

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 1st March, 2016

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

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

PRAYERS

STATEMENTS

HARASSMENT OF RESIDENTS OF MACHAKOS COUNTY BY THE POLICE

Sen. Muthama: Mr. Speaker, Sir, I stand to seek two statements.

First, pursuant to Standing Order No.45(2)(b), I wish to seek a statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding the harassment of residents of Machakos County by the police.

In the statement, the Chairperson should:-

(1) State whether he is aware that almost all attempts by the residents of Machakos County to present petitions to the Office of the Governor have been violently disrupted by the police leading to arrests and prosecution of such residents;

(2) Explain why the following events by residents of Machakos County were disrupted or cancelled by the police;

(a) On 16th December, 2014, a caravan of residents doing civic education was violently stopped and participants arrested and arraigned in court.

(b) In mid-2014, some residents of Masinga sub-county were stopped by police in conjunction with the county inspectorate while on their way to present a petition on environmental degradation caused by uncontrolled sand harvesting activities.

(c) On 18th December, 2015, some residents of Katani and Mlolongo were violently dispersed and arrested by the police on their way to present a petition on the deplorable state of roads in their area.

(d) On 26th January, 2016, the business community from Machakos County led by the local officials of the Kenya National Chamber of Commerce and Industry were violently dispersed by the police while demonstrating against the illegal hiking of business levies by the County Government of Machakos.

(e) On 27th January, 2016, members of the business community from Tala Township were violently dispersed by the police while demonstrating against the illegal hiking of business levies by the County Government of Machakos.

(3) Clarify why on 29th January, 2016, which was a market day in Tala Township, more than 400 anti riot police officers were deployed in the township, which greatly inconvenienced market goers and caused great anxiety and fear amongst the residents.

(4) Explain the action being taken against the officers from the Kenya Police Service (KPS) and other persons who have and are still violating the provisions of Article 37 of the Constitution by repeatedly denying the public their right to assemble, demonstrate, picket and present petitions to public authorities in a peaceful way.

Mr. Speaker, Sir, I have another request for statement. I do not know whether I should proceed.

An hon. Member: Dispense with the first one!

Sen. Muthama: I stand guided.

The Speaker (Hon. Ethuro): Order, Sen. Muthama! Who is guiding you?

(Laughter)

Sen. Muthama: I am sorry, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): There is only one Chair in this House. Proceed to the next statement.

MANAGEMENT OF COMMUNITY AND PUBLIC
LAND IN MACHAKOS COUNTY

Sen. Muthama: Mr. Speaker, Sir, pursuant to Standing Order No.45(2)(b), I wish to seek a statement from the Chairperson of the Standing Committee on Land and Natural Resources regarding the management of community and public land in Machakos County. In the statement, the Chairperson should:-

(1) State whether, pursuant to Articles 62 and 63 of the Constitution, LR No.1491/R, being the piece of land in Kiima Kimwe, Muvuti Ward in Machakos County, is community or public land.

(2) Indicate the parcels of land in Machakos County that have been set aside for public utilities such as schools, health centres and recreation centres.

(3) State whether the Committee is aware that the National Land Commission (NLC) put up a public notice in the *Daily Nation* of 16th December, 2015 cautioning the public and making reservations on the use of the piece of land LR No.1491/R for investments on behalf of the County Government of Machakos.

(4) Explain the steps the NLC and the Ministry of Land, Housing and Urban Development have taken to address the concerns of the people regarding the said piece of land, especially the more than 2,500 squatters who are likely to be displaced, bearing in mind that there are two pending court cases on the matter; No.255 of 2009 and JR No.404 of 2013.

(5) Explain the steps the NLC and the Ministry of Land, Housing and Urban Development have taken to address the long outstanding land dispute in Mavoko sub-county between the local residents and the East African Portland Cement Company which, on 16th February, 2016 escalated to a physical confrontation leading to the death of one person and injury to several others.

The Speaker (Hon. Ethuro): Let us get a response to the first statement.

Sen. Haji: Mr. Speaker, Sir, before I give any undertaking, may I request Sen. Muthama to clarify one thing. Machakos is a huge county and unless he gives specific areas where the harassment took place, it will be difficult to pinpoint what to do about it.

Sen. Muthama: The information is there.

Sen. Haji: Mr. Speaker, Sir, if that is the case, we will require a week to give the statement.

The Speaker (Hon. Ethuro): It is so ordered.

Let us move on to the next statement. Is the Chairperson or the Vice Chairperson of the Committee on Land and Natural Resources here?

Sen. Khaniri: Mr. Speaker, Sir, given the weight of the matter and the numerous issues the hon. Senator has requested, I wish to give an undertaking that if the statement is ready, I will issue it in two weeks' time. If not, I will give a progress report.

The Speaker (Hon. Ethuro): Let us have it in two weeks' time.

Sen. (Prof.) Lonyangapuo.

SUPPLY OF FERTILIZER AND OTHER FARM INPUTS BY THE NCPB

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I have two statements to seek that are directed to the Chairperson of the Committee on Agriculture, Livestock and Fisheries

I wish to seek a statement from the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries regarding supply of fertilizer and other farm inputs by the National Cereals and Produce Board (NCPB) in light of the fact that agriculture is Kenya's main driver of the economy. In the statement, the Chairperson should:-

(1) Explain why the NCPB has not supplied fertilizer and other farm inputs to farmers ahead of the planting season this year, yet the long rains are about to start.

(2) State when the fertilizer will be availed in all the NCPB depots across the country.

(3) State what measures the Government will put in place to avert such scenarios in the future.

Mr. Speaker, Sir, may I move on to the second statement?

The Speaker (Hon. Ethuro): Proceed on to the second statement.

ACUTE FOOD SHORTAGE IN WEST POKOT COUNTY

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I rise, pursuant to Standing Order No.45(2)(b), to seek a statement from the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries, regarding the acute food shortage in West Pokot County occasioned by the prolonged *El Nino* rains which adversely affected food crops in the country.

In the statement, the chairperson should:

(a) Explain whether he is aware that owing to the food shortage, there is a looming hunger and starvation of the people of West Pokot County, especially Pokot North, Pokot Central, some parts of West Pokot and Pokot South districts.

(b) Explain whether he is aware that school going children are already adversely affected and many of them are unable to regularly attend classes.

(c) State when the Government will supply relief food to the affected areas.

The Speaker (Hon. Ethuro): Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries.

Sen. Murungi: Mr. Speaker, Sir, I have listened to the request of the two statements from Sen. (Prof.) Lonyangapuo. With regard to the statement on fertilizer, it is rather broad and it requires a lot of information to be put in place. This is because he is requesting for information regarding all the depots in the country. I request for two weeks to enable the Ministry to prepare for us a comprehensive statement.

Secondly, I request for two weeks also to respond to the statement regarding food security in West Pokot County.

The Speaker (Hon. Ethuro): Sen. (Prof.) Lonyangapuo, you should have no quarrel on that one.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I appreciate what my senior colleague has said. However, looking at the statements I have sought, for example, the first one, there is need for immediate action to be taken because rains are about to set in and our farmers need fertilizer to plant their crops.

The second statement is in regard to people's lives. Therefore, I would appreciate if he can bring this statement in one week's time or less.

The Speaker (Hon. Ethuro): Sen. Murungi, even if the information sought in the first statement is about all the depots in the country, I do not think professor is implying that you visit all of them. Surely, there must be a system in place.

Proceed, Senator.

Sen. Murungi: Mr. Speaker, Sir, I am very obedient. I always seek guidance from the Chair. Let me make an attempt to get a statement from the Ministry of Agriculture, Livestock and Fisheries within a week and then report to the House.

The Speaker (Hon. Ethuro): It is so ordered.

IMPLEMENTATION OF THE BASIC EDUCATION ACT (2013)
ON OUTLAWING CORPORAL PUNISHMENT IN SCHOOLS

Sen. Wangari: Mr. Speaker, Sir, I rise pursuant to Standing Order No. 45(2)(b) to seek a statement from the Chairperson of the Standing Committee on Education regarding the implementation of the Basic Education Act (2013) and the Kenya Gazette Notice of 13th March 2001, outlawing corporal punishment in schools.

In the statement the Chairperson should state:

(a) If the Government is aware that corporal punishment is rife in our schools;

(b) The steps the Government has taken on the alleged extreme corporal punishment meted out on female students by male teachers in Keveye Girls High School, Vihiga County;

(c) The statistics of corporal punishment cases received by the Ministry of Education in the last three years per county;

(d) The outcome of cases of corporal punishment cases received in the last three years per county; and,

(e) The steps the parents, teachers and students are supposed to follow when reporting cases of corporal punishment.

The Speaker (Hon. Ethuro): The Chairperson of the Standing Committee on Education, Sen. Karaba.

Sen. Karaba: Mr. Speaker, Sir, I will make sure it is answered in two weeks' time.

The Speaker (Hon. Ethuro): It is so ordered.

Sen. Murungi: Mr. Speaker, Sir, I rise pursuant to Standing Order No.45(2)(b).

(Loud consultations)

Mr. Speaker, Sir, protect me from the loud laughter of the *Emeritus* Sen. Wako.

The Speaker (Hon. Ethuro): Order, Sen. Wako! Do you know how you have been referred to in the House? Not only are you considered having a loud laughter, but apparently you do not listen.

(Sen. Wako spoke off the record)

(Laughter)

Order, Sen. Wako!

Proceed, Sen. Kiraitu.

TARMACKING OF ROADS IN MERU COUNTY

Sen. Murnngi: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.45(2)(b) to seek a statement from the Chairperson of the Standing Committee on Roads and Transportation regarding roads in Meru County. In the statement, the Chairperson should clarify the following:

(1) Which roads are earmarked for tarmacking by the Kenya Rural Roads Authority (KERRA) in Meru County in the 2015/2016 and 2016/2017 financial years?

(2) Could the Chairperson lay on the Table of the House a list of all roads in Kenya identified by KERRA for tarmacking under the 10,000 kilometres Low Volume Seal Roads Programme by KERRA?

(Sen. Wetangula spoke off the record)

It is not annuity. It has now been changed. What was Annuity Programme is now called the Low Volume Seal Roads Programme which is a low cost road programme to be implemented by KERRA.

The Speaker (Hon. Ethuro): Order, Sen. Kiraitu! I thought you were in the House when I was advising Sen. Muthama that he should only take counsel from the Chair and not from other entities.

Sen. Murungi: I sincerely apologize, Mr. Speaker, Sir. I was distracted by the Senate Minority Leader who is notorious for distracting Members. I will proceed.

(3) Given the fact that Lewa-Kibirichia-Kurua Road in Buuri Constituency and Athiru-Gaiti Road in Igembe South Constituency had been advertised for construction by KERRA under the Low Volume Seal Roads Programme---. This has been stopped by the Council of Governors through a court order. Given the fact that these roads are in a

deplorable state and impassable, especially during the rainy seasons, what urgent steps is the Government taking to resolve that court case so that construction of these roads can start?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I congratulate the distinguished Senator for Meru for bringing that request for statement. In further response to that statement, will the chairperson of that committee also tell the House that the so called annuity programme now christened “Low Volume Seal Roads Programme” was never an intention of Jubilee to tarmac any road, but rather a fraudulent ploy to hoodwink voters to vote them into office and has since evaporated and, therefore, there is no road being tarmacked in the country under that programme.

Sen. Murungi: Mr. Speaker, Sir, would I be in order to request you, under your immense powers under Standing Order No.1, to expunge the remarks made by the Senate Minority Leader who was purporting to ride on my question and distorting its intentions? There was every intention to fix these roads by the Jubilee Government. I request that the roads programme be implemented as stated by KERRA and the roads have already been advertised.

The Speaker (Hon. Ethuro): Order! Indeed the rider by the Senate Minority Leader has no leg to ride on to your horse. I do not need to seek through corners for any extra powers. A rider must be relevant to the question raised. This was negating the issue.

Sen. Karaba: Mr. Speaker, Sir, that question by the Senator for Meru is a question which might attract very many counties in this country. It is better for the Cabinet Secretary (CS) to be summoned here to come and tell us what is happening with the roads. Not many roads have been tarmacked under the Low Volume Seal Roads Programme in all counties.

The Speaker (Hon. Ethuro): Order, Sen. Karaba! The Chair has heard you and will make that determination.

Sen. Sijeny: Mr. Speaker, Sir, I request for three weeks because it is quite a comprehensive statement which has been sought. We, as a committee, have summoned the CS for Roads. He was to appear today, but he did not because he is out of the country right now. He has missed to appear before us on several occasions.

Currently, we are informed he is coming back in two weeks’ time. That is why I seek for three weeks. If he comes before the three weeks, I will notify all the Senators and then we can have him in our usual *Kamukunji*. However, for record purposes, within three weeks or when we summon him; whichever comes first.

Sen. Murungi: Mr. Speaker, Sir, I appeal to you. I have requested for a list of all the roads in Kenya identified by KERRA under the Low Volume Seal Roads Programme. That list is already in existence whether the CS is there or not. Could we have the list within one week as we wait for the CS to be summoned to appear before the House? It might help us interrogate him when he comes.

