

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 12th October, 2016

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

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

PRAYER

STATEMENTS

IMPACT OF NORTHERN WATER COLLECTOR TUNNEL PROJECT

The Speaker (Hon. Ethuro): What is it, Sen. Njoroge?

Sen. Njoroge: Mr. Speaker, Sir, pursuant to Standing Order No.45(2)(b), I rise to seek a Statement from the Chairperson of the Standing Committee on Land and Natural Resources regarding the ongoing Northern Water Collector Tunnel Project which is intended to provide reliable water supply to Nairobi City County and its environs. In the Statements, the chairperson should explain;

- (a) when this project was launched;
- (b) findings that led to the initial rejection of the project by leaders in Murang'a County;
- (c) what informed the Government to proceed with the project despite opposition by various sectors;
- (d) whether an Environment Impact Assessment was undertaken before commencement of the project and contents of the report made public;
- (e) whether the project will adversely affect the environment as feared by those opposing it.

Thank you.

The Speaker (Hon. Ethuro): Sen. Khaniri!

Sen. Khaniri: Mr. Speaker, Sir, that is a very topical and touchy issue in the Republic at the moment. I will consult with the Ministry and see if we can issue a Statement in two weeks' time.

The Speaker (Hon. Ethuro): What is it, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. As admitted by the Vice Chairperson of the Committee, this is a very important matter of grave national importance. The Co-Principal of the CORD Coalition, Mr. Raila Odinga, spoke to this

matter over the weekend. Very many Kenyans especially those ones who live downstream at the River Tana are so scared, that in five years, there will be a desert.

Could the vice-chairperson also in his report, bring us a study of comparative studies and experiences elsewhere in the world so that we can see whether a similar project has succeeded anywhere else in the world? I have googled, and I am unable to get that kind of information. Let them help us see where water is tapped upstream and how they succeeded in ensuring that there is still the normal water supply downstream.

Sen. Njoroge: Mr. Speaker, Sir, noting that we will be going for a recess very soon, I request that this matter be responded to within one week's time. The matter has to do with water, which is life, and it is raising a lot of issues. The Chairman is just a walking distance to the Minister's Office.

The Speaker (Hon. Ethuro): Order! Put the request and do not go for the mechanics. Let us hear from Sen. Wetangula before the Vice-Chairperson responds.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, alongside the very good Statement sought by Sen. Njoroge, the Vice-Chairperson in so doing, should tell the House and the country how many mega dam projects are being undertaken in this country and at what cost. There is general talk that exaggerated figures are being put on dams. One just blocks a river and gets a reservoir behind it and we are told it costs Kshs10 billion to Kshs20 billion. We would like to know how many dams are being constructed, at what cost and in which parts of the country.

The Speaker (Hon. Ethuro): Vice-Chairperson!

Sen. Khaniri: Mr. Speaker, Sir, I had requested for two weeks so that I can come up with a comprehensive Statement. The issue of the House going on recess is a subject of debate. I do not want to anticipate debate. For us to give a comprehensive answer, we will need two weeks to liaise with the Ministry and the relevant Government authorities.

I agree that this is a very grave matter that requires very urgent attention. I personally may not agree with the Government's position. However, I will come here to give the Government's position nevertheless. I will not come to give my personal position. We will get the position from the Government and present it to this House as given.

The Speaker (Hon. Ethuro): Order, Vice-Chairperson! You have done so well to challenge the argument of anticipating debate, then you went ahead to anticipate the answer. You can only make that Statement when you have the answer.

(Laughter)

Yes, Sen. (Dr.) Khalwale!

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. It sounds amusing. However, I am concerned that the Vice-Chairperson says that he might not agree with the Government's position, but all the same, he will attempt to give an answer. In the record of political parties, there is an entry that Sen. Khaniri has since dropped membership to any party in this country. Is he still a Member of the Alliance that recommended him to become a member of a Committee and subsequently become a Vice-Chairperson? Could the Speaker guide us since the communication originated from the Office of the Speaker?

The Speaker (Hon. Ethuro): Order, Members! That is a straight forward matter. Sen. (Dr.) Khalwale and Sen. Khaniri, just relax. I am particularly pleased that Sen. (Dr.)

Khalwale is addressing that matter to Sen. Khaniri who is well versed with the Standing Orders. That issue is completely irrelevant to the matter before us. Our Standing Orders, in theory and in practice, allow Members of what the Minority Leader would call the Alternative Government, to be chairpersons of committees. You have been enjoying that privilege. I do not know why you are now running away from it.

Therefore, the vice-chairperson will respond in two weeks' time.

Let us move to Statements to be issued. Before we do so, I have a Communication to make.

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION OF WOMEN PARLIAMENTARIANS FROM SOUTH SUDAN

The Speaker (Hon. Ethuro): Order, Members. I have a communication to make on the visiting delegation of Women Parliamentarians from the Parliament South Sudan.

Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of the visiting delegation of Women Parliamentarians from the Legislative Assembly of South Sudan. The delegation is in the country for an exposure visit to learn and share the experiences and broaden its understanding and knowledge on the workings of our Parliament. They have been here since Monday, 10th October, 2016, and will depart on Thursday, 13th October, 2016.

I request each Member of the delegation to stand when called out so that they may be acknowledged in the great Senate tradition. The Members of the delegation are as follows:-

The Hon. Betty Achan , MP	-	National Legislative Assembly and Leader of the Delegation
Ambassador Michael Nyang, MP	-	Ministry of Foreign Affairs
The Hon. Mary Puru, MP	-	National Legislative Assembly
The Hon. Alma Abuoch Jervas, MP	-	National Legislative Assembly
The Hon. Lith Aluong, Mp	-	State Legislative Assembly
The Hon. Nyanchiek Nhial, MP	-	National Legislative Assembly
The Hon. Hannah Lona, MP	-	State Legislative Assembly
The Hon. Athiak Rou Rachel, MP	-	State Legislative Assembly
The Hon. Suzan Paite, MP	-	State Legislative Assembly
The Hon. Mary Elias MP	-	State Legislative Assembly
The Hon. Florence Abina, MP	-	State Legislative Assembly
The Hon. Florence Nighty, MP	-	State Legislative Assembly
The Hon. Flora Iliha, MP	-	State Legislative Assembly
The Hon. Ajoh Gordon Kuol, MP	-	State Legislative Assembly
The Hon. Adriana Ali, MP	-	State Legislative Assembly
The Hon. Mary Hadia, MP	-	State Legislative Assembly
The Hon. Joyce Hadia, MP	-	State Legislative Assembly
Ms. Catherine Pita	-	Staff
Ms. Florence Ade	-	Staff

I hope they will have a fruitful programme during their study in the Senate. 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

(Applause)

(Sen. Kittony stood up in her place)

Sen. Kittony, we are digital. Sen. Wangari, proceed.

