

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 20th March, 2019

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

[The Speaker (Hon. Lusaka) in the Chair]

PRAYER

MESSAGE FROM HIS EXCELLENCY THE PRESIDENT

NOMINATION OF HILARY NZIOKI MUTYAMBAI FOR APPOINTMENT TO THE POSITION OF INSPECTOR GENERAL OF POLICE

The Speaker (Hon. Lusaka): Hon. Senators, pursuant to the provisions of Standing Order 42(1) of the Senate, I wish to convey a Message from His Excellency the President requesting Parliament to approve Mr. Hilary Nzioki Mutyambai for appointment as the Inspector General of the National Police Service.

In the Message, His Excellency the President conveys that in exercise of powers vested in him under Article 245(2) (a) of the Constitution and section 12(2) of the National Police Service Act, he nominates Mr. Hilary Nzioki Mutyambai for appointment to the position of the Inspector General of Police.

Hon. Senators, Article 245(2)(a) of the Constitution states-

“The Inspector General is appointed by the President with the Approval of Parliament.”

Further, Section 12 of the National Police Service Act (No. 11A of 2011) as amended by Section 11 of the National Police Service (Amendment) Act, 2014 and further amendment by Section 86 of the Security Laws (Amendment) Act, 2014 states:-

“(1) Pursuant to Article 245(2)(a) of the Constitution, the Inspector General of the Service shall be appointed by the President with the approval of Parliament.

(2) The President shall, within fourteen days after a vacancy occurs in the office of the Inspector General, nominate a person for appointment as an Inspector General and submit the name of the nominee to Parliament.”

Hon. Senators, Section 8(1) of the Public Appointments Parliamentary Approval Act, 2011 states:-

“Unless otherwise provided in any law, a Committee shall consider a nomination and table its report in the relevant House for debate and decision within 14 days from the

date on which the notification of the nomination was given in accordance with Section 5.”

Section 9 of the Act further states:-

“If after the expiry of the period for consideration specified in Section 8, Parliament has neither approved nor rejected nomination of a candidate, the candidate shall be deemed to have been approved.”

Hon. Senators, this not being the first time Parliament is being requested to approve a nominee to the office of the Inspector General of the National Police Service, the matter will be considered by the relevant Committees in the Senate and in the National Assembly.

This Message, therefore, together with the résumé of the nominee stands committed to the Standing Committee on National Security, Defence and Foreign Relations of the Senate, sitting jointly with the Departmental Committee on Administration and National Security of the National Assembly.

The Committees are urged to move with speed putting to perspective the given time lines. The Committees should table the joint report on or before Tuesday, 2nd April, 2019, to enable the Houses of Parliament to dispose of the matter.

I thank you.

Kindly proceed, Sen. (Dr.) Kabaka?

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, thank you for giving me this exceptional opportunity.

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

The Speaker (Hon. Lusaka): What is your point of order, Sen. Cherargei?

Sen. Cherargei: Mr. Speaker, Sir, I do not intend to challenge your ruling. However, this is an issue of employment and I thought the Committee on Labour and Social Welfare should be involved in the vetting of the nominee.

The Speaker (Hon. Lusaka): Hon. Senator, this is not the first time vetting of the nominee of the position of the Inspector General of Police is taking place. There is already precedence. The Committee on National Security, Defence and Foreign Relations is the one that did the vetting of the former Inspector General.

However, what the hon. Senator has said is noted, but it is not possible in the current circumstances

Kindly proceed, Sen. (Dr.) Kabaka.

Sen. (Dr.) Kabaka: Thank you, Mr. Speaker, Sir. I would like to congratulate His Excellency the President for finding it right to nominate Mr. Hilary Nzioki Mutyambai as the Inspector General of Police.

I know Mr. Mutyambai---

Sen. (Eng. Mahamud): On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. (Eng.) Mahamud?

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, is the hon. Senator for Machakos County in order to debate a matter that has been committed to the Joint Committee of Parliament? We are not discussing the merit or demerit of Mr. Mutyambai. That will come when the Joint Committee of Parliament will table its report for us to debate it.

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, I am not debating. I am congratulating Mr. Hilary Nzioki Mutyambai by the fact that he comes from my constituency. He comes from Mwala Constituency and I am the Senator for Machakos County. I know this man---

Hon. Senators: No! It is not right!

(Loud Consultations)

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

The Speaker (Hon. Lusaka): What is your point of order, Sen. Cheruiyot?

Sen. Cheruiyot: Mr. Speaker, Sir, I wish to plead with my colleagues to allow Sen. (Dr.) Kabaka to make his point. This is because some parts of the country have never experienced the pleasure of having very senior Government official. We should understand his excitement. However, I have to warn him that he may compromise the chances of the candidate if he pursues that line of thought.

The Speaker (Hon. Lusaka): Sen. (Dr.) Kabaka, kindly make very brief comments. Do not touch so much on the candidate. Otherwise, you will be out of order.

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, I know the nominee for the position of Inspector General of Police because we went to the same school. He was my classmate from Form I to Form IV in Pope Paul VI Junior Seminary. The school is---

(Loud Consultations)

The Speaker (Hon. Lusaka): Sen. (Dr.) Kabaka, you are now out of order.

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, they are asking me questions.

The Speaker (Hon. Lusaka): Order, Senator! You are now out of order. Take your seat.

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

The Speaker (Hon. Lusaka): What is your point of order, Sen. Madzayo?

Sen. Madzayo: Mr. Speaker, Sir, is the distinguished Senator for Machakos County, Sen. (Dr.) Kabaka, whom I respect so much in order to start canvassing this matter before it is even ventilated by the Joint Committee of Parliament? If he wants to air those views, my suggestion is that he table them before the Joint Committee of Parliament and not on the Floor of this House.

Sen. M. Kajwang': On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Kajwang'?

Sen. M. Kajwang': Mr. Speaker, Sir, you have rightly noted that this is not the first time that the House is getting involved in this process. For the record, the last time this House had to fight. This House put up a very spirited fight for the interpretation of Parliament being a bicameral institution to be respected by the appointing authorities.

I am glad that the appointing or nominating authorities have taken the considerations and discussions that occurred in this House seriously by bringing this to the Senate.

Mr. Speaker, Sir, you have committed this matter to a Joint Committee of both Houses which is in line with the manner in which it was done last time. My only concern that requires your guidance is that, at the end of the day, a report will be laid before both Houses. If one

House rejects the report of the Joint Committee, what happens then? Do we have a mediation mechanism or does it mean that the nomination, therefore, collapses?

I beg for your guidance.

The Speaker (Hon. Lusaka): I will give guidance on that on Tuesday, next week.

Let us proceed.

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

The Speaker (Hon. Lusaka): What is your point of intervention, Sen. Cherargei?

Sen. Cherargei: Mr. Speaker, Sir, you have not ruled on the point of order raised by Sen. Madzayo. However, I would like to draw the attention of my Senior Counsel, Sen. (Dr.) Kabaka to Standing Order No.94 on anticipating debate.

I agree with Sen. Cheruiyot that some regions in this country have never had the privilege of having people who hold senior positions in their villages. It is, therefore, understandable when such excitement goes beyond the normal excitement. However, some of these issues should rest as they are until the Joint Committee of Parliament tables its report here.

Sen. (Eng.) Maina: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. (Eng.) Maina?

Sen. (Eng.) Maina: Mr. Speaker, Sir, Sen. (Dr.) Kabaka is expressing his joy and pleasure. That is in order. However, we must be very clear on this. People are appointed to these positions because they are Kenyans. Therefore, there is no point of saying that some areas have never had any appointments of this magnitude.

I beseech Sen. (Dr.) Kabaka to---

The Speaker (Hon. Lusaka): Order, Sen. (Eng.) Maina! I think we are taking unnecessarily too long on a matter that I have already given a ruling on. I gave discretion to Sen. (Dr.) Kabaka and he concluded his matter. Let us proceed. The matter is rested.

Next order.

PAPERS LAID

REPORTS ON THE FINANCIAL STATEMENTS OF VARIOUS COUNTY ASSEMBLIES

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I beg to lay the following papers on the Table of the Senate, today, Wednesday, 20th March, 2019-

- (a) Report of the Auditor-General on the Financial Statements of Elgeyo- Marakwet County Assembly for the year ended 30th June 2018;
- (b) Report of the Auditor-General on the Financial Statements of Vihiga County Assembly for the year ended 30th June 2018;
- (c) Report of the Auditor-General on the Financial Statements of West Pokot County Assembly for the year ended 30th June 2018;
- (d) Report of the Auditor-General on the Financial Statements of Uasin Gishu County Assembly for the year ended 30th June 2018;
- (e) Report of the Auditor-General on the Financial Statements of Nandi County Assembly for the year ended 30th June 2018;

- (f) Report of the Auditor-General on the Financial Statements of Kiambu County Assembly for the year ended 30th June 2018;
- (g) Report of the Auditor-General on the Financial Statements of Nairobi City County Assembly for the year ended 30th June 2018;
- (h) Report of the Auditor-General on the Financial Statements of Mandera County Assembly for the year ended 30th June 2018;
- (i) Report of the Auditor-General on the Financial Statements of Kajiado County Assembly for the year ended 30th June 2018;
- (j) Report of the Auditor-General on the Financial Statements of Wajir County Assembly for the year ended 30th June 2018;
- (k) Report of the Auditor-General on the Financial Statements of Murang'a County Assembly for the year ended 30th June 2018;
- (l) Report of the Auditor-General on the Financial Statements of Samburu County Assembly for the year ended 30th June 2018;
- (m) Report of the Auditor-General on the Financial Statements of Migori County Assembly for the year ended 30th June 2018;
- (n) Report of the Auditor-General on the Financial Statements of Laikipia County Assembly for the year ended 30th June 2018;
- (o) Report of the Auditor-General on the Financial Statements of Kisii County Assembly for the year ended 30th June 2018;
- (p) Report of the Auditor-General on the Financial Statements of Nyamira County Assembly for the year ended 30th June 2018;
- (q) Report of the Auditor-General on the Financial Statements of Lamu County Assembly for the year ended 30th June 2018; and
- (r) Report of the Auditor-General on the Financial Statements of Garissa County Assembly for the year ended 30th June 2018;
- (s) Report of the Auditor-General on the Financial Statements of Trans Nzoia County Assembly for the year ended 30th June 2018;
- (t) Report of the Auditor-General on the Financial Statements of Makueni County Assembly for the year ended 30th June 2018;

(Sen. Murkomen laid the documents on the Table)

The Speaker (Hon. Lusaka): Next Order.

NOTICE OF MOTION

COMPLETION OF STALLED COUNTY PROJECTS THROUGH BUDGETARY MANAGEMENT

Sen. Kibiru: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, AWARE THAT Kenya has had a development blueprint of Vision 2030 since 2008, which has guided planning and development for the last decade,

with a focus to making Kenya an industrialized middle income economy with a higher per capita income for its citizens;

FURTHER AWARE THAT, the development planning of the country is funded from the Consolidated Fund through the annual budget of every financial year, whereby revenues generated by Kenyans through taxes, levies, and fees that are supplemented with support of development partners in the form of outright loans, conditional loans, grants and/or unconditional grants to support growth and development across the country;

COGNIZANT THAT, any diversion from the Vision 2030 blueprint as well as the President's "Big Four" Agenda, would negatively impact the development trajectory that seeks to ensure a long term microeconomic stability resulting in a revision of targets on the goals for socio-economic, cultural, environmental, technological and political transformation;

NOTING THAT, whereas the National Government's Budget is based on Vision 2030 and "Big Four" Agenda, the County Governments' Budgets are based on their respective County Integrated Development Plans, (CIDPs) which are expected to dovetail with the overall national development blueprint;

CONCERNED THAT, there are glaring discrepancies in progress made in development among counties, particularly among the 14 devolved functions caused by lack of accountability, integrity, professionalism and remaining a blemish on the successes of devolution;

ACKNOWLEDGING the tribulations, ridicule, pecuniary embarrassment, negative socio-economic impact that pending bills have had on the local business community who supplied or undertook a service for the county governments, and the attendant slowdown in actual project completion, the rise in stalled projects dotting counties, with County Governors prioritizing new projects instead of the completion of those which have stalled;

FURTHER ACKNOWLEDGING THAT, the National Treasury in its circular No. 9/2018 detailed the five hundred and forty five (545) projects which have stalled in the 47 Counties, and their status of completion, collectively amounting to an estimated project cost of three hundred and sixty six (366) billion Kenya Shillings;

NOW THEREFORE, the Senate recommends that the National Treasury in partnership with the Controller of Budget, Commission on Revenue Allocation, the Council of Governors and the County Assemblies Forum to-

- (1) Ensure that all the County Integrated Development Plans (CIDP's) and Annual Development Plans (ADP's) are aligned to Vision 2030 with an implementation, monitoring, and evaluation framework in place;
- (2) Address Pending Bills by prioritizing their payment, creating clear timeframes for payment and publishing a schedule of payment of the same; and,
- (3) Prioritizing the completion of stalled development projects prior to undertaking or funding new projects.

The Speaker (Hon. Lusaka): Next Order.

STATEMENTS

THE 2019 GROSS COUNTY PRODUCT REPORT BY KNBS

Sen. (Dr.) Zani: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order 47 (1) to make a Statement on a countrywide concern, that is, The 2019 Gross County Product Report that was launched by the Kenya National Bureau of Statistics (KNBS) on 13th February, 2019, that highlights the economic status of inequalities in counties.

This is an important Report because it is actually the first one that has been produced within the devolution phase. It has actually given an analysis of the equivalent of Gross Domestic Product (GDP), as we know it, but at the county level. It is actually the county equivalent of a GDP. Some people call it the Gross County Product (GCP).

It measures, therefore - if you look across the various counties - the inequalities of the various counties. This Report clearly shows that at the end of the day, there is a lot of variation within the counties. Given the fact that right from the onset of devolution, what was expected is that it would equalize counties.

This Report becomes very key for us because it shows that no difference in terms of inequality has been there. So, counties have grown, improved and developed, but inequalities within the various counties have remained more or less the same.

This becomes a very important Report for this House because we know that through devolution there have been so many improvements in various ways and things, but there are still various challenges that are there. Fundamental challenges have continued to affect the counties, including irregular or delayed disbursement of devolved funds from the national Exchequer, low revenue collection, weak and uncoordinated planning and execution, stalled projects, among many others.

In light of the recently concluded Devolution Conference in Kirinyaga, it is evident that the counties are still grappling with various issues. One of those issues is actually articulated in this particular Report.

Many aspects still need to be put into place, and these are the ones that will help to address the issue of inequalities within the counties. They include better planning in the counties, improved quality of county leadership, prioritization and more investment. We are now hearing more about own-source revenue becoming a key issue within the counties; more participation in project identification, planning and execution; more efforts to ensure that there is eradication of duplicity of efforts, massive sensitization of leaders and many others. All these are very key.

As we know, the Senate is mandated to represent counties. We are here as Senators because we take care of the various counties. Therefore, now that this Report has been launched, it becomes a centre piece for this particular House. Implementation of the devolved system of government is in its sixth year and a significant amount of resources have been channeled to the counties. However, the county governments need to step up efforts at strengthening their capacities in generating revenue locally.

In addition, funds aimed at boosting counties that have experienced underdevelopment have been allocated through the Equalization Fund. This Report shows that even with the Equalization Fund, the element of equalizing counties has not been 100 per cent.

The statistics presented in the Report show how much each county contributes to the respective sectors of the economy and the county GDP data will thus provide the thinking behind the current strategies for revenue location, with the principal objective of reorienting the approaches to ensure equal levels are achieved within the various counties.

The information on economic performance in these counties will provide a key determinant for revenue collection within the various counties and help to prioritize development.

Mr. Speaker, Sir, I would like to take this opportunity to urge the Standing Committee on Finance and Budget that they actually liaise with the Ministry of Development and Planning together with the KNBS to table the County Gross Product Report in the Senate. This will enable us to have a more comprehensive report on the state of devolution, specifically, the inequalities and contribution of the counties to the GDP. Lastly, we will have an opportunity to analyze the audit report of the Equalization Fund, highlighting the contribution of the Fund to eliminating inequalities in the counties.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Proceed, Sen. (Eng.) Maina.

