without light, you will be more blessed in heaven because you will be taking care of the less fortunate people.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, we are over-stepping our time but I would like to give the rest of the Members who have already shown interest two minutes only.

Sen. Cheruiyot Aaron, you may proceed.

Sen. Cheruiyot: Thank you, Madam Temporary Speaker. I support this Statement by Sen. Sakaja. First, it concerns those who live very close to where I used to. I grew up in Umoja, which is a walking distance from Mihang'o and, therefore, I know about the victims that Sen. Sakaja is talking about.

It is really unfortunate that we live in a country where the rights of the downtrodden and the poor are disregarded. This is part of the problem that I was trying to explain a few minutes ago; that, in our application and in the war against corruption, let us treat everybody equally.

We are aware that the Ndung'u Land Report, for example, named very senior people in Government who acquired huge tracts of land and put up buildings. The team that is leading these efforts of demolition right now is Kenya Power. Previously we had the dreaded multi-agency team that demolished people's houses.

It is unfair. Let the truth be known. When you give your direction, Madam Temporary Speaker, please rule in favour of the poor so that if we are protecting those in the Ndung'u Land Report, let us also protect the poor. Protect everybody, including, my friend Sen. Malalah, the Senator for Kakamega whose house is rumoured to have been built on riparian land. It should not be destroyed.

(Laughter)

The Temporary Speaker (Sen. Nyamunga): What is the point of order, Senator for Kakamega?

Sen. Malalah: Madam Temporary Speaker, is it in order for the Hon. Senator from Kericho to claim that my house was built on riparian land? According to the information I have and the papers I hold, it is clear that the house that I stay in is not on riparian land. Therefore, it is bad for the Senator for Kericho to insinuate that I stay on an illegal parcel of land.

I want him to withdraw because we are being viewed across the country and I do not want to be part of land grabbers. He knows the land grabbers in this country. One parcel of land has been grabbed and it is known - it is in the public domain - it is the Weston Hotel land. Let him explain the Weston Hotel saga before coming to my house. Let it be a warning to him; next time, do not start mentioning my name in such things.

I thank you.

The Temporary Speaker (Sen. Nyamunga): Sen. Kajwang', do you have a point of order?

Sen. M. Kajwang': Madam Temporary Speaker, the rule of this House is that when a Member makes such adverse statements against another, they have a duty to substantiate, failure to which they should withdraw. It should not be for Sen. Malalah to come to the Dispatch Box and defend himself. It is for Sen. Cheruiyot to substantiate his claims or otherwise withdraw, apologize and forever keep his peace.

Madam Temporary Speaker, would I be in order to request that either Sen. Cheruiyot substantiates or he withdraws in totality?

The Temporary Speaker (Sen. Nyamunga): Hon. Senator for Kericho County, are you acting on rumors or hearsay? If not, under Standing Order No. 100 you know what you should do.

Sen. Cheruiyot: Madam Temporary Speaker, you know Sen. M. Kajwang' just walked in so he did not follow the full length of my argument. I was making a case for the downtrodden and I said, if we have not demolished the houses of those who were named in the Ndung'u Land Report, they should not demolish anybody's house including the one for Sen. Malalah which is rumored to be on riparian land. It is just a rumor in the newspapers. He is the one who can tell us if it is true or not.

The Temporary Speaker (Sen. Nyamunga): Sen. Cheruiyot you are acting on rumors. Do the needful.

Sen. Cheruiyot: Madam Temporary Speaker, it was given prominence in the newspapers. Now that Sen. Malalah has clarified that his house is not on riparian land, then I do not have a problem with him.

An hon. Senator: You must withdraw!

Sen. Cheruiyot: Why should I withdraw a rumor?

The Temporary Speaker (Sen. Nyamunga): Senators you know you should not talk to each other. You should always address the Chair. I think we want to put that case to rest because time is not on our side.

Senator for Kericho County, can you finalize that whole saga.

Sen. Cheruiyot: Madam Temporary Speaker, I have said, and I will try and use very simple English, that do not demolish anybody's house especially the downtrodden, no matter the rumors. Then I added that if Sen. Malalah's house which is rumored--- He knows about this rumor because it was given prominence in the newspapers that his house is rumored to be on riparian land. So, if the newspapers were writing such stories and he has clarified that the stories are false, then what is the issue about? Is it not a fact that it was covered?

Sen. (Dr.) Zani: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Sen. (Dr.) Zani what is your point of order?

Sen. (Dr.) Zani: Thank you Madam Temporary Speaker. Is Sen. Cheruiyot in order to continue to discuss this issue despite your ruling? Is he by any chance challenging you, because you already made a ruling on this matter?

The Temporary Speaker (Sen. Nyamunga): Sen. Cheruiyot can you withdraw on that matter.

Sen. Cheruiyot: What will I be withdrawing, Madam Temporary Speaker?

The Temporary Speaker (Sen. Nyamunga): We do not want this House to be guided by hearsays; we want the facts as they are.

Sen. Cheruiyot: Madam Temporary Speaker, we must also be factual. It is very unfortunate because we have to discuss this. When I say the simple English meaning of the word rumored cannot have a different meaning only because I am speaking about a colleague. I have said that we have read elsewhere that so-and-so's house is on riparian land. What am I supposed to withdraw?

The Temporary Speaker (Sen. Nyamunga): Sen. Ochillo-Ayacko what is your point of order?

Sen. Ochillo-Ayacko: Madam Temporary Speaker, Sen. Cheruiyot is an experienced Member of this House. We cannot adduce evidence that is generated from newspapers. Is he in

order to continue citing newspaper reports in this House, other than relying on authoritative sources that can be verified?

The Temporary Speaker (Sen. Nyamunga): Sen. Cheruiyot.

Sen. Cheruiyot: Madam Temporary Speaker, because I do not have newspaper cuttings here, I went online in order to further understand the source of this rumor. The report I am reading is that, there is a chairman of Western Land Alliance Owners, a gentleman by the name Ayub Maleche, who I want to believe Sen. Malalah knows. He has been mentioned as having sought the Senator to clear himself from such allegations. Therefore, what is out or order? I said I have not confirmed whether it is true or not.

An hon. Senator: Withdraw!

Sen. Cheruiyot: Withdraw what?

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, according to Standing Order No. 100 which should be very clear to you, Sen. Cheruiyot, being a senior Member of this House, we cannot rely on newspaper cuttings. If you have proper evidence, you can present it or just substantiate the statement.

Sen. Cheruiyot: Madam Temporary Speaker, so that the House makes progress, I want to withdraw the rumor that Sen. Malalah's house is on riparian land. As to the facts of it, it is only him who can help us. I wish I could withdraw the house also from being on riparian land.

(Laughter)

The Temporary Speaker (Sen. Nyamunga): Sen. Wamatangi, Senator for Kiambu County.

Sen. Wamatangi: Thank you Madam Temporary Speaker. My intervention is on the Statement by Sen. Sakaja of Nairobi City County. Now that the Senator for Kericho County has withdrawn the rumor, the Chair should have sought further clarification as to how you withdraw a rumor. But I do not want to get there.

Madam Temporary Speaker, I support the Statement that was made by Sen. Sakaja. It may interest Sen. Sakaja and other Senators that a few years ago, I undertook a project to build toilets and sanitation facilities for inhabitants of Mukuru kwa Njenga and Shauri Village. The point I am trying to make is, when I undertook that project, I did it on humanitarian grounds after visiting some of those areas and I found people living in conditions that you cannot believe. There were families where a father, mother, and children live in the same room divided by manila paper and that house also serves as their toilet. You can imagine the shame of living in such a place.

Madam Temporary Speaker, those people you find living under power lines, it is not that they do not know it is dangerous; they know it is. It is not that they do not know that their lives are at risk; they know. Sometimes they have absolutely no alternative. I agree with the Senator that it is not for us to advocate or support that such people should build under such precarious conditions but, even the process of demolition and those affected must wear a human face.

You cannot have people living under such conditions but it is wrong for an institution or parastatal like Kenya Power and Lighting Company (KPLC) to go there and flatten those ramshackles wantonly without any consideration. Those people do not have any other alternative. I would advocate that at any one time when any institution is going to demolish even those slums, let them first consider --- If you look at what happens in other countries where we

have people living in rivers like boatmen and a country considers it dangerous for them to live there because there is going to be a hurricane, what they do first is to mitigate how and where they will relocate those people.

So Madam Temporary Speaker, when we are talking about making sure that those people are safer, that there is that wayleave that is clear, can the first issue be where will those people be relocated to? When there is a comprehensive plan to take them there, then remove them and show them where to go. That has to stop otherwise, we are living in a country where people who live below that line have no rights and we have a Constitution that has got the Bill of Rights. We should simply not allow it. Shelter, no matter how good, bad, deplorable, or significant is a right of every Kenyan. What we should do is to ensure that it is in the right way and in the right place and do what we should do as Government.

I support Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Finally Sen. Cherargey, Senator for Nandi.

Sen. Cherargei: Thank you Madam Temporary Speaker. I want to congratulate Sen. Sakaja. I am happy yesterday he was with the victims. It is high time that we stand with the victims of the system. We have seen the Sinai issue where the victims were compensated. There is also the Thange issue where the Kenya Pipeline Company decided out of court that they needed to compensate the victims.

Madam Temporary Speaker, as the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, we will know how to assist the Committee on Lands, Environment and Natural Resources to ensure that the people of Nairobi that were forcibly evicted, because of the insatiable appetite of individuals who want each and every land in this country, are brought to book and prosecuted. The KPLC must be made to account for these losses of property, which is provided for under Article 40 of the Constitution on the economic and social rights and also the rights to housing that is provided for under Article 43 of the Constitution. Therefore, their rights have been abused and they must be compensated.

The power of restoration order must be invoked so that the people of Mihang'o Ward can continue to live in peace and build this nation. We wholly support and expect this matter to be resolved as soon as possible and justice be done for the people of Mihang'o.