Sen. Wangari: Mr. Speaker, Sir, I join you in welcoming the delegation of Women parliamentarians from the Parliament of South Sudan. We have been very privileged, as the Kenya Women Parliamentarians, to host them in this Parliament. Yesterday, we hosted them for dinner. They have just come from meeting the National Gender and Equality Commission (NGEC) and they have also visited many other organisations in this country. It is my hope that the delegation will come out better after learning the best practices that we will portray to them as Kenyan women. I hope they will become better legislators as we also learn from them. I welcome them and hope that they will take our greetings to the Parliament of South Sudan. I thank you.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I join my colleagues in extending a warm welcome to the Parliamentarians from South Sudan. We are very concerned regarding what we have been reading in the newspapers taking place in their country and we pray for them. There is a saying that the pain a mother feels over her child, whether a girl or a boy, is heavy. Since they are here on behalf of the mothers of South Sudan, we will ask them to do all they can in their Parliament. They should talk to their leaders. The joy they acquired recently when they became a new Republic should be the standard measure and Kenya has continued to stand with them. We are their neighbours in---

The Speaker (Hon. Ethuro): Sen. (Prof.) Lonyangapuo, it is not a debate.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I wish them well.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, it is a pleasure to see, in the Speaker's Gallery, eminent ladies from South Sudan. May I request them to convey my greetings to Hon. Kong who was the first Chairman of the Public Accounts Committee in the National Legislative Assembly of South Sudan, and I was privileged to train them. I hope that normalcy will be restored in the Republic of South Sudan. We have played a big role as good neighbours and brothers to make sure that the country stabilizes.

My brother died in Juba just three months ago. He was there to train the people on military intelligence. Thank you very much, you are welcome.

Sen. Cheruiyot: Mr. Speaker, Sir, thank you for giving me this chance. I take this opportunity to welcome the distinguished ladies from our neighbouring country. I laud their effort because they have appreciated that as a country, we are their big brother and they came here because they admire us. We hope that they will learn from the many good qualities and good things happening in this country. I want to encourage them that when women rise up for a cause, they deliver. As a House, we want to assure them that the little turbulence that has hit the great nation of South Sudan will be over soon and that is our desire for them. We pray for them and if there is anything we can do as a country to help things stabilize and come to normalcy, they are always welcome. As a country, we are together---

The Speaker (Hon. Ethuro): Order, Senator, please conclude.

Sen. Cheruiyot: Mr. Temporary Speaker, Sir, that is enough. Thank you.

Sen. Kittony: Mr. Speaker, Sir, thank you at long last. I thought being senior, I should have been the one to start.

The Speaker (Hon. Ethuro): Order! Senator. I definitely appreciate seniority and I acknowledge you but there are also procedures in which you catch the Speaker's attention and seniority is not one of them.

Sen. Kittony: Mr. Speaker, Sir, I have been doing without my proper card for nearly four months. I am almost becoming a stranger in the House. Anyway, allow me to join you in welcoming my sisters from South Sudan and I commend them. I would like to tell them that a woman is a pillar of a home and the country. We will rely on them to make South Sudan a peaceful country and a good neighbour, so that all of us can enjoy the fruits of our hard work as the women of Africa. I congratulate and welcome them. They should enjoy staying in Nairobi and learn as much as they can from us because Kenyan women have supported South Sudan for a long time especially on issues of women caucuses. We wish them well and they should take our greetings home when they go back to South Sudan.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I join you and other colleagues in welcoming the distinguished delegation from South Sudan. Like my colleagues have said, Kenya played a critical role in hosting and championing the process of bringing peace between South Sudan and the Republic of Sudan which led to independence. As we do so, it is our wish that normalcy, peace and tranquility are restored in the Republic of South Sudan through magnanimous and selfless conduct of the leaders of that country, particularly President Salva Kiir Mayardit and Dr. Riek Machar.

As an incoming president of this country, I want to assure the Sudanese compatriots that I will do everything humanly possible to assist them achieve a sustainable peace in their country.

The Speaker (Hon. Ethuro): For a moment, I wondered whether the Senate Minority Leader was reporting his days as the Minister for Foreign Affairs.

Sen. Chelule: Mr. Speaker, Sir, I also want to add my voice to what my fellow Senators have said in welcoming MPs from South Sudan. I am happy to see quite a number of women parliamentarians. We all know that women are peacemakers. I hope they will embrace peace building in their country. I wish them well and request them to pass our greetings when they go back home.

Sen. Khaniri: Mr. Speaker, Sir, I want to join you and my colleagues in welcoming the gracious ladies from the Republic of South Sudan to the Senate of the Republic of Kenya. My colleagues have already alluded to it that South Sudan is our younger brother. We midwived the birth of that Republic. As an old brother, we want to see them do well. We want to see a peaceful South Sudan. We want reason to prevail among leaders to ensure that the people of South Sudan enjoy the independence they fought for with their sweat and blood.

We hate to see what is happening in South Sudan. We urge the women parliamentarians to do whatever it takes, when they get back to their Parliament, to ensure that the country enjoys peace. As their elder brothers, we are ready and willing to

support wherever we can. We wish them a fruitful stay in Kenya and a safe journey back to South Sudan tomorrow.

The Speaker (Hon. Ethuro): We shall have the last two interventions from Sen. Leshore and then Sen. Mutula Kilonzo Jnr.

Sen. Leshore: Mr. Speaker, Sir, I would also like to join you and my other colleagues in appreciating colleagues from South Sudan who have come here to learn the best practices we have in our Senate and our country. Peace has been very elusive in South Sudan. I would like to urge them not only to allow those occupying senior position to carry the cross of peace but they should all come together and guarantee peace in South Sudan.

One of my family members is entrenched in peace building in South Sudan. I would like them to work with all Kenyans and take them as their brothers because we would like to see peace prevailing in South Sudan.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, through you, I am representing the Inter-Parliamentary Union (IPU) in presentation of a paper on how women can participate in elections, free from violence and intimidation. As a special rapporteur on behalf of the Kenya Senate, I will seek to know whether we can have a resolution passed in Geneva on the situation in South Sudan because the IPU where you occupy a privileged position can intervene in the crisis in South Sudan.

As we welcome them, I hope that one of our deliberations is how we can help the women and children who are the victims of violence of war to benefit from the strong IPU Parliament that will meet in Geneva. Thank you.

The Speaker (Hon. Ethuro): Granted. The Deputy Majority Leader has stepped in. Let us give him the last bite on the cherry.

Proceed, Sen. Murkomen.

Sen. Murkomen: Thank you, Mr. Speaker, Sir. I have been listening to the debate and I want to welcome the leaders from South Sudan who are our neighbors. The South Sudanese are our brothers and sisters. I was a lecturer before I came here and a number of my students were from South Sudan. The relationship between us and South Sudan is tight but I am told that the Parliament of South Sudan borrowed the Constituency Development Fund (CDF) concept from us.

Mr. Speaker, Sir, as I welcome them, I also recognize the fact that they are women. It is important a young nation like South Sudan started by recognizing the importance of all actors in the society and the participation of women leadership. I say this because it also seems to be the season of women leadership in the world. You have seen the Prime Minister of Britain, the Prime Minister of Croatia, the President of Argentina and Brazil, and I have no doubt in my mind that the next President of the United States of America will be a woman.