Sen. Sijeny: Mr. Speaker, Sir, in that circumstance, I ask for two weeks. However, if we get it earlier we will convey.

The Speaker (Hon. Ethuro): Under those circumstances, Madam Vice Chairperson, you should have agreed with Sen. Murungi. He is demanding a list which should be in existence. Get the list within one week and the other information should be ready in two weeks’ time.

So, ordered.

Sen. Kembi-Gitura: Thank you, Mr. Speaker, Sir. I rise under Standing Order No.45 (2) (b) to seek a statement from the Chairman of the Standing Committee on Public Accounts and Investment.

(Loud consultations)

Mr. Speaker, Sir, I cannot hear myself because of the noise behind me.

The Speaker (Hon. Ethuro): Order, Sen. Kembi-Gitura! What is the purpose of communicating? Is it to hear yourself or to communicate to others? I have no problem hearing you.

REPORT OF SPECIAL COMMITTEE ON PROPOSED REMOVAL FROM OFFICE BY
IMPEACHMENT OF HON. MWANGI WA IRIA GOVERNOR OF MURANG'A COUNTY

Sen. Kembi-Gitura: Mr. Speaker, Sir, I rise under Standing Order No.45(2)(b) to seek a statement from the Chairman of the Standing Committee on County Public Accounts and Investments regarding the report of the Special Committee on the proposed removal from office by impeachment of Hon. Mwangi Wa Iria Governor of Murang'a County, dated 6th November, 2015. In particular, I seek that the Chairman of the Committee addresses the following issues and gives the people of Murang'a a way forward:-

1. Allegation 2; Paragraph 212

The Committee, having found that there was violation of the law, should investigate and determine from whom and how, the Kshs28,849,800 which was illegally used to fund private enterprise from public funds, should be recovered.

2. Allegation 10; Paragraph 219

Can the committee look into whether or not procurement laws were breached and make recommendations as necessary to protect public funds from misuse and or misappropriation?

3. Allegation 11; Paragraph 220

Considering that the Special Committee recommended that the matter of the land measuring 34 acres or thereabout, bought for Kshs340 million be investigated by the Public Procurement Oversight Authority and the Ethics and Anti Corruption Commission:-

(1) Can the Committee see to it that this is duly done and action taken as necessary to protect public funds?

(2) Can the Committee also establish the true value of the land as of the time it was bought?

(3) Can the Committee give a way forward on the several recommendations given in the Report for the purpose of attaining restitutive justice, where necessary, so that public funds are not lost?

Thank you.

Sen. Wamatangi: Thank you, Mr. Speaker, Sir. The matter that has been raised by Sen. Kembi-Gitura is a matter similar to several other matters that are pending before the Committee on Public Accounts and Investment. This Committee is as of now still in

limbo because it has been unable to transact its business after the ouster of the duly then elected Chairman.

Since the pending business and especially the one that has been raised by the Senator for Murang'a is important business for this House, this country and for what we stand for, I seek your direction on this issue because this Committee requires to get to work as soon as possible.

The most fundamental issue that I would want to be addressed by the point of order that I have raised is that, following what has happened in this case, and this is a House that relies and operates on precedence, does it imply that in future, if any side of this House is unhappy with the goings on inside a committee, it means that the committee can be rendered in-operational or dysfunctional by the simple act of de-whipping a sitting Chairman?

Even after the business of this Committee has been reinstated, there is another occurrence where there will be a case that, maybe, one side of the House is unhappy with, then the only thing they would do to render that Committee dysfunctional is to de-whip the Chairman and then the Committee cannot sit.

Mr. Speaker, Sir, I seek your indulgence; does it mean the committee becomes dysfunctional by the action of de-whipping of a Chairman? Does it require that the Committee continues with its business with the existing Members who are from both sides of the House? It is dangerous because what will happen is that if at any one time with this precedence, I would ever find myself or any other Members on the side where we carry the mandate to de-whip a chairperson, then that would be the easiest route to make sure that any business that may not please me inside that Committee can be executed by the simple act of taking the letter to be received, stamped and that Committee can sit in limbo. Is this the precedence?

The Speaker (Hon. Ethuro): Thank you for that intervention. Sen. Wamatangi, I do not know which precedence you are talking about.

Sen. Wamatangi: Mr. Speaker, Sir, ---

The Speaker (Hon. Ethuro): Order, Sen. Wamatangi! I have heard you and I know your concerns. I am just saying there is no precedence set. I will make a ruling on your matter tomorrow afternoon. In the meantime, Sen. Wamatangi, since I know you are a Member of the Committee and the Committee is still there, you can also assist the House by - I do not want to say duty of care; there is the one Sen. Kembi-Gitura says, "out of necessity", - undertaking that the Committee will respond - whatever becomes of the Committee - to deal with Sen. Kembi- Gitura's matter in two weeks' time?

Sen. Wamatangi: Thank you, Mr. Speaker, Sir. I am most obliged by your guidance. The precedent I was referring to is precisely what has happened now because, in future, it will become precedence. However, on the latter, with regard to what you have said, although the Vice Chairman of the Committee is in the House, we can undertake - if we will be back in business - to give that answer in two weeks and only if the Chairman we will elect is not going to be de-whipped again. In case he is de-whipped again, we may find ourselves back in the same spot. That is my concern.

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir. I have sought a statement and I am hearing other arguments which have nothing to do with what I have sought. However, I am grateful that you are going to make a ruling tomorrow which we shall await.

In the meantime and for good order, if the only thing the Committee is lacking is the chairman because the Chairman has been de-whipped, and the Committee is duly constituted under Standing Order No.212, there is a quorum and a duly elected Vice Chairman, I do not understand what Sen. Wamatangi means by saying that the Committee cannot conduct its business because the Standing Orders do not say so. There is a Committee already in place. If it has a quorum, then it should do business that it was elected to do.

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

The Speaker (Hon. Ethuro): Order, Senators! I have said that I will make a ruling on this matter tomorrow, unless somebody has a burning intervention from the other side.

Sen. (Dr.) Machage: Mr. Speaker, Sir, whereas I respect your advice that you will make a ruling tomorrow, I am concerned that a message of bad repute has been put to the Floor of this House against the Vice Chairperson of the Committee. Is Sen. Wamatangi in order to suggest in any way that the Vice Chairperson of the Committee is incompetent, unable and not willing to execute any duties that appertain to that Committee?

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Machage! You are completely out of order. You are deliberately misrepresenting Sen. Wamatangi. That is not what he said.

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

The Speaker (Hon. Ethuro): Order! Let me dispose of this matter, which is very clear.

Sen. Muthama, be brief.

Sen. Muthama: Mr. Speaker, Sir, I will be brief. The mandate of whipping and de-whipping of Members in parliamentary Committees in the two Houses rests with the whips. The whips take actions arising from the consultations that have taken place within the parties. What happened in this case is not the way it is being put. The candidate was sponsored by the other side of this House. We, as Coalition for Reforms and Democracy (CORD), have a position and nobody has the mandate to ask about it.

Secondly, the positions of the Chairperson and Vice Chairperson of that Committee belong to the opposition. Since, elections took place after the Members of our coalition had walked out, we take it that there were no elections. That is why we are where we are and will remain there until the Speaker gives his ruling on the matter.

I rest my case.

Sen. Okong'o: On a point of order, Mr. Speaker, Sir. We do not need to mislead this nation. I am the substantive Chairperson of the County Public Accounts and Investments Committee (CPAIC). Letters were done immediately without consulting my party, FORD-Kenya. For people to purport that I am de-whipped, without whipping, is misleading the nation. As you make your ruling, let it be known that parliamentary procedures and democracies must be followed, instead of just following self interests. Whips should take their positions when they de-whip; you do not de-whip without whipping. Nobody was whipped in our coalition. I had eligible votes and unanimously won. I was even supported by the outgoing Chairman, Sen. (Dr.) Khalwale, but other offices think that they can hold Kenyans at ransom by writing letters and making unilateral decisions. My party leader is aware of this issue and was even on radio saying that he supports my candidature.

My reliable sources indicate that the process of de-whipping me from that Committee is on hold. I will make decisions as it comes, but we do not need to hold this Committee hostage. We have substantive work. This is the nerve of devolution and individuals with partisan interests should not hold this Committee hostage. However, I await your ruling.

The Speaker (Hon. Ethuro): Order, Senators! If you just allowed me to make the ruling tomorrow, you would not be making your partial views. You would want to contribute from an informed position.

What is it, Sen. Billow?

Sen. Billow: Mr. Speaker, Sir, we have a parliamentary democracy and we must respect it. If a Member in this House is a Member of the Opposition and he has not formerly crossed the Floor to the Government side, he remains a Member of the Opposition, as per the records of the House. In fact, if any Member of that group wishes to work for the Government, they are at liberty to cross the Floor. However, to the extent that someone is still in the Opposition and has not crossed the Floor, you cannot throw out your baby from your house simply because he is disabled or has got some small medical problem. That is your team; please, respect the law.

Sen. Abdirahman: Mr. Speaker, Sir, it would have been in order for all of us to wait for your ruling tomorrow, since you proposed that, but this is a matter that does not affect the entire House. It is a matter that affects CORD. The top leadership has spoken---

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(Sen. Wamatangi spoke off record)

Sen. Abdirahman: Sen. Wamatangi, let me speak. This is not a personal matter. I wonder why it hurts you so much if it does not affect you at a personal level or as a coalition on the other side. If you had no interest, you would not have spoken.

Mr. Speaker, Sir, the CORD leadership has spoken—

The Speaker (Hon. Ethuro): Order, Senators! This is a matter that should not evoke emotions.

Sen. Abdirahman: Mr. Speaker, Sir, I am not speaking out of emotions. I want to do it soberly and say that the CORD leadership has spoken. We have consulted seriously and before your ruling, we will also give you our position. This should not give us unnecessary protracted wrangles, particularly from the Jubilee Coalition.

Sen. Wamatangi: On a point of order, Mr. Speaker, Sir. First, you heard what Sen. Muthama said; that their coalition walked out of the elections and the Chairperson was elected by this side. During the elections of CPAIC, which I sit in, when Sen. (Dr.) Khalwalwe was elected the first time, he was given votes by all of us, including me, and he served as the Chair.

For the second time, we gave Sen. (Dr.) Khalwale the mandate to lead the Committee, including a deputy from the opposition. We gave them our votes as Jubilee and CORD. It is worth noting also that, indeed, the Jubilee Coalition has voted for Sen. Wako to sit in the Committee. Why have they not de-whipped him? Sen. Madzayo has also been given a seat by the Jubilee Coalition. Therefore, the argument that is being fronted does not hold water.

As Sen. Billow said, we must respect parliamentary democracy. It is absolute contempt for the Committee to wait for an election to happen and then after the election, de-whip the duly elected Chairman. We have been unable to prosecute vital business for this House because of that action. If we do not speak against oppression now, when shall we do it?

The Speaker (Hon. Ethuro): Order, Senators! Unless there is some reason you think the Chair is not competent enough to handle the matter, just allow me the opportunity in the next 24 hours to deal with this matter.

My office has capacity, information and is privy to all the things you are discussing here. Our job is to filter all of them, look at the law as it is, examine the facts and give guidance.

I will bring this to a close and we proceed with our business. You are invited to my Chamber if you feel there is additional information. I do not think this is proper use of our time.

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

The Speaker (Hon. Ethuro): Sen. Orengo, the problem with small points of order is that they generate other small points and you know small points become big points.

I will allow the last point from Sen. Orengo and it better be small.

Sen. Orengo: Mr. Speaker, Sir, I fully respect the direction you have given us and that you are going to have the last word on this. I was just worried about the kind of amnesia that was coming, respectfully, from Sen. Wamatangi. The precedence was set when this Senate convened. Sen. (Dr.) Khalwale was a Member of the Implementation Committee, nominated by the Jubilee Coalition at that time. By the way, there are no nominations from political parties, but coalitions, so there is no basis of saying this or that political party. I want to remind Sen. Wamatangi, with respect, that when Sen. (Dr.) Khalwale dared to vote for me as the Chairman of the Implementation Committee, he was immediately dewhipped and removed from the Implementation Committee and all the other Committees until, in sympathy, our coalition had to adopt him. That memory should serve us well.

The Speaker (Hon. Ethuro): The final one from the Whip, Sen. Elachi.

Sen. Elachi: Mr. Speaker, Sir, I know it is an issue for a party, but we never dewhipped Sen. (Dr.) Khalwale because of the Implementation Committee. It was the Committee for Finance, Budget and Commerce. We had not done election then. If the elections were held, I do not think we would dewhip our members although they have gone against the party position.

(Loud consultations)

I would plead with the Senate - where we have elected Senators in every county to represent the interest of that county, if we will start discrediting each other because of capacity, then we are going to make this issue political. Let us handle it in party meetings, but not on the Floor of this Senate.