The Temporary Speaker (Sen. Nyamunga): Sen. Sakaja, the Statement stands committed to the relevant Committee. We order that we get the results within two weeks. Is that okay?

(Sen. Sakaja spoke off record)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM ST. ANTONY
SECONDARY SCHOOL, NAROK COUNTY

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from St. Antony Secondary School, Narok County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them.

On behalf of the Senate and my own behalf, I wish them a fruitful stay.

I thank you.

Hon. Senators, because of time, we will go to the next statements under Standing Order No.48(1) and defer all of them to next week for listing.

POLICY ON THE TRANSFER OF FUNCTIONS TO COUNTIES

IMPLEMENTATION OF THE 100% TRANSITION
POLICY TO SECONDARY SCHOOLS AND TO TVET

IMPACT OF DEVOLUTION ON LIVESTOCK FARMING

MINING ACTIVITIES IN MIGORI COUNTY

CRIMINAL ACTIVITIES OF THE “SANGWENYA” GANG IN MIGORI COUNTY

STATUS OF EMALI HOLDING GROUND IN KAJIADO COUNTY

(Statements deferred)

Next Order.

BILL

Second Reading

THE COUNTY WARDS (EQUITABLE DEVELOPMENT)
BILL (SENATE BILLS NO.34 OF 2018)

(Sen. (Eng.) Mahamud on 20.3.2019)

(Resumption of debate interrupted on 20.3.2019)

The Temporary Speaker (Sen. Nyamunga): Senators, we are back to the Bill by the Committee on Finance and Budget. We have interests of several Senators who want to contribute. I will give the first opportunity to Sen. (Dr.) Ali of Wajir County.

Sen. (Dr.) Ali: Thank you, Madam Temporary Speaker. Yesterday, I sat here until I got tired and ran away. I am happy to be given the first opportunity. I appreciate.

This is an important Bill that was brought to this House. I thank my Committee and the originator of the Bill, Sen. Kang’ata, for bringing it. The Committee has done a good job.

If you check Clause 4(c) on Guiding Principles, it states that:-

“equity and the need to ensure that persons residing in marginalised areas in the wards access facilities and services that are available to other residents in the respective counties.”

While there are other guiding principles, that is a very important one because it takes care of the marginalised communities within the county itself.

Madam Temporary Speaker, in Clause 6(1)(a) when you talk of the county assembly approval criteria, Members of County Assembly (MCAs) have always complained that people say they do not do the right things, they collude with governors and do not do much. Now, we have given them the powers to work on this one which will help them assist communities and the wards they come from.

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

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

County assemblies have the powers to determine the best criteria to be used. In this case, the County Executive Committee (CEC) member of the respective sector should make recommendations for the criteria to the county assemblies for approval. If they do not make use of this Equitable Development Bill or the County Wards Development Bill properly, then they have nobody to blame.

The Committee – as several people have said – has not only worked on the criteria but there is also the public, which will also come up with what projects they want. Public participation is stated properly in the law and even in the Constitution. Public participation is mentioned severally but mostly, it is not used. In this case, Clause 7(1) states:-

“The residents of each county shall identify development projects for implementation in the respective county in accordance with this Part.”

This goes up to the village level.

Madam Temporary Speaker, some counties have not yet established village councils. Obviously, the Committee will have to urge that the person who will be doing the public participation in consultation with the CEC member concerned will be the ward administrators who are at the local level. They are very helpful to the communities there.

There is some correction that the Committee will possibly have to do later. Clause 12(2) states:-

“If for any reason a project is cancelled or discontinued during the financial year, funds allocated for such a project shall be reallocated to another project to be implemented within the same ward.”

Clause 12(5) states:-

“The county executive committee member and the county assembly shall not approve the reallocation or appropriation of funds under sub-sections (2) or (3) unless –”

(Sen. Sakaja spoke off record)

That is under Clause 12.

The Temporary Speaker (Sen. (Dr.) Zani): Order, Sen. Sakaja.

Sen. (Dr.) Ali: Madam Temporary Speaker, Clause 12(5) under sub-section (2) or (3), (2) does not apply because it states that the funds allocated for such a project shall be reallocated. The one which is important is sub-section (3)(a) where it states:-

“Where –

- (a) a project is to be carried out for a period of more than one financial year; and
- (b) the financial obligations relating to the project exist for the subsequent year,

The county executive committee member shall seek the approval of the county---”

The CEC member will have to look into that so that the issue of sub-section (2) does not arise.

As it has been said before, Clause 12(7) states that:-

“All funds allocated to a ward shall be cumulative and shall be carried forward from one financial year to the next, including funds returned into the account or funds which are not utilised for whatever reasons”

That one might not be significant. It might bring confusion because if the money allocated to counties, once it is not utilised, it stays with the same counties as well. Somebody mentioned that this one might not be necessary.

I feel it is necessary because even within the same county, if you remove that one, then they can reallocate that money again. They can say that since it is not stated, that whatever remains in the wards should remain there, they can reallocate it to somewhere else within the constituency or some other parts of the county. It is important that Clause 12(7) stays the way it is.

Madam Temporary Speaker, when you talk of maintenance of records, Clause 14 states:-

“A county executive committee member shall maintain comprehensive and accurate records including a system of internal accounts with respect to the projects---”

Credible, adequate and accurate records. In some cases, we have these problems. That is why I suggest that the ward administrator is the one to keep records. If you talk of village councils, sometimes in some of our areas they are not educated enough. Keeping of these things might not be appropriate sometimes.

In Part V on the Miscellaneous Provisions, Clause 18 states that county assemblies do legislation. This is important so that when it comes to Clause 18(1)(a) where it is making further provisions for the criteria for the allocation of funds to wards under this law, it is important that they make proper legislation which cannot be misused by the county administration. Otherwise, we might end up in problems.

The most important in that sub-section is (d) which states:-

“Outlining the format of preparation and submission of the list of, and the description of, projects proposed by the entity for funding pursuant to this Act.”

This is because if they do not do the right things, then this can be misused.

Clause 18(e) says:-

“Determining the minimum and maximum number of projects that may be undertaken in a ward to ensure efficiency and effectiveness in utilization of funds under this Act;

I am saying this because the CEC obviously will go to the wards and when they are doing the criteria of approval of proposals for the projects they might put projects where they think they can get or get funding continuously for several years. So, putting in place gigantic projects which may not be helpful to the communities in those areas should be curtailed by this legislation by the county assemblies. Otherwise, you will see the building of stadiums or big dams and all the money which has been allocated to the ward might be channeled into that project. This might be repeated in the subsequent years and this might not be very helpful to the communities in those areas.

Madam Temporary Speaker, I hope the county assemblies will take these things very seriously. The county governments and their CECs should not misuse these funds as envisaged by the Senate because this is one of the few legislations which will help change issues at the county and ward level.

Madam Temporary Speaker, one of the Senators mentioned here yesterday that when the then CDF was introduced many people were complaining about it. However, in the long run we have realised that it has helped in the constituencies. When I was a Member of the National Assembly we used that money to build a lot of schools, health centres and water pans. It was very useful to the constituents. At that time, you had to run up and down in the Ministries to get the funding. Ever since the money was devolved to the constituencies a lot has happened.

Madam Temporary Speaker, I believe that ever since we put in place devolution the funds were devolved to the counties. Instead of the sub-counties, they keep most of the money at the county level. Now that we have said that at least 15 per cent should go to the wards, I hope that things will change.

With those few remarks, Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. (Dr.) Zani): Well-spoken, Sen. (Dr.) Ali. Proceed, Sen. Cheruiyot of Kericho County.

Sen. Cheruiyot: Thank you, Madam Temporary Speaker. I rise to lend my support to this Bill.

I am a member of the Senate Committee on Finance and Budget. It is unfortunate that as a Committee we have not concluded our Report to be able to table it before the House. As a Member of the Committee, my thoughts are richly filled up with the deliberations and discussions that went on during the public hearing phase of this particular Bill where we had organs and groups come before us to deliberate and discuss the Bill.

We had the Controller of Budget and the Commission on Revenue Allocation (CRA) who came before us---

Sen. M. Kajwang': On a point of order, Madam Temporary Speaker. I did not intend to disrupt the flow of thought of Sen. Cheruiyot. However, he mentioned that the Committee has not reported to the House but I recall picking a Report of the Committee on this Bill from the Table Office. Could it be that the Report was subsequently withdrawn?

The Temporary Speaker (Sen. (Dr.) Zani): We need clarification Senator. You mentioned that the Committee Report is yet to be Tabled.

Sen. Cheruiyot: Madam Temporary Speaker, I do not think Sen. M. Kajwang' has the right Report because as a Committee we have not Tabled it. I have just confirmed from my Committee Chairperson, Sen. (Eng.) Mahamud.

The Temporary Speaker (Sen. (Dr.) Zani): That is an important clarification. Are you satisfied with that Sen. M. Kajwang'?

Sen. M. Kajwang: Yes, Madam Temporary Speaker. I will take it up.

Sen. Cheruiyot: Okay, good.

The Temporary Speaker (Sen. (Dr.) Zani): Just to urge the Chairperson of the Committee that it is important to circulate that Report to other Senators. So, once the Committee is able to get to that point, it will also add value to our understanding of this Bill.

Proceed, Chairperson Senate Committee on Finance and Budget- Sen. (Eng.) Mahamud.

Sen. (Eng.) Mahamud: Madam Temporary Speaker, I confirm that we have not circulated our Report. This is because the Bill is also owned by the Committee. So, the Report be an input to the Third Reading. We are not yet ready but we decided to move ahead with the Bill so that by the time it goes to the Third Reading then we will have the input as far as the

Amendments are concerned. I hope Members will during that stage give us their recommendations on how to do the amendments.

The Temporary Speaker (Sen. (Dr.) Zani): Thank you, Chairperson for that clarification.

Proceed, Sen. Cheruiyot.

Sen. Cheruiyot: Thank you, Madam Temporary Speaker. In terms of suggestions, one of the things we may need to consider as a House moving forward is that on many occasions when we find ourselves in similar situations one of the things that the Table Office does is to give us a Bill digest on some of these Bills. It is also important for the originator of the Bill sometimes to try and share his thoughts because I understand what Sen. M. Kajwang⁷ is saying.