So, I believe women leaders will take this moment including those sitting here from South Sudan to provide the right leadership and use the soft power that comes with motherhood in dealing with the issues of conflict in our country and South Sudan. We do not want to see South Sudan continue in the situation it is. We believe we will continue playing our role as a country to assist each other as neighbors and ensure the country becomes what its founding fathers including John Garang de Mabior dreamt about. We do not want Africa to be a place where bad governance is the norm.

Mr. Speaker, Sir, I want to encourage women leaders in the Senate who are going to pursue leadership positions in the upcoming elections to take this moment. The spirit of women leadership is in the air and they must take it seriously and they must prepare themselves to provide leadership in Senatorship even those who are competing with people like me in governorship and even presidency. They must challenge the status quo and be ready to provide leadership in this country and in the whole world. Thank you.

The Speaker (Hon. Ethuro): Listening to the Deputy Majority Leader, you wonder whether challenges are supposed to be in vain or for--- let me not conclude. Before I invite the Chairperson of National Security and Foreign Relations, I have a communication to make.

VISITING DELEGATION OF STUDENTS AND TEACHERS
FROM MOI AIRBASE PRIMARY SCHOOL

Hon. Members, let me recognize the presence of visiting students and teachers who are seated at the public gallery from Moi Airbase Primary School, Nairobi County. In our usual tradition of receiving and welcoming visitors, I wish to extend a warm welcome to them too. On behalf of the Senate and my own behalf wish them a fruitful visit. I thank you.

Proceed, Chairperson of National Security and Foreign Relations.

STATEMENT

DISAPPEARANCE AND BRUTAL MURDER OF CHILDREN
IN CHESUWE VILLAGE, NANDI COUNTY

Sen. Adan: Thank you, Mr. Speaker, Sir. As you ruled yesterday, I will go straight to the answer and I believe my colleagues who had requested for information on this have gone through the statement.

Mr. Speaker, Sir, the Government is not aware that five children aged between eight and sixteen years have disappeared in Chesuwe village, Nandi Hills Sub-County, Nandi County, since 5th July, 2016. However, the Government is aware that two cases of disappearance of children were reported at Kapsabet Police Station via O/B No. 50/1st July, 2016 and O/B No. 25/18th July, 2016. Following the reports, the Government security agencies, with the support of the community members managed to recover two mutilated bodies from the bush; one on 7th July, 2016 and the other on 10th July, 2016.

Investigations were launched immediately and one suspect; Newton Kipleting was later arrested in connection with the abduction and murder of the two children. Investigations are ongoing to establish whether he is the syndicate behind the kidnappings and subsequent murder of the children or whether the suspect was acting alone or incorporation with other persons. In the investigation, the public has been of a lot of help through provision of information. The Government is not aware that the suspect; Newton Kipleting is a repeat offender as records held by the police do not have such information.

Further, my Ministry has no vote to cater for the cost of burial expenses. The Government is not aware of the disappearance of 40 students from Kakamega County

and about 30 youth from Tana River County. However, the Government is aware of the disappearance of the following persons. I believe my colleagues can look at the statement. They are about 11 persons from Tana River District and they are between the ages of 17 and 35. Kakamega County, there are about 12 persons between the ages of 17 and 41 years. This clearly shows there are no students that have been reported in Kakamega missing.

Mr. Speaker, Sir, the Government is aware that on various dates, in the last one year, bodies have been retrieved from Ol Donyo Sabuk River. The incidents include:- On 5th December, 2015, a badly decomposed body of an African male adult was retrieved near Mithini area in River Athi and was escorted to City Mortuary in Nairobi for postmortem. On the 7th April, 2016, the body of an African juvenile aged about four years was retrieved at Kangemi area without the head and the right leg. The body was escorted to City Mortuary. On 8th April, 2016, a decomposed body of a well built African male adult was retrieved near Fourteen Falls and taken to the City Mortuary pending investigation. On the 29th May, 2016, a decomposed body of a well built male African adult was retrieved near Fourteen Falls and taken to the City Mortuary. On 30th June, 2016, three dead bodies of Lawyer Willy Kimani Kinuthia, Joseph Mwenda Mwathi and Joseph Thinguri Muiruri were retrieved from River Athi in Machakos County and transferred to Nairobi City Mortuary. Four suspects have been arrested and arraigned in court.

Mr. Speaker, Sir, I wish to state that the Government has no policy to promote extra judicial killings. Any police officer who kills will be held personally liable for his or her conduct. Further, the Government is not aware of any relationship between extra judicial killings and the ongoing vetting of senior police officers. In addition, the Government has not formed a squad within the National Police Service with a mandate to carry out extra judicial killings.

Finally, Mr. Speaker, Sir, the Government has employed appropriate security measures to ensure all the learning institutions are secured and conducive for learning, both for the pupils, students and teachers and to ensure students do not disappear. This includes continuous profiling and registration of new students, frequent meetings among stakeholders in the education sector and local leaders to discuss the modalities of addressing any concern in the learning institutions, vetting of religious leaders who conduct pastoral education to ensure radicalization is not spread during such pastoral sessions, proper monitoring of school dropouts to ensure they are not recruited by terrorist groups.

There should be stringent control measures on movements of visitors into institution compounds. Kenya has undertaken continuous training to ensure capacity among the security agencies on techniques to combat terrorism particularly in areas of detection, investigation, prosecution, terrorism financing, border and maritime security. The following measures have been proposed which will facilitate a long lasting solution to the education sector. These are improvement of housing for teachers and putting up security walls around all institutions of learning.

Sen. Sang: Mr. Speaker, Sir, I want to take this opportunity to thank the Vice-Chairperson of the Committee for submitting this particular response. However, I want to be on record as having said that it is unfortunate that it had to take the Ministry of Interior and National Coordination a whole four months to respond to an issue of this magnitude.

I also want to confirm that out of the five children who were reported missing, three children have been found. I, therefore, agree with the statement to that extent.

However, I want to seek clarification with regard to the suspect. The responsibility of a Government is to protect its citizens and more specifically children. I want the Vice-Chairperson to indicate to us whether the suspect, known as Newton Kipleting, who was arrested, has been charged and whether he has been released on bail or not. We should be told the status of the case.

The two families that lost their children are barely surviving in terms of their economic status. It is wrong for the Government to say they do not have a vote to cater for the burial yet it is its responsibility to provide security. In this case, the Government failed to provide the security and we ended up with children being kidnapped and killed. The families are not asking for compensation. They are asking for support to bury these children. I am aware of one situation in this particular case where the family had to postpone the burial for three days. The body of the young child had already decomposed when it was being buried yet the Government has the audacity to say they do not have a vote. This Government has resources. Why is it that they cannot provide resources to support families, especially in situations where they failed to carry out their responsibility?