Sen. (Eng.) Maina: Mr. Speaker, Sir, I rise regarding a Statement that occurred on the Tuesday 12th March. In the HANSARD, it is quoted clearly---

The Speaker (Hon. Lusaka): Sen. (Eng.) Maina, what are you referring to? Are you commenting on the Statement by Sen. (Dr.) Zani?

Sen. (Eng.) Maina: No, Mr. Speaker, Sir. I am rising on a point of order regarding Statements.

The Speaker (Hon. Lusaka): On a different Statement?

Sen. (Eng.) Maina: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Let us dispense with the earlier Statement and then I will call you on that one.

Proceed, Sen. Halake on the same Statement.

Sen. Halake: Thank you, Mr. Speaker, Sir. I congratulate Sen. (Dr.) Zani for bringing this all important Statement before the Senate because we have always discussed sustainability of counties, and counties as being governments in themselves. A government looks at development plans, GDP, sustainability plans and equality as guaranteed in the Constitution.

If there is one thing that this House needs to pay very close attention to and which perhaps should form both our legislative priorities as well as others for this House, it should be this County Gross Product Report. It will tell us which counties are sustainable and which are real governments or a department of the national Government.

Mr. Speaker, Sir, I have heard discussion on some of the counties where the issues around stalled projects---. This is the emotion that has been the ---

(Loud consultations)

Mr. Speaker, Sir, I beg to be protected from this noise making.

(Laughter)

The Speaker (Hon. Lusaka): Senator, you are out of order. Members are consulting in high tones; not making noise. The Senate does not make noise. Let us consult in low tones. Proceed.

Sen. Halake: Mr. Speaker, Sir, as I was saying, this is one report that is important for this House. We have always complained that our counties may not be as sustainable as we would have liked them to be.

If our mandate under Article 96 of the Constitution is to protect county governments, what better place to start than to check the health of the counties and their economic status that is provided by the County Gross Product Report?

We have talked about pending bills, stalled projects and delayed disbursements where our counties cannot even operate for two weeks if the money does not come from the national Government. That is not how a government operates. It has sustainability and can operate whether or not another disburses funds to it.

(Sen. Olekina and Sen. Malalah consulted the Speaker)

Sen. (Eng.) Mahamud: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your intervention?

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, I was concerned that Sen. Olekina and Sen. Malalah are harassing you. I think if they want to see you, they should come to your office for consultation.

The Speaker (Hon. Lusaka): Okay. They have heard. I have to follow the proceedings. Continue, Sen. Halake.

Sen. Halake: Thank you, Mr. Speaker, Sir. I thank my colleague from Mandera County for saving me from that as well.

Sen. (Dr.) Zani is on to something and maybe we are not giving enough attention to some of these long-term developmental and existential issues. We are worried that sometimes counties are being looked at as unsustainable units. Therefore, if we look at this report and see the health of our counties and where the gaps are in terms of the financial sustainability, programmatic and service sustainability and other governance issues, it is going to form a very good basis on which we can exercise our mandate of oversight, representation and legislation. This is because we will then be able to legislate in terms of what the gaps will reveal, and oversight where they point to, maybe, below optimal stewardship of our resources.

Mr. Speaker, Sir, again, what I like about this is the fact that we are also interrogating the Equalisation Fund. The Fund is supposed to have equalised some of the gaps where the marginalised counties would then get extra resources to catch up with the rest of the country.

I know I come from a county that qualifies to get money from the Equalisation Fund. For instance, places such as Isiolo County and the Northern Kenya are supposed to benefit from Equalisation Fund. However, we do not know as yet whether or not these funds have done what they were supposed to do.

The Speaker (Hon. Lusaka): You should be winding up.

Sen. Halake: Mr. Speaker, Sir, I hope that it will be given the attention and importance it deserves.

I beg to support.

The Speaker (Hon. Lusaka): Order, Members.

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION FROM VIHIGA COUNTY ASSEMBLY

The Speaker (Hon. Lusaka): I would like to acknowledge the presence in the Speaker's Gallery this afternoon of a visiting delegation from the Vihiga County Assembly Members of the Committee on Delegated Legislation. I request each member of the delegation to stand when called out so that they may be acknowledged in the usual Senate tradition.

They are:-

- | | | | |
|------|-----------------------|---|----------------|
| (1) | Hon. Nixon Butia | - | Deputy Speaker |
| (2) | Hon Elizabeth Mohonja | - | Chairperson |
| (3) | Hon. Calystus Ayondi | - | Member |
| (4) | Hon. Elisha Amara | - | Member |
| (5) | Hon. Jackline Mwenesi | - | Member |
| (6) | Hon. Sally Inonda | - | Member |
| (7) | Hon. Lucy Kemunto | - | Member |
| (8) | Hon. Stanly Kasiera | - | Member |
| (9) | Hon. Joseph Alukhusa | - | Member |
| (10) | Hon. Violet Baganda | - | Member |
| (11) | Hon. Patrick Akhwale | - | Member |
| (12) | Hon. Stephen Mugalizi | - | Member |
| (13) | Hon. Edwin Kutai | - | Member |

Secretariat:-

- | | |
|--------------------------|----------------------|
| (1) Ms. Raychelle Syamba | (3) Mr. Joseph Binzu |
| (2) Ms. Mary Olere | (4) Mr. Hilary Ano |

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

VISITING DELEGATION FROM UON INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

I also would like to acknowledge the presence in the Public Gallery this afternoon of a delegation of visiting students and teachers from the University of Nairobi Institute of Diplomacy and International studies. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a welcome to them and on behalf of the Senate and my own behalf, wish them a fruitful visit.

I thank you.

(Applause)

The Speaker (Hon. Lusaka): Proceed, Sen. Khaniri.

Sen. Khaniri: Mr. Speaker, Sir, allow me to join you in welcoming the delegation from the great County of Vihiga, and our students from the University of Nairobi. I had an opportunity to meet the delegation from Vihiga County this morning when they paid me a courtesy call. In their own words, they were very satisfied with the meeting they had with our own Committee on Delegated Legislation. They confessed that they had learnt a lot within that interaction.

Mr. Speaker, Sir, let me restate that one of our responsibilities that we must take very seriously is to ensure that our County Assemblies are properly empowered to deal with matters to do with oversight. We must build their capacity and I think we have been doing that since 2013. This is because they are our first line of call when it comes to oversight in the counties. We vote a lot of money to go to our counties. In many counties, it is a pity that there is nothing to show for these billions of shillings that go to them.

We want to urge them to remain vigilant because they are our closest partners in this devolution arrangement. I am very happy that I have a vibrant County Assembly this time round in Vihiga County.

I wish them well in their stay in Nairobi County and a safe journey back to Vihiga County.

Sen. Wetangula: Thank you, Mr. Speaker, Sir. I join you and my distinguished younger brother from Vihiga County, Sen. Khaniri, in welcoming the delegation of colleagues from Vihiga County Assembly. These are colleagues and I know each one of them personally because we interact with them very regularly in many public fora.

I encourage them – like Sen. Khaniri has said and this, indeed, applies to all other counties – that county assemblers and their units are the primary oversight institutions. They must learn the art of not only passing budgets, but tracking budget implementation to see that no money goes astray. Many counties are not accountable in the manner that is satisfactory to this House.

I know that Vihiga County has one of the finest governors in this country; a man who was so distinguished as a Member of Parliament (MP) in the last two Parliaments. I encourage you, as our colleagues on the ground, to learn as much as you can. Avoid being captured by any governor and do your oversight without any fear, favour or prejudice.

I equally welcome the students from the University of Nairobi, Institute of Diplomacy and International Studies. This is an Institute that I have had a very long relationship with. I used it greatly to train diplomats from nascent countries like Somalia and South Sudan to enable them start functioning as States. I encourage them to also be connected with Parliament because Parliament is an active face of diplomacy that any country that wants to move forward must use.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, on behalf of myself and the Senate as well, I join you in welcoming the MCAs from Vihiga County and students from the University of Nairobi Institute of Diplomacy and International Studies.

Let me tell the MCAs of Vihiga County that they are lucky to have one of the longest serving legislators in the Republic of Kenya at a very young age. He is an example in this House in so far as the rules and procedures are concerned; our latter day Hon. Martin Shikuku. If they can work closely with him, there is a lot that they can learn; particularly when we talk about the Senate upscaling its work when it comes to oversight and the plan that we have from the last part

of this financial year and next year. We, as a Senate, would like to go further to examine projects that are taking place in our counties.

I looked at the reports of the Auditor-General that we have tabled here that will be examined by our Committee on County Public Accounts and Investments (CPAIC), I pleasantly saw that the Auditor-General has now moved to telling us about project “x” and “y” in a certain corner of a county. In my county, for example, he identifies some staff that were employed six months during the campaign period. They were paid about Kshs5 million. The county government is not struggling to see what to do with it.

Mr. Speaker, Sir, if county assemblies can work closely with us, we will not only deal with postmortem when it comes to resources of counties, but we will avert great danger that can occur in counties. This is because when it is closer to elections, it is now apparently clear that a lot of contractors are given huge projects and 10 per cent for those projects. After elections, those projects become white elephants.

I urge Senators to be very keen with the Auditor-General’s report for 2017/2018 Financial Year because it was an overlapping year when it comes to elections. There was a lot of malpractice that took place. Some of the MCAs who I suspect are new have a great opportunity in the second term of devolution to look into that issue very critically.

As for the students of the Institute of Diplomacy and International Studies, I think this is the right place they chose to be; a place of great debate. Sen. (Prof.) Kindiki used to teach that Institution. I was a beneficiary of a programme which was for University of Nairobi School of Law and the Institute of Diplomacy and International Studies, where I got the opportunity to train as a leader in Zanzibar University, University of Dar es Salaam, University of Arusha and Makerere University. Some of the things that we do now were planted in us. It was not by accident.

(Sen. Moi walked into the Chamber)

(Sen. Murkomen spoke off record)

Sen. Sakaja: Thank you, Mr. Speaker, Sir. The Senate Majority Leader says there is a stranger. I do not know who he is referring to. I do not know whether it is His Excellency the incoming --- The Senator for Baringo County.

(Laughter)

I am really delighted to welcome to ---

(Sen. Moi spoke off record)

Sen. Sakaja: *Si umesikia nimesema.*

(Laughter)

I am delighted to welcome the MCAs from Vihiga County. Sen. Khaniri will tell you that Vihiga County is very close to me. It is a county where my great grandfather, Mr. Harun Khasoa

Kubasu – after absconding the throne from the line of Kabakas – went to learn God’s word at Kima. From there, he went to Bushiangala to donate land to the church in sen. Malala’s County. That is why when I had to go through our cultural rites, I went to a place called Kima.

Karibuni sana, MCAs from Vihiga County Assembly. Please, make sure as you pass by Mbale Shalom Academy Primary School, you greet Mama Esther who is my mother. Sorry, Mr. Speaker, Sir, where come from, we like sending greetings. So, we must send greetings.

(Laughter)

I spent a lot of time in Bunyore. They will tell you that the longest serving Principal was Ms. Esther Muhanji who brought up that school. She also raised me.

Additionally, I have noted that they have come with a good number of female MCAs. The ratio is good between the male and female MCAs. Just coming from the Commission on the Status of Women (CSW) where I was representing the men and women of Kenya on the status of women, it is encouraging to see that the Chairperson of that Committee is a female. In many other county assemblies, we have heard MCAs trying to say that nominated MCAs should not vote. That is unconstitutional. There are some who even dropped nominated MCAs from Committees. That is extremely unconstitutional. We have had great leaders in this country who have come through nomination such as Sen. Wetangula, His Excellency Uhuru Kenyatta and yours truly, Senator of Nairobi County.

Additionally, Mr. Speaker, Sir, I welcome the students from the University of Nairobi, my *alma mater*. I am proud of this university. That is where I honed my leadership skills at the Student Organisation of the University of Nairobi (SONU). We hope that we can have a greater interaction with these students. I think many of them might be doing Masters or the undergraduate. Let us do a greater partnership between the Senate and these two institutions.

Sen. Were: Mr. Speaker, Sir, I would also like to join you and my colleagues in welcoming Members of County Assembly (MCAs) of Vihiga to the Senate. I also send my greetings to them.

(Laughter)

The Majority Party in Vihiga County Assembly is Amani National Congress (ANC) where I am a Member. So, I would like to welcome and remind them---

The Speaker (Hon. Lusaka): Sen. Haji, what is your intervention?

Sen. Haji: I think I touched the wrong button because I also want to contribute.

The Speaker (Hon. Lusaka): Okay, I will allow you. Sen. Were, please proceed.

Sen. Were: I would like to remind the MCAs that the Senate plays a secondary oversight role and they play the primary oversight role. They should remember that they make our work easier when they do theirs. So, they should focus on oversighting alongside representation and budget-making.

I would also like to note that within that team, we have the Secretary of the County Assemblies Forum (CAF), Ms. Jackline Mwenesi. Whatever they learn here, they should take it back to the CAF. They should also develop a closer working relationship between the CAF and the Senate.

I would also like to welcome students from the Institute of Diplomacy and International Studies and urge them to develop a partnership with the Senate.

I thank you.

Sen. Malalah: Mr. Speaker, Sir, in the spirit of where we come from, I also want to start by sending greetings and welcoming my colleagues from Vihiga County Assembly. They are my colleagues because I was once an MCA and here I am as the Senator for Kakamega County. Let it be known that everything is possible.

Secondly, I want to assure MCAs countrywide that the Senate is committed to protecting county assemblies. Just an indication, we have a programme called Senate *Mashinani*. Last year, we went to Uasin Gishu and so we will be taking the Senate next to the people. This is a sign that the Senate is committed to protecting county assemblies. I suggest that this year, the Senate should have its sittings in Vihiga County Assembly because they have a wonderful Chamber. When you go to Vihiga County Assembly, you will think that you are here in Parliament. Through Sen. Khaniri, I would like to suggest that this year, if possible, we consider Vihiga County Assembly as our venue for the Senate *Mashinani* Programme.

I would also like to assure the MCAs of this country that we are committed to ensuring that they execute their mandate effectively. When you look at our Order Paper today, Order No.19 is The County Wards (Equitable Development) Bill which we will discuss today because we know the importance of that Bill. We know that MCAs were elected on the basis of development and therefore they must deliver for their people.

I would like to assure them that as a Senate, we will ensure that, that Bill passes so that they execute their mandate, so that when they go back to the people in 2022, they will be appreciated.

I would also like to welcome the students of the University of Nairobi (UoN) and not University of Nairobi. We only have two serious universities; the United States International University (USIU) where I went and this other one. So, I welcome them to the Senate and---

Sen. Were: Point of order!

The Speaker (Hon. Lusaka): What is your point of order, Sen. Were?

Sen. Were: Mr. Speaker, Sir, is it in order for the Senator for Kakamega County to state that there are universities which are better than others and classify universities when the Government has the mandate to license universities?

The Senate Majority Leader (Sen. Murkomen): On a point of order, Mr. Speaker, Sir. Is it in order for Sen. Were to confuse this nation when we know very well that there is only one “the University” and then others? There is only one university in this country called the University of Nairobi.

Further, Mr. Speaker, Sir, is it in order for Sen. Were to also confuse this House in so far as ranking of universities is concerned? “The University” is ranked globally as one of the best universities in the Continent.

I must put a rider. It is not that the other universities do not exist. What we are saying is that there is just only one university that has an article “the”.

The Speaker (Hon. Lusaka): Senate Majority Leader, you have made your point.

Sen. Wambua: On a point of order, Mr. Speaker, Sir. The point of order raised by Sen. Were was not disputing the name of the University of Nairobi. The question was; is Sen. Malalah in order to say that there are only two “serious” universities in this country?

The Speaker (Hon. Lusaka): The Senators are totally out of order. All universities give quality education because they are accredited and approved.

I can see a lot of interest but let us move to the next Statement from Sen. (Dr.) Langat.

Sen. Poghiso: On a point of order, Mr. Speaker, Sir. I am the Chairman of the Sessional Committee on Delegated Legislation. I have been seeking for a chance to welcome MCAs from Vihiga but you have been allowing some people who have no idea of what delegated legislation is about.

The Speaker (Hon. Lusaka): You are out of order! Sen. Poghiso, do you mean that the Speaker does not understand the people he picks to welcome the delegations? If you look around, most of the Senators I gave an opportunity were people who have associated very closely with the visiting delegation and I also allowed others who wanted to speak to do so. However, I have noted your point.