Going back to my point, having listened through the deliberations and discussions of various Government organs from the Controller of Budget to the CRA, presentations from County Assemblies Forum (CAF) and various members of the county assemblies on what they thought about this Bill, it left many of us somewhat confused because the arguments both for and against the Bill make a lot of sense. We listened keenly with an open mind, just wanting to understand the concerns that people raise. As a Committee we were more inclined towards how we can enrich the Bill in terms of improvements and things that we need to add to it so that it can achieve the intention and purposes it was aimed at.

Madam Temporary Speaker, the history of this Bill is well known to all of us. We know what was its first intension and what has been achieved this far. There is a good reason as to why we went this route and had deliberations about having a County Ward Equitable Development Bill, 2018.

I agree with colleague Senators that have spoken before me that for one reason or the other, devolution, while it is still in its formative years, continues to experience various forms of challenges. If you travel across the country you will realise that the initial challenge that we had as a country when Kenya was just one unitary state without devolved units, was that certain parts of the country would develop faster than others; either because of the leaders and the people that have got the means of control, having come from certain regions or intentionally to frustrate certain regions because of their political persuasions.

The reality of that is also happening in our counties. You understand how our political campaigns sometimes tend to be in our country where we have two or three protagonists in a political contest. When a Governor is still in the first term and wants to secure their base and constituency, they tend to neglect the parts of the county which are in wards that either did not vote for them or do not even stand the potential of voting for them.

Madam Temporary Speaker, this is not even as more pronounced in certain counties as it is in those counties that do not have one homogeneous community living together. For example, in counties such as Migori, Bungoma and Baringo, you find certain sections of the county where a particular community occupies a very small size of the population. If they do not toe a particular political line, there is every possibility that the county government may go out of their way to frustrate development efforts.

Therefore, somebody made a very good effort of the need to ensure that at least we ring-fence even if not all, a certain proportion of the funds that are meant for development in a particular county. This is to ensure that that all the wards in a particular county are, at least at the bare minimum, assured that in every budget cycle, every financial year there is meaningful development that will go to that ward. That is the idea that informs this Bill.

The people who do not agree with this thought hold the view that we are becoming too descriptive in our legislation to a point that we are almost tying the hand of the Governor and turning him into a robot sort of such that they are only presented with a plate of oranges and told that you can only drop one here and the other there and that kind of a thing. The argument is that the people that are charged with the responsibility of managing the resources at the county government should be given enough room for manoeuvre in terms of decision-making. There is good justification for that.

There are many signature projects in the counties. If a county has to build a fantastic hospital or set up an industry, the budget has to be slightly more than the regular allocations. It will be like a one-size-fits-all approach where you take a budget meant for development and divide it by the number of wards. For example, if you have Kshs300 million for a financial year and you have 30 wards, each ward will be assured of Kshs10 million for development. In my opinion, this will be taken care of by provisions in Part III of this particular Bill where it is provided in Clause 5(3) as follows:-

“In determining the criteria for allocation under subsection (2)(b), the county executive committee shall ensure that the allocation—

(a) is not less than fifteen percent of the county government’s allocation for development expenditure as provided under section 107(2)(b) of the Public Finance Management Act; and

(b) is complimentary to any other development efforts by the county government or any other agency.”

I think this is a good figure to start with.

When you do a piece of legislation, the obvious thing that you must ask yourself is the mischief that can come out of it. The obvious mischief that could come out of this is a governor deciding – because they must set aside a certain proportion of county funds to go to each ward in the county – to set aside a percentage that is so small and that will end up being of no much significance. Therefore, in my opinion, 15 per cent is a good percentage because a county government will remain with 85 per cent or even more of the money allocated to do development in all parts of the county.

Madam Temporary Speaker, one of the reasons I agree with the people that are pushing this particular narrative is because county assemblies will get to feature. When they will be doing annual development plans that will be extracted from the County Integrated Development Plans (CIDPs), just as per the dictates of the Public Finance Management (PFM) Act, they will ensure that they do not agree with the County Fiscal Strategy Papers that will be presented to them if they do not meet the dictates of this legislation. They will have to check and ensure that the projects that will be proposed for funding feature in each and every part of the county. At least it should be 15 per cent of the budget but the more, the better because I know of counties that have achieved this.

On many occasions, people believe that Kericho, which is the county that I represent in this House, is rich and beautiful. However, the truth of the matter is that the lower part of the county is as arid as you can imagine a place like Wajir, Mandera or any other northern part of the country. When Members of the County Assembly (MCAs) from that region go to Kericho County Assembly, they argue about what those who represent wards that have multinational tea estates do; where water is not a problem, roads are tarmacked, and there are good schools.

We understand how politicians process their thoughts. Since they made campaign promises to the people that voted for them, they must take something tangible to the people. The argument is always that they should give something that is commensurate to other parts of the county. On many occasions, MCAs of my county struggled to pass an Equalisation Bill but they were not able to do that. With this kind of legislation, it will be possible to do that.

This Bill needs a bit of polishing. I know we will do that later in the Committee of the Whole, when we will present our proposed amendments for Third Reading. For example, in Clause 9(a) it is provided that a project will meet the criteria for funding if it is a community project. We need to define what a community project is.

Sometimes it is not a big issue when we pass some of the legislation but later when they are being applied, somebody could see an opportunity to be mischievous. During public participation, people can be incited. We have provided for public participation but sometimes when a county government wants to have its say on a particular project, it may not be difficult to do that. One of the things they need to do is to ensure that they have the right number of people to push a particular agenda during a meeting so as to pass a project as a community project.

I see the importance of Clause 12(2), although my colleague from Wajir had different thoughts. I deliberated about this with my colleagues at the committee level and we saw its importance.

Clause 12(2) states that:-

“If for any reason a project is cancelled or discontinued during the financial year, funds allocated for such a project shall be reallocated to another project to be implemented in the same ward.”

We do not want to have mischief by county governments. You have seen how our county assemblies operate. Sometimes you will find that a group coalesces with the governor, another one with the women representatives and yet another one with the Senator. We always have political factions. One group can ensure that some projects are not funded despite the budget having allocated resources to the same.

In my opinion, Clause 12(2) is the silver bullet that will ensure that come rain come sunshine, it does not matter what a county governor thinks about certain people living in a certain ward. This is because even if they cancel projects where monies have been allocated, they will still be duty bound by law to ensure that they start another project in the same ward. That is extremely important because we should not open development to the vagaries of politics. We understand that politics is transient in our country. Today it could blow this way and tomorrow that way. Therefore, that particular Clause is important.

Clause 13 under Part IV on Reporting and Oversight is also important because it speaks to something that we have always wanted to achieve as a House. I know we still have a challenge but as a committee, one of the things that we have endeavoured to do is to define the actual percentage of a budget that a county assembly may interfere with. That has always been the desire of our committee because I was also a Member of the Committee on Finance, Commerce and Budget during the previous Parliament when we wanted to push it to 10 per cent and we made our proposals. Unfortunately, when the Cabinet Secretary for Finance sent his regulations to the national Treasury, that was not properly included.

I am aware that the PFM Act is currently under review in the National Assembly and I know definitely it will come to this House. When it comes, these are some of the things that we may want to include. We should define the extent of maneuver by the county assemblies.

Sometimes people erroneously argue about the quality and breed of MCAs that we had. I do not know about other counties but based on my experience, because I was there during the previous Parliament, in every elections cycle, we keep on getting better MCAs in terms of even their capacity to process things and their understanding of how devolution should work. Therefore, it is my desired view that it will be the same way the Executive submits its appropriations before Members of the National Assembly and leave to them to make determination on what to fund and what not to fund. The Executive sends people to lobby but Members of the National Assembly always determine the amount of money to be allocated to things like security and food and so on and so forth.

As we proceed to the future, it will be good to keep increasing the capacities of county assemblies in terms of determining what is important for county governments. I do not buy the idea that only a governor should make decisions. When the national Government proposes something and the National Assembly either agrees or disagrees with them, it provides the necessary checks and balances. People will be able to ask; ‘why are you putting extra amount on health care yet we feel that our hospitals are properly funded and can take care of our people?’ They can suggest that more money be put in agriculture because their people continue to face drought. I look forward to a time when we shall be able to do this.

Clause 13(1) of this Bill continues to devolve this power to our county assemblies. It states that;-

‘A county budget or county plan under the County Governments Act or Public Finance Management Act dealing with allocation of resources shall clearly indicate the manner in which the resources have been equitably distributed across the wards in the county.’

Clause 13(2) states that;-

‘A county Assembly-

(a) shall not approve a county plan or budget that does not comply with subsection (1); and

(b) may amend a county plan or the development expenditure in a county budget in order to ensure the equitable allocation of resources across the wards of the respective county.’

This is the point that I was putting across. Over time, we must allow our county assemblies enough room and space. I do see the sense and wisdom as to why we did not give them that space and room in the first cycle of the first five years and during this particular cycle but progressively, it is something that we may need to do.

Clause 15 provides that:-

‘A county executive committee member shall submit quarterly reports to the county assembly on--- setting out information.’

It also provides what will happen if they fail. They must be able to say that; ‘this is the amount that we have been able to expend on this particular project’. A county executive committee member for finance must table a report before the county assembly stating that; ‘these are the projects that we intended to do in this particular quarter and this is how much we have spent’. If a project was budgeted at Kshs10 million, he can say that; ‘we have so far spent Kshs2 million to that project and it is on-going. When they raise the next certificate, we shall be able to pay’.

The Members of the County Assembly (MCA) will be able to see any mischief on the part of the executive and they will be able to flag it. They can ask for the reason as to why

projects in 14 out of the 30 wards have been funded up to 10 or 20 per cent but no funding is forthcoming for the other wards. They will then get the assurances that is needed from the County Executive Committee (CEC) member or they can be told that; ‘we did not have resources but be assured that those projects that are not funded will be given priority the minute we get funding’.