The other clarification is with regard to the disappearances of persons. They may not be students, but the Vice-Chairperson needs to know that even masters' students who might be well over 40 years old are still students. Therefore, the indication that 40 year old might not reflect a student is not right because that could still be a student.

This country is treading on a dangerous path when we make it look normal that 11 people disappeared in Tana River County and 12 people disappeared from Kakamega County. Who killed these people? We need to know if they were killed. Who is responsible for providing security? It is the Government. Could they give us more detail on this?

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. It is very disheartening to me, on behalf of the parents whose children got lost in Kakamega, for the Vice-Chairperson to tell us that the Government is not aware. Before I raised this matter, I was aware that for every disappearance, the parents went to the Assistant Chief, the Chief, the District Officer and the District Commissioner; they reported the missing children and gave details. In this list, we have the latest who is Biko Mukabwa the son of Benard Likhanga from Museno Sub-Location of Khayega Location in Shinyalu. I am aware of this because I took part in the reporting.

Could it be that in the system of the Government, members of the public can report on a matter and Nairobi is not given the information when it asks for it? That means that there might be a syndicate in the country where security people are aiding these young people who end up going to Somalia. The Minister must be particularly concerned that it is only in Shinyalu where these children are being fished from yet Kakamega County has got 12 sub-counties. Could the Vice-Chairperson confirm that no elements within the security system aid these children to leave and then create a cover up? The second enquiry is: why is Shinyalu targeted?

Finally, there is the issue of the disappearance and death of lawyer Willy Kimani Kinuthia. The Vice-Chairperson has to clarify since the events are in the public domain. Kimani and other young lawyers were having adverse information on senior police

officers which they wanted to use to make it difficult for them during the ongoing vetting exercise. Could you confirm that all the senior police officers either vetted or due for vetting are actually investigated to ensure that they have nothing to do with the death of Kimani and two others? This is because when this young lawyer was at the police post, he actually wrote and said that he was sensing that his life was in danger and he ended up being killed by four police officers who have all been arraigned in court. You cannot afford to take it lightly.

Sen. (Dr.) Machage: Mr. Speaker, Sir, could the Vice-Chairperson tell us whether the police force in this country is properly trained on crime scene preservation, protection and analysis? Why is it that all bodies collected from such places like Tana River are just collected and that is the end of the case? Have police turned to be corpse collectors and nothing else?

Sen. Adan: Thank you, Mr. Speaker, Sir. On Sen. Sang's question, I have no information whether the suspect was released on bond or not. The information I have is that he was arrested. It is something I need to, probably, clarify from the relevant police station through the police department.

He also raised the issue of supporting the family in burying the deceased. Of course, as I said yesterday, we do not have a budget in support of burials for the relevant Government departments and the counties. However, if the family was aware of this, they would have gone to the county government for support and I believe that should have been granted.

On the issue of the masters' students being 41 or 42 years old, this was in relation to the question that was asked by Sen. (Dr.) Khalwale. The answer is directed to whether they were students or not. I believe in that answer, there was only one student.

Another question was; if the security agencies are aiding in disappearance of children to Somalia. It is untrue and totally wrong to say that police officers are aiding and abetting disappearance of youths into Somalia.

The other issue is why Shinyalu is targeted. We need to investigate this.

The Speaker (Hon. Ethuro): What is it, Sen. Njoroge?

Sen. Njoroge: On a point of order, Mr. Speaker, Sir. Is it in order for the Vice Chairperson to purport to be speaking on behalf of the police? That is a serious issue. She needs to inquire from the office of the Inspector General of Police whether they are doing it or not. She is a Member of the Senate. I do not think she qualifies to give that direct answer.

Sen. Adan: Mr. Speaker, Sir, I have a portfolio to represent the Government. The information I have read in the statement clearly says that if any police officer is involved in such kind of an act, then action is normally taken against them. So, that is why I am speaking on behalf of the police service.

The Speaker (Hon. Ethuro): Order, hon. Senators. Both of you are wrong. The Chairperson does not represent the Government. You only represent the Government statement. You are not in Government.

Sen. Njoroge, you cannot also say that the Chairperson of a Committee cannot be competent to address herself on a matter. By virtue of overseeing that docket, she acquires sufficient capacity, competencies and knowledge to pronounce herself on that matter.

Proceed, Chairperson.

Sen. Adan: Mr. Speaker, Sir, thank you for the clarification.

The other issue that was raised is that senior police officers undergoing vetting are behind the disappearance. I am not aware of it. However, I can bring it to the attention of the police service to carry out an investigation.

The next issue is on preservation of crime scenes. As much as I know, the police officers are trained in that field. Their work is not only to carry corpses. I believe that they are supposed to take care of the crime scene whenever such issues occur.

The Speaker (Hon. Ethuro): What is it, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Categorically, the Chairperson is denying the possibility of the existence of a cartel within the forces that is aiding children to end up in Somalia. In view of the fact that Mr. Boniface Luvembe from Shinyalu ended up being arrested by the African Union Mission in Somalia (AMISOM) in Somalia and in view of the fact that Mr. Biko Mukabwa, who is not on this list rang the father and said, "Dad, I want to come home." In view of the fact that in Kapenguria, a police officer, two months ago, killed fellow officers on duty at the desk until he was disarmed and killed after a very big fight, could the Chairman undertake to do further inquiries so that she can come with a more solid answer? The facts I have stated are flying right into the face of your answer.

Sen. Adan: Mr. Speaker, Sir, I do not have the information that Sen. (Dr.) Khalwale is trying to get from me. If a child has called from Somalia saying that he wants to come back home, that does not implicate a police officer. Even from Isiolo there are such children who have called their parents and said that they want to come back home or they are luring other children to join them. That is not the work of the police. If there is evidence against any police officer, can that be brought to the attention of the police and the Government? Action will be taken immediately against that officer.

(Sen. (Dr.) Khalwale stood up in his place)

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, it is also good to accept certain things. When you spoke I was almost persuaded until the gracious lady came back to you. I wondered; the facts were flying on whose face?

Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, thank you for your indulgence.

I am afraid that I could be right because on these very children, reports have been made by their parents at the office of the assistant chief, the chief, the assistant county commissioner and the county commissioner. That information has not been brought to Nairobi to give you an opportunity to list those children in your answer. It raises my fear.

When you say it is not the work of the police, whose work is it?

The Speaker (Hon. Ethuro): Proceed, Chairperson. That is a fair question.

Sen. Adan: Mr. Speaker, Sir, I still deny that this is the work of the police. If Sen. (Dr.) Khalwale believes or maybe there is a record at Kakamega Police Station on the report of those parents, that can be given to me or brought to the headquarters for further investigation then we can verify the information he has given us.

The Speaker (Hon. Ethuro): Order, Senator! Order, Chairperson! The work of a people's representative is not to do police work. I will not allow this House to be one more opportunity for the police to abscond their responsibility. I agree completely with

you and I am convinced that the presence of certain youth from Kenya in Somalia does not imply complicity by the police. There are many ways in which people travel.