Let us have Sen. (Dr.) Langat.

STATEMENT

WELFARE OF KENYAN DOCTORS IN CUBA

Sen. (Dr.) Langat: Thank you, Mr. Speaker, Sir, for giving me this chance. Pursuant to Standing Order No.47(1), I rise to seek a statement on a matter of national concern regarding the welfare of Kenyan doctors in Cuba.

Mr. Speaker, Sir, following a Memorandum of Understanding (MoU) between Kenya and Cuba that was steered by His Excellency the President, Uhuru Kenyatta and his Cuban counterpart, President Raúl Castro in March, 2018, at least 50 Kenyan doctors were admitted to Latin America School of Medicine in Havana for specialised medical training.

As you may have heard, one of the medics, Dr. Ali Juma, who was undertaking a post graduate diploma in family medicine under the programme committed suicide due to hardship and frustration experienced in the foreign land. I wish to convey my heartfelt condolences to the family and relatives of this Kenyan doctor.

The doctors who travelled to Cuba have on several occasions aired their grievances through the Kenya Medical Practitioners, Pharmacists and Dentists' Union (KMPDU) stating that the cost of living is too high and that they would like their allowances to be enhanced and living conditions improved. Unfortunately, their pleas have fallen on deaf ears.

The doctors have also been requesting for return tickets home every year as is the case with the Cuban counterparts in Kenya but they have been informed that they were not entitled to the same.

The KMPDU had from the beginning advised against this programme which was shrouded in uncertainties and had appealed to the Government to do due diligence but the Government did not heed the advice.

While the Cuban doctors in Kenya are treated like kings and queens, Kenyan doctors are suffering in that country. Cuban doctors are given free housing, free transport and have full access to reliable internet while our compatriots are forced to pay for their houses, which do not even have internet connectivity and are of poor quality and also pay their fares to their places of

work. This is extremely unfair. As legislators, we are the voice of the people and we cannot shy away from condemning that which is wrong.

I, therefore, wish to bring this matter to the attention of the Senate. I would also urge the Committee on Health to investigate this matter. The national Government should address this matter with the urgency that it deserves with the view of bringing the remaining 49 medics back home pending investigation of the unjust memorandum of understanding.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I thank Sen. (Dr.) Langat for coming up with this Statement. This is an extremely serious Statement because of the reports that I have seen on social media and what I have heard from the Kenya Medical Practitioners, Pharmacists and Dentists' Union address on television.

I am more concerned about the welfare of the remaining 49 doctors who are in Cuba and the circumstances that led to the death of the doctor, who is a relative to one of our colleagues from the National Assembly. Our Committee should sit down with the Council of Governors and the Cabinet Secretary of the Ministry of Health to interrogate the terms and conditions for this exchange program. I have seen the living conditions of those doctors, the places where they live, their access to medicine and food. That must be interrogated in a manner that is going to create the necessary transparency in this nation.

We treat their Cuban colleagues well in terms of accommodation, welfare, payment and so forth. In the principle of reciprocity, this House demands equal treatment for the doctors in Cuba. Training one doctor, like the one that we have lost, is not an easy thing. It is such an expensive process. It costs over Kshs10 million to train one doctor though one cannot quantify the value of life whether one is a doctor or not.

I thank Sen. Kasanga for coming up with a Bill on mental health. There is concern about mental health in this country. In fact, the most affected people are those that you would expect to have everything that they need in life. Mental health is an area that we must deal with as a country and that includes giving people, who are suffering depression, psychosocial support.

I agree with Sen. (Dr.) Langat and request that the Committee on Health acts expeditiously. Within the next two weeks or even less, they should give us an interim answer on the condition and situation of the doctors. In fact, we want to see a high ranking Government official, at the level of a Permanent Secretary and above, visit those doctors in Cuba and give us real time response regarding their welfare. There is nothing wrong with admitting that this thing is not working if that is the case. We can have our doctors back then train them in other countries. That is not the only place where they can be trained. What kind of training can they achieve if they do not have the mental stability to consume and absorb any knowledge?

I urge you, from your very important seat of authority, to order the Committee on Health to give us an answer within the next one week. When they invite the Government officials that are responsible, we will be more than happy to attend as friends of the Committee so as to listen to the response to that important question.

Sen. Olekina: Thank you, Mr. Speaker, Sir, for allowing me to comment on this important Statement. I have read about the circumstances that led the doctor to commit suicide in the dailies. We might be blaming the Cubans yet we are the ones who are not looking at the conditions that we set. If it is true that the doctor suffered depression because he requested the Ministry of Health to prepare documentation for him to come back home to see his ailing child and they did not do that, then we are the ones who have failed and not the Cubans. As we look at

the circumstances that led to the depression, we have to be open enough to accept where we have gone wrong. If, indeed, it is true that those doctors have not been paid their allowances yet this is a Government sponsored program, then we are the ones who are failing and not the Cubans.

I thank Sen. (Dr.) Langat, the distinguished Senator for Bomet County, for bringing this Statement. We might be blaming the Cubans yet we are the ones who are not giving them their allowances when they are due.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir. I also want to make my contribution on this extremely important matter that is being canvassed by our colleague, Sen. (Dr.) Langat.

A few months back, as Senators in this House, we questioned the kind of agreement that the Government had entered into with the Cuban Government. We said that there is need for the Government to deposit the exchange program documents to this House so as to help us understand our side of the bargain in this agreement. Unfortunately, I have not seen those agreements up to date. It will be good for us to have a look at them if they have been tabled before this House. If they have not, I still insist that you rule that the program notes be tabled before this House because we are the primary custodians of counties who protect their interest. That document will help us to understand what was expected of us, as the Kenyan side, and what our doctors were supposed to receive on the other side.

Otherwise, it is unfortunate that in this day and age, we can take the best of our professionals and expose them to that kind of suffering. What can we do to the rest of Kenyans if we can do that to medics? It is unfortunate and I call on you to give a firm ruling. You should ask the Committee on Health to delve deep into all the issues that are being raised by the doctors.

Sen. Ochillo-Ayacko: Thank you, Mr. Speaker, Sir. I want to lend my support to the issue that has been raised by my colleague, Sen. (Dr.) Langat. We should be sad when we lose a professional of this calibre. When the loss is attributable to the fact that we are uncaring, then we should mitigate this matter by expediting our activities of care. I want to urge the Government side to be sensitive to this matter.

Doctors are hard to train. They are people who have achieved excellence in training and have sacrificed to study for long years. I know that there are difficulties in Cuba. I visited Cuba in my other life when I was the Minister for Gender, Sports, Culture and Social Services and I believe that the medic took his own life because life is unbearable. I want to urge the Committee that is responsible for this matter to ensure that we do not lose any other person.

Mr. Speaker, Sir, right here at home, we also have Cuban doctors. The information available to us is that the facilitation is also not good. Quite a number of them have been promised a lot of money. However, they are not treated well. Perhaps, this also contributes to the hardship and lack of cooperation that our medics in Cuba are experiencing. Therefore, I request the relevant Committee to ensure that both Kenya and Cuba take this matter seriously and deal with it because it involves lives and the future of our people.

Sen. (Eng.) Hargura: Thank you, Mr. Speaker, Sir. I thank Sen. (Dr.) Langat for bringing up this issue. I also send my condolences to the family of Dr. Hamisi, who unfortunately had to take his life under these conditions.

Mr. Speaker, Sir, doctors are, as it has been said, very important in this country. That is why we had to take them for training. However, I am surprised to learn that, as a country, we want to invest in our own human resource but we do not look at their welfare. We wanted to learn from the Cubans. However, we should have known that circumstances in Cuba are very

harsh. It is a communist country which has been under a lot of embargo for a long time. It is not like going to any Western country. Therefore, before sending our doctors there, we should have known what kind of situations they will go through.

The Committee will have to check on the issue of the allowances. However, I expect the Government to be paying directly to the accounts of these doctors. They should not wait to be sent their allowances by the Ministry.

Mr. Speaker, Sir, I am not sure whether doctors are civil servants. I know that when civil servants go on a study leave or sponsorship, they still get 80 per cent of their salaries. So, what is going on? Does it mean that doctors are not getting their salaries or what is happening? The Committee on Health needs to clearly check under what conditions we sent our doctors to train on a course on family medicine which about five universities in Kenya are offering. What was so important for us to take our doctors there then subject them to these conditions until they end up taking their lives? The Committee has to give us a very serious answer on that.

Sen. Omogeni: Thank you, Mr. Speaker, Sir. First, I congratulate Sen. (Dr.) Langat for bringing this matter to the attention of this House. I also pass my condolences to the family of Dr. Ali Juma Hamisi. We pray that God Almighty will strengthen the family during this very difficult time.

(Loud consultations)

Mr. Speaker, Sir, I seek your protection. There is very loud consultation to my right. I am apprehensive that somebody may box a Senator next to me, on my right.

It is not easy to train a doctor. Therefore, it is painful for us, as a country, to train doctors, send them abroad to enhance their skills in medicine only for them to die. This is a sad thing to happen to us. It is a matter that should concern all of us.

(Sen. Omanga stood in her place)

The Speaker (Hon. Lusaka): Sen. Omanga, you are not on record. What is your point of order?

Sen. Omanga: Mr. Speaker, Sir, the Senator for Nyamira asked for protection because on his right, there is loud consultation from the Senate Majority Leader, Sen. (Dr.) Zani and Sen. Were.

The Speaker (Hon. Lusaka): Senate Majority Leader, let us consult in low tones. Proceed, Sen. Omogeni.

Sen. Omogeni: Thank you, Mr. Speaker, Sir. It is painful to train doctors in foreign countries only for them to lose their lives. As leaders, this is a matter that we should not take lightly. We also received doctors from Cuba. I was privileged to be in the team of Senators that travelled to Cuba to discuss and negotiate on those doctors who came to provide services in this country.

I have not heard of a single case of any doctor from Cuba who has been subjected to any form of treatment that can cause him or her depression or any form of anxiety. Therefore, what we demand as a country is that the same treatment we extend to the Cuban doctors should be extended to our doctors who are sent to Cuba. Let us call a spade a spade.

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

The Speaker (Hon. Lusaka): What is your point of order, Sen. Kinyua?

Sen. Kinyua: Thank you, Mr. Speaker, Sir. I thought Sen. Omogeni is a Member of the Committee on Health and even travelled to Cuba. Therefore, he is supposed to give us answers instead of asking questions.

(Applause)

Sen. Omogeni: Mr. Speaker, Sir, I did not travel to Cuba to arrange for the death of the Kenyan doctor who has just died. We travelled to Cuba to negotiate for Cuban doctors to come and offer services in Kenya.

Mr. Speaker, Sir, what is before the House is a sad situation where we have lost one of our doctors who was sent to the---

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

The Speaker (Hon. Lusaka): What is your point of order, Senate Majority Leader?

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, Sen. Omogeni is first of all revising the Statement of Sen. (Dr.) Langat which was about conditions of doctors in Cuba, including the situation that led to one of the doctors passing away. Therefore, the point of order raised by the hon. Senator of Laikipia County is very valid. What is the position of a Committee Member who, to make it worse, travelled to that country, on the understanding that he was to look after the condition of those doctors among others but comes back to the Floor of the House to lament before the rest of us who are asking questions from the Committee? Is it in order?

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

The Speaker (Hon. Lusaka): What is your point of order, Sen. Cherargei?

Sen. Cherargei: Mr. Speaker, Sir, I ride on that point of order----

(Loud consultations)

Mr. Speaker, Sir, my apologies. I am not riding on anything. The great senior counsel, Sen. Omogeni, who is the only among the three in this House has said that he travelled with the Committee to check the conditions of Kenyan doctors. Therefore, is it in order for him to lament like all of us? He should tell us whether he is aware of any negotiated deal between the Government of Kenya and the Government of Cuba over the doctors' exchange programme?

It looks like the Committee went to Kenya on a tourist excursion---

The Speaker (Hon. Lusaka): Sen. Cherargei, you are out of order! Sen. Omogeni is just contributing as the Senator for Nyamira. When the matter is referred to the Committee on Health, the official position will be given by the Committee.

Proceed, Sen. Omogeni.

Sen. Omogeni: Thank you, Mr. Speaker, Sir. The point I am making is that this is a matter that should be taken seriously by this House. Already, what should worry us is that out of the 50 doctors that were sent, we have just lost one life but we have 49. We need to know---

(Loud consultations)

The Speaker (Hon. Lusaka): Hon. Senators, if you want to talk, I will give you an opportunity. Do not just talk from where you are sitting but when I give you an opportunity you do not talk.

Proceed, Sen. Omogeni.

Sen. Omogeni: Thank you, Mr. Speaker, Sir. This House should be concerned about the welfare of the 49 lives of the other doctors who are still in Cuba. We should not take lightly the concerns that have been raised by the professional body that looks after the welfare of doctors. What is worrying is that there is likelihood that this doctor committed suicide. It means that there is a possibility that we have sent our doctors to Cuba and they are being subjected to conditions that have exposed them to serious depression. We would rather have our doctors back to our country with their degrees without their postgraduate education.

I urge you to ensure that if this matter is referred the Committee on Health, it should do thorough investigations and give a report to this House. If need be, our doctors should be recalled from Cuba.

The Speaker (Hon. Lusaka): Sen. Faki.

Sen. Faki: Asante Bw. Spika kwa kunipa fursa hii kuchangia Taarifa ya Sen. (Dr.) Langat kuhusiana na kifo cha---

(Loud consultations)

The Speaker (Hon. Lusaka): Order! Let us consult in low tones, Senate Majority Leader of Majority.

Proceed, Senator.

Sen. Faki: Bw. Spika, *the Senate Majority Leader* lazima aongoze kwa mfano. Yeye akiwa wa kwanza *ku-consult* kwa sauti inakuwa ni matatizo kwetu sisi wengine. Tulimskiza tukiwa kimya.

Bw. Spika, marehemu Dkt. Ali Juma Hamisi alikuwa ni daktari katika zahanati ya Likoni mjini Mombasa akiwa amejiriwa na Kaunti ya Mombasa, mpaka alipoenda Cuba mnamo tarehe 24 mwezi wa tisa mwaka uliopita. Madaktari wale waliuliza mambo matatu kabla ya kusafiri. Walitaka kujua ni *course* gani walikuwa wanaenda kusomea. Pili walitaka kujua watakapoishi na tatu, marupurupu yao yatakuwa namna gani. Mambo hayo hayakujibiwa mpaka juzi tarehe nne wakati Wizara ilipeleka barua kusema kwamba watalipwa marupurupu ya Kshs33,000 kwa mwezi kuanzia mwezi wa tisa mwaka wa 2018.

Bw. Spika, mpaka juzi, tarehe nne, walikuwa wamelipwa marupurupu ya miezi miwili pekee yake; mwezi wa tisa na mwezi wa kumi mwaka wa 2018. Mbali na kukosa marupurupu mahali wanapoishi haparidhishi. Hakuna *internet* wala mawasiliano mazuri baina ya familia zao na madaktari walioko kule Cuba. Kwa hivyo, hali zao za maisha zilikuwa zimerudi chini kuliko vile ambavyo walikuwa wanaishi hapa Kenya wakati wanafanya kazi serikalini na kaunti tofauti tofauti nchini Kenya. Kwa hivyo, swala hili ni zito sana na ni lazima litiliwe uzito, kwa sababu maisha yamepotea katika hali ambayo ni ya utatanishi.

Marehemu Dkt. Ali alikuwa arudi nyumbani jana Jumanne, tarehe 19. Alikuwa ameshakata tiketi na kuzungumza na familia yake kwamba alikuwa anarudi siku hiyo. Kwa hivyo, lazima Serikali ichunguze swala hili na Bunge hili limuite Waziri wa Afya pamoja na maafisa wetu wanaosimamia mambo ya ubalozi, ili kuhakikisha kwamba hakuna jambo lolote mbaya lilitokea kabla ya marehemu kupoteza maisha yake.

Asante, Bw. Spika.

The Speaker (Hon. Lusaka): Sen. Sakaja.