Clause 15(1)(h) expects them to give a report that provides compliance with principles of sound management system which will help us know that the amount that we are spending and what it is going to cost us. Every MCA will be kept abreast with these developments.

Clause 15(2) states that:-

‘It shall be gross misconduct for a county executive committee member to fail to report to the county assembly committee on the matters provided under subsection (1).’

Those are the things that have been listed. It states the projects that they have funded and how they are maintaining them. Clause 15(2) then provides that it shall be gross misconduct. The words ‘gross misconduct’ are extremely important because it provides grounds under which a county assembly can impeach a CEC. The debate that we had about Mombasa County is still fresh in our minds including the explanation that was given by the county executive. For the first time, we are drafting a law that spells out what gross misconduct is.

I do not know if we have done that before and if we have, then I may not have picked it. Previously, we left it to imagination to a point where one can think that gross misconduct is when a CEC member abuses members of the public. However, in this particular legislation, there are about 11 counts that have been put forth and if a CEC member does not live to the dictates of this law, they shall be liable and can be taken before the county assembly and impeached on grounds of gross misconduct. That is important and needs to be hailed.

Clause 16 speaks about the roles of the relevant committees of the county assembly.

The Temporary Speaker (Sen. (Dr.) Zani): Senator, you have about a minute to conclude your thoughts.

Sen. Cheruiyot: That is okay, Madam Temporary Speaker.

In clause 16(e), the relevant committee of the county assembly is to:-

‘engage the Commission on Revenue Allocation, the county executive committee member and any other relevant stakeholder so as to jointly deliberate and provide solutions to issues relating to achieving equitable development within the county.’

We are giving powers to our county assemblies which is another first in terms of our legislation because previously, we left them to deal with the county government alone. Some of our governors have got a lot of disdain for the MCAs but we are now saying that they have to involve the Commission on Revenue Allocation (CRA) and any other stakeholder. A county government can also appear before the CRA.

With those many remarks, I support.

The Temporary Speaker (Sen. (Dr.) Zani): Well spoken, Senator.

Sen. Omogeni: Thank you, Madam Temporary Speaker, for according me an opportunity to also air my views on the County Wards (Equitable Development) Bill (Senate Bills No. 34 of 2018).

I want to remind us that this country is under a new constitutional dispensation. Our Constitution recognises two levels of development; the national Government and the county governments. Devolution has brought the issue of devolving resources to our people through our county governments. Going down memory lane, before the enactment of our new Constitution,

we had what we used to call the Constituency Development Fund which is currently known as National Government Constituency Development Fund. We need to be very careful in enacting this Bill. We should not enact a Bill that may find its way in our courts where it is being challenged on grounds that it is possibly unconstitutional.

We need to understand that the new constitutional dispensation that was enacted by the people of Kenya in 2010 has a very key pillar which is separation of powers. We have the Executive at the national Government and the executive at the county level and they are the ones who spearhead development within our counties.

The Constitution that was enacted in 2010 elaborates how to involve people of counties as development is brought about. Article 10 of the Constitution is very clear on our national values and one of the key ingredients is public participation. In our budget cycles, beginning from our preparations for the County Integrated Development Plan (CIDP), the people are given a key role in making proposals on projects that should be given priorities in their areas. The only way public participation can reach the grassroots is through having public participations at our ward levels.

When we introduce another forum of public participation as it is provided for in this Bill, there is a possibility that we are going to increase administrative expenses in our counties which will eat into money that should go into development for various projects. In essence, we are passing judgement on our MCAs that they have not been able to ensure that the people that they represent at the ward level are involved in the budget making process. We will also be passing judgement that they have not ensured that the executive allocates money equitably in all wards.

Madam Temporary Speaker, however good intentions this Senate may have in passage of these Bills, we will have the same problem that this country is going through in terms of the National Government-Constituency Development Fund (NG-CDF). If you read through the National Government-Constituency Development Fund Act, it gives very little room to the Member of Parliament (MP), in terms of implementation of projects at the constituency level. In fact, the only role the MP is given in that Act is to witness the launching of projects or issuance of checks at the constituency level. We share forums with Members of Parliament (MPs) and the practice that we have is that when we go to forums, they have made people at the constituency to believe that it is them that have brought development to the constituency while the law, as it is today, gives that mandate to the Committee that is employed at the constituency level.

Madam Temporary Speaker, the process of recruitment is that members of the Committee apply to the sub-county administrators, the people we used to call District Commissioners (DC). They are interviewed and a Chairperson is picked from among people who have been employed through a competitive process. However, MPs are good at reminding the people at the constituency level that it is them who bring development projects to the constituency level.

Madam Temporary Speaker, I am raising this point because if we are not careful, we will get into a situation where this Fund will become a political tool and end up being an avenue for people to misuse resources that we send to our county governments. There is the other risk of duplication. The biggest problem that we have had in terms of misuse of our resources is that there is no synergy between the national Government and county governments on how to implement and audit projects. If you go through the reports of the Auditor-General, you will find instances where a governor claims that he is the one who undertook a particular project, another donor somewhere will say that he or she undertook the project and the NG-CDF Committee will

say they did the project. Therefore, we are duplicating projects and in the process misusing a lot of resources.

This is the problem we are trying to address through this Bill. However, it will be addressed if we truly recognize that the people we represent from the ward, constituency to county level, have a right to determine the project that should be undertaken in the wards, constituency and the entire county. What projects are we talking about? This Bill talks about social rights in accordance with Article 43 of the Constitution which includes health services, housing, access to clean water and education. It is nothing new. This is what is covered in our county budgets year in, year out. So, will we not create another avenue or expense for our counties? Already, this country is going through a big crisis where most of our resources go to recurrent expenditure. Therefore, with the creation of this new Ward Development Fund, there will be a new administrative cost. We cannot run away from it. This is taking away money that should go to development.

Madam Temporary Speaker, we need to be very careful so that we do not spread ourselves too thin. The initial proposal by my good friend, Sen. Kangata, was to allocate 8 per cent of development resources to our wards. Now, we have moved it to 15 per cent. I want each of us to go back to their respective counties and look at the amount of money that goes to development. For example, if you send about Kshs5 billion to your county, you will find that not more than Kshs1 billion---

Sen. (Eng.) Mahamud: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. (Dr.) Zani): What is your point of order, Sen. (Eng.) Mahamud?

Sen. (Eng.) Mahamud: Madam Temporary Speaker, is Sen. Omogeni speaking to the same Bill that is on the Floor of the House or another Bill? We are not creating new structures. The 15 per cent he has talked about is for development. We have a totally new Bill which is on the Floor of the House. We are not creating structures. Are we reading from the same Bill?

The Temporary Speaker (Sen. (Dr.) Zani): So, what is not in order is that he seems to be presenting another Bill?

Sen. Omogeni: Madam Temporary Speaker, I am not presenting a new Bill. I urge my good friend, the Chairperson of the Committee on Finance, Commerce and Budget to read this Bill carefully, interpret it and cost it.

For example, in Clause 6 there is a provision that public participation must be undertaken in each ward. That is a cost. It also says that the county executive will ensure that members of staff who serve in the county governments will be the ones to lead that process. This must be budgeted for because it is an added cost. I remind my good friend that we are talking about another process being undertaken by the Commission on Revenue Allocation (CRA). They must go down to our counties and create new criteria for sharing revenue within our wards. That is a cost. Therefore, I urge my good friend, the Chairperson Committee on Finance, Commerce and Budget to interrogate this Bill and understand its implication on the resources that we send down to the counties.

Madam Temporary Speaker, I was talking about spreading ourselves too thin.

Clause 5 (1) states that:-

“A county government shall allocate its resources equitably across all the wards in the county”

Sub-section 5 (3)(a) states that:-

“Not less than fifteen percent of county government’s allocation for development expenditure as provided under section 107 (2) (b) of the public Finance Management Act”

Madam Temporary Speaker, this simply means that any development allocation for any county, for example, in a county like Nyamira, if it is Kshs1 billion, we must remove 15 per cent of that allocation and spread to 20 wards. Of course, that is spreading ourselves too thin. It means that we will give about Kshs20 million to undertake development projects in each of the 20 wards in Nyamira County. The question we should ask is what project will we do with Kshs20 million?

Madam Temporary Speaker, what will happen is that this money will be used for projects that will not have any meaningful impact in our wards, for example, clearing the bush and opening streams. What will have an impact for our people is a situation where we send more money to improve health facilities like what is happening in Nyeri County where the County Government of Nyeri is upgrading their facility from a level 5 to level 6. That cannot be attained with Kshs20 million. That is the point I am trying to make.

We need to be very careful. There is an animal that we are now experiencing in this country; that of devolving corruption. When we set up county governments, the biggest fear among Kenyans was that there was a real danger of us devolving corruption.

The Chairperson of the Committee on County Public Accounts and Investments (CPAIC) will tell you that year in year out, the Auditor-General continues to raise serious queries on misuse of resources. Money cannot be accounted for in our county governments. The fight is that the more money you get for projects, the more you deep your fingers into public coffers.

Therefore, we need to be careful that we do not open another avenue for corruption. This is because the mindset of people is that the moment you give them an opportunity for money for development, it is an opportunity for people to make sure that resources are diverted for personal enrichment. We need to be very cautious.

Madam Temporary Speaker, there is an issue of this Bill, most likely being unconstitutional. In Clause 5, the Bill says that:-

“A county government shall allocate its resources equitably on the advice of the commission”.

I believe that it is the Commission on Revenue Allocation (CRA). However, under Article 216 of the Constitution, the CRA has only been given one principal. Function; and that is to make recommendation concerning the basis for equitable sharing of revenue raised by the national Government, between the national Government and the county governments. There is no mention of a function given to the CRA to determine how to share revenue between wards. In this Bill, we are trying through an Act of Parliament, to create a new constitutional mandate for the CRA, which is not envisaged in this Constitution.