The question is, if you can deny unconvincingly that the police are not involved, then, who is involved? That is the statement you need to interrogate further on your own motion. What Sen. (Dr.) Khalwale has given is on the HANSARD. Use that information. This House will not be used to do police work. Let the police do their work. Ours is to interrogate the output.

The Speaker (Hon. Ethuro): What is it, Sen. Murkomen?

Sen. Murkomen: Mr. Speaker, Sir, am I in order if I become of help to the Chairperson? If the question is not within the police service, it could be within the defence department. If it is not within the defence department, it is in the Ministry of Foreign Affairs. All of them fall within the same Committee. The Chairperson can go to the Diaspora Desk at the Ministry of Foreign Affairs or the Ministry of Defence and find out exactly what the situation is.

What Sen. (Dr.) Khalwale has raised is of great concern. Some of the students whom we taught in the past, a law student from Moi University was part of those who were accused of having participated in the Garissa attack. I have information that a few other universities have law students who have been traced to Somalia. It is still of great interest to this House that this information is dealt with. This Committee has consolidated its responsibilities around the same issue in different departments of the Government.

Sen. Sang: Mr. Speaker, Sir, I request that you direct the Chairperson to provide information on the status of the case within two days since already the Vice Chairperson has the answer. More importantly, the said person, suspect Newton Kipleting is known in the community as a repeat offender.

What Sen. (Dr.) Khalwale said initially becomes relevant in this case. It is possible that the public is apprehending criminals and forwarding them to the police who book them in. However, when you go to the details within the police stations, you do not have records of the same. This is something that happened in Mosoriot, Nandi County, where members of the public arrested suspected criminals, they were booked but in the night, we are told that they broke out through the roof of the cell and disappeared. Up to now, that information has never been provided to the public.

I think that the Chairperson can confirm that every record of crime presented by the public to the police station is recorded and kept so that when the public indicate that this is a repeat offender, the Government does not say otherwise on the basis that that information is not provided within the occurrence book.

Sen. Adan: Mr. Speaker, Sir, I will act on that as quickly as possible.

The Speaker (Hon. Ethuro): Order, Madam Vice Chairperson! What will you act on? You have been asked the status of the case in two days. Are you acting in two days? You were asked about the records being submitted.

Sen Adan: Mr. Speaker, Sir, we are not able to submit the response in two days. We request for a week.

The Speaker (Hon. Ethuro): Madam Vice Chairperson, you can read the mood of the House. This is one issue where the entire membership across the political divide is united and not just for the sake of unity. It is because it is a very important issue affecting the lives of Kenyans. The Government has one responsibility. In fact, all the others are

extras. If there is one basic responsibility, it is to protect lives and particularly that of vulnerable people like children.

Madam Vice Chairperson, I think it is in that light that the House expects much more from your docket. So, I will give you up to Tuesday next week to come up with an appropriate response taking into account all the issues that have been raised.

Sen. Adan: Mr. Speaker, Sir, obliged.

(Sen. Mutula Kilonzo Jnr. Spoke off record)

The Speaker (Hon. Ethuro): I hope you are not intimidated by Sen. Mutula Kilonzo Jnr.

Shall we move to Statement (b)?

STATUS OF STREET FAMILIES AND URCHINS IN KENYA

The Member is not here.

(Statement deferred)

Let us move to Statement (c)

KENYA'S COMPLIANCE WITH THE EU DEADLINE FOR EPA PROGRAMMES

The Member is not here.

(Statement deferred)

Finally, Statement (d).

PREPARATIONS FOR PLANTING SEASON DURING THE SHORT RAINS

(Statement deferred)

Where are the Chairpersons of the Committee on Labour and Social Welfare; Finance, Commerce and Budget; and Agriculture, Livestock and Fisheries?

STATUS OF STREET FAMILIES AND URCHINS IN KENYA

Sen. Wangari: Mr. Speaker, Sir, it is unfortunate that this Statement has not come to this house. It was requested a while ago by Sen. Leshore. The confusion that came in is that we had asked this question from the Ministry of Labour and Social Welfare who in turn directed us to the Ministry of Devolution and Planning. So, we have had to do it twice. We are still waiting for it. I just spoke to them before we came to the Chamber and we hope to have the answer next week.

The Speaker (Hon. Ethuro): Tuesday next week.

(Statement deferred)

KENYA'S COMPLIANCE WITH THE EU DEADLINE
FOR EPA PROGRAMMES

Do we have the Vice Chairperson or any Member of the Committee on Finance, Commerce and Budget? This one should appear in the Order Paper tomorrow.

(Statement deferred)

PREPARATIONS FOR PLANTING SEASON DURING
THE SHORT RAINS

Any Member of the Committee on Agriculture, Livestock and Fisheries? This Statement is dropped.

(Statement dropped)

Sen. Khaniri, you were to seek a statement.

STATUS OF IMPLEMENTATION OF THE
BANKING AMENDMENT ACT, 2016

Sen. Khaniri: Mr. Speaker, Sir, thank you for the opportunity. Pursuant to our Standing Order No.45(2)(b), I rise to seek a Statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget concerning the implementation of the Banking (Amendment) Act 2016.

In the Statement, the Chairperson should explain:-

(1) the extent of the implementation of the Act signed into law by the President on 24th August, 2016, especially for customers with existing loans;

(2) if the Governor of the Central Bank of Kenya (CBK) is aware that certain banks are not compliant with the provisions of the Act, especially in terms of adjusting the repayment premiums and period; and

(3) what action the Governor has taken on financial institutions that are in contravention of this newly enacted law.

The Speaker (Hon. Ethuro): Where is the Chairperson, Vice Chairperson or any Member of the Committee on Finance, Commerce and Budget?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, give us seven days although the question on certain banks is not clear. Maybe the question should have been which banks have complied. "Certain banks" is ambiguous. I do not know whether anybody would know which banks they are unless they are specified.

The Speaker (Hon. Ethuro): You can clarify that with the Member. It is a moot point. Please, respond next Wednesday.

(A hon. Member spoke off record)

I have not seen anyone willing to do so.

Sen. Obure: Mr. Speaker, Sir, thank you very much for indulging me. When this particular law was passed, Kenyans everywhere looked forward to enjoying lower interest rates. I just want to know if the CBK has the capacity to supervise banks and ensure that, indeed, relief is provided; first in respect of those who have existing loans and secondly, to customers who are seeking new facilities in those banks. Does the CBK have the capacity to ensure that these benefits are passed down to customers?

The Speaker (Hon. Ethuro): Next Order.

BILL

First Reading

THE LOCAL CONTENT BILL
(SENATE BILL NO.13 OF 2016)

*(Order for First Reading read – Read the First
Time and ordered to be referred to the relevant
Departmental Committee)*

The Speaker (Hon. Ethuro): Next, Order.