Sen. Sakaja: Thank you very much, Mr. Speaker, Sir. There is a quote that Martin Luther King once gave in September, 1960 at the Golden Anniversary Conference. He said that it is a trite yet true observation that if America is to remain a first class country, it cannot have a second class citizen. This is true for Kenya as well. If Kenya is to remain a first class country, it cannot have a second class citizen.

Mr. Speaker, Sir, if you saw how when the doctors from Cuba were being received in Kenya, governors were falling over themselves trying to welcome them. Some gave them houses with swimming pools; going beyond the extra mile to make them comfortable, as if they are more special than the Kenyan doctors who left. In the same breath, the Kenyans who went to Cuba are living in conditions that are not befitting people who we have trained, and least of all, of the medical profession.

It cannot be that as a country, we value foreigners more than we value our own people, because even such a country cannot then respect Kenya as a country. For us whether it is our mission abroad or our Ministry, we are okay with the ill treatment of Kenyans living in squalor, yet they are doctors, but over here, we are going beyond the extra mile to provide luxuries to the Cuban doctors.

Mr. Speaker, Sir, just the other day, we were discussing in the House how there are certain diseases - and I remember Sen. Malalah was trying to describe - which cannot be described apart from in mother tongue in the villages that these doctors cannot understand. When the Kenya Medical Association (KMA) says that the family medicine programme in Cuba is not recognized by the international community and in Kenya, we are not taking them seriously.

When the Kenya Medical Practitioners Pharmacists and Dentists Union (*KMPDU*) is saying that they are opposed to the manner in which the deal was executed, in complete disregard of the established procedures for licensing and deployment of foreign medical personnel and selection of training programs, we are not taking them seriously. That is why we wanted Sen. Omogeni and the Committee on Health to give us more details of what this arrangement was. Are these Kenyan doctors there on forced labour? Are they captive? Why is it that if they want to come back home, they cannot? This is more than a health issue. This is a health and labour relations issue, because they have rights as any other employees of Government. It must be looked at in all other aspects.

Mr. Speaker, Sir, we are being told that these doctors are complaining of highhandedness at the Kenyan Embassy. Any Kenyan who is not in this country must be able to see our embassies and consulates as a fortress and home; that if they go there, they are received and treated with the dignity they deserve. We see it with other countries. If you touch an American, you will be taken to that embassy of--- They know that they are at home and protected.

Mr. Speaker, Sir, let us take this matter seriously. We cannot allow the mistreatment of a Kenyan anywhere in this world, if we are to truly be a first class country.

The Speaker (Hon. Lusaka): I see there is a lot of interest, but let me give an opportunity to Sen. Madzayo and then we move on.

Sen. Madzayo: Asante, Spika kwa kunipa nafasi hii. Kwanza, daktari aliyefariki anatoka katika eneo la Pwani. Nikiwa mhusika, ningependa kutoa rambi rambi kwa familia iliyompoteza huyu daktari.

Bw. Spika, chama cha madaktari walikuwa wamekataa mkataba huu na kusema kwamba hawaukubali kabisa, lakini Serikali ikaonelea ni lazima iendelee nao. Hatimaye ikafaulu na ikaona ya kwamba lazima wale madaktari waje. Walikuja na wakakaribishwa kitajiri, kama vile wenzangu wamesema. Mtu akikataa na umlazimishe, basi Waswahili husema: “Mwenda tezi na omo marejeo ni ngamani.” Hii ndio faida tunayoipata hivi sasa, kuona ya kwamba sisi kama wakenya tulikuwa wapumbavu, tukaingia katika mkataba ambao haufai na hatimaye, tumempoteza daktari mmoja.

Wizara ya Afya inayoongozwa na Cecily Kariuki ndio iliwafanya wale madaktari waende kule. Je, Waziri huyu amesema nini mpaka leo kuhusu kifo cha yule daktari? Mbona amekuwa bubu? Kama Waziri Cecily Kariuki ameshindwa na hii kazi ya Waziri wa Afya katika Kenya, atoke na kuwaachia madakatri wengine wafanye hio kazi.

Bw. Spika, habari zinazotufikia hapa ambazo ni za ukweli kuhusu madaktari ambao wako kule Cuba ni kwamba wanaishi wanaume watatu ndani ya *room* moja. Mwanaume kama mimi na ndugu yangu, Sen. Sakaja, hatuwezi kulala katika chumba kimoja kwa sababu hairuhusiwi kiafrika.

(Laughter)

Mimi na ndugu yangu, Sen. Wambua, hatuwezi kulala kwenye chumba kimoja; hairihusiwi kiafrika. Itakuwaje madaktari, ambao ni watu waliohitimu na wameenda kufanya masomo ya juu, wanaishi katika hali ambayo si ya binadamu? Si kiafrika kwa wanaume watatu kulala kwenye *room* moja. Kama watu wa Cuba hufanya hivyo, hapa kwetu Kenya haiwezekani mimi na ndugu yangu, Sen. (Eng.) Hargura, kulala kwenye *room* moja.

Kwa hiyo, tunasema, heshima, lazima ilegeshwe na heshima. Ikiwa mkataba huu hauna heshima, sioni faida Serikali ya Kenya iendelee kuwa na mkataba huu baina ya sisi na wenyeji wa Cuba. Wale madaktari walio kule Cuba, kabla hatujapoteza mtu mwingine, waweze kurejeshwa nyumbani. Kuna ripoti ya kwamba, huyu ndugu yetu, Ali, alikuwa amesema amechoka na mateso yale na alitaka kurudi nyumbani lakini alitishiwa maisha yake. Daktari yeyote ambaye alikuwa anaweza kusema anataka kurudi nyumbani; walikuwa wanatishwa. Hata wakienda katika ubalozi wetu kule; walikuwa wanatishwa! Waliambiwa kuwa hawezi kuukata mkataba huu, hadi umalizike.

Kwa hiyo, Bw. Spika, ikiwa inawezekana, kamati ambayo itachunguza jambo hili, ichukue msimamo wa kikamilifu kuona ya kwamba wamejadiliana na wamepata suluhu. Sisi tunasema ya kwamba; ni lazima Waziri wa Afya katika Serikali ya Kenya, aweze kuweka msimamo kama mkataba huu utaendelea, ama utakwatwa mara moja ili madaktari wetu warudi nyumbani, badala ya kuteseka kule Cuba. Hatutaki tena mambo ya Cuba.

Asante sana, Bw. Spika.

The Speaker (Hon. Lusaka): Hon. Senators, pursuant to Standing order N0 47(3), I refer this request to the Committee on Health. The Committee is hereby directed to take note of the concerns raised by Senators and give us a comprehensive report in the next 14 days.

I thank you.

Next Statement is by the Senate Minority Leader, executed by Sen. Olekina.

Sen. Olekina: Thank you, Mr. Speaker, Sir. On behalf of the Senate Minority Leader, I would like to request a Statement on the fight against corruption by the Multi-Agency Team.

FIGHT AGAINST CORRUPTION BY THE MULTI-AGENCY TEAM

Mr. Speaker, Sir, pursuant to Standing Order 48(1), I rise to seek a Statement from the Standing Committee on Justice, Legal Affairs and Human rights on the ongoing fight against corruption by the Multi-Agency Team (MAT).

Mr. Speaker, Sir, in the Statement, the Committee should:-

- (1) State the composition of the Multi-Agency Team that is leading the fight against corruption in the country.
- (2) Explain the support being accorded by the national Government to the Multi-Agency Team in the fight against corruption.
- (3) State whether the principle of non-interference with independent offices is still being upheld in Government, in light of the threats issued against the Director of Public Prosecution (DPP) and the Inspector General Police (IG) through the Director of Criminal Investigations (DCI) in the fight against corruption.
- (4) Assure the country that the fight against corruption will not be scuttled by those attempting to interfere with the operations of independent offices.
- (5) Explain the incoherence and disharmony of Government policy in the war against corruption, as against the clear and unambiguous commitment by His Excellency the President of the Republic of Kenya.

Thank you, Mr. Speaker, Sir.

COMMUNICATION FROM THE CHAIR

VISITING STAFF FROM VARIOUS LEGISLATURES
ATTENDING THE INAUGURAL APR CONFERENCE

The Speaker (Hon. Lusaka): Hon. Senators, I like to acknowledge the presence in the Speaker's gallery this afternoon, of visiting staff and resource persons from the various States Parliaments, attending the inaugural African Parliamentary Researchers (APR) 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) Mr. Wolfgang Hiller | - | Director, European Parliamentary Research Service, Brussels- Germany |
| (2) Mr. Mark Quiner | - | National Conference of State Legislatures, United states America |
| (3) Mr. John Power | - | Director, Pris Northern Conference Ireland Assembly, United Kingdom |

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.

I thank you.

Sen. Cherargei: Thank you, Mr. Speaker, Sir. I want to join you in welcoming our visitors to the Senate and Parliament. I hope that they will learn a lot.

Secondly, on the Statement requested by the Senate Minority Leader, through Sen. Olekina, interestingly, the Senate Minority Leader, is a member of the Committee Justice, Legal affairs and Human Rights. I want to assure the Senate Minority Leader and Sen. Olekina that we will ensure we address the concerns that he has raised through the Statement, as a Committee.

In fact, I want to report to this House, I know we will Table this report to show that last week, we had a fruitful discussion with the Multi-Agency Team, led by Attorney General Kiara Kariuki, the DPP, the DCI, the Kenya Revenue Authority (KRA) and the National Intelligence Service (NIS), among other agencies that work in coordination. The EACC was represented by the new Chief Executive Officer.

I agree that the fight against corruption in this country, Mr. Speaker, Sir, should be done in good faith, but it should be devoid of political witch-hunt, ethnic profiling or any other form of being used as a weaponization in terms of politicization in this country.

As a Committee, we will avoid all unnecessary vested interests that have arisen over the few months, and Sen. Olekina is aware of this. We will try as much as possible to address the concerns raised by the Statement devoid of political witch-hunt, ethnic profiling and weaponization or politicization of corruption in this country.

Finally, Mr. Speaker, Sir, there are so many amendments that the MAT has proposed. I know when the right time comes, I will ask the House to rise up to the occasion and assist us in fast tracking those legislative amendments to ensure we fight corruption in good faith in this country.

I thank you.

The Speaker (Hon. Lusaka): That Statement is committed to your Committee. All those things you are saying, make sure that you incorporate them in the response that you will give us, as a House, because you are the Chairperson of that Committee.

(Laughter)

Next order.

Hon. Members, for the Convenience of the House we are deferring Orders Nos.8 to 17. So, we go to Order No.18.

COMMITTEE OF THE WHOLE

THE ASSUMPTION OF OFFICE OF THE COUNTY
GOVERNOR BILL (SENATE BILLS NO.1 OF 2018)

(Consideration of the National Assembly Amendments)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE COUNTY GOVERNMENTS (AMENDMENT)
BILL (SENATE BILLS NO.13 OF 2018)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE COUNTY GOVERNMENT RETIREMENT SCHEME BILL
(NATIONAL ASSEMBLY BILLS NO.10 OF 2018)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE COUNTY EARLY CHILDHOOD EDUCATION
BILL (SENATE BILLS NO. 26 OF 2018)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE PUBLIC PARTICIPATION BILL
(SENATE BILLS NO. 4 OF 2018)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE RETIREMENT BENEFITS (DEPUTY PRESIDENT
AND DESIGNATED STATE OFFICERS) (AMENDMENT)
BILL (SENATE BILLS NO. 2 OF 2018)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE DATA PROTECTION BILL
(SENATE BILLS NO. 16 OF 2018)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE CARE AND PROTECTION OF OLDER MEMBERS
OF SOCIETY BILL (SENATE BILLS NO. 17 OF 2018)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS)
BILL (SENATE BILLS NO. 18 OF 2018)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE COUNTY OUTDOOR ADVERTISING
CONTROL BILL (SENATE BILLS NO. 19 F 2018)

(Committee of the Whole deferred)

MOTION

APPROVAL OF SENATORS TO SERVE IN SELECT COMMITTEES

The Speaker (Hon. Lusaka): Sen. (Eng.) Mahamud.

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, I beg to move:-

THAT, pursuant to Standing Orders Nos.187 and 189, the House approves the nomination of Senators to serve in Select Committees of the Senate as follows

—

(a) Standing Committee on Energy

Sen. George Ochillo-Ayacko Mbogo, EGH, MP to replace Sen. Mercy Chebeni, MP

(b) Standing Committee on National Cohesion, Equal Opportunity and Regional Integration

Sen. Mercy Chebeni, MP to replace Sen. George Ochillo-Ayacko Mbogo, EGH, MP.

I beg to move, and ask Sen. Malalah to second.

Sen. Malalah: Mr. Speaker, Sir, I stand to second this Motion on swapping of Sen. Chebeni and Sen. Ochillo-Ayacko. These are two able senators. The issue of placement of Senators in committees should arise out of interest. We have seen Senators who have no interest in committees which they are in. This calls for a review of the membership of the committees. We shall be coming up with a review of the membership of the committees so that we allocate Members membership within their area of interest.

[The Speaker (Hon. Lusaka) left the Chair]

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

Madam Temporary Speaker, we have seen Members not contributing or participating in Committee transactions just because they lack interest and do not have the expertise to transact business in particular Committees. Therefore, as a coalition we want to say that we are comfortable with the swapping of Sen. Ochillo-Ayacko and Sen. Mercy Chebeni in their respective Committees.

Madam Temporary Speaker, I second.

Thank you.

(Question proposed)

Sen. Sakaja: Madam Temporary Speaker, I note that the acting Leader of Majority is trying to rush that you put the question while we want to contribute to this.

First of all, I support this Motion of the swap. Sen. Ochillo-Ayacko being a former Minister of Energy, is well suited to be a Member of the Standing Committee on Energy and Sen. Chebeni will bring the much needed vigour to re-invigorate the Standing Committee on National Cohesion, Equal Opportunity and Regional Integration.

The reason I wanted to contribute is this, I strongly feel - and I am glad the Minority Leader is here - that we need to rejig and reinvigorate our Committees. Members should be in Committees which they are interested in. We have some Committees and - I will not mention them - where we are seeing a lot of lethargy. Committees that are supposed to be dealing with very important issues and we do not know whether this is caused by lack of interest from those Members. These are issues that are on the national conversation every day and they are devolved functions. Therefore, we need the Senate to be involved in them.

In the spirit of the handshake, Sen. Malalah, as Leader of Minority, we can even change the leadership of some of our Committees. Let us have a taste of some of the Members from the National Super Alliance (NASA) being Chairpersons or Vice Chairpersons of committees. I am a Chairperson and a Vice Chairperson and I am willing to let go of any of the two positions to be taken up by someone else. People should not feel like they own Committees. You do not own Committees. The Senate in its entirety is supposed to play an oversight role.

Madam Temporary Speaker, there is no Opposition or Government in the Senate because we are oversighting county governments. There are county governments that have Jubilee Governors while other county governments have NASA Governors. Within the leadership of these Committees in the Senate, let us see a better mix.

Sen. (Dr.) Zani will tell you that in the last Parliament we were both in the Standing Committee on National Cohesion, Equal Opportunity and Regional Integration. It was a joint Committee of both Houses. You can imagine how difficult it was. It had 15 Senators and 15 Members of the National Assembly. Due to the level of interest we had in cohesion, I think we made a record that I am not sure any other Committee has been able to achieve. We visited 34 counties in this country. We did peace deals between warring communities that to date, because of what we did, they have not fought again in those areas where we went to.

The Senator for Turkana County will tell you that in as much as there have been flare-ups, in the area of Lokwar Nakuse in his county it has remained largely peaceful. If that is not the case, we are ready to go back there now as the Committee on National Security, Defence and Foreign Relations. We were able to achieve so much in such a short time despite huge difficulties because of interest.

I would plead with the leadership of this House, from the leadership of Majority to the leadership of Minority, let us stop acting like we own Committees. Please look at them afresh, put Members where their interests are and where their expertise lies because the committee is the heartbeat of the Senate. A lot of what we want to do, cannot be done at the Plenary; but it is at the Committee where the Senate can really be felt.

I urge my fellow colleagues who are Chairpersons of committees; I know we have had a meeting of Liaison and unfortunately I was not able to attend because I had an emergency in Kayole, Chokaa area where my people are being evicted and their houses being demolished for very flimsy reasons. I want to urge them, let us do more of county visits in these Committees. Members are just looking at international visits yet if you look at the budget that is even left between now and June for county visits, every Committee can even be using whatever means of transport.