What is the constitutional implication? The constitutional implication is that there is a likelihood that somebody may move to court and say, “We are trying to take away powers that constitutionally are vested in the county executives” - That is the governors and giving them to another Commission, which under this Constitution has not been given a mandate to determine sharing of resources among wards.

These are things that are very clear and explicit in our Constitution. We should be careful about passing laws that may end up being challenged in Court and they may be declared unconstitutional.

We have been talking about giving a role to Senators in overseeing county governments. That is the debate we have been having in the Senate. I have read through this Bill, there is nowhere this is mentioned, and this would have been a window of opportunity for the Senate, to give a role to Senators to oversee the way this fund will be implemented among our wards. However, that opportunity has been lost.

There is something that I keep on wondering about. That we keep on passing legislations but where we get a window of opportunity to re-assert our mandate of oversight, we never take that opportunity. I challenge the Chairperson of the Committee on Finance and Budget, my good friend, to be a bit innovative in some of these things - you give some role to the Senators so that we are able to provide our Constitutional mandate of overseeing expenditure of money in our counties.

Madam Temporary Speaker, as I wind up, there is a danger that again in passage of these Bills, under Clause 18, we have given a leeway to our county governments to make regulations. It is a very wide discretion. Under Clause 18(a), we are saying that:-

“the county government can make regulations for criteria for allocation of funds.”

That is too wide a mandate. Under that particular Clause, the regulations that will be passed can totally nullify what is provided for in this Bill. That particular provision should not be worded the way it is, if at all this Bill is to be enacted.

Finally, Madam Temporary Speaker, we also need to be very careful, that under Article 175, there should be very clear separation of powers between the executive and Members of County Assembly (MCAs). In coming up with this Bill, that should be at the back of our minds. We should not give a lot of leeway to our friends - MCAs, to have a very big say in the allocation of resources and coming up of development projects in our wards, instead of our governors.

Madam Temporary Speaker, with those few remarks, it is my view that this Bill requires further consideration.

I thank you.

The Temporary Speaker (Sen. (Dr.) Zani): Quite a number of multiple issues--- Sen. Farhiya.

Sen. Farhiya: Thank you, Madam Temporary Speaker. I wish to congratulate you on your new position. You are doing a good job.

I add my voice to this Bill. I also happen to be in the Committee on Finance and Budget. Of course, on every issue that we look at, there are divergent issues. Everyone has a different lens of looking at things.

Madam, Temporary Speaker, overall, I believe that this Bill is good for counties in terms of equity. It speaks to the heart and the spirit of devolution. This is because, with this Bill, whether you voted for the Governor or not, he can never have an issue in a way that you do not get development just like everybody else. People exercise their democratic rights and they have a choice. If they never chose a specific governor, but chose someone else, then they do not deserve to be punished. From where we come from, that is what we see all the time.

Madam Temporary Speaker, the amount might not be that big - 15 per cent. For people who think that we are prescribing what governors would have used to do bigger projects, they still have 85 per cent. Surely, if you have 85 per cent, then you can do a lot with it; unless you want to pocket 100 per cent of the money that you are given. If you want to pocket everything, at

least spare 15 per cent for all the wards so that the people can see where money meant for those projects have gone.

During our public hearings, one of the issues that we heard was the fact that there are some counties with very small amounts of money for development - some of them as low as 24 or 22 per cent. If 15 per cent is allocated, then that amount will be reduced further. My counter argument on that is that something is wrong. There is over-recruitment. What happens in counties is that every governor - and truth be told - for example, all first term governors who were re-elected for the second term have recruited their own people. If over recruitment is the case at that level, then there will be no money left for development.

I do not accept to explain away nor make excuses for the bad behaviour of governors whereas we have better deserving cases whereby equality should be attained in all counties - let me not say equity. This is because, for example, Nairobi City County development needs are quite different from a ward in Wajir County. This is due to the fact that a lot of development has been undertaken in Nairobi and other places in this country. In my county even a Ward itself can be the size of probably the whole of Nyeri County. That is just the size of a Ward in my county in some cases. If there is a constant amount that is going into that county, each village at the end of the day however small, should be able to get some funds.

There are things that might be a small investment in Nairobi City County but could be a very big deal in the counties where we come from. For example in my county, installing a tank of water where people can draw water from or a single borehole that costs Kshs5million can make a difference between those people losing all their livestock and their lives and survival for those people.

For one to appreciate this Bill you must have seen the deplorable level of development in some of these counties. For people like us, this is the first time we are seeing anything coming to our counties. We never had anything in the first place. We have provided a further restriction. At least 15 per cent of the Development Budget should go to different Wards. The Constituency Development Fund (CDF) also suffers from the same fate because if you did not elect that Member of Parliament (MP) where you come from, you suffer when he is disbursing CDF funds.

Within a Ward, those people must have elected that leader or somebody else who is close to home so that he can bring development in the area. The unfairness is closer home. That is one of the things that make a difference in people's lives and which we should also adhere to.

Some people were saying; what is Kshs10 million? The amount of Kshs10 million is a lot of money for some people. If Kshs10 million can build 10 Early Childhood Development (ECD) classes in a sub-county, that is a big deal for some Wards.

This is not similar to CDF because the people through public participation will identify the projects that they need. The person in charge, either the County Administrator or Ward Administrator can also participate in that process up to the level of the CEC. After that process of generating the development budget for the county, all the projects will go to the County Assemblies for review or improvement of the proposals. There is separation of power between the MCAs and the County Executive Officers. Therefore, there is a check and balance.

Madam Temporary Speaker, we need to put measures in place to ensure that once a project has been approved it should be finished and the Governor should not use delaying tactics. For example, he does not implement the projects for those Wards and then he carries them forward; in such a case, he can still not access that money regardless of whether he carries the

project forward or not. So that money remains to be used by the same Ward; the Wards are protected.

That creates a completion mechanism. After the implementation you have to also report quarterly to the County Assemblies. That can put people to task to ensure that they know where development is. You can report that nothing happened in the first quarter and the second quarter but you cannot do that in the third quarter. There is check and balance in this process as well. This is the kind of governance that we need in all the other Bills so that some of these things can bring meaningful development to the people of counties.

Madam Temporary Speaker, there is also a Clause that takes care of misappropriation of funds. If you misappropriate funds, you go to jail for five years and are fined not less than Kshs500, 000 or both if you are found to be guilty. I find that to be a bit lenient and recommend that we impose a harsher penalty. I would say, and I will take that amendment to my Committee, that anybody who misappropriates funds from this Ward Development Fund is liable to pay three times what he took. If he cannot do that then he goes to jail for 10 years so that he does not have time to spend the money that he stole.

This Bill clearly specifies that there is scrutiny by the County Assembly; again, there is separation of powers. Most times public participation is done in the county headquarters. Sometimes you find that most members of the public are illiterate or do not even have transport to go to the headquarters. In their village or Wards they will say this is what we have identified as our priority. When it is not implemented, then they can hold their MCA accountable for not making sure that those projects were implemented because he is the one in charge of playing the oversight role over those projects. It becomes an issue and the public will then put their MCA to task.

Madam Temporary Speaker, this Bill also could have been passed by MCAs as an individual county assembly passing these Bills. There are some counties that have already put in place the Ward Development Fund. In order to ensure that there is a legal framework for it, this House has made a difference to counties by ensuring that there is uniformity between counties.

The other issue that was talked about was that flag ship projects of counties will be curtailed by providing 15 per cent of the development budget. If you wanted to do meaningful development, you still have 85 per cent. If you put that 85 per cent in one project in one year, that will result into billions of shillings then you develop. Next time put the other 85 per cent in another year in another flag ship project, still counties will develop. We talked about marginalisation of counties. We do not want marginalization within a county and that is what this Bill is addressing.

Madam Temporary Speaker, I thank you and I support.

Sen. M. Kajwang': Thank you, Madam Temporary Speaker. I rise to lend my views on this Bill. I start of by supporting it. I have been in some significant trouble in the past over this particular Bill, last year at the Legislative Conference at a venue appropriately named Pride Inn Paradise Resort. There was trouble in paradise when I rose to give my views regarding this Bill in the presence of MCAs and they were very emphatic that they did not associate themselves with my views.

Those are the views that I held and still hold on the other Bill that is not before this House. This is because the Bill that was initially brought before this House was for the establishment of Ward Development Funds and it was sponsored by Sen. Kang'ata. The Bill

before us today is the County Wards (Equitable Development) Bill, which is sponsored by the Chair of the Committee on Finance and Budget, Sen. Mohamed Mohamud.

The earlier legislative proposal had certain deficiencies because it was prescriptive. We agreed as a Senate that what we need to do is to come up with a framework that would help counties come up with ways of ensuring that funds went straight to the wards without telling them exactly what to do and without dotting the i's and crossing the t's with the finality on what they need to do.

The earlier legislative proposal was trying to set up a Fund and we know what the PFM Act says about establishment of funds. For every Ward Development Fund, the Auditor-General would have had to do the audits. That means we would be receiving on the Table of this House about 47 reports of the Auditor-General on Ward Development Funds per county, in addition to the numerous reports that we receive from counties. I felt that was not tenable.

The earlier legislative proposal had come up with some structures for identification and implementation of projects; structures that we felt were going to be expensive and a duplication of already existing structures.

Madam Temporary Speaker, my conviction about this Bill is that if county governments were to do what is required of them by the Constitution, the County Governments Act, and the PFM Act, this Bill would be unnecessary. This is because the Constitution puts an obligation on county governments to ensure that development goes to the lowest level, which in this case is not the ward but the village.

The Constitution makes it obligatory for public participation to be undertaken in the budget-making process. There is a principle of subsidiarity in the Constitution which, if observed, Senate would have no business legislating on ways of ring-fencing resources that go to wards. However, the reality is that all these things that we hope should be happening in counties are not happening.

There are still a lot of pockets of disadvantage in our counties. We have not just devolved corruption but also tribalism, clannism and political partisanship. There are counties that are multi-ethnic and you will find that the ethnic group from which the governor and the leading elites come from gets preferential treatment at the expense of others. There are also counties that are homogeneous when it comes to language and tribal orientation but even where there is homogeneity in the ethnic composition, they bring in clannism.