MOTION

RESOLUTION TO ALTER THE SENATE CALENDAR

Sen. Murkomen: Mr. Speaker, Sir, I beg to move the following Motion:

THAT, pursuant to Standing Order No. 28(4), the Senate resolves to alter its calendar in respect of Part III of the Fourth Session so that the recess scheduled to commence on Friday 14th October, 2016 be deferred to start on Thursday 20th October, 2016 and accordingly, for the Senate to adjourn on Wednesday 19th October until Tuesday 1st November, 2016 when the sitting will resume.

Mr. Speaker, Sir, first of all, I want to thank the Senators for their dedication and commitment to public service. The period of recess was interrupted more than thrice for purposes of performing important public duties. I remember that we had to come back to discuss an important matter in relation to the Nyeri County and the Nyeri Governor in particular.

Mr. Speaker, Sir, before, we also had to come back to pass some critical legislations. As I stand here, I would like to request the Senators that although our calendar requires that we commence recess as from tomorrow, the business before us is critical because it is about important Bills. Some are critical in so far as the running of the counties is concerned. Others have national as well as international interest. The matters are in relation to physical planning, county governments and self-help groups. There are key issues and Bills. In order to facilitate the processing of those Bills and Motions, particularly the Divisions on various Bills, I request the Senators to support this Motion

in order to enable us continue with Business for the next one week so as to pass these legislations.

As I do so, I remind the Senators that we only have less than a year to serve in the 11th Parliament. In the 12th Parliament, our colleagues, most of whom are sitting here, have provided statements of intention that they would wish to serve in different capacities; some in the National Assembly, some as governors and others wish to exit the Senate, like Sen. Billow who wishes to serve in other capacities.

Mr. Speaker, Sir, therefore, we have less than one year to continue performing a critical responsibility and leaving a legacy in this House in so far as legislations and oversight roles are concerned. I thank the Committee Members in this House and particularly the County Public Accounts and Investments Committee (CPAIC) led by Sen. (Prof.) Anyang'-Nyong'o for working tirelessly through the entire period that we were on recess. I remember meeting Sen. (Dr.) Khalwale several times in the precincts of Parliament. They dealt with a backlog related to accountability in counties.

We have a problem in our counties. The problem within our counties is neither Coalition for Reforms and Democracy (CORD) nor Jubilee's. It is uniform whether in the counties led by CORD's governor or Jubilee's. We have problems of accountability in our counties. May I use my county as an example. The Elgeyo Marakwet county has so far has received over Kshs12 Billion. Out of this, it is expected that if you were to share the money equally, every sub-county would received Kshs3 Billion. If it were to be shared equally, every ward would have received about Kshs800 Million.

If you take this Kshs800 Million for example in Embobut Ward, where I come from, after subtracting the recurrent expenditure you will find that in that ward, there is an absolutely no services provided. Embobut Ward is one of the most marginalised wards in the Republic with no allocation for a road meant to be a county road. It is about 10 Kilometres of a road that would have served a marginalised sub-location.

Mr. Speaker, Sir, you ask yourself whether it was not possible that Kshs200 million in four years would have been spent in the ward to carry out development. That is why as Senators, we have a critical responsibility this year to go back to our constituencies to hold meetings with the people and explain to them what Article 96 means on oversight. We should demand that every ward gets its share of the recurrent expenditure if it means expenditure related to development. This is because every time I ask this question in my county---

The Speaker (Hon. Ethuro): Order, the Senate Deputy Majority Leader. Look at the Motion.

(Laughter)

Sen. Murkomen: Mr. Speaker, Sir, this Motion is critical. If you see where I am coming from, it is critical in so far as the extension of this week.

The Speaker (Hon. Ethuro): Your argument is not promoting the Motion.

Sen. Murkomen: Mr. Speaker, Sir, I will come to the reason why I am setting the stage why this House must extend for another one week to deal with certain legislations. In those two weeks, I request the Members to focus in the next eight to nine months in the counties.

We are here to exchange ideas and best practices. For the last two or three weeks, every visit and *barazas* that I have had in my county my responsibility has been to ask---

The Speaker (Hon. Ethuro): Order Senator. I do not want to take it away. You know another opportunity will come for an Adjournment Motion. Then, you can exchange those ideas with your colleagues as they go home. For now, you are asking them to remain.

Sen. Murkomen: Thank you, Mr. Speaker, Sir. That will be next week. There is a slight and important point I wish to conclude. Every time we are in our counties, you hear governors and Members of the County Assemblies (MCAs) telling Senators - this is important for County Public Accounts Committee - that the money received from the national Government is little. They say most these amounts go to recurrent expenditure.

However, when you go to any ward in Kisii, Busia or Lelmok Ward in Nandi County, the question is that the money received in the county has been spent on recurrent expenditure; who is consuming this recurrent expenditure? How many people have been employed in the ward that is part and parcel of the expenditure referred to in the recurrent expenditure? There is none. The people say that nobody has been employed in the ward to serve in the county government.

Mr. Speaker, Sir, this recurrent expenditure that is a basis of complaints by governors must be demonstrated by indicating the citizens of the ward that are part and parcel of the recurrent expenditure enjoyed by the county staff.

(Applause)

We cannot just sit and accept that there is a lot of recurrent expenditure. We must go to our villages and ask them who the people enjoying the recurrent expenditure from their village are. We have a role as the Senate in this last year to organise *barazas* in our wards. Let us forget about the harambes, church visits and funeral politics. The next stage of oversight by Senators will be to organise *barazasto* find out the expenditures. In Kakamega County, for example, they get in each year about Kshs9 billion. In the last four years, Kakamega County would have been allocated Kshs36 billion. If you sub-divide the Kshs36 billion among the 12 sub-counties, you will find that every sub-county should have received about Kshs3 Billion. If you go to Shinyalu as a Senator of Kakamega, you must ask where the Kshs3 billion is. The development expenditure should be shown after the recurrent expenditure is subtracted.

Mr. Speaker, Sir, these counties must account for the money before the next election. We will not renew the mandate of those managing our resources if this House is not going to provide the necessary oversight. That is why when Senators ask for an answer in this one week, we must get an answer. We must know where the resources to assist the Senators to carry out these meetings are so as to make sure that the people understand and appreciate the importance of devolution.

(Applause)

Mr. Speaker, Sir, gone are the days and times---
I still have more than 20 minutes to go.

The Speaker (Hon. Ethuro): Order, Sen. Murkomen! I hear and appreciate you!

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

The Speaker (Hon. Ethuro): Order! You are completely out of order, Sen. Boy Juma Boy!

This is a fairly straight forward matter. Try to conclude, the Senate Deputy Majority Leader.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. The Senate Deputy Majority Leader leads the business of the Jubilee Government in this House. What Jubilee is only clear about, especially in Nyanza, Ukambani, Coast and Western regions is that to get development you must go to Jubilee. Could he substantiate what has changed? You have indicated that in Embobut Ward, people are suffering and they are in Jubilee. In the next ward, people are suffering and they are in Jubilee. A clergy man said that women and children are sleeping in caves with snakes in your sub-county of Markwet and yet they are in Jubilee. Has Jubilee changed its policy that---

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! I did not hear the Senate Deputy Majority Leader talk about the political divide. He talked about governors and accountability for the money that you allocate to counties.