Madam Temporary Speaker, let us go round the country with these Committees. Let Kenyans feel us. Let us go to the villages. It is not just that you want to go to the USA or Asia; let us also go to those villages and take the Senate to the people. I cannot talk about the budget here because I will be embarrassing this House. But the amount of money that is left in your Committees for local travel is humongous, yet, there is no Committee today with a coin left for international travel. It is interesting.

Let us do that, I support that change. Please bring more changes. Someone like Sen. (Prof.) Ongeru should be where his interest and expertise for all those years is. Let us benefit from his wealth of knowledge over the years. Even before I was born he was already an Ambassador. Let us have those people. Let us have Sen. (Eng.) Mahamud with his huge expertise. Let him leave the Committee on Finance and Budget for now and go back to the area where he is really good at. He is good in Finance as well but he has been an Ambassador and also been in the transport and infrastructure sectors. This will ensure that even when we are questioning people they can see professionalism that the Senate upholds.

Thank you Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Hon. Senator, I would agree with you and from where I sit, it is very clear. It was an issue of major concern when the House first sat in 2017. This is a matter that we want to leave to leadership and also raise it with the leadership so that we see what we can do, going forward.

(Question put and agreed to)

Next Order

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

Sen. (Eng.) Mahamud: Madam Temporary Speaker, I beg to move that The County Wards (Equitable Development) Bill, 2018, be read a second time.

This Bill was originally sponsored by the Senator for Murang'a Sen. Kang'ata and after discussions and through a lot of ---

The Temporary Speaker (Sen. Nyamunga): Senator, you need to read out the terms of the Bill as it appears on the Order Paper.

Sen. (Eng.) Mahamud: Madam Temporary Speaker, I beg to move that The County Wards (Equitable Development) Bill (Senate Bills No. 34 of 2018) be read a second time.

Madam Temporary Speaker, this Bill was originally sponsored by the Senator for Murang'a, Sen. Kang'ata Irungu. After a lot of discussions, from the original form it was and with a lot of participation and disagreement; this Bill has now changed to the form in which it is now. It is no longer a fund but an ordinary Bill which develops a framework for ward equitable development in our counties.

The objects and purposes of this Bill are to:-

- (a) promote the objectives of devolution set out under Article 174 of the Constitution by providing a legal framework that promotes equitable development across all wards in each county;
- (b) provide a framework for the participation of the residents of each county in the identification of priority projects in counties in respect of which funds are allocated under this Act.
- (c) promote the decentralisation of functions and provision of services by county governments to the extent that it is efficient and practicable, pursuant to Article 176 of the Constitution; and
- (d) to ensure equitable sharing of resources within the county.

Madam Temporary Speaker, the guiding principles of the Bill are set out in the Bill that all persons and entities under this Act, shall, be guided by the following principles:-

- (a) the promotion of the social and economic development of all persons residing within the ward in order to ensure the realization of their economic and social rights under Article 43 of the Constitution.

As you are aware, today, when they make the budget for the counties, little attention is given to the wards. A lot of attempts were made by various counties to enact County Ward Development Fund, which has hit a legal snag with regards to both the Treasury and the Office of the Controller of Budget. Hence it is important that we come up with a way of trying to get equitable development within our wards.

Madam Temporary Speaker, this Bill, in the current form, proposes a way of how county governments are going to identify projects which are ward-based for equitable development. A county government shall allocate its resources equitably across all the wards in the county. For

this purpose, the County Executive Committee (CEC) shall within the time frame required, ensure that development projects are spread out equitably across all the wards in the county.

In determining the criteria for allocating funds under this Bill, the CEC shall ensure that the allocation is not less than 15 per cent of the allocation for development budget as provided for under Article 107(2)(b) of the Public Finance Management (PFM) Act.

We know, under the PFM Act now the counties are supposed to make budgets with 70 per cent Recurrent, and 30 per cent Development expenditure, respectively. Out of that 30 per cent, we are saying not less than 15 per cent should be allocated equitably among the various wards within the counties.

Madam Temporary Speaker, this allocation is complementary to any other development efforts by the county government or any other agency. The fact that these wards have got that money should not preclude them from getting other funding.

Bwana Speaker, there must be a criteria developed on the advice of the Commission for Revenue Allocation (CRA) to determine the criteria for allocating the specific amount of money for each ward. The money will not be divided to the wards equally, but equitably according to a criteria to be developed by CRA. Once that criteria has been developed, it is a requirement that the county assemblies of respective counties must approve that criteria within 14 days of submission to the assembly. However, we will come up with an amendment of at least 28 days so that there is enough time for the county assembly to understand. If they do not approve it within those 28 days, then the matter becomes law.

Bwana Speaker, in terms of identifying projects---

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

The Temporary Speaker (Sen. Nyamunga): Senator, I have not given you the opportunity, you are taking the opportunity.

Okay, go ahead.

Sen. (Dr.) Zani: I spoke because I saw the microphone was on, Madam Temporary Speaker. Sorry to interrupt such a flow of presentation that was going on but consistently the dear lady sitting in the Chair is being referred to as '*Bwana* Madam Speaker'. So I am a bit worried about the terminology. Are you sometimes *Bwana*?

(Laughter)

The Temporary Speaker (Sen. Nyamunga): Hon. Chair of the Finance Committee, I did not know you are that off today. So recollect.

Sen. (Eng.) Mahamud: Madam Temporary Speaker, sorry; I do not know whether I have said something else but I thought all along I was saying Madam Temporary Speaker.

Madam Temporary Speaker, I was saying that if the county assembly fails to approve or reject the criteria within the specified period, the criteria shall be deemed to have been approved and shall be applicable for a period of three years. That is the criteria for equitable allocation of funds.

In terms of identifying projects, the residents of each county shall identify development projects for implementation in the respective county in accordance with this part. The CEC member shall coordinate the process of identifying projects for implementation under this Act in respective wards and shall, for this purpose, ensure public participation.

Bwana Speaker, you realise that the politicians like MCAs will no longer identify projects but it is the public that will identify the projects. The CEC shall for the purpose of this Act collaborate with respective village councils established in the county under Section 53 of the County Governments Act.

Bwana Speaker, selection of projects by the CEC, the CEC member shall---

Sen. Were: On a point of order, Madam Temporary Speaker.

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

Sen. Were: Madam Temporary Speaker, I would not have wished to interrupt the Chairperson of the Standing Committee on Finance and Budget, but he has repeatedly referred to you as '*Bwana* Speaker'. He may not be conscious of it so I would like him to withdraw and retract.

The Temporary Speaker (Sen. Nyamunga): Yes, Senator, Chair, I have also witnessed that. Could you just correct and recollect yourself for this debate.

(Laughter)

Sen. (Eng.) Mahamud: I stand corrected, Madam Temporary Speaker. I always say Madam not *Bwana*. Maybe my 'm' is like 'b'.

In terms of selection of projects by the CEC, the CEC member shall consolidate and submit the proposals received under Section 7(4) to the CEC for prioritisation and determination of projects for implementation of each ward.

In determining the projects for implementation under the Bill, the county executive committee shall prioritise the wards determined by the commission to be marginalised or requiring special or urgent intervention in order to bring the standards of living of the residents residing in the specific wards to the same level as those generally enjoyed by the residents of other wards in the county.

The criteria to be used for selection of projects - a project meets the criteria for funding under this Bill if it is a community-based project which aims at ensuring the development of infrastructure that would promote the delivery of basic services and goods to persons residing at the lowest unit of decentralisation established pursuant to Section 54 of the County Governments Act.

The Bill also seeks to ensure that the projects identified under it shall be included in the development plan provided for under Section 126 of Public Finance Management (PFM) Act. It says that the County Fiscal Strategy Paper provided for under Section 117 of the PFM and the County Budget Estimate provided under Section 113 of the PFM Act---. Those projects identified should not be in isolation, but should be able to fit within the County Fiscal Strategy Paper, within the County Development Plan and the County Budget Estimates. Any other plan or document provided for under the law which may be determined by the commission as being necessary for the implementations of this law.

Part III (11) of the Bill deals with the implementation of projects. For the purpose of this Bill the county executive committee member shall:-

- (a) Ensure timely and sufficient disbursement of funds for the implementation of county ward development projects;

- (b) Ensure efficient management of funds in the implementation of county ward development projects;

Once the project has been funded and is in the budget, the county executive Committee member is under obligation to make sure that funds set aside for the purpose are meant for those projects within the wards and not to be diverted.

Part III (12) says that:-

“Funds allocated for a project shall only be reallocated for any other project during the financial year with the approval of the county assembly.”

The county executive cannot then reallocate funds midstream after a project has already approved by the county assembly under the appropriation act.

Madam Temporary Speaker, this Bill is a great improvement from what we had earlier. In fact, the concern was that we were going to create something like the National Government - County Development Fund (NG-CDF) which gives the representatives of the people mandate to implement projects thus creating a conflict of interest between legislators and the implementers. However, these projects are actually identified by the residents with the help of the county executive. The leadership can have input when they participate in the public participation. It is ensured that the projects are implemented by the implementing agencies that are the county executive.

The county assembly's role is to make sure that the criteria is approved by them. Once the projects are approved in the budget, they are implemented and there is no disruption in terms of funding.

Madam Temporary Speaker, a county budget or plan under the County Governments Act for the PFM 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.

A county assembly shall not approve a county plan or budget that does not comply with this section. A county assembly may amend a county plan for the development expenditure in a county budget in order to ensure equitable allocation of resources across the wards. In our view as a Committee, we think this Bill attempts to create a framework for decentralising further the county functions.

It is a step in the right direction. Many people are waiting for the passage of this Bill. In the original form that was brought by our colleague from Murang'a, the proposed law was similar to what was in the NG-CDF. This is a great improvement. The only thing it does is to ensure that we implement the requirements of the Constitution; Articles 174, 175 and 175 in terms of decentralising further.

Madam Temporary Speaker, this is in our view a good Bill. Members have got it and everybody should be able to look at it. We need to debate it a while, so that we enrich it. By the time it is put to the vote, it will be a move in the right direction that can help us decentralise our resources further.

There are concerns that 15 per cent is very minimal money. The other concerns is that 15 per cent is too much in the light of the fact that some counties have very little money for development because their wage bill is very high. Nonetheless, this is a very good Bill.

Madam Temporary Speaker, with those very many remarks, I beg to move an ask Sen. Malalah of Kakamega County to second.

(Sen. Malalah walked to the dispatch box)

Sen. Malalah: Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Sen. Nyamunga): Sen. Malalah, you know that even if you are requested to second, you cannot do so before you are given a chance by the Chair. Procedure must be followed. This is a House of procedure.

Proceed.

Sen. Malalah: Thank you, Madam Temporary Speaker. I stand guided. I stand to second this Bill. First of all, I passionately believe in the concept. Since I was a Member of County Assembly (MCA) we have been fighting for this Bill to go through. I take this earliest opportunity to thank the Chairperson and Sen. Kang'ata for pushing for this noble idea.

The gist of this Bill is that we will ensure that devolution works. The principles of devolution categorically and vividly state that we need to decentralise power and resources down to *wananchi*.

The promulgated Kenya Constitution, 2010 provided for general framework in which we were supposed to ensure that monies are decentralised from the central Government to the county governments and further to the village level. However, we did not have a legal framework to ensure that those resources trickle down to the villages. Therefore, it is with that purpose that I stand to second this Bill because it will ensure that more resources are devolved from county headquarters to villages.

Madam Temporary Speaker, we have visited counties and seen a lot of infrastructural development in some urban areas. However, it is a pity that in the villages, our people are lacking basic amenities. For example, if you go to Mung'ang'a in Kakamega County, people do not have water points where they can draw clean water for them and their animals. I believe this Bill will provide a framework which will encourage decentralisation of resources from the county headquarters to the village level.

The gist of this Bill is to encourage a bottom-up approach to project identification, planning and implementation. One finds that in most of our county government establishments, we do not go down to the villages to identify the needs of the people at the grassroots level. We only sit in hotels and adjudicate matters pertaining to counties at a high level. We have not interrogated the process of going down to the common *mwananchi*. Those people who voted for us are never consulted before a project is initiated in their villages.

Therefore, we have moribund projects from the beginning because they did not consult the citizens at the grassroots. This Bill provides for identification of projects from the grassroots. The noble idea behind this Bill is that every community has its unique problems. For example, the people in Marama South Ward have different needs from those in Mautuma Ward in Kakamega County. This Bill clearly sets out the procedure that we need, to identify the projects from the grassroots.

Clause 7(4) of this Bill clearly states how the county public service officers will sit together with the village councils to identify projects through public participation. This also challenges the county governments, which have not established village councils. I am proud that my county is the first to delineate power. We have ward administrators, and further, we have even recruited the community area administrators. This will, therefore, challenge county governments that have not implemented that structure, as envisaged in the Constitution; to go

ahead and fasten the process of ensuring that they recruit village councils and community area administrators.

We need to review the model of public participation. Public participation is being carried out as a formality. We have people who have not been to school but need to give their input in certain legislation or decisions of the county. However, you will see a county government officer going to the ground with a booklet of balance sheets in the name of budget estimates and asking a villager to endorse it as a way of public participation. We need to have a simplified mode when we go to get views from the public. Therefore, I encourage public officers who will be going to identify projects at that low level to simplify the model in which they will get views from the public.

Madam Temporary Speaker, secondly on the issue of public participation, we need to encourage county officers to give enough notice. We have seen time and again cases where those villagers are given a one-day notice that, for example, tomorrow we will be in Inzakula Village for public participation. I think they should be given enough notice. There is also the issue of giving notices in newspapers. Most of these people do not read newspapers. I think county governments should also device a mechanism or communication channel that will reach many people on the ground in good time.

I support this Bill because it provides for equitable distribution of resources. In the inaugural administration of county governments, we saw a lot of political inclination when it comes to resource distribution in the counties. If a Governor comes from Constituency B, then he will influence all resources to be channeled towards Constituency B.

I, therefore, support this Bill because it provides a framework in which the county and wards will get equitable distribution of resources. I have seen a clause that specifically says that this will be done in consideration with other projects. I want to be very cautious with that clause because you can have a flagship project in, say, Mahiakalo Ward in Kakamega County, where we are constructing a stadium costing Kshs500 million. That in itself does not disqualify Mahiakalo Ward from getting monies from the equitable share, just because you have built a stadium there. We need to separate this and say that we shall have all wards benefit from the 15 per cent, regardless of the flagship projects being implemented there.

Madam Temporary Speaker, I believe that this Bill will stimulate the economies of our respective counties because monies will be distributed deep into the villages that we represent. I take this opportunity to again thank the Committee on Finance and Budget and Sen. Kang'ata for coming up with this noble course.

I assure Members of the County Assemblies (MCAs) that once this Bill is passed in the Senate, let it not make them forget their core mandate as enshrined in the Constitution of Kenya. The mandate of an MCA is stipulated in the Constitution and further elaborated in the County Governments Act. One is that they need to continue representing their people and this Bill gives them that opportunity by passing the criteria mode in which they will distribute the resources in their counties, that is, by mobilizing their community to identify right opportunities. Therefore, their representation role can be effected well using this Bill.

Their second role is legislation, which again this Bill gives them an opportunity to debate and ensure that whatever criteria and formula that they will pass in their respective county assemblies, takes effect. They have an opportunity to exercise their constitutional mandate on the floor of the house.

The third and most important role is oversight. Most MCAs have forgotten their oversight role. I remind them that the Constitution envisaged a situation where we needed separation of power between the two arms of Government at the county level. We have the executive and the legislature. It is, therefore, important for MCAs to be reminded that their core mandate is oversight. They need to check the executive.

These projects will be implemented by the executive and not MCAs. Let it be very clear to them that it is them to ensure that monies allocated for certain projects in their respective wards have been appropriated prudently and the effect felt by their people. It is through their oversight role that they will question the governor why he is not following up on the criteria mode that they passed in their respective county assemblies.