The Speaker (Hon. Ethuro): Order, Senators! I am not going to entertain any more points of order.

Even if you are threatened with being consumed with the burning fire, you will not be the first one to survive a burning fire. It happened in Genesis, so you will also survive this one.

To dispose of a few things as we put them on record, because this is a House of record, I want to confirm as I sit today that the Committee had elected a Vice Chairperson. I also want to confirm that the statements are usually addressed to the Chair, but the Vice Chairperson or any other Member of the Committee, can respond. Even a substantive response can be brought by a Member. When Sen. Wamatangi took the undertaking on behalf of the Committee, it is perfectly in order. The rest of these things will be sorted by tomorrow. That is clear.

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): I hope it is not on this.

Sen. Kembi-Gitura: I just want to know when the statement will be given.

The Speaker (Hon. Ethuro): Two weeks, Sen. Wamatangi?

Sen. Wamatangi: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Hon. Senators, that is the end of statement time.

Hon. Senators, I want to make an appeal. If you look at your orders, Order Nos.8, 9, 10, 11, 12, 13, 14, 15 and 16 are all for Division. Since we have the numbers, I would encourage that we pend this business so that we can dispose of this other business, but we shall revisit it later.

I am encouraging all of us to remain in the Chamber. We will dispose of the business as follows:-

We will vote on Order Nos.9, 10, 11, 12 and 13 before coming back to the Motion. We must contribute to this Motion and also dispose of it today. After the voting, you can take a break as others debate then be available to vote on Order No.8.

I order that the Division Bell be rung for 30 seconds.

(The Division Bell was rung)

Hon. Members, the 30 seconds are over.

BILLS

Third Readings

THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLY APPROVAL)
BILL (SENATE BILL NO. 201 OF 2014)

(Resumption of Debate interrupted on 24.02.2016)

DIVISION

ELECTRONIC VOTING

*(Question, that The Public Appointments (County Assembly Approval) Bill
(Senate Bill No.20 of 2014) be read a Third Time*

put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Wamatangi, Kiambu County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Okong'o, Nyamira County; Sen. Orenge, Siaya County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

NOES: 0

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

AYES: 27

NOES: 0

ABSTENTIONS: 0

(Question carried by 27 votes to nil)

*(The Public Appointments (County Assembly Approval) Bill
(Senate Bill No.20 of 2014) was read a Third Time and passed)*

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

(Resumption of Debate interrupted on 24.02.2016)

DIVISION

ELECTRONIC VOTING

*(Question, that The HIV and AIDS Prevention and Control
(Amendment) Bill (Senate Bill No 4 of 2015) be read a Third Time put
and the Senate proceeded to vote by county delegations)*

AYES: Sen. Abdirahman, Wajir County; Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Wamatangi., Kiambu County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos

County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

NOES: 0

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

AYES: 27

NOES: 0

ABSTENTIONS: 0

(Question carried by 27 votes to nil)

*(The HIV and AIDS Prevention and Control(Amendment) Bill
(Senate Bill No 4 of 2015) was read a Third Time and passed)*

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

(Resumption of Debate interrupted on 24.02.2016)

DIVISION

ELECTRONIC VOTING

*(Question, that The County Industrial Development Bill
(Senate Bill No. 7 of 2014) be read a Third Time put and the
Senate proceeded to vote by County Delegations)*

AYES: Sen. Abdirahman, Wajir County; Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Karaba, Kirinyaga County; Sen. Kembu-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Wamatangi., Kiambu County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

NOES: 0

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

AYES: 27

NOES: 0

ABSTENTIONS: 0

(Question carried by 27 votes to nil)

(The County Industrial Development Bill (Senate Bill No. 7 of 2014) was read a Third Time and passed)

MOTIONS

ADOPTION OF MEDIATION COMMITTEE REPORT ON THE NATIONAL DROUGHT MANAGEMENT AUTHORITY BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2013)

THAT, the Senate adopts the report of the Mediation Committee on the National Drought Management Authority Bill (National Assembly Bill No. 42 of 2013) laid on the Table of the House on Thursday, 3rd December, 2015

(Sen. Wangari on 24.2.2016)

(Resumption of Debate interrupted on 24.2.2016)

DIVISION

ELECTRONIC VOTING

(Question, that the Senate adopts the Report of the Mediation Committee on the National Drought Management Authority Bill (National Assembly Bill No. 42 of 2013) put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Wamatangi., Kiambu County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

NOES: 0

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

AYES: 27

NOES: 0

ABSTENTIONS: 0

(Question carried by 27 votes to nil)

(The Report of the Mediation Committee on the National Drought Management Authority Bill (National Assembly Bill No.42 of 2013) agreed to)

ADOPTION OF REPORT OF AD-HOC SELECT
COMMITTEE ON COUNTY HEADQUARTERS

THAT, this House adopts the Report of the Ad-Hoc Select Committee on County Headquarters laid on the Table of the Senate on Thursday, 3rd December, 2015

(Sen. (Eng.) Muriuki on 24.2.2016)

(Resumption of Debate interrupted on 24.2.2016)

DIVISION

ELECTRONIC VOTING

(Question, that the House adopts the Report of the Ad Hoc Select Committee on County Headquarters put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Karaba, Kirinyaga County; Sen. Kembu-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Wamatangi., Kiambu County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

NOES: 0

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

AYES: 27

NOES: 0

ABSTENTIONS: 0

(Question carried by 27 votes to nil)

(The Report of the Ad Hoc Select Committee on County Headquarters agreed to)

COMMUNICATION FROM THE CHAIRVISITING DELEGATION OF STAFF FROM KILIFI, NYAMIRA
AND WEST POKOT COUNTY ASSEMBLIES

The Speaker (Hon. Ethuro): Hon. Members, present in the Speaker's Gallery this afternoon are visiting staff from Kilifi, Nyamira and West Pokot County Assemblies. The staffers are here on a five day attachment visit to similar departments at the Senate. I request each member of the delegation to stand when called out so that they may be acknowledged by the Senators in our great usual tradition.

Kilifi County Assembly

1. Stanley Suma
2. Omar Chuvi
3. Alfred Mumba
4. Samson Katana

Nyamira County Assembly

1. George Nyamiaka
2. Geroge Bosire
3. Jacklyne Nyamboga

West Pokot County Assembly

1. Paul Kibet
2. David Ruto

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.

Thank you.

MOTIONADOPTION OF REPORT ON THE MEDIUM TERM
BUDGET POLICY STATEMENT, 2016

Sen. Billow: Mr. Speaker, Sir, I beg to move:-

THAT, this House adopts the Report of the Standing Committee on Finance, Commerce and Budget on the Medium Term Budget Policy Statement, 2016 laid on the Table of the Senate on Thursday, 25th February, 2016.

Mr. Speaker, Sir, on behalf of the Members of the Committee on Finance, Commerce and Budget and as required under the Second Schedule of the Senate Standing Orders, I present to this House this Motion whose deadline is today. It is significant for me to mention that the Medium Term Budget Policy Statement, 2016 is the critical document in the budget circle that is prepared by the National Treasury because it is the basis upon which all subsequent budget documents are prepared.

It also sets the stage at which Parliament and by extension the public gets the feel of the main areas of expenditure as well as the revenue policies and debt levels that form the next financial year. In brief, the document sets out the broad objectives, policy goals

and the strategic objectives that guide the national and county governments in preparing their budgets for the financial year and the medium term.

Mr. Speaker, Sir, pursuant to Section 25 of the Public Finance and Management Act and its Regulations, the Committee assessed the compliance to this provision. The key context of the Budget Policy Statement (BPS) includes an assessment of the current state of the economy and the financial outlook over the medium term. It also includes the financial outlook with respect to government revenues, expenditures and borrowings for the next financial year and over the medium term.

It also looks at the proposed expenditure ceilings for the three arms government and indicative transfers to the county governments. It has the fiscal responsibility principles and the financial objectives over the medium term and has the total resources to be allocated to projects within different individual programmes, projects within the sectors, ministries, departments and agencies.

The approval of this Report will communicate the Senate's position on the preparation of all the subsequent budget documents for the remainder of the financial year beginning with the Division of Revenue Bill, 2016.

Mr. Speaker, Sir, the Committee has had the opportunity to look at the budget policy statement in detail and has received the views of the chairpersons of the various departmental committees of the Senate. Twice, we also had a meeting with the National Treasury Cabinet Secretary including this morning to get the Treasury's views. After looking at the entire document, and having considered the views, we came up with the recommendations. May I briefly go through the recommendations and then I allow the Members to contribute.

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

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

The Committee recommends as follows: There are three main areas or broad issues in the Budget Policy Statement (BPS) this year. The first one is the national policies and programmes that have a direct impact on economic performance. The second is with regards to the counties. These are issues regarding transfer of county functions alongside the additional financing. Thirdly, issues of the division of revenue.

Mr. Temporary Speaker, Sir, on enabling national policies and programmes, we recommend the synchronisation of the Social Safety Net Funds at the national and county levels through establishment of a common single register. We are concerned that some counties have also started similar funds and the national Government has got Safety Net Funds that are disbursed through the Ministry of Labour, Social Security and Services. Our concern is that the duplication is likely to create a situation where some particular beneficiaries might benefit both from the counties and the national Government. So, we are calling for a system where the Government either devolves that responsibility to the county governments completely or develops a strategy or policy through which there is no duplication.

I will only highlight the key recommendations that Members can see on Page V of the Report. Another thing that we suggested under the same heading relates to preventive, promotive, reproductive, maternal, antenatal, child and adolescent health

programme which currently is under the Ministry of Health. We feel that the programme can best be undertaken by the county governments. The Treasury should discuss with the Ministry of Health and consider devolving the programme to the county governments.

On the implementation of the managed equipment services – the equipment that has been leased by the Government to referral hospitals – we have realised that it has taken long and we urge the Ministry to hasten, so that the targets that have been set can be achieved.

Mr. Temporary Speaker, Sir, I want to look at the State Department of Livestock. Livestock is part of the Ministry of Agriculture, Livestock and Fisheries and it accounts for nearly 13 per cent of the Gross Domestic Product (GDP). We felt that the reduction of the vote of the Ministry of Agriculture, Livestock and Fisheries from Kshs7.1 billion last year to Kshs6.8 billion next financial year is likely to hamper the performance of the Ministry in terms of value addition, establishment of livestock disease-free zones and fast-tracking modernisation of the meat processing plants and so forth. Therefore, we recommend that the Treasury should consider increasing the allocation to that Ministry.

In the Judiciary, we have looked at a number of recommendations that are there regarding the fast-tracking of completion of courts which have been under construction for a long time because there are quite a number in a number of counties. At the same time, we have also recommended that the Government synchronises the establishment of county offices for the Director of Public Prosecutions (DPP). In this BPS, there are plans to establish 15 county offices for the DPP. We think they should be synchronised with the additional new courts that are coming up, so that the entire justice system works together in tandem.

Regarding the Independent Electoral and Boundaries Commission (IEBC), we also raised concerns about eight million new voters who need to be registered in the next year before the election but the amount of money allocated for registration of voters is not adequate. We have recommended here that Treasury must consider allocating more resources, so that more people can be registered.

Mr. Temporary Speaker, Sir, the issue of leasing of police motor vehicles and the police housing is a matter that has been raised on the Floor of this House before and in Parliament generally for a long time. Our police forces do not have adequate housing. Nearly 20,000 or 30,000 police officers are not properly housed. Our main concern is that although Parliament votes substantial amounts of money for security, the money is domiciled under the Office of the President. We have realised that the money is rarely released for construction of houses and so forth. So, we are recommending that the leasing of motor vehicles by the police and the housing for the police be domiciled under the National Police Service Commission (NPSC), so that we can fast-track the whole process of efficiency in the police service.

We have recommended that the Treasury together with the Ministry of Foreign Affairs and International Trade need to come up with a policy to guide capital expenditure in foreign missions in the context of buying houses and offices as opposed to rentals where the Government is currently paying exorbitant amounts of money on rental properties.

Lastly on this item is the issue of demand for teachers. There is a shortage of nearly 100,000 teachers in the schools in this country yet there is no provision for recruitment of additional teachers. We have recommended to the Treasury that they

should provide funding to the Teachers Service Commission (TSC) to recruit at least 25,000 teachers in the next financial year. This is critical because a lot of money is being spent by Constituencies Development Fund (CDF) to build new schools. A lot of schools are coming up yet there are no teachers. The rate of attrition is also significantly higher than the number of teachers that are being provided in the replacements. I will not go into the details of that.

Mr. Temporary Speaker, Sir, I want to go to the second part on the transfer of outstanding functions. We have recommended – Members can see that on Page IX of the Report – that all the county health functions be transferred fully; including free maternity programmes although this is a national Government policy. However, in effect, it is something that is being done and the money can be disbursed through the sharable revenue. These include free maternity programme, slum health upgrade, the cancer mitigation and control and so forth.