In Homa Bay County where 80 per cent of the people are from one ethnic community, we are further divided on the basis of which part of the county one comes from such as Karachuonyo, Ndhiwa or Kanyada. Further to that, even if you come from Kanyada, you would still be defined on the basis of where your migration started from. People would want to know whether your migration started from Ugenya, Gem or another part.

We need to find a way of dealing with some of these issues, not necessarily by legislation but by appealing to the good sense of morality, internalising Chapter Six and reflecting on what leadership is supposed to be.

There are areas where people are neglected because of the political choices they made. We are still seeing it happening in counties, just like it is happening at the national level where some zones are categorised as opposition. It is because of that reality check that I would be convinced that Parliament needs to come up with legislation that would act like an affirmative action kind of legislation to ensure that nobody and no ward is left behind. However, we must also remember that in some of the wards there are still pockets of disadvantage. There are broad

pockets of disadvantage at the county but the wards are also not homogeneous. In some wards, there are different ethnic communities, different political persuasions and different clans.

Imbalances in development are seen even at the national level. For example, we have witnessed a scenario where Kshs64 billion is set aside to construct two dams with a target audience or beneficiaries numbering 100,000. A budget of Kshs64 billion is set aside for dams yet I have not seen a multi-billion shilling project in Homa Bay County with a population of 1.4 million people. Those are imbalances that perpetuate a sense and feeling of exclusion from the centre and the national cake. The same thing is happening in the counties.

In my county, a decision was made to build a tarmac road from one corner of a constituency to another corner of another constituency at a budget of Kshs500 million. One example is Gendia Road that starts from Gendia to Kadongo, which traverses two constituencies and goes through about three wards and that will cost of Kshs500 million. However, when you go to Suba Constituency, not a single shilling has been set aside to build a tarmac road. Those are the kind of feelings that make (MCAs) feel that they need protection from the Senate.

We are saying that not less than 15 per cent of the development budget should go to wards but we must remember that all development takes place in wards. The only problem is that some wards are getting much more, just like some areas get Kshs64 billion for dams yet others get nothing. I believe that the essence of this Bill is to ensure that the 15 per cent meant for development is spread out using a formula that counties will be advised by the CRA.

My county has a budget of Kshs8 billion and probably many other counties have got an annual budget and revenue of Kshs8 billion. The PFM Act says that not more than 70 per cent of the budget should go into recurrent expenditure. Therefore, generally counties have about 30 per cent of the revenue that goes into development. A county that gets Kshs8 billion would have about Kshs2.4 billion for development. If you do the maths, 15 per cent of Kshs2.4 billion is Kshs360 million. So the amount that will go to the wards is Kshs360 million out of the Kshs8 billion. If you have about 40 wards, that is about Kshs9 million per ward.

I urge MCAs not to promise the moon or the world because. Even though my colleague, Sen. Farhiya, said that Kshs9 million or whatever amount is a lot of money, it will cause them serious problems. Remember this is supposed to be development spending.

If you use Kshs9 million on recurrent expenditure, you can get away with a lot of things but if you use Kshs9 million on development, you can build nine Early Childhood Development Education (ECDE) classes. Therefore, you will not need to build other ECDE classes the following year and probably the priority would be a road. What road will you fix with Kshs9 million? If the next priority is water, what kind of water service provision would Kshs9 million do? Maybe you can drill a borehole but you will not be able to do the piping. Residents could require a dam. In Kenya, a dam costs Kshs64 billion. So, what would Kshs9 million do for you?

Madam Temporary Speaker, I urge MCAs to take away the notion that this will be their money for them to distribute as they wish because that is the story they have been telling people on the ground, which is unfortunate. In fact, they have been very much in solidarity with the Senate.

When you go to a fundraiser, the story would be told of the kind of talents or endowment that elected leaders have been given. They know that the governor has been given billions, the woman representative has a Fund, the Member of Parliament in the National Assembly remote controls the NG-CDF. It is only the MCA and the Senator without any money. They have been telling people that very soon they will have Ward Fund and very soon people will start seeing

things happening. This is going to be their waterloo if they promise the public that the money is coming for them to use as they deem fit.

The Bill needs to be very clear on how projects are identified, how oversight is carried out and the role of the MCAs. I can see that the role of the MCAs will just be to approve the criteria for allocation, approve the plans and to do the oversight of the plans at the county assembly level and maybe to guide in public participation but not to be the ones deciding which project to be undertaken and deciding how much should be spent on which particular project.

There is a Clause that states the penalties and consequence of non-adherence to this Act. I want to urge the Mover of this Bill to ensure that it is consistent with the Public Finance Management (PFM) Act because the Act has some sanctions and consequences for lack of financial prudence. If counties did what they are required to do, this Bill would be unnecessary. Right now, county assemblies are doing public participation on County Fiscal Strategy Papers (CFSP). It is during the budget making process that priorities are identified and put in a budget.

The question is; is the public participation that goes on during the budget making process adequate? I have seen newspaper notices that state; 'let us meet at a certain hall at nine o'clock in the morning'. The county assembly members would then arrive at four o'clock in the evening with bulky documents and present them to people, who have not interrogated them. As they prepare or present the documents, food will be served outside, for people who have been waiting from nine o'clock in the morning. The priority of those people has always been food rather than looking at the budget documents. We need to fast-track the Public Participation Bill to guide the counties.

There is need for the county assemblies to establish county budget offices. In Parliament, we have the benefit of a Parliamentary Budget Office which was born out of the realization that elected Members are not necessarily experts in budget, economic and financial matters. We now have a specialized public budget office which is protected by the PFM Act. Counties do not have that benefit and we need to think of legislating, coming up with regulations or building the capacity of counties for them to establish their own budget offices. They should not just come up with budget offices but they should also have an audit and oversight office. That will help them have experts who will help them in the budget process. They will also have investigators, forensics people and analysts who can guide them in the audit process.

We also established the County Budget and Economic Forum (CBEF) which can do a lot in theory but is doing absolutely nothing in practice because they are controlled by the governors. When we call the governors before the Committee on County Public Accounts and Investments and ask them about the establishment of these budget and economic forums, they say they have established them. The question is; how effective are they? The private sector has repeatedly told us that they want to be part of the CBEF. When we meet the Kenya Private Sector Alliance (KEPSA) during the annual round tables, one of their usual grievances is that they are not involved and where they have nominees, those nominees are just there for tokenism because all the decisions are done by the governors.

The County Development Boards would be the forums where the county executive, national executive, county assembly and Parliament would sit in one room to harmonize and prioritize development. That would only happen if the County Development Boards had not been declared unconstitutional by the courts and I do not know how far we have gone with the litigation. Right now, you are going to have ward based projects, constituency based projects managed by the Member of the National Assembly, countywide projects managed by the county

governor and projects superintended over by the county commissioner, who is currently chairing a county development structure. The county commissioner reports to the committee that is led by the Cabinet Secretary, Dr. Fred Matiang'i.

The projects that the national Government is undertaking in counties are of much greater value than the monies that the counties are getting. If there is a Kshs64 billion project in Elgeyo-Marakwet, it would be under the purview of the county commissioner. He will be the one to oversee and monitor it and the governor will be left with a Kshs3 billion budget to look after. There is need to bring all these people on board and put them in one place.

In my opinion, a Bill and legislation which will do much more than what we are looking at right now will be a county leaders' forum that brings everyone together. With that, we will have all the Members of the National Assembly, Senate, county assembly, Executive and the county commissioner sit in one room and agree on the priorities before we embark on the budget making process. In fact, there is another layer of implementation which is the Regional Development Authorities. They have projects in the counties and they do not care what the governor wants and what the priorities of the people are.

We need to look at our counties and ask ourselves; between the economic and political goals, which one do we want to put ahead? Politically, we have said that it makes sense to take power to the lowest level but for economic purposes, especially the budgets and projects; we must find a way of consolidation. Right now, we have forty seven of everything. If it is bad manners, theft or nepotism, we have them forty seven times. Can we look at our counties and find a way of ensuring that we shed off some of the fat that puts us into the eternal trap of 70 per cent on recurrent expenditure.

The Mover has proposed that the Commission on Revenue Allocation (CRA) shall advise when distributing these monies though we must also consider the revenue generating capacity of the wards. It is unfair for the traders in Gikomba to be taxed every day just for that money to be used in putting up streetlights in Lavington. Where revenue is collected, there has to be some return on investment to the people and that is the only way of motivating them to continue paying taxes.

In as much as we are saying that development should go to the ward, the Members of County Assemblies (MCAs) should not forget their primary duty which is oversight. Most of the things this Senate has been doing are supposed to be done at the county assembly. What my Committee has been dealing with; the audit reports, is supposed to be handled at the county assembly level. It is for that reason that we said that we now want to take a different look. We came to that decision when we retreated last week. We said that we will bring a fiduciary risk assessment to this House and not individual county reports.

That will help us assess the key risks that we have come across over the last six years of devolution, their impact, the ways of mitigating them and the policy on legislative proposals that we can put before this House. That will be a better way rather than bringing the names of procurement tender committee members or accountants who misplaced receipts and receipt books to this House. That kind of conversation should be happening at the county assembly level.

We will be bring an omnibus report of the Committee on County Public Accounts and Investments to this House which covers the first three years of devolution through the fiduciary risk report. For the subsequent years, we have made a resolution that we are sending out invites to governors to respond to Auditor-General's reports for the 2017/2018 financial year. Article

229 of the Constitution requires us to consider those reports within three months of tabling. Some of these reports were tabled last week and we only have three months according to the Constitution. If we go beyond that, it will be unconstitutional. We cannot be the same people holding governors to account for acting unconstitutionally and with disregard to the rule law yet we are the same people doing the same thing.