Lastly, we have instruments that are being used to implement the development plan in county governments. We have the County Integrated Development Plans (CIDPs) and Annual Development Plans (ADPs), which are extracted from the CIDPs just to come up with budget estimates and identify projects. How I wish that the projects that we will identify using this Bill emanate from the respective CIDPs and ADPs. We do not want to form a law that will defy other instruments of power or development that have already been established. Therefore, if it has not been captured here, let us capture in this Bill, that all the projects that will be identified must emanate from the CIDPs, so that we do not come up with other projects outside the CIDPs. Eventually, we will narrow down to the ADP, which will definitely now come as the annual budget estimates in our respective counties.

I believe that this is the right way to go. The other one by Sen. Kang'ata was a good idea, but now we are more specific and within the law. I do not think we are contradicting any other law. We have incorporated views which are already captured in the Public Finance Management (PFM) Act and other relevant Acts that deal with devolution.

I beg to second.

(Question proposed)

Sen. (Dr.) Zani: Madam Temporary Speaker, I will start by congratulating Members of the Committee on Finance and Budget for coming up with this Bill. I think this is what the Senate and the county assemblies have been waiting for. I also thank Sen. Kang'ata for conceptualizing the initial Bill and now we have this Bill in an amended version.

During the Eleventh Parliament, we had an interesting Petition before the Committee on Finance, Commerce and Budget. The Petition came from an MCA from one of the wards and he was very bitter. He perceived that he did not have a good relationship with the governor. As a result, he claimed and almost tabled evidence that he felt that his ward was unfairly targeted and that development was not taking place in that ward.

It was a long Petition. He appeared before the Committee, executed his case and talked for a long time. The importance of that case is that it brought to the fore the inequalities and lack of equitable distribution as far as resources and projects are concerned. We have moved from the initial Bill by Sen. Kang'ata that involved monies and we are now looking at this Bill in terms of having projects and ensuring that they are catered for at the county level and that is very important.

One of the tenets of this Bill is to address marginalisation. The right word ought to have been "equitable" rather than "equal" because there is the issue of having the right formula by the

Commission on Revenue Allocation (CRA) and the right interests in specific projects. There is the notion that projects will be vetted by the communities. That is important because communities will think of the type of projects they want and that will enable them to jumpstart their wards.

Participation and social development are also key. Across the board, whichever indicators you look at, whether in terms of development within the counties or human development indexes, there is unequal development.

Earlier on, I talked about the Gross County Product (GCP) in county governments, which is equivalent to Gross Domestic Product (GDP). If you are keen on that, you will also notice that there are a lot of inequalities.

The Equalisation Fund has not succeeded in doing what it was meant to do. I am not even sure whether that money went to the counties or not. I can hear Sen. (Eng.) Hargura and Sen. (Eng.) Mahamud saying that it did not. The amount of money that was put into Equalisation Fund was not going to create equality across the various counties. What people want is equality. We may not have 100 per cent equality but at least the levels of inequality should be reduced over time. There should be evidence that counties are improving and the gap is closing. That is what most societies try to achieve. How do we achieve that? Some sort of cohesion needs to happen within the counties.

During the Eleventh Parliament, Sen. Sang who is now the Governor of Nandi County came with an idea which did not work because of the whole issue about hierarchies. The important thing is that this is exactly what it was meant to do. The MCAs at various leadership levels were to sit together and plan so that there is no duplication of projects by governors, MPs and MCAs.

In one of our trips to Turkana County to look into Early Childhood Development Education (ECDE) matters, we sat with the MCAs and the Governor and they came up with a very interesting model of how to distribute ECDE centres and the money for building them within the county. They had a measured number of classes in each of the various wards and that was commendable. That reduces conflict amongst people because you can sit down and agree. That is what this Bill intends to do, so that there is equitable share of resources.

Looking at the Bill, various components are critical.

Clause 4 states that:

“All persons and entities under this Act shall, in the performance of their functions under this Act, be guided by the following principles—

(a) the promotion of the social and economic development of all persons residing within the ward in order to ensure the realisation of their economic and social rights under Article 43 of the Constitution;

(b) the principles and objects of devolution set out under Articles 174 and 175 of the Constitution;

(c) 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 county; and

(d) the promotion of the national values and principles of governance set out under Article 10 of the Constitution.”

I want to talk about Clause 5 which the Chair mentioned as he was moving this Bill. It is stated in Clause 5(3) that the county executive committee shall ensure not less than 15 per cent of the county government's allocation for development expenditure as provided under Section 107(2)(b) of the PFM Act. The important thing is that this will take place within the county assembly set up. In the county assemblies, MCAs can meet and give their views about projects to be undertaken.

The question that concerns me is whether we have mechanisms to ensure that it moves from theoretical to practical. Yes, we do because mechanisms will be put in place for the relevant County Executive Committee (CEC) member to ensure that the projects are carried out.

There is one Clause that I am looking for which provides that funds can be allocated for a project and reallocated to something else. That is a dangerous Clause because in county assemblies, there is politics and we could have a ganging up effect. Is it possible for MCAs to reallocate funds meant for projects in a particular ward to another ward and ensure that that money is not used where it is meant to be used?

That is Clause 12(1) which states that:

“Funds allocated for a project shall only be reallocated for any other purpose during the financial year with the approval of the county assembly.”

I feel that this Clause is a bit loose and it needs to be tightened by having a threshold of about two-thirds of MCAs to reallocate the money to another project.

Before I forget, in Clause 10, counties shall have development plans because the projects should be in line with County Integrated Development Plans (CIDPs) of a particular county. Therefore, issues of concern by county residents should be looked at.

Clause 10 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.”

It is also indicated that the county executive committee member shall align the project identification and selection processes with the county budget cycle as set out in the PFM Act. What will be the measure of equitable projects? Will it be as per the amount of money that will go to projects or will it be as per the number of people that the projects will benefit? What will be the variables? That probably will be a matter of discussion because some of the decisions will be made at the county assembly level and also by CECs within a specific county.

It is important that the identification of the projects will involve members of the public across the county.

Clause 7(1) states that:-

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

Therefore, the decision will also be made by the members of the public and not just the leadership.

Clause 8(2) states that:-

“In determining the projects for implementation under subsection (1), the county executive committee shall prioritise the wards determined by the Commission to be marginalised or requiring special or urgent intervention in order to bring the standards of living of the residents residing in the specific wards to the same level as those generally enjoyed by the residents of other wards in the county’.

Most of the tenets of this Bill have been put into place.

Clause 17, which talks of penalties, is broad in my understanding. There is imprisonment for a term of not less than five years which means more than five years but when it comes to the fine, it just talks of a fine not less than Kshs500,000, which I think is not stiff enough for a Member of County Assembly (MCA). When the amendments time comes, we should look at how to make it stiffer in the hope that the rule will be adhered to.

Clause 15(1) states that;

“A county executive committee member shall submit quarterly reports to the county assembly on setting out information”.

He is to give detailed components of the project including the schedule of work, the compliance with the principals of sound management systems, steps taken towards operationalization of the projects and many more. This is all in paper and we know that we have a lot of legislation.

We have reached a point where we cannot over-emphasise the role of oversight. We did that earlier this afternoon when we were talking to the visiting delegation from Vihiga County. The county assemblies should have powers for them to oversight and put their feet down. This Bill is directly concerned with development and it may give the MCAs some sort of impetus and extra zeal because it will count at the end of the day. People will ask them how they performed with their projects. The MCAs will be keen to ensure that the projects work and that will stimulate the role of oversight and project management.

We are at a point in this country where we need projects to be initiated. We need them to be processed and we need them to be completed for the sake of Kenyans. This Bill will get us there.

I support.

Sen. Were: Thank you, Madam Temporary Speaker, for giving me the opportunity to contribute to this worthy Bill; The County Wards (Equitable Development) Bill (Senate Bills No. 34 of 2018). I would also like to thank Sen. Kang’ata for having come up with the idea and the Committee for improving on Sen. Kang’ata’s Bill so as to make sure that it conforms to the Public Finance Management (PFM) Act. They have complied with the PFM Act in Section 12(5) by ensuring that the county assembly does not allocate those funds to particular wards but instead approves the county plan on budget and can as well amend the county plan.

This Bill is important because it brings the essence of devolution to the fore. One of them is equitable distribution of resources, taking development to the people and making the people a part of that development through public participation. The people are to decide on the projects that are important to them and the ones that should be prioritised. Therefore, they will determine the need of coming up with a particular project instead of coming up with white elephants.

This Bill will also give independence to MCAs and it will enable them focus on oversight instead of trying to play the executive role. They will focus on their legislative and oversight role. The Bill also allows the county assembly to decide on the criteria to be used in allocating funds to the wards just the same way the Senate questions the allocation of resources to counties that is presented by the Commission on Revenue Allocation.

I commend this Bill, especially Clause 12(2) which 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 within the same ward”.

That will ensure equitable distribution of resources and development across the counties and in all wards. This Bill also favours MCAs because they will be partaking of the criteria developed by the commission. They can relook at it, review it or agree with it such that the criteria used to decide on the ward that gets funds for development is agreeable to all members.

I would also like to reiterate that this Bill is going to cure the problem of incomplete projects in our counties.

Clause 12(5)(b) states that:

“The county executive committee member and the county assembly shall not approve the reallocation or appropriation of funds under subsections (2) or (3) unless the completion time for the project does not extend to a period of more than two years”.

That will cure the problem of incomplete projects that we have experienced in our counties.

With those few remarks, I beg to support.

Sen. (Eng.) Hargura: Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute to this important Bill. I would like to thank the Committee on Finance and Budget for coming up with this Bill; the County Wards (Equitable Development) Bill (Senate Bills No. 34 of 2018). I would also like to thank Sen. Kang’ata for having come up with the idea though it was similar to the Constituency Development Fund (CDF) which included the MCAs in the executive work.

However, the improvement done by the Committee is good and it is now a legislation which we can comfortably pass and have it implemented by the county assemblies or the county governments.

For the last five years, we have worked on this kind of a process in my County. The planning or the budgeting that we have done in the last two years is almost similar to what this Bill is proposing. The county executive looks at the budget or the allocation that they get from County Allocation of Revenue Act (CARA) and from there, they set out their budget for recurrent and development which is shared between the wards and the County. We have the ward specific projects, departmental projects and County flagship projects. Based on that, for the last two years, we have had clear amounts going to the wards. The problem is not equitability; they have been doing it equally. For example, in Marsabit County, there are 20 wards.

In the Financial Year 2018/2019, the executive made it very clear from the beginning that each ward will get Kshs75 million. Members of the executive led by the ward administrators and the officers from the executive went round and held public *barazas* in the ward. They told each ward the amount of money they had and asked them to come up with their projects. For example, if a ward has four locations, the members of the ward would share the money in all the locations. They would sit down and come up with their projects from that level.

At the end of the exercise what the executive will have from each ward is projects which have been identified. From there, it is for the executive to determine which projects the amount of money can fund. For example, members of the public are not expert to know the cost of constructing a borehole or a dispensary which might be their priorities. Therefore, it is for the executive to assign the number of projects to be covered by that amount of money. So, basically, it is a process which has been tried.

Madam Temporary Speaker, last year, public participation was done in Marsabit County and each ward is getting Kshs50 million. This is because the county is trying to give some attention to departmental and county flagship projects. So, they had to reduce the old allocation. If you look at the percentage we are proposing, for example, in Financial Year 2018/2019, Marsabit County got about Kshs7 billion. Already they have allocated Kshs1.5 billion directly to the wards. That is more than 15 per cent. Fifteen per cent of Kshs7 billion is about Kshs1,050,000,000. So, they have already done more than that. Therefore, it is possible.

This law gives them a framework. The executive did its work by being fair and making sure that each part of the county gets money for development. This framework is in law so that the different wards are not at the mercy of the executive. That is what we are trying to cure.

Madam Temporary Speaker, in the Eleventh Parliament, we tried that process with the counties. They used the Commission on Revenue Allocation (CRA) formula in sharing money for development among the constituencies, then down to the wards. Sometimes, we have to innovate but it depends on the goodwill of the executive. However, this kind of law will clearly make sure that what we are doing is anchored in law. Therefore, if the executive tries to go against it, it will not be acceptable. The law clearly says that the county assembly does not approve the budget until it is in line with this law. That is what Clause 13 in Part IV states.

Madam Temporary Speaker, I would like to bring to the attention of the Chairperson of the Committee, Clause 6 (2) which gives county assembly the power to approve the criteria. It talks of 'approve' or 'reject'. I propose that it should have the word 'amend'. It is not a matter of approving or rejecting. The county assembly can also amend that formula developed by the CRA. So, it should be clear that, county assemblies can also amend the formula and adapt it to their own prevailing factors which can sometime change from year to year. Therefore, let us have that amendment included there.

Madam Temporary Speaker, considering the amount of money that we are giving to these wards, for example, in Marsabit County, if a ward gets Kshs15 million then it scales it down to the village units which are the locations, then they will remain with Kshs10 million which, may be, cannot complete one or two projects. For example, if a ward decides to do a borehole, there has to be drilling, installation and piping which might cost more than Kshs10 million and there might be other priorities.

Therefore, once a project is started, there must be continuity. This is one problem we have on the ground. For example, in my county, there are areas where a borehole has been drilled according to what was in the last year's budget. However, this year, there is nothing and that borehole has not been equipped. So, when they tell me that they want the borehole equipped, I normally ask them what they allocated their money for this year. Therefore, there must be continuity. A project must be completed. For example, if a dispensary is started, there must be construction of the necessary facilities, it has to be equipped and staffed. However, this cannot take one year; it has to take several years.

Clause 12 (3) gives room for continuity. It states that:-

“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 (CEC) Member shall seek the approval of the county assembly for the appropriation of monies in the subsequent financial year during which the project is to be undertaken for the completion of that project”.

Madam Temporary Speaker, I thought what needs to be done is that each year, the money has to be budgeted for. So, I do not see how the (CEC) Member will seek the approval of the county assembly for the appropriation. What they need to do is to capture the project so that it is completed. So, when a project is started, it must be completed. If it takes two years, it must be captured so that an ongoing project is given priority before a new project is started.

If we do not do that, with the experience of what is happening in Marsabit County where this kind of procedure is used, normally, communities easily forget what they have started. They will start a new project every year without completing the previous one. Therefore, the best thing is for the executive to always have that. For example, if they start a project from their Kshs10 million, automatically Kshs5 million should be spent to complete the project started the previous year. Therefore, there must be that continuity so that we do not have projects which are not utilised, all over the place.

Madam Temporary Speaker, I did not get the reasoning behind Clause 12(7) which 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”.

The current financial system is such that once the money has been allocated from the national Treasury to the county accounts in the Central Bank of Kenya (CBK), it does not go back. What happens is that, if the year lapses, whatever money that has not been spent is supposed to be brought forward and be budgeted for in the next financial.

So, there is no risk of the monies going back the way it used to happen in the old system, where we have a centralized Government where at the closure of a financial year, whatever you have not spent goes back and you do not have a way of continuing with that project. However, in this case, we need to be very clear. We need to put it in such a way that what was for that ward should still be for that board, but there is no fear of monies going back.

Madam Temporary Speaker, the other part is reporting and oversight which gives the county assembly, so to speak, the power to make sure that the executive complies with this law. I am saying this taking into account that currently the county assembly has limited leeway in terms of changing the budgets of the executive. They can only change, if I am not wrong, 1 per cent. So, that is not changing. If you can only change 1 per cent of a budget, then you are not changing anything. But with this kind of a law, then you have a way of holding the executive to account; that if they do not follow that, then you cannot approve the budget.

If they did not follow this law by giving at least 15 per cent to the roads, then you will have the power now not to approve that budget. So, that gives the county assembly more powers and more say in making sure that the budget is equitable and covers the whole county irrespective of which part of the county especially in multi-ethnic counties where we come from

and which constituency or community supported which party or government, then you have your rights anchored in this law, so that you always get the same shares as any other part of the county. It also takes into account marginalized parts.

Sometimes we think that when you come from a county, the whole county is at the same level, which is not true. Within the county, there are areas which are more marginalized than others. Therefore, when this money is being shared, there must be some way of taking that into account. I do not know whether the Bill addresses that, so far, because it just talks of marginalized counties. That should be in the formula which is developed by the Commission, which talks of equitable but not equal.

Madam Temporary Speaker, the problem we had with the first version of this Bill was the involvement of the Members of the County Assembly (MCAs) in execution of the works but in this case it is very clear, and we need to quickly pass this Bill so that from the next financial year, the county governments have a very clear way of making sure that whatever we allocate from here does not become a preserve of the executive to reward and punish people taking into account that the governor, who is the head of the county government is an elected person. So, there is that conflict that comes indirectly if you give that person all the powers to decide where to take development.