Mr. Temporary Speaker, Sir, the programmes on crop development and productivity, agribusiness and information management, irrigation and land reclamation, fisheries developments, livestock resources management and the rest ought to have been transferred according to the Constitution. These functions should be transferred by the Ministry instead of the national Government spending a lot of resources in Nairobi on them.

In the Ministry of Sports, Culture and the Arts, we recommend that functions such as library services ought to have been transferred as required in the Constitution, so that the Government does not spend money.

We have also mentioned about regional development authorities and water service boards. We have said that the Government needs to fast-track the review of the legal framework and restructuring of the institutions, so that ultimately the amount of money, that is, Kshs3.78 billion, being proposed for the regional development should not have been provided for. The Government should fast-track that programme and devolve these functions. So, there are a number of other functions that are there in the recommendations. Members can read for themselves.

Mr. Temporary Speaker, Sir, on division of revenue, Members of our committee have recommended that conditional allocations as per Article 202 need to be kept to a minimum, in view of Article 187 on transfer of functions between levels of government. In particular, the essence of devolution is about equitable resource allocation. So, the sharable revenue should be the focus of devolution. So, conditional allocations should only address critical issues which would not be funded in any other way, like Level 5 Hospitals and the other allocations such as the Road Fuel Levy Fund, the Leasing of Medical Equipment and so forth.

The second recommendation, with regard to division of revenue, is that the Committee notes that some county road functions are still held by the national Government through the Kenya Urban Roads Authority (KURA) and the Kenya Rural Roads Authority (KERA). The Committee proposes that the equitable revenue share be provided to finance county roads. We know that substantial amounts of kilometres of roads were transferred when reclassification was done recently. But the amounts of funds that have been allocated or provided in the shareable revenue may not be adequate. We

recommend that the Treasury considers allocating money to cover roads that have been devolved to county governments.

The Committee also notes that the Budget Policy Statement (BPS) uses a very conservative revenue growth rate in the computation of equitable revenue share. Actual revenue realisation seems to differ from the growth rate used in the BPS. Thus, the Committee recommends that the official rate of growth of revenue should be used as a minimum to compute the equitable share. This is important because the single most important factor in determining how much more additional revenue should be provided over last year for the coming financial year, is based on the growth of revenue. As much as possible, we want the Treasury to be consistent in the parameters that they use and how those parameters are arrived at. So, the actual percentages of revenue realised should be used to determine the allocation of revenue to county governments.

Mr. Temporary Speaker, Sir, there are many other recommendations regarding counties. Let me mention just two more before I conclude. The Treasury should strictly adhere to the approved county cash disbursement schedule and give it priority. In addition, there is also need to prioritize and consider critical aspects of some functions like maternity services. Last year, because of the cash crunch at the Treasury, county governments had their money delayed significantly for almost two to three months. This affected operations and led to some counties borrowing money. Even disbursement of funds for maternity and so forth were delayed. So, we have recommended that the Treasury must seriously stick to the provisions of the law, which require that they remit the money at the beginning of every month.

There are resources that have been provided to the Ministry of Education, Science and Technology. We need to ensure that we provide money specifically to the ministry of education to ensure that each county has at least one nationally funded Technical and Vocational Education and Training (TIVET) institution. This will ensure equity in the provision of TIVET education which is critical towards the realisation of Vision 2030. As we speak, nearly 30 counties probably have TIVET centres and there are still many others that do not have. This is important because the world is moving towards technology and it is important that we have these technical colleges that are properly equipped and funded so that we can provide that.

I have gone very briefly through the recommendations. There are specific recommendations that we have made with regard to some critical areas like Information and Communication Technology (ICT). We have asked the Government to prioritize allocation of money to fast-track the development of horizontal and basic infrastructure, for example, in the Konza City project that has been on for some time. We also need to ensure completion of the county connectivity project. Many of the counties are not connected up to now and they have serious challenges in terms of connectivity which affects the utilisation of Integrated Financial Management Information System (IFMIS), operationalisation of e-procurement and so forth. I think it is very important that we enhance the implementation of the second phase of the national optic fiber backbone infrastructure so that we can address the issue of the last mile connectivity.

Mr. Temporary Speaker, Sir, let me not go through everything since Members can read the rest of the report for themselves. I want to conclude by saying that the BPS should clearly state when the second phase of the construction of the Standard Gauge

Railway (SGR) is set to begin and the exact route that it will follow, including extension to port cities like Kisumu. Those are the recommendations.

I express my appreciation to all those who provided us with information, particularly the Cabinet Secretary (CS) and the Principal Secretary (PS) in the Treasury, the Commission on Revenue Allocation (CRA) who also appeared before the Committee and other written contributions that were made by other stakeholders. I also express our gratitude to the office of the Speaker, the Clerk of the Senate, the Parliamentary Budget Office and all Members of the Committee on Finance, Commerce and Budget, who were instrumental in the preparation of this Report.

I beg to move.

The Temporary Speaker (Sen. Mositet): Who is your seconder?

Sen. Billow: Mr. Temporary Speaker, Sir, the Senator for West Pokot can second.

(Sen. (Prof.) Lonyangapuo's microphone went off)

The Temporary Speaker (Sen. Mositet): Sen. (Prof.) Lonyangapuo, you can do it from the Dispatch Box.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I rise to second this Motion as presented by the Chairperson of the Committee. There are many issues that have been raised. As he said, some of the issues have been raised even to the Treasury. When you talk about enabling national policies and programmes, what comes out very clearly is that there are functions that have been devolved. Any such functions should no longer be held by the national Government as already stated in the Fourth Schedule of the Constitution. For example, since health has been devolved, it is not good for the national Government to continue holding and keeping more money in the Treasury and yet the functions have gone to the ground.

Mr. Temporary Speaker, Sir, on page 6, item 6, we are stressing on energy renewal and that we need to put more emphasis on solar and wind power. You note that we have plenty of sunshine in Kenya and many of our counties can use it. This point is very clear for county governments and the national Government to undertake. Some of our towns and cities need lighting during the night. It is not good that we continue using this expensive power and yet we can put more money into power generation. That is why it talks about setting aside money for solar and wind power. Some counties, without knowing what they are doing, have decided to buy these huge masks and they do not benefit in the evening because nobody uses them for business. If you go to Lodwar where there is plenty of sunshine, you will find an entire mast of electricity power that goes to waste during the night. In my town of Kapenguria, we have six of them which nobody is using and a lot of money is paid per month. So, it will need to encourage tapping of solar and wind power.

Again, if you look at page 6, item 7, the report talks about our Committee seeking additional funds to enhance programmes for Arid and Semi-Arid Land (ASAL) areas that keep livestock. Today, people who live in these counties depend on livestock and their lives entirely rotate on the animals. It is a pity that we have not given them additional funds to upgrade their livestock and even process livestock products. In my county, a meat processing plant was built in a place called Nasuguta where previous Governments spent over Kshs120 million. Unfortunately, I am told that they are currently downgrading

it to a mere slaughterhouse. This is why this Committee has proposed that the Treasury allocates more money to counties that have animal products and also depend on animals. Some of them can come up with meat processing plants in order to utilize the milk, hides and skins.

Mr. Temporary Speaker, Sir, in the next page, this Motion indicates that the Judiciary is given a lot of money. However, sometimes because of their inability to absorb for development, the money is not spent. It is important that we also mention that the national Government informs the Treasury to engage particularly the technical staff in counties. Such staff includes the county works officers, architects, engineers and so on, rather than purport to be giving tenders in the headquarters in Nairobi County for a whole building to be constructed in Mandera, Lamu or my county of West Pokot.

Today when I talk to my former colleagues in the Ministry of Public Works, I was happy to know that for the first time now, some of the ministries that previously pretended to be working and thought that they could give some of these tenders to themselves have now gone back. That is why we now have a new Department called Public Works. Some people wanted to kill it. Unfortunately, we cannot kill a Ministry that will keep our nation united. We can run away from it, but we will come back to them.

Many people need to be registered by the IEBC. I propose that the National Treasury allocates more money to the IEBC to register eight million new voters. There is no politics here. It is not a matter for the CORD or Jubilee coalition. We must give Kenyans an opportunity to exercise their right to vote, particularly in the coming elections.

In my county, I have over 100,000 Kenyans who have not been registered as voters. This is a huge number, but they do not have identification cards. We need to fast track issuance of these cards so that our people register in large numbers as voters. We ask county Governments whose people have not been registered, to work together with the national Government. They should avail some of the vehicles they use at night to do other things to IEBC. The vehicles can be used to move staff and register people, particularly pastoralists who are always on the move.

This committee has proposed that the leasing of motor vehicles by the police and housing project be domicile under the National Police Service (NPS). This is true so that it becomes easier to monitor. We need to ask the national Government how much we have been spending on hiring of vehicles. The Government stopped buying vehicles one year ago. We should do cost-benefit analysis and see how much we are saving as a country.

In some counties, some of the Admiralty Police vehicles, particularly the areas that used to be hit most by cattle rustlers before, are lying idle in the parking yards. The vehicles are now escorting the governors everywhere, making strange noises in the name of sirens. Therefore, we need to know how we are benefiting from this. Yes, it is true that they need to be increased, but the policy of managing these vehicles is very key. In the counties, we are also hiring ambulances. In some counties an ambulance is hired at Kshs600,000 per month, whether you have a patient or not. We should have a firm policy to measure value for money.

During the presentation by my chairman, one critical item that came up is the realization that we have a problem in the Teachers Service Commission (TSC). All our

primary and secondary schools have an acute shortage of teachers. It is a pity that at this time in Kenya, over 50 years after Independence, we can still claim that we have a shortage of teachers that is more massive than we had before. The committee is proposing 25,000 teachers, but we have a shortage of over 80,000 teachers. In my county alone, I have 2,961 primary school teachers on duty with a shortage of 2,023 teachers. That is about 40 per cent deficit.

The children have a right to education under the Constitution. This Government should be sued for not enabling these children to go to school. Some go to school and start playing for lack of teachers. In secondary school, I have 580 teachers and a shortage of 532 teachers. That is a staggering 48 per cent deficit. If this what is happening in West Pokot, what is happening in Turkana, Mandera, Lamu, Nairobi and other counties?

The Constituency Development Fund (CDF) has found its way back to Parliament. The current Constitution anticipates devolved funds. However, our colleagues in the “lower” House conspired with the national Government to have it given back to them. They are using it for construction of classes and some police housing. We are in a scenario where it is the teacher that is missing and their houses. We can use that money, over Kshs35 billion per year to employ teachers. We can engage them as teachers under Schools’ Boards of Governors. Even if we cannot pay them a full TSC salary, we can pay them better than what they are being paid, at least Kshs20,000 to Kshs30,000 per month. That way we can mitigate this shortage.

On page 8, No.16 says-

“Kshs3.7 billion, be re-allocated for the programme on integrated regional development under the State Department for Environment to respect counties.”

There are some regional authorities whose analysis on what they have been doing for the last three years is shocking. For example, Ewaso Nyiro, Kerio Valley Development Authority (KVDA), Coast Development Authority (CDA), and so forth. These bodies need to be closed very fast. The money used should be divided according to the counties that they serve. Their original buildings can be rented out and the rent shared to all the counties annually. The authorities seem to be “lost” since the counties came.

On crop development and productivity; these sectors should all be transferred from the National Government. This is correct. On schedule four, most of these have been devolved, including the National Cereal Produce Board (NCPB). A few minutes ago I have asked about availability of fertilizer. Not all counties require fertilizer in the bulk that we see in the counties. It is important that counties like Trans Nzoia, Uasin-Gishu, Nakuru, West Pokot, part of Western Kenya and so on are keenly looked after so that we have sustainable and genuine food for our people. We should not import food whose genetic makeup we do not know. Treasury and the national Government should look at that keenly.

We are giving Governors money for development. They should sit down and call all the relevant elected leaders before they pop up with their building plans. The national Government officers on the ground have been evicted by these people. County Governments now engage young architects and engineers who have never been on duty to drive some of the constructions we see. Two or three months after a road has been built, the tarmac comes off. It is important that some of the constructions done go to the standards that were generated in 1932 and are domiciled in the Department of Public Works under the Ministry of Land, Housing and Urban Development.

The national Government has created a team that goes to every county to check the quality and standards of the buildings we have, including the new ones. A certain Governor quickly chased some of these officers when they visited. Already they had evaluated 3,000 houses in Nairobi. When they went to Mombasa, they were chased back to where they came from. These houses in Mombasa do not belong to the Governor. Send him to West Pokot. When I send officers there, the fellow thinks it is his own home. This message should be clear.

It is important that we send out a clear message so that there the things that we do are for posterity; they should last more than a term of individual governors, most of whom are rude and do not adhere to rules as stipulated in various circulars that they have been given.