The Senate must take a different view as far as oversight is concerned but we must build the capacity of our county assemblies. I do hope that we will have this conversation when we go to Kisumu County for the Legislative Summit. It is good that this Bill has made progress. If we are to go to Kisumu without this Bill, there would be trouble in paradise just the same way there was trouble in paradise last time. I hope the conversation about car grants, mortgages and pensions will be less and that we will have more conversation on how to improve and entrench our oversight, legislative, budgeting and planning roles as legislatures.

I support, but I do hope that there could be a few amendments that can be put in place to enrich this Bill.

The Temporary Speaker (Sen. (Dr.) Zani): Well-spoken Senator. The last request is from Sen. Faki, the Senator for Mombasa County.

Sen. Faki: Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute to this important Bill. I wish to associate myself with the sentiments made by my fellow Senators and support this Bill, which will go a long way in entrenching devolution in the counties.

Majority of the projects are now at the whims of the governors and the County Executive Committee Members (CECs). Most of the projects are of high value and they sometimes run for two or three years and at the end of the day, there is no direct benefit on the members of the public. However, this Bill attempts to bring development closer to the people and that has been the intention of devolution right from the beginning.

Madam Temporary Speaker, I have issues with Clause 5(3)(a), where it provides that:-

“In determining the criteria for allocation under sub-section (2) (b), the county executive committee shall ensure that the allocation –

- (a) is not less than fifteen percent of the county government's allocation for development expenditure as provided under section 107(2)(b) of the Public Finance Management Act.”

Madam Temporary Speaker, the 15 per cent is rather too little because already the governor or the executive has a say in the projects that are being done in counties. It is the same argument of the Senate that money that goes to counties is too little to foster any development in those counties. So, if we are complaining about a budget of 15 per cent that goes to counties, it is the same reasoning that we should devolve more to wards. This is because all the projects are done in the respective wards in the counties that are involved. So, the allocation should be increased maybe, to 30 per cent. This is because at the end of the day, the development will go to the same wards that are affected.

My other concern is the proposed Clause 18 on the power donated to the county governments or the county executive to make regulations. We shall have 47 regulations which may not be uniform. This is the same way we are trying to avoid each county to pass legislation on ward development. This power should have been donated to the Cabinet Secretary (CS) for the Ministry of Devolution and Arid and Semi-Arid Lands or the CS for the National Treasury so that there can be uniformity in those resolutions.

Madam Temporary Speaker, the important thing is that in many counties, most of the development is done at the behest of the governors. The public participation that is done is minimal and ineffective. This is because majority of it is done at a certain time when members of the public are unable to contribute effectively and are not aware of what is happening.

For example, when Mombasa County was doing County Integrated Development Plan (CIDP) last month, members of the public were there to discuss the budget. However, the county government was discussing the issue of the County Fiscal Strategy Paper (CFSP) which was what was under consideration by the executive.

Madam Temporary Speaker, there is a problem with public participation where a county is not prepared in the first place. Secondly, members of the executive bring supporters who will support whatever is put on the table without understanding what it entails. Therefore, public participation should be very important.

I associate myself with Sen. M. Kajwang's position that The Public Participation Bill should be fast-tracked so that we have a uniform legislation to deal with public participation.

With those few remarks, I support this Bill.

The Temporary Speaker (Sen. (Dr.) Zani): Lots of insightful points there. I am sure some of these will come as amendments.

There being no further requests, I call upon the Mover to reply.

Sen. (Eng.) Mahamud: Madam Temporary Speaker, I thank the Members for the good contributions that they have made since we started debating this Bill yesterday.

The history of this Bill which has been in discussion for a year now, started with our colleague Sen. Kang'ata of Murang'a County. The form in which it was then is very different from what we have today. Members will recall that we subjected the original Bill to a lot of discussion among the Senators, within our Committee and various stakeholders including, the COB, CRA, CoG, CAF, Institute of Certified Public Accountants of Kenya (ICPAK) and International Budget Partnership (IBP).

Thereafter, we had breakfast meeting as Senators. It was agreed that we have a Committee to look at the Bill. It was not supposed to go on in its original form because it was considered to be creating a fund which was opposed by many. It would have been even very difficult to implement that funding. There was a lot of objection from the National Treasury, COB and other experts.

Madam Temporary Speaker, it was then agreed that the sponsor engages with other Members of the Senate. A Committee was formed which in fact, agreed to withdraw the original Bill and come up with one which was no longer a fund but in the form it is today.

I am happy that my Committee was given the mandate to move the agenda of the Bill forward even after the Senate Business Committee (SBC) had initially been involved. That is why we have this Committee before the House today. I am happy that Members have appreciated the work that has been done. The Bill in its current form is much better than it was before. I do not think it offends any part of our law. Should there be any part that offends the Constitution, PFM Act and other laws, I urge Members to come with their proposal for amendment at the Third Reading so that we can improve on it.

Madam Temporary Speaker, as alluded to by my colleague Sen. M. Kajwang' of Homa Bay County, it is true that there are a lot of laws in place today that if followed and if there is some discipline, counties can decentralise further within the provision of the current laws.

However, because that is not happening, there is no harm for us to emphasise in another Bill so that those actions are taken by way of a Bill making it clear. We are looking for clarity.

Madam Temporary Speaker, all development in this country takes place in counties and all development in counties take place in wards. There is no place where there are no wards. This Bill is trying to have minimum project budgeting in every ward in this country. We have put a figure of not less than 15 per cent of development budget in every county.

It is true that figure is about Kshs15 to Kshs20 million depending on what counties get. It is true that the figure looks small. However, it at least makes some minimum provision in every ward but that does not preclude any other development to be undertaken. In fact, since development in the counties takes place in the wards, they will still be having development programmes out of the other 85 per cent of development expenditure.

That is the provision under Clause 5(3)(b) and (4). It says:-

“(3) (b) is complementary to any other development efforts by the county government or any other agency and

(4) Nothing in this Act shall be construed to mean that an area may be excluded from any other development programmes.”

Madam Temporary Speaker, it is a minimum amount.

County governments, in their wisdom, can increase that figure from 15 per cent to a figure they choose.

When we met with Members of the County Public Accounts and Investments Committee (CPAIC) and the rest, there was a feeling that this figure is high. Depending on the money allocated for development in certain counties, they thought that the figure is too high and it might distort the development expenditure of counties.

Madam Temporary Speaker, we have taken note of the concerns that Members have. In fact, there are a few improvements that are required here and there. By and large, public participation that is envisaged in this Bill is the same public participation that is supposed to be undertaken in the counties during project development and implementation.

Clause 10 of this Bill states that:-

“The projects identified under section 7 shall be included in—

(a) the development plan provided for under Section 126 of the Public Finance Management Act;

(b) the County Fiscal Strategy Paper provided for under Section 117 of the Public Finance Management Act;

(c) the county budget estimates provided for under Section 13 of the Public Finance Management Act; and

(d) any other plan or document provided for under law, which may be determined by the Commission as being necessary for the implementation of this Act.”

There were concerns as to why the Commission on Revenue Allocation (CRA) should be involved as far as the criterion is concerned. We wanted to have a criterion for ensuring equity in the counties. A colleague Senator has said that it might be unconstitutional. If that is the case, we will have that corrected.

Madam Temporary Speaker, the reporting and oversight that is foreseen in the Bill is important. In fact, the same reporting done here is the same that is envisaged in the PFM Act, where counties are supposed to report on all projects. Our aim is to make sure that counties report about projects in wards and that the responsible County Executive Committee (CEC)

member shall maintain comprehensive and accurate records of all the programmes in a particular county. That will be applicable to all projects under their docket. Therefore, it is important that we move the agenda of this Bill forward. If there is anything to be added to improve it, we are ready for that.

As I said, we will bring our report proposing some amendments but I think this is a good Bill. Ideally, maybe counties should have conceptualized the concept of devolution but that did not and is not happening but this Bill will not do any harm. It will only improve the way things are done there.

What this Bill seeks to achieve is to make things different from the original Constituencies Development Fund (CDF) and the current National Government Constituencies Development Fund (NG-CDF) where the Executive was in charge of project identification and implementation. Respective MCAs will identify projects, of course through public participation, but implementation will be done by the county executives. A county assembly will either approve or reject the criteria used for selection of projects and oversight because nothing prevents them from oversighting.

Madam Temporary Speaker, I thank Members for their support. Everybody has supported this Bill and the reservations expressed by one or two Senators have been taken in good faith. We expect them to come out and give us specific proposals for amendments before we finalise on this Bill.

With those many remarks, Madam Temporary Speaker, I beg to reply.

The Temporary Speaker (Sen. (Dr.) Zani): Very well done. Let us go to the next Order.

Sen. (Eng.) Mahamud: Madam Temporary Speaker, pursuant to paragraph 6(1)(3) of the Standing Orders of the Senate, I propose that the putting of the question of this Bill be put to a later date.

The Temporary Speaker (Sen. (Dr.) Zani): Thank you. That question will be put on Wednesday, next week.

(Putting of the question deferred)

Next Order.

Second Reading

THE DETERMINATION OF THE NATURE OF BILLS
(PROCEDURE) BILL (SENATE BILLS NO. 30 OF 2018)

The Temporary Speaker (Sen. (Dr.) Zani): The movers of the Bill are not in the House at the moment, so that Order is deferred.

(Bill deferred)

Next Order.

MOTION**ADOPTION OF REPORT ON THE COUNTY GOVERNMENTS’
INFRASTRUCTURE PROJECTS**

The Temporary Speaker (Sen. (Dr.) Zani): Could we hear from the Chairperson on the Committee on Finance and Budget, Sen. (Eng.) Mahamud?

Sen. (Eng.) Mahamud: Madam Temporary Speaker, I beg to move;-

THAT, this House adopts the Report of the Standing Committee on Finance and Budget on the County Governments’ infrastructure projects comprising County Executive Headquarter offices, Assembly Chambers and offices and County State officers’ residences, laid on the Table of the Senate on Thursday, 29th November, 2018.

Article 96(1) of the Constitution provides that the Senate represents the counties and serves to protect the interests of the counties and their governments. Further, under Article 96(3) of the Constitution, the Senate determines the allocation of national revenue among counties.