More often than not, the political inclination will come in and some areas will be favoured more than others. This should also be extended to all other sharing of resources within that county. There must be fairness in the way we are sharing resources even when it comes to employment, because employment is also a resource because the same monies we allocate from here which are being used to employ people. So, if that sharing is done, also in the same way, then there is that equitable sharing. If not, then we are living at the mercy of one individual who also has his own political ambitions, and political people to reward and that way we will not be fair.

Madam Temporary Speaker, I thank the Committee for coming up with this Bill. I hope that once we pass it, we will see it being implemented on the ground and have a more equitable distribution of the resources which we share from here.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senator. Sen. (Prof.) Onger, Senator for Kisii County.

Sen. (Prof.) Onger: Thank you, Madam Temporary Speaker. I also want to lend my voice in support of this Bill. It has come a long way. We have had a lot of consultations and I want to thank Sen. Kang'ata and the Chair of the Committee on Finance and Budget for making innovations on this Bill.

Looking at its present form, this Bill intends to achieve three elements. The first element is the equitable growth in the wards which has been missing. The second element is providing a mechanism of selection of projects and the third element is re-enforcing the oversight mechanism so that these resources are used optimally. So, for me, when you capture these three elements of the Bill, what it is really saying is that, from now henceforth, all the MCAs, executive and the public will be made alive of what they want to do in line with Article 174 of the Constitution. In other words, the people will now be conscious of their fundamental rights both social and economic rights that they are entitled to in arriving at that level.

Madam Temporary Speaker, I have observed the process of County Integrated Development Plan (CIDP) which is conceived and developed at the executive level. They make

what you call a semblance of public participation. When I say semblance, they literally handpick a few market centers and gather professional commentators who follow them from one market center to another. In the end, it is deemed to have been passed through public participation. The new Bill is going to focus the attention of the ward to its immediate needs. So, that is one element that is going to be cured by this Bill. I would like to see a situation that the County Integrated Development Plan captures in priority areas in every ward and at the county level.

Madam Temporary Speaker, once those have been captured in the CDIP, one then will expect that the annual development plan will now focus on areas of interest and concern for the local communities. That will give meaning to the local village councils. Interest differs from one ward to another. In one ward, they may require boreholes, dispensaries or Early Childhood Development Education (ECDE) classes, road networks within their interest, warehousing facilities which we have passed a Bill on warehousing where they are producing cotton and they want to store their cotton for their marketing purposes. For them, that is a priority.

I see in the CDIP, many counties have incorporated markets that have been ostensibly built to help the local villages to market their wares. However, there are no resources given to those markets, and I have in mind, for instance, a market which was set in one of the wards in Kisii County, and has not been opened. The Daraja Mbili Market, for instance, has not been completed. This is where everybody brings their agricultural produce. So, let us look for innovative ways of financing certain things that have a tendency of promoting the interest of local productions. Therefore, this County Ward Equitable Development Bill will in greater measure address that issue.

Let me move on to annual development plan. Again, in a similar manner, I expect that the county assemblies, through their wards, will take an active role in establishing priority programmes that are required in their wards. That way, when this Bill is finally passed, what they should be watching for is that the resources are allocated equitably within the framework of the fiscal strategic plan.

Without that consideration, it becomes very difficult. You reduce the ward representative in trying to persuade the executive to give them a project. Therefore, they end up being at the mercy of the executive. They lose focus of wanting to do their own things in accordance with the requirements, interests and the desires of the ward representatives. It is an important feature that we are introducing in this Bill.

When the fiscal strategy paper is being laid before the county assembly, one of the things that should form an automatic checklist is; has the equitable sharing plan been included in their budgetary provisions in the fiscal strategy paper before the county assembly? If it has not been included, then you invoke, approve, amend or reject the clause which has been cited here. That is why Clause 6(2) has been included here.

It gives the ward representatives and the community a sense of belonging, that this is our proposal, priority and the manner in which we want to do it. Therefore, let us now apply the mechanism that is required. The mechanism is that all these things must fall in line with the annual development plan and the budget plan. Once that has been captured, the element which is left out is how far can 15 per cent carry us through? Some counties have very meager development plans, because the recurrent expenditure has gone beyond the expectations.

We have this animal called the pending bills. It is quite a headache for many counties. It is now going into billions. I hope and believe the Chairperson, since this has come to your docket

– the issue of pending bills which tend to distort the budgeted proposals of counties will be looked into. It will be interesting to know, at the end of this debate, how far the issue of pending bills will be addressed and determined. This is because without making provision for the same, even this Bill itself will become an innovative one that will gather dust in the shelves without the implementation.

We need to look at these elements which are so critical and important. The element that, obviously comes out which forms part of the oversight that I talked earlier on is the fiduciary risks that are attendant to the usage of resources within the county and by the county executive. The CPAIC will be presenting before this House its report after considering fiduciary risks in the counties. They differ from one county to another. That may help us to identify the pitfalls that will make this kind of a programme fail.

It is important that we do so to ensure that this noble and very important Bill before this House is carried right up to the end. At the end of the day, it will better results if well managed. With the fiduciary risks being taken care of, I think it will have better results than we have ever thought before.

Those of us who had the opportunity to use the NG-CDF correctly will admit here that we achieved certain milestones that stood even after we left the leadership of our constituencies. In my case, I can attest to some of the projects that were implemented through the NG-CDF, which would have never seen light of the day during the budget circles of the yesteryears. We achieved monuments of development in our constituencies through NG-CDF. You can see the way the community appreciates.

We have water projects, the school programmes like the bursaries that have seen many of our children complete their secondary and university education. They have completed and they are now doing useful things in the society. You see messages thanking you for helping them complete their education through the bursary programme. Some ask what they can do to their communities. We are proud of them. This is what this kind of Bill should be able to generate – social transformation, apart from endearing the economic development at the village level. By doing so, you give meaning to the village councils. I fully support this Bill.

I want to put caution on one area. When these funds are put in the budget, how do we ensure that they fund the intended projects and are not hijacked or side tracked to finance other elements? They might come up, for instance, with flimsy priorities like a library. First of all, they will put money into it, when you check its existence, it will be non-existent. Those are the fiduciary risks that I was talking about. I hope this money when budgeted for by the executive, will finance the intended programmes and projects.

That brings me to the fourth element; what is the capacity of the officers, who will do the survey, sensitize and put the programme in the format that is expected, so that it can attract funding? We must be able to ensure the capacity building of officers who will be seconded to the sub-counties and wards. They must know their roles. Otherwise, they will take us around in circles on very flimsy and trivial things that will not be able to work out for us.

I know that there are other people who would want to contribute to this Bill. I am happy that the Chairperson of the Committee on Finance and Budget has also considered to amend Section 108(2) (a) of The County Governments Act by inserting the implementation of the County Wards Equitable Development Fund. Without that amendment, that would have flown in

the face of the County Governments Act; conditions under which there is a deviation from financial objectives.

It is a good amendment and once it is done, there should be clarity that The County Government Act has been amended in order to take into account these changes and giving reasons and implications of this deviation. Proposals should also be given to address the deviation. We have already done it through this Bill and if that is followed through, everything will come to place.

Finally, let our county assembly leaders see this Bill as enhancing the ability and the capacity to oversight the executive. Let them not use this opportunity to also blackmail the executive because of personal interests. It is for the common good of everybody and we should use this opportunity to be supportive to one another. Let the executive play their role and the county assemblies also play their role in this oversight programme.

When I go to address my county assembly during the annual address, these are some of the issues that I will be addressing because when we work together as the Senate and the county assembly and we all emphasise the role of oversight, we will see value for money being put into programmes and projects that we have approved through the County Allocation of Revenue to each county. It is very critical for me and for us all. We will have brought sanctity and sanity in the way we do things in a devolved system.

Thank you again, Sen. Kang'ata, for having come up with an idea. Although we have mutilated it, but it has been mutilated for better service to the people.

I support.

The Temporary Speaker (Sen. Nyamunga): Sen. Kang'ata.

Sen. Kang'ata: Thank you, Madam Temporary Speaker, for the opportunity to contribute to this Bill. Let me first congratulate the Chairperson of the Committee on Finance and Budget, my friend, Sen. (Eng.) Mahamud, for having agreed to take over this Bill and coming up with very good proposals.

Let me start by saying that no one wants to own a Bill. Whenever we up come up with any idea, every Member of Parliament or Senator should be able to receive better and superior ideas from whichever source that information may come from. Therefore, I was more than happy when my friend, Sen. (Eng.) Mahamud, requested that he takes over the Bill. I knew that he is very competent and the Committee would come up with a better Bill. In any event, a Committee Bill is usually easier to navigate the Senate and other parliamentary structures as compared to a Bill that is brought by an individual.

The amendments that are contained in this Bill, which contrast my original idea, are good. They are positive because, one, there were concerns that were raised by the Commission on Revenue Allocation, the Treasury and also the Budget Office as to whether this Bill negates the principle of separation of powers. The person who came up with the idea of separation of power is called Montesquieu, a French Philosopher who was living in this world in 1700 or thereabout – the 18th Century. He was arguing that power should not repose in one institution.

During that time, every power was fused in the entity that is called the monarchy. Therefore, there were no checks and balances. We had what is called an absolute monarch that would abuse its power. It was not accountable to anyone and not based on meritocracy, but by inheriting. Therefore, he proposed that there is need to separate the three major functions of government, that is, the whole idea of making laws and executing those laws.

Then, again, it is known that you cannot have complete and distinct separation of power. There are instances where the Executive may want to make some laws; you do not have to keep on referring back to the National Assembly or Parliament. That is why you will find the Executive doing what is called subsidiary legislation.

On the other hand, Parliament also makes decisions which appear to be like Executive in nature. Therefore, based on that philosophy of separation of power, we thought of relooking at this law, and therefore, ensuring that we do not negate the idea of the legislature overseeing the Executive.

One thing that the Committee has done is to take some crucial powers concerning the implementation of this law to the County Executive Committee (CEC) Member in charge of Finance in various counties. That to me is a positive thing.

Two, this Bill has also provided that the money that will go to the ward will be minimum; 15 per cent of the development expenditure. That to me is positive. The third change, which I have seen in this Bill, is doing away with my proposal concerning creating committees. I agree that if we could have created committees, like the Constituencies Development Fund (CDF) system, we would have made this Bill expensive to implement. It would bring in other attendant cost of huge bureaucracy. Therefore, it made a lot of sense that we do away with those committees and give that power to the CEC in charge of finance, so that we ensure good and seamless implementation.

However, the assembly has powers to oversight this Fund. How? The CEC Member in charge of finance will be compelled by this law to be reporting to the assembly the progress made towards implementing ward projects. Two, he will be compelled to bring quarterly reports before the county assembly, saying how far they have gone with ward projects, how much money they are paying to those projects and whether procurement processes are okay. All those are provided for under this Act. Therefore, the assembly will still have some oversight powers, which are clearly provided for under the Constitution and this law.

What are the main advantages that this Bill will give to the country? I am going to cite five reasons. First, governors have become omnipresent demigods in our counties. They have been oppressing Members of County Assembly (MCAs) and residents. If you do not toe the line of a governor, you will find a situation where there is no development money that is being sent to your ward.

You are being punished as an MCA because of opposing or overlooking the governor. That is very unfair because the actual people who are suffering are the common *wananchi* in your ward. So, this Bill is going to ensure that the assembly is independent to conduct oversight without fear and that their wards will not be denied development because of their stand. You will find MCAs overlooking governors in a very strong manner. They will not be blackmailed. To me, that is positive, and we are going to have stronger institutions at the grassroots level.

Secondly, for a long time, the way budgets at the county have been prepared in a manner that is not coherent, that hides information, and that does not indicate, for instance, which ward is going to benefit from the programmes of a county. For instance, I come from Murang'a County and we have about 35 wards. The people of Kambiti Ward in Maragua Constituency; the people of Kiguna Ward in Kigumo Constituency; residents of Kiru in Mathioya; Muguru in Kangema; Wangu Ward in Kiharu; Muruka in Kandara; and Kihumbu-ini or Kahumbu or Kimorori-Wempa

or Kakuzi – name any ward; all those residents want to know in this budget of Murang'a County, how much they are getting from the budget and how they are benefiting from it.

Currently, when you look at any county budget, it does not clearly state how much, for instance, Kanyenyaini or Kamacharia in Mathioya is going to get. This Bill is going to liberate and clarify that so that the people of Kamacharia will know what to expect this year. The same will apply to the people of Muguru Ward or Kanyenyaini Ward. That is important.

It is even provided for in the Constitution. Article 35 of the Constitution provides the right to information. This Bill compels governors to provide that information to the people who reside in those respective wards. That, to me, is positive.

Thirdly, we had a lot of complaints from the people we represent here concerning skewed development. You will find some governors or even some county governments are only developing regions where they usually get bulk support. It is like they are weaponising devolution against their perceived political enemies. This Bill is going to liberate Kenyans from that kind of tyranny. It is going to ensure that every ward or region; notwithstanding political decisions that they made, do not suffer or lag behind. It will ensure that there is equitable distribution of development.

The fourth reason why we should support this Bill is because it is a constitutional obligation. Article 176 of the Constitution indicates objects of devolution. One of the objects is to provide for decentralisation of services. It is also one goal, aim and a principle of the Constitution. Article 176 and 174 ensures that you foster community development at the grassroots level.

Without this law, you do not have any statute to actualise that dream; you cannot be able to do that. Therefore, this Bill, in actual sense, is geared towards actualising a constitutional requirement. Otherwise, you would be having a situation where we have a constitutional provision that is not actually implemented. It is just an aspirational clause in the Constitution. We need constitutions to bite; we need constitutions that have real meaning to the *wananchi*. The only way to do that is to provide for this because it gives procedures of effectuating that constitutional provision. It gives some prescriptions, and that is a win.

Finally, this Bill should be supported because it is going to bring uniformity in the issue of ward development. I am aware of some counties that have thought about this problem, one of them is Meru County and Elgeyo-Marakwet County. They are very few, about five out of the 47 counties. We need standardisation of principles. Therefore, this one is going to standardise principles concerning ward development, and that is positive. It is something that makes ward development something rational and certain. Remember, one function of law is to bring certainty in management of public affairs, and this one will do that. The critics of this Bill have argued that it is unconstitutional. Those fears have been addressed. It is now a constitutional Bill.

A second criticism of this Bill is that we are replicating the National Government-Constituencies Development Fund (NG-CDF). That is not true. We have ensured this Bill does not duplicate NG-CDF. Kenyans challenged the legality of the CDF Act in court and it was declared unconstitutional. However, the Members of Parliament were able to remedy those sections of unconstitutionality. But this one, we have looked at the Court of Appeal decision concerning CDF; we have ensured we have drafted the Bill that does not negate any constitutional principles or philosophy. Therefore, this is a very constitutional Bill.

Other critics have been saying that we may duplicate development. This Constitution has been embedded to the various provisions or other laws, including the Public Finance Management (PFM) Act to ensure this Bill adheres to those provisions. We have ensured that this Bill also respects other major institutions, importantly, the Commission for Revenue Allocation (CRA). We have ensured that this is respected. Therefore, there will be no problem concerning a Bill that appears to negate other provisions and statutes that are already in place.

The national Treasury and the National Assembly also need to be informed that this is not a money Bill. They had raised concern whether we are creating a money Bill or not. No, we are not creating a fund. There is no fund. In fact, even the title has been changed – it is the County Wards (Equitable Development) Bill. So, we have done away with the term ‘fund’ that was in my original Bill. Therefore, the concerns of the national Assembly and the national Treasury have been taken care of because it is not a money Bill.

There were also some people who raised clerical and grammatical issues. Again, we have ensured that this Bill does not contain any grammatical or clerical errors. This Bill has also undergone very good and great public participation. We have listened to representations from civil societies, county governments, CRA, the Parliamentary Budget Office and the national Treasury and ensured that this Bill does not offend anyone.

Therefore, I would urge my colleagues in the National Assembly not to imagine that this Bill is intended to create other potential political opponents to them. I have also heard from the rumours going round that this Bill will be used by MCAs to fight MPs. That is not the intention of the Bill. It is something to do with their development. It is purely to ensure our areas receive equitable development.