Mr. Temporary Speaker, Sir, I am happy that my committee and my Chair has presented most of these issues. We should revisit the Constitution and find out what it says about many of these issues. For example, there is talk of extending the term of the Transition Authority (TA) so that they can oversee the transfer of most of these functions. We know what is supposed to be transferred and it is important that we do not hold money. Why should we have over Kshs50 billion in the Ministry of Health in Nairobi when you are giving very little to the counties? We need to analyze what has been devolved; that is, the money that goes to the counties and the money that remains in Nairobi. When we compare and contrast, we will be able to notice that we may be transferring some of these roles without funds.

I second.

(Question proposed)

Sen. Elachi: Thank you Mr. Temporary Speaker, Sir. I rise to support the Report and thank Members of the Finance, Budget and Commerce Committee for the work they have done since last week. I want to also thank all the chairpersons of the various committees that presented their recommendations to this Committee.

Mr. Temporary Speaker, Sir, when you look at the Budget Policy Paper we have six key pillars that the national Government is trying to address. The key pillar among all these is the pillar on sustained sectoral spending for employment creation. This is a pillar that deals with agricultural transformation which is now very low. We know that we have minimal resources that have been allocated to the sector and we hope as we give in our recommendations that the Ministries of Treasury and of Agriculture, Livestock and Fisheries will come up with a clear policy since agriculture is a devolved function.

We will work hand in hand to ensure that we create more employment opportunities. We know that, of late, many Kenyans are suffering while this is a sector that used to empower many. I hope we can look at it again. We have many from the counties who have gone to the Galilee Institute for different training and we do hope the training they have gone through and the skills they have acquired will be implemented in their counties. I also hope the Agriculture, Livestock and Fisheries and the Health Committees will visit the institution which has fantastic capacity building that can help counties to transform this agenda.

Mr. Temporary Speaker, Sir, the other agenda that is critical is the issue of sustained investment in social services for the welfare of Kenyans. This is a sector that

concerns healthcare and deserves scaling up social safety nets, empowering the youth, women and persons with disability and this is where we also have so many funds that have been created at the national and the county governments. When you look at these funds - I hope that as we now interrogate this policy - we shall be able to look at how we can enhance some of these funds so that they can transform lives as we thought.

You find that the Constituencies Development Fund (CDF) has a bursary scheme, the governors also have a bursary scheme and I know that the President has his own bursary scheme. I think if we bring that together, we will be able to have a better fund that can be given to needy children who will be able to pursue education from Form One to the University as opposed to giving out money based on how you supported the Member of Parliament. I think it is time we came out as Kenyans and realized that we collect all these monies from our revenue. This money belongs to Kenyan taxpayers and they would want to see services being given to all.

Mr. Temporary Speaker, Sir, we now have the Affirmative Action Fund for women that is also going to deal with the issue of bursary. Then we ask ourselves why it is that we still have children in constituencies who are unable to go to school and yet they got 300 or 400 marks in the KCPE results. This is something that we need to investigate.

When we talk of health - I want this Senate to now look critically at health as a devolved function - it is time we got back and sat down with the Cabinet Secretary of Health Dr. Cleophas Mailu and came up with clear proposals. As we speak, most of the doctors have now left. We need to have key hospitals in counties where doctors can be retained through incentives.

This is something we can work with the national Government. For example, if there is a surgeon at the county level and the sub district hospital is in need of one, they can call on that doctor at the county to go to the sub district hospital and assist. This is something we must put in place so that the doctors and nurses who are there are able to be contained and be given better packages. This Senate should come up with that policy to ensure it works.

Mr. Temporary Speaker, Sir, we now have a CDF which is supposed to deal with national functions. We also need to ask ourselves whether really this function goes to a county. They also need to re-look at their policies. We do not need to continue building classrooms without rationalizing the number of teachers. That is why year in, year out, we are having challenges of teachers because every Member of Parliament who comes in does not want to enhance the facilities that he or she got in their constituency; instead, they was to build another new school from scratch. You find children joining those new schools but the next thing you hear is that they want the Teachers Service Commission (TCS) to post teachers there and yet it is us who are creating these challenges in the counties.

Mr. Temporary Speaker, Sir, CDF should have a clear policy. If it is education they want to tackle for our country, let them have a policy. They can even employ teachers. The teachers who are employed by the various Boards of Governors and Parents and Teachers Associations can be boosted by additional teachers employed by the CDF, as the Government tries to improve the situation. If the Government remains with these resources that have now been allocated to the Affirmative Action Fund, it can put them to better use by either employing teachers or doctors. These are basic services which the Constitution has assured as basic rights for all Kenyans.

As the Senator of West Pokot said, we are losing a lot on the regional boards and institutions that we created, which were fundamental at that time. The Transitional Authority (TA) has gone and we cannot bring it back. If we could not extend the term of the Constitutional Implementation Commission (CIC), then the TA cannot continue. The assets that we are talking about were supposed to be handled by the TA. If the TA has recommendations or proposals to ensure the regional boards and institutions are devolved in a manner that we shall not have conflict between counties, then we could be safe. But knowing Kenyans and our governors, there will be conflict and some of these institutions will be run down. We must have a guiding framework.

A good example is the Kerio Valley Development Authority (KVDA) that covers six counties. How would you tell West Pokot, Samburu, Uasin Gishu or Elgeyo Marakwet Counties that they will share? We need to determine whether they need to continue the way they are and then share the resources. That is why we need a framework that guides us in this process. Now that the TA's term has ended, how will we ensure that we protect sensitive assets like land which, may be, only the governors know about? We know that a good number of our governors do not want to share such information. For example, in Nairobi, you can easily lose your land, especially if you do not pay your land rates.

Even if you go to the governor, he will have to go back to the Ministry of Lands, Housing and Urban Development to help you get back your land. Many landlords have lost their property in such circumstances. As the Senate, we need to safeguard resources for Kenyans without bias or taking partisan positions. Let us give Kenyans hope that they can bring a petition to this House regarding these issues and that it can help them to get back their property.

It is my hope that when we will be considering the Division of Revenue Bill, we shall also re-look at the things that we have entrusted the governors to do. We have to be candid about it. That is why the Committee on Finance, Commerce and Budget is critical at this point. Since the TA's term has ended, this Committee should have come up with key areas to follow up in the counties. It should work closely with the Controller of Budget and the Auditor-General to find out the pending issues that we can safeguard for the sake of Kenyans. During election time, Kenyans will want to know whether there should be a Senate.

No one is even talking about the personnel that have been employed in the counties, especially those on contract. Now that the Senators will have resources for oversight, we should ask for documents of individuals who are working in the counties, even if they have five year contracts. What safeguard measures have we put in place to ensure that when a new governor takes over, for example, people will not take them to court for not paying their dues? We need to address this issue as the Senate. Many Kenyans, including doctors are worried as we go to elections. That is why we face a big challenge during political engagements with the civil servants in the counties. Most of them think that since they were employed by the governor, when he leaves, they are also supposed to leave. We need to assure them that they will be there even when the next governor comes. It is only the political appointees and politicians who will go. We must safeguard our employees in the counties so that they can be protected from politics.

With those remarks, I beg to support.

Sen. Wangari: Mr. Temporary Speaker, Sir, I rise to support this Report, which is work well done by the Committee on Finance, Commerce and Budget. The Budget Policy Statement (BPS) is the first most important budget document because it is where the cycle begins. It is the first interaction that Parliament gets in the budget making process. It is where as the representative of the people we are meant to make serious input in terms of how our taxes are spent and monies are allocated. That is exactly why this was done. I also want to thank the Committee for inviting the Cabinet Secretary to clarify issues and making sure that the BPS went to all the standing Committees. We interrogated the policy in the Committees.

I want to pick a few issues in the Statement. Matters of health are critical. In fact, the biggest customers of any health provision in this country are women and children. I know we have had many issues. The Committee has also noted that we need to improve in terms of money disbursement to the counties. As we know, this is a fully devolved function, but the challenges that we are facing in the counties are enormous. We have issues of negligence and maternal deaths that were preventable. People even die in ambulances. These are issues that we can be dealt with even at the county level.

Mr. Temporary Speaker, Sir, recently, we had an issue in Nyeri that was reported in the media of a woman who gave birth while standing in a Government hospital. That baby, of course, did not survive. This is just one case that was reported. Many other cases have been reported in the past and we have requested for Statements here to do with negligence. We must look at the national Government and fault it in terms of the release of money for free maternity care. It must be timely and reliable. We must prioritize this during our engagement with the National Treasury, to prevent deaths.

The other issue is cancer prevention, which is a programme under the Ministry of Health that is carried out in the counties. This money should be released and prioritized. The other issue on health is lease of equipment.

I know that we have queried this issue in statements, but we have not got satisfactory answers. Article 189 of the Constitution envisages that these two levels of Government must have some kind of cooperation between them. It is not so difficult to share information unless we have something to hide. We must make sure that we expedite this issue of lease of equipment. We know that the Council of Governors also has a subcommittee which must be involved in the process. When this equipment is taken to the counties, it will be the responsibility of the governors whom we will point a finger at if they do not work properly.

Mr. Temporary Speaker, Sir, we must look into the issue of manpower to run the equipment. We need to get officers trained properly so as to avert the issues of misdiagnosis that we have had before. We have had injections done on patients by persons who were not qualified. These are issues that we must canvass. As Committees, we have picked up some of these issues. The Committee on Labour and Social Welfare has picked up the issue of human resource which has been raised by Sen. Elachi. We know that with the exit of TA, there will definitely be a gap. We need to fast track this matter.

We, as the Senate, have generally had issues with the funding of our committees. The issue of per capita funding is not working for our committees. We had planned meetings to go and deal with emerging issues, but we could not because we do not have

the budgetary allocation. We are suffering. We are doing a disservice to this country when we do not get proper reports.

We cannot produce such reports in Nairobi. We may need to visit the affected counties to do proper audit. In the last two weeks, we have tried to set up meetings of the Committee on Labour and Social Welfare, but it was impossible due to lack of money. We need to petition the PSC to give us adequate budgetary allocation. This is because most of the work that we do in this House is not prosecuted in the Plenary; it is done in the committees. When committees are not facilitated to do their work, they are blamed for not fulfilling their mandate.

Mr. Temporary Speaker, Sir, we complain everyday that random hiring is being done. In fact, currently as we are dealing with the issue of pension in the county governments. You will discover that we still do not have proper records on the duties of the employees; which employees are on contract and who are permanent and pensionable. That can only be done when we do a proper human resource audit and ensure that systems are implemented.

I agree with the Committee on the issue of the IEBC; that what they are doing is not enough. If they plan to register the 8 million people they are targeting, more needs to be done. If you look at the way the exercise is being conducted now, you will find that every ward has been awarded two BVR machines. Some wards are as big as a constituency. You cannot put one station to serve the whole ward and expect to reach the target with that kind of resource. The officers are also stationed there without seats or tents. They sit in the sun yet they are expected to work and deliver results. We must look at the budgetary allocation of IEBC. We must know how the money is allocated to them and spent so that we get value.

Mr. Temporary Speaker, Sir, I am also passionate about the issue of cash transfer programme and this was canvassed at the Committee on Labour and Social Welfare. This is the money that is allocated to the vulnerable groups in the community who include women, orphans, children and people with living with disabilities. They have been allocated about Kshs17 billion. The Senator for Kitui County has raised this issue with us previously. We asked the Ministry to provide us with data of the transfer monies which is a major budget yet we have not received satisfactory answers. We have made recommendations that we must get one single register of these beneficiaries in every county broken down to the ward level. It is possible to do so with the kind of ICT technology that we have today. We would like to know that if an individual benefits from the Ophaned and Vulnerable Children (OVC) programme from the national Government, and if the county government has a similar programme of that nature, then that individual should not benefit.

We have visited many counties such as Kiambu, Nakuru and several other counties to find out whether the county governments have alternative programmes to the cash transfer and we found out that they do. However, they do not care about what transpires in the national Government with regard to the cash transfer programme. We do not have people who are for the national government and others who are for the county governments. Therefore, as we deal with the budgeting process this year, we should get money to consolidate and get one single register where one can find out who is benefitting from the cash transfer programmes run by the county governments and the

national Government. As it is, the money is not enough because we still have very many vulnerable and deserving cases.

Mr. Temporary Speaker, Sir, that confusion is what is also bringing the issue of corruption. We have people who benefit from such programmes when they should not. However, this cannot be determined because the register is not readily available while others are done under the table. It is unclear who benefits and what amounts are from the county governments. This will be important if we are to account for the billions of shillings.

Looking at Page VI, recommendation No.(iii); that the National Treasury should consider amendments to the Public Finance Management (PFM) Act of 2012. I challenge the Committee that it is not the National Treasury to do these amendments. If we feel that we need to look at the PFM Act as Parliament, it is very important that we look at these laws ourselves and give recommendations. The issue of a longer period to consider the budget policy statement is very critical. If you look at the way it is now, it is supposed to be submitted to Parliament by 15th February. However, they normally wait until the last day. If they submit on 15th February, we only have 14 days to deliberate and give a report on it. We have raised this concern because that is not sufficient time. We have really struggled with it at the Committee level. I know that we can do with more time. I, therefore, challenge the Committee to initiate these amendments where necessary so that we deliberate and get enough time to canvass on these issues.