The Second Schedule of the Senate Standing Orders mandates the Committee to investigate, inquire and report on all matters relating to coordination, control and monitoring of the county budgets.

Pursuant to Article 216(2) of the Constitution, at a meeting held on 27th June, 2018, the Commission on Revenue Allocation drew the attention of the Committee to the issue of on-going county governments’ infrastructure projects which included construction of county executive headquarter offices, county assembly chambers and offices and county state officers residences projects. The construction of county state officers’ residences projects included county governors’ residences, deputy governors’ residences and county assembly speakers’ residences. Noteworthy, there were counties which were receiving conditional grants on ‘supplement for construction of county headquarters’ where the projected cost of construction had almost doubled.

The Senate will recall that for almost three years or four, this Senate has been passing funding under County Allocation of Revenue Act for construction of county headquarters for five counties namely; Nyandarua, Tharaka Nithi, Isiolo, Tana River and Lamu. The project has not started in most of those counties apart from Tharaka Nithi and Nyandarua though from what we have heard and from what we have witnessed, the headquarters were supposed to be funded up to Kshs510 million. We are told that 70 per cent was to come from the national Government as a conditional grant and 30 per cent was to come from the counties but the figures have doubled.

It is with this regard that the Committee resolved to deliberate and interrogate the matter with the view to providing guidelines. Further, this will ensure that the principles of public finance as stipulated in Article 201(d) of the Constitution, is adhered to.

Madam Temporary Speaker, upon noting the trends of construction cost expenditure on county headquarters, assembly chambers, offices and residences, the Committee resolved to invite the relevant stakeholders with the view of determining the most appropriate costings. A quick preview showed that counties were at various stage of implementation of aforementioned projects at hugely varying costs.

Madam Temporary Speaker, the Committee held several sittings in which it invited several key stakeholders which included the Salaries and Remuneration Commission (SRC), the Controller of Budgets, Commission on Revenue Allocation (CRA) and the Ministry of Transport and Infrastructure, Housing, Urban Development and Public Works. The Committee made several observations and recommendations on the issues raised by the various stakeholders.

Madam Temporary Speaker, some counties had made budgetary provisions for some of these projects. The figures provided at the deliberations were extremely high. To mention a few, in Financial Year 2018/2019 budget, Kirinyaga County had allocated Kshs100 million for a governor's residence. Kilifi County had allocated Kshs214 million for a deputy governor's residence and Kshs200 million for county assembly speaker's residence. Nyandarua County, which is one of the counties receiving conditional grant supplementary for construction of county headquarters, had allocated Kshs800 million for construction of county headquarters. Uasin Gishu County had allocated Kshs850 million for construction of assembly offices and chambers.

Madam Temporary Speaker, the recommendations proposed by the Committee, if taken into account and implemented, will enhance accountability, effectiveness, transparency, efficiency, prudent management, commercial viability and value for money. The mentioned county government's infrastructure projects are essential for the running of the county but the investment in the same should not jeopardize service delivery.

Madam Temporary Speaker, the concerns that we had is that counties are spending a lot of money on these infrastructure projects, all of them varied. projects. In fact, the headquarters of a particular county has no resemblance with the other. Everybody is building what they want. So, this concern was raised. Counties were rushing because one time, the SRC gave an indication that they must build all the county headquarters by June, 2019. So, they were trying to beat that deadline.

Madam Temporary Speaker, the records of evidence adduced and documents received by the Committee formed the basis for recommendation of the Committee as outlined in the report and can be obtained in the minutes of the Committee proceedings annexed to the report which is here already.

Madam Temporary Speaker, the Committee observed that the timeframe provided by the SRC was not adequate since county governments had only one fiscal year to initiate and complete the residential projects. The circular by SRC giving 30th June, 2019 deadline is unrealistic. Our recommendation was it must be rescinded. The outcry by residents in different counties in protest of the excessive budgetary provisions for residences was an indication that the projects were not within the immediate needs of the people.

Madam Temporary Speaker, there was need for design standardization and capping of maximum expenditure on the projects to ensure adherence to the principles of public finance management as enshrined in the Constitution. For the counties which had already commenced the construction projects, there was need for work appraisal with the view to modify the designs and scale down the cost to allowable limits.

The five counties receiving conditional grant of Kshs363 million that is 70 per cent of the cost of the facility spread over three years, for construction of headquarters, should contribute the balance of 30 per cent of the cost. The total cost of construction translates to Kshs518 million ceilings set by counties for construction of county executive headquarters considering the

technical and market forces cost beyond this limit defeats the purpose of justification of conditional grant.

Madam Temporary Speaker, in view of the above mentioned observations, the Committee recommends that, county governments should consider prioritizing the matters that are of service delivery in nature. In addition, the Salaries and Remuneration Commission (SRC) directive, *Gazette notice* N0.6518 and circular number of 24th October, 2016 to county governments, giving 30th June, 2019 as deadline for the option of either paying rent for residences of the designated county government State officers, or should be rescinded so that we know the time. The time limit should be realistic within the budget provisions so that people do not hold too much money in one year.

The county governments should customize the prototype designs. We had a lot of discussions with the Ministry of Transport, Infrastructure, Housing and Urban Development. In fact, they showed us a lot of prototype designs for the county headquarters, county speaker's residence, County Governor's residence and the county assemblies. The counties have different types of assemblies. Some had less than 30 Members of the County Assembly (MCAs) and others had up to 90 MCAs. So, there are different types of assembly chambers.

The designs were shared with the county governments, especially those who have conditional grants. They should customize the prototype designs attached in this report for respective projects.

The county government should ensure the estimated cost of construction of executive offices for the county headquarters do not exceed Kshs500 million. The county government should ensure that the estimated cost of designated county State officers' residences do not exceed the limits as follows:-

The advice we got from Ministry of Public Works was that, the county Governor's residence should not be more than Kshs45 million. It is a building similar to what used to be the former Provincial Commissioners' residences in the former provinces, which sit on a 2 acre land.

County Deputy Governors' residences should be a maximum of Kshs35 million. County assembly speakers' residences should not exceed Kshs35 million. Further, the size of land should not exceed 2 acres and not below quarter acre. The county government should ensure that the cost of construction of the county assemblies' chambers, is within the limits provided for in this Report.

You might wonder that it is a bit late because counties have started building. I think this came to our attention very late. For those who have started, our recommendation is that appraisal of the project must be done, so that they can agree with the contractors to vary the scope of the works that is allowed within the building laws that you can vary the cost of project down by 25 per cent. If that is done, then we can have some sanity in the whole thing.

Madam Temporary Speaker, counties that are getting grants from the National Government, where they are supposed to get Kshs363 million from the conditional grants and they are supposed to contribute the rest, surprisingly, the same counties are trying to award tenders at Kshs800 million for their headquarters. There is a lot of concern that monies are just being wasted in building big infrastructures, which have got nothing to do with the service delivery.

As I conclude, I want to appreciate members of Standing Committee on Finance and Budget, who have exhibited commitment to their duty and sacrificed their time.

Madam Temporary Speaker, this is an attempt by the Committee to bring sanity into the infrastructural projects of the counties. Our intention is to get a housing solution and forward it to various independent oversight bodies. We will send to the Commission on Revenue Allocation, Controller of Budget and the Auditor General, so that when we interrogate the budgets of the counties, we see if there is any adherence to the technical experts because, the Ministry of Transport, Infrastructure, Housing and Urban Development, is an expert in this field. We want to set out some guidelines to guide them because not everybody knows what he wants.

(The red light was switched on)

Madam Temporary Speaker, I can see that time is already up. So, with those few remarks---

The Temporary Speaker (Sen. (Dr. Zani): Sen. (Eng.) Mahamud, proceed to request for a seconder.

Sen. (Eng.) Mahamud: Madam Temporary Speaker, I beg to move and ask Sen. Malalah to second.

Sen. Malalah: Thank you, Madam Temporary Speaker. In the interest of time, I second this Report. I highlight one of the pertinent issues that the Chairperson has pointed out. This Report is very informative. When I was going through it, I felt as if we are betraying the objectives of devolution. The drafters of our Constitution envisaged a situation whereby devolution was supposed to help the poor women, children and the citizens in the counties. However, as it stands right now, county governments are not prioritizing their projects right.

In a county like Kakamega, we have seen an attempt by the county government to come up with a multimillion project of a governor's residence almost 100 kilometres away from the headquarters. That means that we shall have to incur extra cost every evening for the governor to travel 100 kilometres to go and sleep in his residence far away from the headquarters. Again, in the morning, we will also incur cost of fuel and personnel to transport the governor back to the headquarters. How I wish we looked into this matter more seriously.

We have the Salaries and Remuneration Commission (SRC) which was in court the other day and granted governors and their deputies house allowances. Why should these officers enjoy house allowance yet they build luxurious homes for them to shelter?

Madam Temporary Speaker, I request that after the tabling of this Report, the big question should be what next? Will the resolution of this House be binding? Who will implement the recommendations by this Committee? This requires either a legislation or regulation to be adopted in this House so that it is binding. However, as it stands right now, it only ends at it being a Report.

Therefore, I ask the Chairperson to think deep and devise mechanisms to implement this Report so that its resolutions are adopted by the relevant authorities.

Madam Temporary Speaker, I have been looking at how county assemblies have been funded by the executive. We need to help them because they do not have the relevant experts to approve their designs, for example, engineers, designers or people who will make a follow up on the construction that they have done. I suggest that the element of development in county assemblies be given back to the executive because we do not have capacity in our respective county assemblies to ensure that they implement development and infrastructure.

The Temporary Speaker (Sen. (Dr. Zani): Order, Sen. Malalah. You have 15 minutes to continue seconding this Motion when it is next on the Order Paper.

ADJOURNMENT

The Temporary Speaker (Sen. (Dr. Zani): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The House, therefore, stands adjourned until Tuesday, 26th March 2019 at 2.30 pm.

The Senate rose at 6.30 p.m.