With those few remarks, I support.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senator. Proceed, Senator Enoch Wambua, Senator for Kitui County.

Sen. Wambua: Thank you, Madam Temporary Speaker, for this opportunity to also support this very important Bill. A good idea gives birth to a better one. When Sen. Kang'ata, the Senator for Murang'a County brought this Bill in its original version, I went on record saying that any move by this Senate to devolve development from the county headquarters to the wards level will be supported by everyone in and outside this august House.

Madam Temporary Speaker, I thank the Senate Committee on Finance and Budget for making amendments to the original version of this Bill. I congratulate them because in the process, the spirit of the original Bill has not been lost.

I will focus my attention and comments to four clauses that I think are very important to me. That is Clauses 5, 7, 11 and 12. It will be remembered that in the early 1980s development was concentrated at the centre, specifically in Nairobi. Decisions that affected development in our villages were made in Nairobi. In his wisdom, the retired President of The Republic of Kenya, Hon. Daniel Toroitich Arap Moi came up with a policy called District Focus for Rural Development. The districts then became the focal points for making decision on developments.

Madam Temporary Speaker, this Bill is a throwback to the 1980s where now we are setting in motion of further devolving decision-making from the county headquarters to the ward level. Therefore, the focus for development will appropriately and rightfully shift from the county headquarters to the wards level.

To me, Clause 5 of this Bill that speaks about equitable sharing of development funds in all the wards in a county is a very important one. It will no longer be discretionary on the part of any governor to decide whether or not to take development to certain wards. It will never be whimsical on the part of the member of the county executive to decide the amounts of money that will be allocated to wards that supported the governor and those that did not. It will be mandatory and a requirement of the law that at least 15 per cent of development funds shall equitably be distributed in all the wards within a county.

Madam Temporary Speaker, when it comes to amendments, I will be proposing that, yes, it is okay to talk about at least 15 per cent of development funds and take into consideration sections within wards in a county that are marginalised. On the decision as to which wards are marginalised and which ones are not, I would be urging the Committee to consider equipping county assemblies with a criteria or capacity to determine marginalisation within counties.

Alternatively, they should equip them to be able to interrogate the list of marginalised villages coming from the Commission, with a view to amending where necessary. This is because it will be wrong to leave that decision with a Commission sitting in Nairobi City, whereas the real implementation of the projects and the decisions of what projects should be done rests within the wards.

This Clause is equally important because if it is properly implemented, then it means that no ward within any county in this country will be left behind in development. In fact, if we develop every ward in this country, then it means that every county in this country will be developed and the entire country will benefit from development. My considered view is that this is one of the most important Bills that have ever found their way on the Floor of this House.

Madam Temporary Speaker, Clause 7 is on public participation. This is like music to my ears because this Bill will guide what constitutes public participation and funny arrangements by governors and County Executive Committee (CEC) Members, which are termed public participation, but in real sense, are just gatherings to rubberstamp decisions of the executive.

The decision for what project should be implemented in what part of a county must be made by residents of that county. What makes this Bill so important to me is that a resident sitting far away from Kitui Town, which is the headquarters of my county, say, in Mutonyaitho, Mukuanima, Katulu or Kiseu in a Ward in Kitui South; and another resident in Kitui North, in Usueni, Kithuke, Tseikuru, Kyuso in Mwingi North; another resident in Voo-Kyamatu, Zombe, Mutitu in Kitui East; and, another in Kitui West, in Enzuva, Thaana-Nzau, Kwa-siku all in Kitui West will be participating in making decisions on development concerning them and about them. This, for me, is a winner.

The third point is in Clause 11. When it comes to amendments, I will also be asking whether we are not putting a lot of responsibilities on CECs and excluding MCAs who are elected leaders from their space in terms of decision-making on what projects need to be implemented. This is because at the end of the day, the people who are responsible for wards are MCAs who are elected in those wards. Their core mandate will be to oversight implementation of funds meant for development by the county governors. I think we should create within this law some space for them to participate even if it is just to mobilise residents for public participation in respect of identification and implementation of projects through project implementation committees and then evaluation of those projects.

I am saying this in relation to Clause 11(a) which provides that the CEC concerned shall ensure timely and efficient disbursement of funds for the implementation of county ward development projects. That should be the case but to a bigger extent, I hold the view that this House has let counties down when it comes to disbursement of development funds from the national Government.

The PFM Act is very clear on disbursements from the national Treasury to the county governments. Those disbursements must be done the first week of the month or not later than the 15th day of the beginning of the quarter. We have witnessed situations where the national Treasury withholds funds for county governments and those funds are released towards the end of the financial year with no time for counties to absorb funds meant for development.

I think time has come that even as we take CECs to account on disbursement of funds meant for development within wards in the counties, as a Senate, we must also find a way of ensuring from the National Treasury that funds that are meant for development reach the counties in good time. That way, we will be doing good service to our people.

Finally, I want to comment on Clause 12, because I said I have four comments.

Clause 12(1) and (2) states that:-

“(1) Funds allocated for a project shall only be reallocated for any other purpose during the financial year with the approval of the county assembly.

(2) 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.”

For me, Clause 12(2) is a very good provision because we have also witnessed situations especially in counties where the pioneer governors lost in the 2017 General Elections and when the incoming governors took office, they chose to abandon projects that were started by their predecessors and started new projects or reallocated monies that had been allocated to projects in wards that did not support them and took those monies to wards that supported them.

This Bill is good because it will ensure continuity of projects. If a project is started in a ward, then there is no way of reallocating that money to another project outside that ward. This is a very important Bill. To allow my colleague, who I know wants to contribute to this Bill; I will end my contribution. I support.

Sen. Cherargei: Thank you, Madam Temporary Speaker. I want to join my colleagues in thanking the brain behind this Bill, Sen. Kang’ata.

This Bill is important because it removes the shackles of doom from the ferocious governors who capture and recapture the MCAs. It is interesting to note that when you attend a function with a governor, the MCAs fall over themselves by displaying sycophantic tendencies of hero worshipping for the governor to develop their region. Development looks like a privilege more than a right. Every Kenyan, as per the Constitution and in the spirit of ensuring uniformity, equal and equitable development across our counties, should by right get the fair share of development.

However, when you go to most of our counties, the state of capture and recapture has been fully perfected by the governors across the 47 counties. That is why a ward, whose MCA does not toe the line of the governor, is most likely to suffer. As Senators, we have noticed this and the governors have perfected the carrot and stick approach by ensuring that the MCAs who are sycophants are given priority in terms of development over those who want to do their

constitutional mandate of oversight as provided for in the Constitution. The MCAs play a primary role in terms of oversight and the Senate, as the big brother, does the secondary oversight. I want to commend the Committee on Finance and Budget for fine-tuning this Bill and as my brother said, a better idea gives way to the best idea.

My worry since the inception of this idea has always been the principle of separation of powers. This is because the county assemblies are supposed to provide oversight as per the Constitution yet we wanted them to do the executive work. I am happy that this Bill has clearly brought this out. When you look at Section 9 of the County Governments Act No. 17 of 2012, it provides for the role of an MCA. They are supposed to maintain close contact, present views, opinions and proposals of the electorate to the county assembly. This is important because it is in line with the Constitution. Article 10 looks at the national values and principles of good governance and one of the key values is public participation. One is supposed to present views, opinions and proposals of the electorate to the county assembly. For us, that is important because when you look at Section 9 of the County Governments Act No. 17 of 2012, it is clear that the aim is to ensure that they present views, opinions and proposals.

If you go to every ward, as my colleagues have tried to enumerate, there is an issue. For example, a ward that borders Chemelil-Chemase Ward, Ndalat Ward which borders Uasin Gishu County, the ward that borders Kilibwoni Ward and Tinderet Ward that borders Kericho County, their needs are so unique. Kapsabet Ward which is the main ward which hosts the county headquarters of Nandi County has unique and diverse needs. However, this Bill will ensure that we have an equitable development agenda across the entire county. For example, one county might need water as a priority while another county might be in need of roads.

For example, Ndalat Ward might need roads because it is poor, whereas Tinderet sub-county which borders your county is more disadvantaged and marginalized. Therefore, wards in that sub-county must be considered in a unique way in terms of development. This Bill will cure all that and ensure that we have uniform and equitable development across the county.

Madam Temporary Speaker, Section 9(2) (a) and (b) of the County Government Act states that:

“A Member of a county assembly shall not be directly or indirectly involved in the-

- (a) executive functions of the county government and its administration;
- (b) delivery of services as if the member were an officer or an employee of eth county government”

Interestingly enough, most Members of County Assembly (MCAs) are guilty of this Section. However, I know that it is not all MCAs across the country. It is unfortunate that most MCAs are Public Relations Officers (PRO) of some of their governors. Therefore, I hope that this Bill will assist them.

I always wonder why we should have communication departments in most of the county governments because MCAs are the PROs of the governor. For example, before a governor speaks, they say that he or she has created a particular road from point A to B and used millions of shillings. MCAs are guilty of this Section. I hope that with this new Bill, most MCAs who are guilty of Section 9(2) (a) and (b) of the County Government’s Act will stop.

Madam Temporary Speaker, I thank the distinguished Sen. (Dr.) Zani for bringing the report of the Gross County Product (GCP), 2019 which is also called the county Gross Domestic

Product (GDP). One of the challenges that I hope the Bill will look into is how to handle Own Source Revenue (OSR). You will find that 12 to 13 per cent of any financing in all county governments across the country comes from OSR. We had a discussion to agree on how to work with Kenya Revenue Authority (KRA) to ensure that we seal leakages in terms of revenue collection in our counties.

Madam Temporary Speaker, in the Report of the Auditor-General for Financial Year 2014/2015 of Nandi County, the county government used to bank in less than 100 metres. The county government headquarters and the National Bank in Kapsabet Town is less than 100 metres. However, when banking was done at the county Treasury, Kshs960,000 used to get lost daily. Therefore, we need to have a creative way to ensure that we have OSR to supplement other revenue. This is because most funding is done by the national Government and that is why we must agree that financing for county governments must be sufficient.

Madam Temporary Speaker, I was watching some discussion yesterday on television where the prophets of doom and the people who do not believe in devolution were saying that county governments are not sustainable. They are not sustainable because we have allowed leakages of Own Source Revenue (OSR). Interestingly, the county governments even under the indictment of the Auditor-General in all audit reports including 2017/2018, they have given and passed a sentence that regarding Own Source Revenue, we must seal leakages and ensure---

You find that the Council of Governors (CoG) do not want a model like the Kenya Revenue Authority (KRA) because the more the leakage, the merrier for many of them, such that they can ensure that this revenue being collected funds their lifestyles.

Madam Temporary Speaker, I heard Sen. (Prof.) Ongeru talk about County Integrated Development Plan (CIDP). It is very sad because the issue of CIDP has always been a problem across all counties. It is better we cast this in law. Regarding the CIDPs, the county governments went around the entire 47 counties, listened, synthesized, analyzed and up came with a report. They went into the county assemblies. Every citizen in all specific wards had their unique challenges or development needs. Interestingly, the CIDP reports are gathering dust in most of the county governments simply because they are disregarded.

So, I hope when this Bill becomes law, it will assist, in accordance with Section 53 of the County Governments Act, in using village councils, I hope they will now take public participation seriously. This law has said before that the people will be given the opportunity to identify specific development projects based on their needs. How county governments do this? The issue of public participation has now been turned into a photo session, tea or soda taking session, where people are being called and told: "We have agreed on this", but because the people are given soda, a loaf of bread or some Kshs200, they are not given the opportunity to ventilate on serious issues.

Since there is a case of CIDP, I hope the County Wards Equalization Bill will be taken seriously because it says that we will need to identify projects through the village councils. I think they have quoted in the spirit of Article 174(10) of the Constitution and many others, they will be able to handle that.

Madam Temporary Speaker, Clause 5 says that:

"It is not less than 15 per cent of the county government's allocation for development expenditure as provided for under Public Finance Management Act".

When you look at this Gross County Product Report and the Auditor-General's report, most counties were accused of either allocating zero per cent to development or even less than 20 per cent as provided for, which should be around 30 per cent to development. The issue is how we will ensure that county governments allocate this 15 per cent to development at the ward level. According to the Auditor-General's Report, which has also been circulated in the media, most of the county governments allocated zero per cent in terms of development.

When it comes to amendments, I want the Committee to relook and ensure that it is sanctionable for county governments. The county executive can decide to buy flowers, tea, national newspapers or everything but in terms of ensuring that the allocation of 15 per cent coming against the challenge of zero per cent to development because even my county is standing at 80 per cent in Recurrent Expenditure. The wage bill has just "busted".

Madam Temporary Speaker, the county governments are now employment bureaus. A new governor, like when my governor - I do not want to cast aspersions on other governors although they are in the public domain because on this I can prove - came in, he fired 1,000 people that had been hired by his predecessor and hired another 2,000 people on a three-year contract basis. The wage bill is now sky-rocketing and yet we are looking at the same money that is being allocated, and we are saying; after 30 per cent or 20 per cent has been allocated to Development, we come again and look at 15 per cent, to allocate to Development. That is why we are saying that own source revenue is very critical in sustainability, especially in development issues, in terms of collection of revenue at the public level.

Clause 7 states:-

- (1) The residents of each county shall identify development projects for implementation, in their respective county, in accordance with this Part.
- (2) The County Executive Member shall co-ordinate the process of identifying the projects for implementation under this Act in the respective wards and shall, for this purpose ensure public participation.

However, I want to request that we include the village councils and also the local leadership, because as it has been provided by the County Government Act, Section 53, No. 17 of 2012, there is already an elaborate provision under that Act, that has brought out and ensured that village councils can be used to identify projects.

Madam Temporary Speaker, this Chief Executive Committee (CEC) member co-ordinates, identifies and ensures the implementation of projects. I wish the village councils committees can still be used for follow up. This is because if the CECs are called by their boss the governor, he can say: "Because people in Ward A did not vote for me, I do not want that project to be implemented." In his wisdom, the CEC can just decide and say: "Let us remove these things; we will not do it because of one, or two vested interests."

Madam Temporary Speaker, I will still request that even as the CEC coordinates and ensures the identification process, we still need the village councils, the local leadership, the opinion leaders, civil society organizations (CSOs), the local community, among others, who can still identify the projects. We can even use the famous council of elders. We have the Luo, Kalenjin and Kamba council of elders. They come from those specific areas. We can still use them to identify these projects, because at the end of the day, we want to serve the community.

Let us not leave that unilateral decision to the CEC, Finance and Planning, and the wisdom of the governor. Because of vested political interests, the Governor might decide not to support development from a ward that did not vote for him.

Madam Temporary Speaker, on the issue of County Revenue Fund (CRF) formula – the Committee on Justice, Legal Affairs and Human Rights, the Standing Committee on Finance and Budget and the Committee on Devolved Governments and Inter-governmental Relations and I, are waiting for the report on the CRF formula. I know this year we are going for the national census. These are formulas that we would like to know.

I want to ask the county assemblies, in their wisdom, because I know they have the capacity to try to cascade down the Commission on Revenue Allocation (CRA) formula, so that if you are in Kisumu City County, Nandi County or Kitui County, for example, you can stay in Nandi because Tinderet Sub-County is marginalized. Let us cascade down the CRA formula. Let us cascade down in areas like Mosop and the other parts of Emgwen and Chesumei, in terms of poverty index, so that we ensure that we allocate revenue based on the strength.

Madam Temporary Speaker, I know we are almost coming to a close; if you could kindly add me two or three minutes so that I wrap up properly.

When you look at Article 43, on Economic and Social rights---

The Temporary Speaker (Sen. Nyamunga): Hon. Senator, I will give you another one minute, if you can manage to wind up.

Sen. Cherargei: Madam Temporary Speaker, finally, I want to say that this Bill has captured the spirit and substance of Article 43 of the Constitution on Economic and Social Rights. I hope our Members of County Assemblies (MCAs) will use this law, to ensure that we bring equitable and equal development across our counties.

Thank you. I support.

ADJOURNMENT

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the House. The Senate, therefore, stands adjourned until tomorrow, Thursday, 21st March, 2019 at 2.30 p.m.

The Senate rose at 6.30p.m