The issue of police housing is one that we have talked about, over and over again. We have talked about the demeaning conditions that our police officers with families live in. Some of them live in *mabati* houses that are not in good condition. We must consider the individuals who are allocated those houses. You will find that an officer has been posted to Mombasa, but has been allocated a house in Embakasi. We need to look into such issues so that genuine individuals benefit.

Mr. Temporary Speaker, Sir, the issue of teachers is very thorny. We have always talked of how we have a shortage of over 80,000 teachers. We should raise enough money and put it in the budget. It is also very important for us to consider the issue of sports because it is a devolved function. We need the Budget Policy Statement (BPS) of the coming year to reflect on what has already been achieved. If you look at this report, you will see that we have mentioned that five stadia will be build in Naivasha and other areas of the country. Come next financial year, how then do we review whether they report progress. If they said that they will build a stadium in Naivasha and we gave allocation for that, do they report progress in the next year? It is very important that we monitor what has been put in this report so that we are not just a “talk House”. If we allocated a certain amount of money, and it was not used, we must find out where the money goes to. Was it carried forward or retained?

Mr. Temporary Speaker, Sir, the issue of anti-doping is important. As a country we should take clear measures to avoid bans from international competitions. That also falls under the Committee on Labour and Social Welfare. We had already talked about it.

Concerning the issues of library services, we have a Bill pending in this House which will ensure devolution of management of these services. Sen. Gwendo has brought a Bill to deal with that issue but this should be noted; we must look at Article 187 of the Constitution to know how well these library services will be managed because they are in the counties. They are not in the air. We should look at other issues, for instance, social

halls to know how much is released this year and for what. We can monitor come the next financial to ascertain value.

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

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I rise to support this Motion in respect of adoption of the Committee's Report. However, I support it with an amendment. I, therefore, wish to move the amendment which is:-

I beg to move:

THAT, the Motion be amended by deleting the full stop after the figure 2016 on the third line and inserting the following words: “, subject to amending the recommendation of the Committee on paragraph 109(f)(iii), page 49.

The Temporary Speaker (Sen. Mositet): Order. The amendment he is talking about is on the Motion. After the words, “25th February, 2016” instead of a full stop, he is referring to a comma.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, for clarity if hon. Senators could look at the Report of the Committee on page 49 which is the second last page of the report; I am amending paragraph 109(f)(iii) on Division of Revenue.

Mr. Temporary Speaker, Sir, the amendment I want to make on (iii) is as follows:-

The Temporary Speaker (Sen. Mositet): I hope hon. Senators are following.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I would like to guide the Chairman that the amendment is on page 49, paragraph 109(f)(iii) on Division of Revenue. The amendment I want to make is by deleting all the words after the word “recommence” on the fourth line and inserting the following words in place thereof:-

“THAT, the official average rate of growth of revenue over the last four years of 13 per cent should be used at the minimum to compute the equitable share for the year 2016/2017.”

The Senate Minority Leader (Sen. Wetangula): Can you read slowly?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, could the office of the Clerk distribute those copies of the amendment?

Thank you.

“THAT, the official average rate of growth of revenue over the last four years of 13 per cent should be used at the minimum to compute the equitable share for the year 2016/2017”

Mr. Temporary Speaker, Sir, may I give a brief background. The House will recall that in the last financial year, you appointed Sen. Kagwe, Sen. Elachi and I to the Mediation Committee on the Division of Revenue Bill. We did very well. We raised candid issues. However, we were knocked out on the very strong position by the National Treasury and the National Assembly; that, whatever it was that we were advancing, had not been canvassed for in the Budget Policy Statement (BPS). So, I am provoked to make this amendment. In the event that the Division of Revenue Bill will end up in mediation and should it require that there is need for us to increase the allocation as proposed by the National Treasury, that amendment should find when we have already made this provision in the BPS.

Mr. Temporary Speaker, Sir, by this provision I mean – hon. Senators, I have gone through the Parliamentary Budget Office report on this BPS. I have a document which I have shared with a few Members. In this Report, the total revenue collection in

the country has been growing. For the Financial Year 2011/2012, it was 12 per cent. It grew to 13 per cent in the Financial Year 2012/2013. It grew further to 15 per cent in the Financial Year 2013/2014 and to 14 per cent in the Financial Year 2014/2015. Therefore, for these four years that have been captured, the average growth in total revenue in the country is 13 per cent.

Therefore, armed with that knowledge, we now go to the BPS. Those of you who have a copy of the document called BPS; it is stamped "secret." It is a document from the journals office. On page 68, the National Treasury has put a table, 5.3, which shows equitable revenue share allocation to county governments. From it, they inform us that, whereas the money that went to the counties was Kshs259 billion for the last financial year, they are proposing that for this financial year, it should be Kshs280 billion. When you follow the legend of that table; what has informed the increment from Kshs.259 billion to Kshs280 billion is something they call adjustment. They say that they have adjusted from Kshs259 billion to Kshs280 billion by a factor of 7.9 per cent.

I would like the House to remember that the same adjustment was done in the last Division of Revenue Bill. That time they used 10.4 per cent. Therefore, the amendment I am making introduces a scientific basis for that adjustment. Whereas, in the last financial year, the adjustment was 10.4 per cent, it was informed by the fact that the total revenue collection had increased. So, they needed to adjust it upwards. In this financial year, again, the revenue has increased, they are adjusting upwards but why are they using an arbitrary figure of 7.9 per cent?

I am informing the House that the scientific way to do it would be to use the same factor by which the revenue collection is increasing. So, if the revenue is increasing by 13 per cent, then it follows that the adjustment factor should be 13 per cent. That is the purpose of the amendment. I request the whole House to see that if we do not put this factor, should we go to mediation, then the Senators who will represent us will be found exactly where we found ourselves last year, when we were told, "okay, what you are saying is correct but you passed the BPS without these amendments."

I therefore, urge the House to support this amendment.

Mr. Temporary Speaker, Sir, if we are not careful, they do not disclose everything to all stakeholders. We are critical stakeholders and they have not disclosed to us that 7.9 per cent that is used to adjust is arbitrary. They should have disclosed that they have abandoned the scientific figure of 13 per cent and used an arbitrary figure of 7.9 per cent. They failed to disclose.

When the National Treasury sought the views of the members of the public on the Budget Policy Statement - I have a document they used - they told the public that they were going to give the county governments Kshs285 billion. What they told the public is not what they informed this House. I have a copy of the document that they used to inform them how much they would grant the county governments.

Mr. Temporary Speaker, Sir, secondly, we cannot accept reduced allocations to counties. Many governors have made mistakes in the past. With the permission of the lady Members in the House, allow me to cite a hypothetical example. A father who works in Nairobi as a cook and has nine children under the care of his beloved housewife sends money to support the family. If the wife does not put it into proper use, the husband cannot resort to denying the family sufficient funds because the mother misappropriated. Instead, he will give more money to make sure that the children have food, clothes,

school and lastly correct the wayward wife. In this case, some of our governors - with due respect since they are not our wives - have made mistakes and, therefore, the errors should not blind us to punishing the children who are the residents of the respective counties.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I beg to second this amendment. However, before I second, I want to seek direction from the Chair. My understanding of the Standing Orders is that after the secondment, the Chair proposes the Question and we will have to dispose it off before we go back to the original Motion. Having no voting numbers this afternoon, it means this debate will go on tomorrow. I have substantial information to contribute on the main Motion as well.

The Temporary Speaker (Sen. Mositet): The Senate Minority Leader, the procedure is exactly the way you have described. I do not know why you are presuming that there is no quorum.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, the error is on the face of it. In law, we say records do not lie. We have nine Members including the Chair.

In seconding this amendment, I am rightly driven and convinced by the reasons advanced by the Senator for Kakamega County, reasons that I believe the Chairman of the Committee to which the three of us belong will have no difficulty with. Budget and figures are scientific and one can approximate where there are no real figures. In the last census that caused this country many problems, the then Minister responsible told us that after he had received the census figures, he had to sit with his officers and smoothen the aggregates. There is no room for smoothening figures when they are explicit.

The table that Sen. (Dr.) Khalwale has read to the House - I had the opportunity to read through it carefully and being figures from the Treasury and not *Omutata's* on the streets - indicate that for the last five years, there has been a stable average revenue growth rate of 13 per cent. In trying to share resources, the progressive growth rate should be pegged on the real figures.

If the growth rate of revenue collection was 10 per cent, we will be unreasonable to demand 13 per cent progression in sharing. If it is 13 per cent from the Treasury itself, then it is arbitrary and unreasonable to drop to a lesser figure. We are not sharing abstract figures between the counties and the national Government. Whatever the formula we have, it must be scientific and properly calculated to the nearest decimal point. That is what equity is all about.

Mr. Temporary Speaker, Sir, in Shakespeare's *Merchant of Venice*, there was nothing less in a pound of flesh close to the heart as equity for Shylock. I urge the House to agree with the Sen. (Dr.) Khalwale that for avoidance of doubt - we lawyers say that; to specify one is to exclude others. In Latin we say *expressio unius est exclusio alterius*.

Sen. (Dr.) Khalwale has stated clearly in his amendment that what he wants is to end the paragraph in Clause (f) (3) which recommends, instead of going on then:-

“That the official average rate of growth of revenue over the last four years of 13 per cent should be used at the minimum to compute the equitable share for FY2016/2017”.

As the custodian of the interests of counties, we will have no difficulty in the country moving from 13 to 20 per cent even if it is unreal but we shall have serious

difficulties in moving below the scientific accepted average because if you move upward, then it means taking more resources to the counties which we fight for all the time. Anything less means denying counties their legitimate expectations of the share of revenues.

Mr. Temporary Speaker, Sir, consequently, it is absolutely important that this amendment finds favour, in a bipartisan manner, from Members of this House so that at the end of the day what will be shared will be worthwhile for the counties. Importantly, the point that the Mover has said is that, this will happen in the event that we reach a stalemate with the National Assembly. In law, we have a doctrine of *estoppels* which provides that what you were supposed to say but you did not say, you cannot say it now. This is the time for us to lay our claim and stake so that when we get there we say that this is not being wise after the event and that it has been our position all along, so that we are not *estopped* from raising new matters. It is like a good lawyer advising that you have no case then he eventually turns round and say that you have a case or *vice versa*.

He is *estopped* from advancing an argument contrary to what he started with. That is *estoppel*. They may ask you; *Ulipovamiwa*, what did you say? Will you say it was not me or it was me? This is what Sen. (Dr.) Khalwale talked about and it is with hindsight of experience. He, our Chairman, and Sen. Elachi went to mediation and they were confronted by exactly the same nightmare that we are trying to sidestep now. When we say that we want more money for counties, Kirinyaga needs more money for irrigation or the distinguished Senator for Mandera needs more money to build a wall along the border and so on and so forth, then, we will say that even then we said what you are computing was incorrect and now we need a correct computation.

Mr. Temporary Speaker, Sir, therefore, I urge the House that this amendment is not unreasonable or inconsequential; neither does it negate the intention, the spirit and the letter of the Motion that has been very ably moved by the Chairman of the Committee.

I urge that we support it. I, therefore, beg to second.

(Question of the amendment proposed)

The Temporary Speaker (Sen. Mositet): Members, you will be contributing to the amendment.

Sen. Nabwala: Mr. Temporary Speaker, Sir, I rise to support the amendment which has been proposed by Sen. (Dr.) Khalwale. The amendment is a very reasonable proposal going by the figures which are before us. The average revenue, as he stated, was 13 per cent over the past four years. The Treasury should not, therefore, use arbitrary figures or percentages to deprive counties of money.

When you look at the Budget Policy Statement (BPS) on revenue projection - that is on No.67 on Page 18 - you will realise that they have projected revenue in the 2016/2017 Financial Year to be Kshs1.5 trillion, which is 20.6 per cent of the Gross Domestic Product (GDP). That is from the current Kshs1.36 trillion which is 21.1 per cent. So, 7.9 per cent is really depriving counties money when we know that counties are having problems, the health sector faces problems, doctors are not being paid and we need to buy sufficient drugs in counties. We need to equip hospitals in the counties so that they can match hospitals at the national level.

We know that our people are dying because of starving the health sector with money. The Abuja Declaration states that not less than 15 per cent of the money should be allocated to the health sector yet at the moment, what is being allocated to health is a paltry 3 per cent.

I agree with Sen. (Dr.) Khalwale that this amendment be approved by the House, so that counties are given sufficient money by using the 13 per cent of the revenue growth. The Government is still safe because it has projected twice the figure that it is trying to allocate to the counties. I, therefore, support the amendment.

The Temporary Speaker (Sen. Mositet): Sen. Billow Adan Kerrow, Chairman of the Committee.

Sen. Billow: Mr. Temporary Speaker, Sir, I rise to oppose the amendment although I understand the rationale behind the proposed amendment and the good intention the Senator has for increasing the revenue that goes to the counties. However, when we were doing recommendations in our Report, we were very careful not to use the figures 13 per cent or so. We wanted to be certain that when we look at the Division of Revenue Bill, we should use the actual exact figure which we will have determined.