Sen. Murkomen: Mr. Speaker, Sir, as a matter of fact, Sen. (Dr.) Khalwale was doing very well and has been doing very well for the last three years, focusing on our responsibility as stated in Article (96) which is to oversight county governments. When we carry out that responsibility there is no Jubilee or CORD. If I was to digress to national Government, accountability has been the bedrock of the arguments that the President has been putting across, but that is not where I want to go.

I want to urge the Senators that to avoid this imagination that if a governor is from CORD, Sen. (Dr.) Khalwale should not challenge that governor because he is from CORD---. Nevertheless, Sen. (Dr.) Khalwale has been asking questions of accountability in Kakamega despite the fact that they come from the same political persuasion with the governor. So, let us remain focused so that the National Assembly, whose primary responsibility is to oversight national Government, should also continue borrowing from us. Our Members of Parliament and the rest should also do what we are doing as far as the national Government projects are concerned in their Constituencies. If we must be effective, we must not be kept scattered.

Let us focus on how much money we have put to our counties. For example, Kshs36 billion has been put in Kakamega and they could have collected another 15 billion in the last four years. So, cumulatively, they have about Kshs50 billion to Kshs60 billion. I could ask Sen. (Dr.) Khalwale if he is convinced that Kshs50 billion or Kshs60 billion that was put in Kakamega in the last three and half years, if he could see projects worth Kshs50 billion if he goes around the county. Those are the questions we need to ask ourselves.

Mombasa County collects a lot of money. We give them about Kshs4 billion a year. If you multiply it by the four years we are talking about--- they have got Kshs16 billion; that is over Kshs30 billion. Can we be shown projects that can be said Governor Joho has worked on? If Governor Joho is going to be defeated tomorrow, is there any project that you can say he initiated and this is his legacy? These are the things that are supposed to guide us, as a Senate, as we provide the oversight.

Mr. Speaker, Sir, I want to ask the Senators that we accept to postpone our recess for another one week so that we can prepare a proper template. We also need to pass

legislation that is in place, prepare ourselves well for the two weeks recess and use those two weeks to organise *barazas* in every part of this country. Let governors in every corner of this country and Members of County Assembly in the wards in this country feel the heat of oversight of this House. This will enable the people of Kenya to benefit from devolution and feel the impact of oversight that comes from this House.

Finally, I want to appeal to my colleagues that we postpone our recess for another one week; go for recess for two weeks and come back and review it early November. We should think about oversight in our counties and exchange strategies. By December, we should saturate this country with serious oversight on devolved resources so that we can have collective impact as a Senate on the role of this House in as far as accountability of our country is concerned.

I beg to move and ask Sen. Mutula Kilonzo Jnr. to second.

Sen. Kilonzo Mutula Jnr.: Mr. Speaker, Sir, I was wondering at some point why the Senate Deputy Majority Leader is arguing the opposite because he almost made a case on why we should not go on recess.

(Laughter)

He made a passionate appeal why we should actually work tirelessly and not go on leave. However, in support of this Motion, although Sen. Murkomen has made a passionate plea for *barazas*, I am wondering whether there is something he knows that we do not know; something that is supposed to facilitate these *barazas*. Otherwise, the one week he is talking about I was expecting something miraculous will happen, but nothing has happened so far. Although Sen. Murkomen---

The Speaker (Hon. Ethuro): Order, Sen. Mutula Kilonzo Jnr.!

Sen. Kilonzo Mutula Jnr.: Mr. Speaker, Sir, I want to support.

The Speaker (Hon. Ethuro): You are a good lawyer and I suppose you know your role in this business is to second.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, my work is to second. We should introduce something called seconding by protest where I make comments without prejudice to the protest.

(Laughter)

That is why I said I should have been given a leeway to protest without prejudice. Sen. Murkomen, in his comments, said that we have just resumed. Let me get to my point. It is important that--- some of the work that is pending is at the County Public Accounts Committee and Investment Committee (CPAIC). Today, I found the county officials of Taita Taveta in the parking lot with a heap load of paper. Governor Lusaka was at our Committee today answering questions. This one week is going to increase and should increase the mileage and, therefore, considering what we have been doing in the last one week, I support it entirely.

I hope once we come back, the Senate Deputy Majority Leader is going to come to this Senate with good news. Sen. (Dr.) Khalwale has asked him a question and he has not answered. At some point, he looked like he has turned from Saul to Paul in the road

to Damascus and he has now seen the light and has joined us in asking what the governors have been doing for the last four years.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. This is the most erratic Secunder I have ever got.

(Laughter)

He cannot abuse the privilege I gave him to second this Motion to attack me. Be it as it may, I have remained consistent. The country and people in my county know that I have remained consistent in calling for oversight of county resources. In fact, from 2013 to 2014, Sen. (Prof.) Kindiki and I were being branded persons who want to kill devolution in this country. We were the first people who kept arguing that we need accountability. I remember so well even in functions where I could meet opposition leaders saying that this call for accountability is just a way of killing devolution. There is no argument that I have changed my mind because my colleagues have now joined us.

Accountability is the main game across the country. So, I want to remind my colleague in the right context that on matters of accountability in the counties, I am on record in the public and in the HANSARD of this Senate that we must do our job. When it comes to national Government, it is not our primary mandate, it is our secondary mandate. However, our primary mandate is under Article (96); to oversight county governments.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Since our Standing Orders may not have guidance on what I am just about to ask, I will need your guidance. What would this House do if a Mover finds his seconder erratic and feels that he is not only hostile but also not worth the appointment to the duty? He may wish to withdraw the seconder and appoint another one. We need your direction on this.

(Laughter)

The Speaker (Hon. Ethuro): Order! Secunder, conclude in the normal way; it will help me dispose the issue raised by Sen. (Dr.) Machage.

Sen. Mutula Kilonzo Jr.: Mr. Speaker, Sir, I made my comments without prejudice to the seconding, which is allowed. Those comments are without prejudice.

I second the Motion that we alter our calendar, with my comments which in no way contradict the Motion and the person who moved it, who is my colleague and my learned friend.

The Speaker (Hon. Ethuro): Order, Members. Before I propose the question, this was a bit unusual, but that is why we are a Parliament. Our business is not to deal with monotonous, dull and bureaucratic business. Our business is always to chart new paths and grounds.

You are all aware that you can amend a Motion without altering the substance of the Motion. All that the seconder did was in pursuit of what the other Members had raised, including the Senator for Kakamega County. He just put it in the Biblical expression of “the road to Damascus”, and whether Sen. Murkomen’s Damascus point had been reached. Sen. Murkomen just confirmed that there was no new Damascus for him; he has always been there. If anything, it is the other side that might have found their

Damascus after him. That does not take away the fact that the seconder finally concluded that he supports the Motion. The seconder also said that he was making the remarks without prejudice. That already clarifies the whole business.