In our Report, the Committee recommends that the official rate of growth of revenue should be used at the minimum. The Member talked about the official rate of growth of 13 per cent over the past four years. What is not determined is the official growth rate of 13 per cent. That is why I do not support it because this is a House of record and we might end up using figures that are not accurate.

The Commission on Revenue Allocation (CRA) in its report that was tabled in this House provided the actual rate of growth. On Page 27 of the report that was tabled here, the growth of the total revenues average for the four financial years 2011/2012, 2012/2013, 2013/2014 and 2014/2015 is, in fact, 18 per cent. That includes Appropriation-in-Aid (A-in-A). So, if you remove the A-in-A, the figure that the CRA has which is from the audited Exchequer accounts of the Auditor-General's report is actually 14.2 per cent. So, my concern is to put a figure that will not then be in tandem with the actual figures that have been determined by the auditors. I think that is not necessary.

Secondly, it is good to have consistent basis for determining the revenue growth because it has always been an average of three years and that is what we have been using for the past three years. In this case, the Senator is proposing an average of four years. That will create inconsistency in terms of the trend. We deliberately left it open so that when we come to the Division of Revenue Bill, we will have an opportunity to discuss the rate of growth by looking at the actual official figures.

I oppose.

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, I wish to support the amendment. If you look at the detailed report, in (iii) on Page 24, the Committee itself contents that the Budget Policy Statement (BPS) uses a very conservative revenue growth rate. It says actual revenue realisation differs from the growth rate used in the BPS. The Committee, in its report says that the average actual revenue performance for the last four years is about 13 to 14 per cent. Therefore, the rate of revenue should be used at the minimum to compute the equitable share for 2016/2017 at 13 per cent. That is contained on page 24(iii) of the report that we are looking at.

Mr. Temporary Speaker, Sir, I, therefore, support that we benchmark the increase in the equitable share on the actual revenue growth rate which is 13 and 14 per cent. The Chairperson of the Committee has brought in the argument that part of this could be the Appropriations-in-Aid. Probably, this is what we need to question; whether this 13 to 14 per cent growth is consistent across ordinary revenue and Appropriations-in-Aid.

The BPS has recommended that we use 7.9 per cent in computing the increase in equitable share. I have not seen where that has been justified. In as much as the Committee calls this 7.9 per cent conservative, to me, it is arbitrary. This is because I have not seen where it has been justified. The 13 to 14 per cent has been justified on page 24 of the Committee's Report. It is important that there is consistency. Otherwise, arbitrariness will open the doors to situations where we will think that one part of the Government is fighting another part.

The CRA had earlier proposed that counties get Kshs331 billion on the basis of a 15.09 per cent increase in equitable share. In fact, CRA had proposed 15.09 per cent and the Senate is proposing something slightly less, on the basis of realities and actual revenue growth. It is not unreasonable to give counties this money. There is still debate on the issue of costing of functions and the Committee captured that in quite a detailed manner. One of the lessons learnt out of devolution was that we probably should have costed the functions that were transferred to the counties.

The Committee, in its report concluded that the issue of costing of functions has been overtaken by events. However, how do we decide that 15 or 45 per cent is enough as proposed by other political quotas? As proposed by this House itself where we believe that we need to give this 40 to 45 per cent to counties, the general feeling is that the devolved functions cannot be adequately covered by 15 per cent. The Senate is an institution that protects and defends the interests of devolved governments. We are not saying that we give counties 45 per cent of sharable revenue. We are just saying that let it increase by the actual increase in revenue which is captured here as 13 per cent.

As I conclude, I wish that the Mover of this amendment would have also touched on the conditional allocations. This is because the BPS has stuck to - I think - three types of conditional allocations. The CRA had broadened out the conditional allocations to counties. There was one that I found very attractive; making a conditional allocation to counties to be able to finance educational infrastructure in primary and secondary schools.

We spend our weekends and all free time in counties raising funds for primary and secondary schools because this money has been put in the hands of Members of the National Assembly. How I wish we could make a conditional allocation to counties in order to improve education infrastructure in primary and secondary schools. How I wish the Mover of this amendment would also agree that the growth in conditional allocations should be consistent with the growth in revenue.

This is because CRA had proposed a growth in conditional allocations at the same rate of 15.09 per cent. There is the exception of leasing of medical equipment where we do not expect an increase in the cost because it is something that is signed upfront. However, things like support to Level 5 hospitals, reimbursement on some of these costs like maternity fees and so on; how I wish we would have agreed to increase those allocations by a similar percentage.

Mr. Temporary Speaker, Sir, I support this amendment as read by the Mover: That, we increase the conditional allocation on the basis of average actual revenue performance and as captured on page 24 of the report of the Committee, which indicates that it should be 13 per cent.

The Temporary Speaker (Sen. Mositet): Sen. Hassan. You may contribute now.

Sen. Hassan: Mr. Temporary Speaker, Sir, I was hoping to contribute to the amendment itself. Now, I have heard the gist of the amendment. I support the amendment because of that relative growth of our revenue to what we allocate to our counties.

I seek to support it. I had actually pressed my button to speak on the substance of the BPS.

Sen. Ndiema: Mr. Temporary Speaker, Sir, I rise to support the amendment. When there are figures which clearly stipulate the correct situation, it is not right to use an assumed figure. In this case, the average growth rate in revenue over three or even four years is 13 per cent and this is scientific. However, in this report, we are told that the Treasury is using a conservative figure of 7.9 per cent. I do not know whether there is, therefore, an intention by the Ministry concerned to slacken in revenue collection. We should always appear to be optimistic especially in dealing with matters of revenue collection.

Sen. Billow: On a point of order, Mr. Temporary Speaker, Sir. I would like to clarify that in a document that was submitted to our Committee by CRA, they explained how the 7.9 per cent was arrived at. They took the average growth of revenue according to the Treasury plus the average growth in the Gross Domestic Product (GDP) of the country. So, it is not really arbitrary. They combined these figures. This is why we said that we wanted to look at it when we come to the Division of Revenue Bill.

Sen. Ndiema: Mr. Temporary Speaker, Sir, thank you for that. However, the fact is that even in the Constitution and its spirit, the basis of any division of revenue between the national and county governments would be the growth of revenue. It does not talk about economic growth and so forth that is being introduced now. That factor is not there.

By using 7.9 per cent, there is, therefore, a likelihood that the stage is being set so that an agreement will come up to say, the proposal of Kshs302 billion to counties carries the day because of that figure. We should ensure that if there is revenue growth, then that benefit should be shared equally between the national and county governments in a fair manner according to the formula. That is what the Constitution envisages.

We are in a transition period and we are now at a stage where we can say, yes, most of the functions have been devolved to counties unlike the previous years. In fact, the term of the Transition Authority (TA) is ending. Therefore, it is assumed that counties will take up most of the responsibilities of the devolved functions. The devolved functions are very central to the livelihoods of our people. Food is very important but agriculture has remained under-funded even for all the years that we have been devolved. Health is also key. Infrastructure whose bulk now falls under county governments is key as well because we are talking of rural roads.

We should also as Senate, being a House that represents counties and county governments; that champions the counties, in a non-partisan manner analyze these figures with a view to safeguarding and preventing any mischief that may arise leading to reduction in funding to counties.

With those few remarks, I support the amendments.

Sen. (Prof.) Lonyangapuo: Thank you Mr. Temporary Speaker, Sir. I was consulting with my neighbour here. To begin with, I support the amendment.

Page 24 (iii) says:-

“The Committee notes that the Budget Policy Statement (BPS) uses a very conservative revenue growth rate in the computation of equitable revenue share. Actual revenue realization seems to differ from the growths used in BPS. Average actual performance for the last four years is about 13 to 14 per cent, thus the rate of growth of revenue that should be used at the minimum to compute the equitable share for 2016/2017 should be 13 per cent”.

Mr. Temporary Speaker, Sir, I think the mover, Sen. (Dr.) Khalwale is right and at the rate at which we are moving, we need to be actual. My neighbour here talked about the average that was done to get 7.9 per cent. We require what is going to make the county get more money. This Senate is going to support it because if you look at the services that have been devolved and the problems, you cannot measure and number them.

I had the privilege of going to Mandera where I slept for a day. I found out that the myriad problems there are equal to the ones that I go through. I know we have problems with some of the “leaking” money that goes to the counties because of the way county governments are misusing the funds. That is not the case. I know the law will catch up with them one day. We are now arresting people who stole through the Goldenberg saga many years later whereas county governments have been in place for three years and those cases will just arrive in courts next year. So, we should not bother ourselves whether they get a lot of money or not.

Mr. Temporary Speaker, Sir, we should have figures that can be proved. I support this amendment so that at the stage of discussing the way the funds are shared, this should be reflected.

I support.

Sen. Karaba: Thank you Mr. Temporary Speaker, Sir. This is an important discussion and we are trying to find ways and means of seeing how we can create more funds for the counties so that the devolved functions can be seen to be working. Many times we go for workshops, we argue over and over again as to how we should get more money so that functions at the counties can be implemented. We never come to a conclusion because we are told that the money is not enough.

Mr. Temporary Speaker, Sir, what I was imploring the Members to do is to imagine those counties whose economy can expand. If they are going to expand, they must expand through stimulation. The stimulant is what you give to the residents of that county. If the residents are going to be stimulated by an overdose of revenue, be it in the collection or by generation, then we should go for the increase so that we have more money which can be shared among the counties.

In this case, I have a point in Kirinyaga, for example, which gets almost Kshs4 billion whereas the others get Kshs9 billion. If we consider the amount of money that Kirinyaga collects and remits to Treasury, it could be more than what they are given as their shareable revenue.

Mr. Temporary Speaker, Sir, in this case, we are trying to argue that even when counties continue producing, they should be given a carrot so that they can continue to generate more income. That is what this amendment is all about. It is one way of trying to

collect more revenue, I am sure we are going to get more money to share with other counties that cannot collect.

I am of the view that we increase from 13 per cent to an agreed amount of percentage but the figure should not be seen like it is static even after three or four years when we are talking about the growth. It should be seen like it is moving and this is what the amendment is all about. It should not be so conservative that even when the other counties are doing well, they should not be allowed to grow. We need to have more money to build more dams, to encourage infrastructure, to pay our Early Childhood Development (ECDE) teachers and to put up generators. When that happens, we are going to have more money spent. That is what we are going for so that we can have more money generated and paid to the counties.

I support on those grounds and also add that Kirinyaga County is capable of generating more money than others. So, they should be given more money because they generate more.

I support.

The Temporary Speaker (Sen. Mositet): Hon. Members, since there are no more Members who are willing to contribute to this and I can see that we do not have enough numbers for a Division, can we defer?

Sen. (Dr.) Khalwale: On appoint of order Mr. Temporary Speaker, Sir, before I comment on deferment, I thought you should allow me a moment to respond to a very critical point as the mover.

The Temporary Speaker (Sen. Mositet): So you want to reply now?

Sen. (Dr.) Khalwale: Yes, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Mositet): Okay, go on.

Sen. (Dr.) Khalwale: Distinguished Senators, I think the most important point that requires my response is in this report of our committee.

If you go to page 24 (iii), it says:-

“The Committee notes that the Budget Policy Statement (BPS) uses a very conservative revenue growth rate in the computation of the equitable revenue share. Actual revenue realization seems to differ from the growth used in BPS. Average actual performance for the last four years is about 13 to 14 per cent thus the rate of growth of revenue that should be used at the minimum to compute the equitable share for 2016/2017 should be 13 per cent”.

Seriously speaking, all that I am doing is lifting this observation so that what we observed is captured in the recommendations. I want to urge the Committee Chair to change his mind and support because this is what he led us in observing in the Committee and our drafters failed to capture it in the recommendations.

With those few remarks, I move that the Motion be supported by this House.

In view of the fact that it is a Motion concerning counties, allow me under Standing Order No. 54 (3) to request that voting on this matter be deferred.

*(Putting of the Question on the amendment
to the Motion deferred)*

The Temporary Speaker (Sen. Mositet): I can see an intervention by Sen. Billow.

Sen. Billow: Mr. Temporary Speaker, Sir, I rise under Standing Order No. 99 to move that the Motion be now adjourned.

The Temporary Speaker (Sen. Mositet): Sen. Billow, are you referring to the main Motion?

Sen. Billow: No, Mr. Temporary Speaker, Sir. I am referring to this one because we are not able to proceed to the next stage of voting.

The Temporary Speaker (Sen. Mositet): The amendment has been deferred for voting. The main Motion is being adjourned as per the request of the Chair. I then order that it appears in tomorrow's Order Paper.

(Question, that Debate be now adjourned, put and agreed to)

Hon. Senators, Order Nos.14, 15, 16, 17, 18, 19, 20 and 21 are deferred.

BILLS

COMMITTEE OF THE WHOLE

THE KENYA NATIONAL EXAMINATIONS COUNCIL
(AMENDMENT) BILL (SENATE BILL NO. 7 OF 2015)

THE OFFICE OF THE COUNTY ATTORNEY BILL
(SENATE BILL NO. 37 OF 2014)

THE OFFICE OF THE COUNTY PRINTER BILL
(SENATE BILL NO. 42 OF 2014)

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

(Committee of the Whole deferred)

Second Readings

THE NATIONAL CEREALS AND PRODUCE BOARD
(AMENDMENT) BILL (SENATE BILL NO. 15 OF 2015)

THE MICRO AND SMALL ENTERPRISES (AMENDMENT)
BILL (SENATE BILL NO. 12 OF 2015)

THE COUNTY STATUTORY INSTRUMENTS BILL
(SENATE BILL NO. 10 OF 2015)

THE NATIONAL HOSPITAL INSURANCE FUND
(AMENDMENT) BILL (SENATE BILL NO. 9 OF 2015)

(Bills deferred)

THE COUNTY LIBRARY SERVICES BILL
(SENATE BILL NO. 6 OF 2015)

Sen. Gwendu: Mr. Temporary Speaker, Sir, I beg to move the County Library Services Bill (Senate Bill No.6 of 2015) ---

The Temporary Speaker (Sen. Mositet): Just say that you beg to move that the County Library Services Bill (Senate Bill No.6 of 2015) be read a Second Time.

Sen. Gwendu: Mr. Temporary Speaker, Sir, I beg to move:-

THAT, the County Library Services Bill (Senate Bill No. 6 of 2015) be read a Second Time.

This is a simple Bill. Therefore, I will not take a long time on it as it seeks to devolve library services to the counties. It also seeks management of libraries set up in the counties. Currently, the public library services are regulated by the Kenya National Library Services (KNLS) Act which establishes a board within its main function to promote and manage the libraries. The current board was established many years ago. Therefore, this Bill seeks to establish a board in each and every county that will manage the libraries, including other services that provide library services that are not currently included in the definition of libraries in our Constitution.

As we all know, libraries are important institutions in our societies.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. This is a House of record. Did you hear the distinguished Senator say that she rises to move the County Library Services Bill (Senate Bill No. 6 of 2015). The correct way of doing it would be for her to rise and say that she rises to move that The County Library Services Bill (Senate Bill No. 6 of 2015) be read a Second Time.

The Temporary Speaker (Sen. Mositet): I corrected her and she said it correctly then went on to debate.

Please, proceed Sen. Gwendu.

Sen. Gwendu: Thank you, Mr. Temporary Speaker, Sir. Sen. (Dr.) Khalwale, please, pay attention.

I am privileged to have studied a degree course in Information and Library Sciences, which included studying the cataloging of books and information that helps to manage libraries. Currently, our libraries are not well established. The only libraries that are established are the national libraries. All the libraries in this country are run by KNLS Act. This Bill seeks to have boards established in the counties so that our people get library services at the grassroots level. This is because libraries do not only have books, but they have magazines, videotapes and other things that can impact information to our people.

Part Two of the Fourth Schedule of the Constitution of Kenya provides for even cultural activities such as public entertainment amenities as a function of the county governments which libraries fall within. Therefore, the Bill seeks to ensure that library services are brought to the reach of our people. This then brings the importance of legislators being involved in this and ensuring that our counties have libraries that are not just buildings and structures that we see, but we do not walk into. For us to establish the boards in the counties, we have to push the need to have our libraries equipped by

different kinds of information sources that can help to disseminate information to our people.

As we know, everyday is a learning day. We learn here in the Senate and other people learn from us. We are looked upon as sources of information in the community. Why can they not look for such information from the libraries?

Many people do not know much about the Constitution. What if the copies of the Constitution were put in these libraries and made accessible to them? This would be good work even for us. It would be a step ahead for people to understand the Constitution, the role of their leaders, how the Government works and other things that can help change the society. We should look forward to a situation whereby we have automated libraries where one can become a member and access information online, read more and make themselves better and useful persons in the society.

The committee that this Bill seeks to develop in the counties will consist of the County Executive Committee Member (CEC) responsible for library services. Currently, there is a CEC but the library is still being run by the Kenya National Library Services (KNLS). The board is run nationally. We keep saying that services are devolved but why not devolve information? Why not make it easily accessible to them by devolving library services and giving the CEC a chance to have something to run?

Other persons who will be in this Board will be one man and one woman, appointed by the governor with the approval of the county assembly. They have to be renowned academicians who understand the value of books. Most of us, if not all of us, read books stored in our houses, buy them or fetch them from the library but not for the person there at home. I like giving the example of our Constitution because that is the most important thing that will make this person understand how the country works. One may also go to the library just to get news. This library will also have newspapers and they will know the current information in the country. Many people in our communities and constituencies get information from hearsay but if you make the library accessible, you will no-longer deal with hearsay. We will be dealing with real time information; information that this person has accessed and can come to a public *baraza*, for example, or even challenge the leader because he or she knows what he or she is talking about.

In addition, the governor will also appoint another man or woman with five years' experience in the provision of library services. This group of people is a minority. We have not given libraries the attention they deserve, yet most of the information we talk about even here today, is from the libraries. From here, when we are done with the business on the Order Paper, we go to a library but for your constituents somewhere back in Kakamega or Homa Bay County, if they want to get information about what goes on in the Senate, for example, what was discussed today, this person cannot afford a newspaper. If a library is established, he or she will be equipped with a lot of information that will then help them.

This committee will have different functions. Some of them are already being performed by the KNLS Board but it has been there since time immemorial. We need to put words into action. Currently, this country is run under devolution. The Senate is established so that we ensure that devolution is executed to the letter. If these boards are established, we will move the equipping, management, maintenance and use of libraries to the counties. From this, the governor will set aside a fund to ensure that the library is

equipped, well managed and everything is in order so that the information in the library will be imparted and disseminated.

The committee will also plan, coordinate and advise the county government and other bodies on all matters concerning the library. Like I earlier said, the library is not just books. It is a hub of information including entertainment. One can visit a library to read biographies of people like Martin Luther King, Jomo Kenyatta and even the history of Kenya before we were born. However, this information cannot be found if the library is not equipped. Therefore, this committee will plan and coordinate and advise the county government on matters of library. It will also facilitate the documentation of information relating to counties.

Our counties are rich in things that we do not know about and often, we depend on leaders, media and rumours to learn about our counties. If an equipped library with the history of a county is established, it will help the residents learn more about their county. Public participation will be enhanced because the residents are educated about their county.

The committee will also facilitate training of librarians within the county. A librarian should know about books, cataloguing and record keeping. A library user should not experience difficulty finding the information they want in the shortest time possible. It will be the responsibility of this committee to train the librarians. It will also conduct campaigns for eradication of illiteracy and stimulate public interest in reading. Many people shriek when they hear about books. This committee will create awareness and promote the interest of books and reading. An equipped library attracts users because it is not a typical bookstore but contains entertainment materials like video tapes.

Mr. Temporary Speaker, Sir, the committee will also design innovative ways to enhance library services and information by disadvantaged persons within the society. Disadvantaged persons here imply women. In a patriarchal society, women have been sidelined. A woman should also access information. This can only be realised if the committee promotes the importance of a library to the women, youth and persons with disabilities. Library should not be left to men only but must be a place for everyone because information brings change to the user, county and the country as a whole.

The committee will also be tasked with acquiring books within and outside Kenya. It is important to put counties in a position where they can exchange information but not just to restrict people in the society with information regarding counties and the country because we have a lot to learn from outside this country. For example, we have a lot to learn from the history of the United States of America (USA) and how it got to where it is today. What most of us know is from rumours or what we learn in class. But what have we read beyond what we were taught in class? Maybe it is because of the inability to access books. By devolving libraries and ensuring that committees are formed in the way I will request Members to pass, then, we will access information. The committee will be able to get and equip libraries with information both from within and outside Kenya.

Mr. Temporary Speaker, Sir, the Bill also provides for the power of the committee to recognise any library run by a voluntary agency. We have libraries that are run by, for example, Non-Governmental Organisations (NGOs) that are within the counties but they run them as private entities. We also have individuals who have started mobile libraries to encourage a reading culture in the society. We will request the committee to also

include such libraries that can be accessed and have information that is important to the society.

The Bill will also impose an obligation on the committee to prepare and submit annual reports to the county executive and assemblies and report its activities every year. We have passed Motions in this Senate that committees should be formed and functions be devolved. However, a problem arises when we do not receive reports about, for example, what a committee does, how far it has gone, how far the libraries will be equipped, what is in the libraries and how they are being managed.

Currently, there is a problem because libraries are being managed by the Kenya National Library Services Board (KNLSB) that was established before I was born. It has members that do not have much impact on the people in counties, for example, my county which is Kisumu. In this case, we will request the Senate to pass the Bill so that a board is formed to perform all the tasks that I have enumerated. The board will have to report back to the county government and county assembly on what they have done or what they will do. It will inform them about the plans they have and how they will turn the society into a reading culture. The board will also inform us about how they will attract members of the community to go to the libraries now that libraries will be near them. These are tasks that it will perform.

Mr. Temporary Speaker, Sir, this Bill is also expected to promote the establishment and use of libraries in counties. You can build a house or hotel but if you do not invite people to it, then, it will just remain a structure with a name printed on it. So, we expect the committee to make a library a place worth going to and digging into the information that is inside so that people can access information.

I always believe that every day is a learning day. You can teach me and I can also teach you. Sometimes, I know what you do not know and you know what I do not know. By this, we can help each other because you have something that you can help me with but a library has something that can help all of us. It has information that can change counties or even the country.

I beg to move and call upon Sen. Wangari to second.

Sen. Wangari: Mr. Temporary Speaker, Sir, this is a simple amendment but has an impact. Access to information is a constitutional right.

Article 35(3) of the Constitution states that:-

“The State shall publish and publicise any important information affecting the nation.”

When I look at devolution, this is one place we will get information for counties in terms of budgetary policies that different County Executive Committee (CEC) members have and plans they have for the counties. This is one place we will publish them.

Mr. Temporary Speaker, Sir, if you may recall, last year but one, we had appeals from the counties on some of the functions they felt would be better performed by county governments. One major function that came from 29 counties that appealed to the Senate was the issue of and management of libraries. Not every county is lucky to have a national library based in it. I think they were 11 or so counties if I am not wrong. Out of that, we have others that need libraries. It is important that we use Article 189 of the Constitution that encourages cooperation between the national and county governments in this function.

It says: -

“Government at either level shall liaise with government at the other level for the purpose of exchanging information, coordinating policies and administration and enhancing capacity”

This is one area where we must use this Article. I say that because the people who need these services are in the counties. In fact, during the recent teacher’s strike that went on for quite some time, the one place where children found solace was in these library services in counties. However, we have reduced these libraries to a place where you get the oldest books. In fact, when you go inside the library, you get out coughing because the books are old, undusted and not properly arranged. It is chaotic. From the pictures in the media, you could see children and members of the public seated on the floor because the sitting capacity is inadequate. That is one reason why each county should control its own library.

Some counties like Kericho do not have a library. People from there have to travel all the way to Nakuru County because it is the only place where they are sure to get material in a national library. We must also move away from this idea that we only read for exams. In fact, this Bill should encourage reading not only by children and students but even members of the community. If you do not read, you cannot lead. We need to cultivate a culture of reading that will produce readers.

Let me touch on the functions. The definition of a book enlarges this definition to “not limited to a book”. We need to know that technology is dynamic. We are moving from the era where you can only read a book on a hard copy. We must start practicing e-reading and have these libraries equipped and ICT enabled in order to do that.

If you remember, we passed a Bill that encouraged that we honour heroes in counties. Where do we store this information? This is one place where this can be properly documented. In paragraph (f) on the coordination of training, I would only appeal that the policy, in terms of coordination, is put in a central place. That way, we can also have uniformity and homogeneity in terms of training and curriculum for the trainers, so that different counties do not do different things.

I look at part (h) and I see the promotion of libraries. It is very important that we promote and encourage people to read. This culture of just reading for examinations must be gotten out of our system. We must encourage even villagers to access this information. Every day, we talk about public participation in counties but where do we get these documents? This is one place where I hope that county governments will give this information because it is a constitutional right.

Regarding the issue of people with disability (PWD), the libraries must be stocked with the necessary devices to make it friendly to them. Finally, on reporting, we must increase it to maybe twice or every quota. Let us not do it once because it will be ineffective to monitor and make follow-up by the county assembly in county governments.

With those few remarks, I think it is a very productive Bill. I beg to second.

The Temporary Speaker (Sen. Mositet): Hon. Members, we still have one minute.

(Question proposed)

ADJOURNMENT

The Temporary Speaker (Sen. Mositet): Hon. Senators, it is now time to interrupt the business of the Senate. The Senate stands adjourned until tomorrow, Wednesday, 2nd March, 2016, at 2.30 p.m.

The Senate rose at 6.30 p.m.