Initially, my problem was with the Mover because he kept on shopping for support by using Kakamega County and when the Senator for Mombasa came in, he turned to him. I was wondering why he was not referring to Makueni County, only to find that the Senator was the seconder.

(Laughter)

(Question proposed)

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I stand to support this Motion to alter the Senate calendar. I support that we go on with the business of the House for one more week.

I must commend the Mover and the Seconder for the spirit in which they moved this Motion and the compliments they have made regarding our Committee; the County Public Accounts and Investment Committee, a Committee that never went on recess. We have been moving on full blast on a daily basis - Monday to Friday quite often - mainly to ensure that the audited accounts of the Financial Year 2013/2014 of both the county executives and county assemblies are finished.

Mr. Speaker, Sir, we are looking forward to the Auditor-General tabling in this House the audited accounts for the Financial Year 2014/2015. We are surprised because by law they should have already been here, but they are not yet here. I am politely reminding your office and that of the Clerk that may be, the Auditor-General is overlooking an important law. It is definitely time that those accounts were brought here, so that we can begin our next journey.

Having said that, when Sen. Murkomen was moving the Motion, he lamented the rather profligate manner in which public funds are being used in the counties. We are now heading towards the homestretch of elected executive bodies in this nation; those who are in position of executive power by dint of being elected. This is the time when specific attention should be paid to the diversion of public resources for purposes of electioneering.

As Sen. Murkomen rightly pointed out, this nation has been permissive towards county governments in their irresponsible manner of using public funds. This irresponsible manner does not simply mean that money is wasted, but that laid down procedure, according to laid down law, like The Public Finance Management (PFM) Act, The Public Audit Act of 2015 and the fundamental principles of good governance, laid down in the Constitution, which are important to the management of public resources, are not followed. In this homestretch, all organs of Government responsible to ensure that no criminality is done in the use of public resources should be more than attentive.

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

[The Temporary Speaker (Sen. (Dr.))

Machage) took the Chair]

Mr. Temporary Speaker, Sir, I will use a bizarre incident that occurred in my county a few days ago. The county assembly found out that the Ward Development Fund for this Financial Year, which was about Kshs280 million, deposited in an account under the administration of a management committee as set up in the Ward Development Fund Bill passed by the county assembly has been misused. The county assembly decided to set up a committee to look into this matter and table their report in the county assembly which was duly debated and adopted.

In debating and adopting this very important report, all hell broke loose in the county assembly, in a manner not befitting the decorum of a representative institution. Even more bizarre is that in the midst of that drama, one of the Members of County Assemblies (MCAs), who was in the committee, disappeared in another bizarre manner. In that tension the home of the county officer in charge of planning and finance was vandalized by angry residents of the village, who presumably took it upon themselves that it was because of that debate in the county assembly that the MCA had disappeared.

This matter needs to be properly investigated by relevant arms of Government and the facts must be known and due process followed to ensure that justice is done and public resources are recovered. In the meantime, the affected officer is unfortunately behaving in a very irresponsible manner by mentioning all kinds of names including mine on radio stations as if I was responsible for his predicament.

Mr. Temporary Speaker, Sir, this is highly irresponsible and I would like to request the security and the investigative agents of the State, particularly the Ethics and Anti-Corruption Commission (EACC), the Criminal Investigation Department (CID), the National Intelligence Service (NIS) in Kisumu to take this matter seriously and deal with it promptly. This is because if it is not done, it may lead to permissiveness in dealing with public resources in counties, which is definitely not good for this country.

Elsewhere, in this nation, we have seen - as was being dramatized in radio and television this week - the issue of water resources in Murang'a County, which we shall discuss next week. It demonstrates benefits that can accrue to a county assembly when they do their work properly. However, because of corruption, some people are compromised not to expedite and execute works of county assemblies diligently so that in a rather bizarre manner, a report that had been adopted by the county assembly is then peculiarly disowned by the county assembly speaker and some of the Members.

These are the things that make Kenyans extremely cynical about devolution. We must pay attention to this because devolution is a wonderful opportunity for development to take place at the grassroots and for resources to go to the counties for purposes of improving reproductive forces in the counties, providing opportunities of employment for the youth, giving opportunities for agricultural produce to be commercialized and increased value addition in agriculture, opening up counties that were not previously opened up for commerce to take place and building infrastructure beyond levels imagined ten years ago, let alone even five years ago.

Mr. Temporary Speaker, Sir, if these resources are properly utilized, then as envisaged in Vision 2030, this nation should be a middle income nation not just in words but in reality. That dream will be realized. If we do not put our foot down and make sure that there is responsible use of resources at the county level, we may miss an important

opportunity in the history of this country. This is because as the present Constitution provides, we cannot cease to channel resources to the counties every year through the Division of Revenue Bill. We cannot avoid that. However, if we do not have equivalent responsibility in the use of these resources at the counties, this nation will write a very sad history.

During the recess, we should pay attention to the problem of insecurity and, quite often, insecurity perpetrated by the security agencies. What happened yesterday in Ahero was as a result of the police moving into a girls' school at night and when the Member of Parliament for that area went to find out what was happening, the police decided that the Member of Parliament was now the enemy of the security agents and a complementary partner in trying to deal with insecurity.

Mr. Temporary Speaker, Sir, when we play our oversight role, we run foul of the security agents who think otherwise. There must be collaboration and understanding in the things we do, because in this House in particular, we have men and women with tremendous experience in public affairs who are not going to do guess work. Therefore, as we go on recess we should seriously think about insecurity in the countryside. However, it is not for legislators to ensure security in the countryside.

I gave an example yesterday of how our colleague Sen. Sang and I experienced conflict on our common border. It was not for us to bring security. We just went there because there was a crisis and being representatives of the people we had to be there. However, the State organs responsible for security should have been ahead of us and not waited for any of us to call them and tell them what to do.

Mr. Temporary Speaker, Sir, Kenyans pay taxes so that services can be delivered in terms of roads, water and health, but much more importantly, services in terms of security. An insecure nation is a nation under peril, stress and a lot of uncertainty. This is because you cannot wake up one early morning and go to work unless you are assured of reaching where you are going. Otherwise, you may never arrive where you are delivering your labour.

I was told last night that in my village, people cannot get together at night in funerals. This is because they are likely to be attacked by thugs who attack the vulnerable community from which to steal money and food. I would like to appeal to this Senate to do something about this provision in our Constitution when we come back. I do not know whether it is the Committee on Devolution which should have been seized of this matter which is extremely serious. This is because the Government has never done anything concrete about it. Every time we have asked about it, vague answers have been given.

Regarding Article 17 in the Transition and Consequential Provisions of the Constitution, 6th Schedule, it says:-

“Within five years after the effective date, the national Government shall restructure the system of administration commonly known as the Provincial Administration to accord with and respect the system of devolved Government established under this Constitution.”

Mr. Temporary Speaker, Sir, I do not know why the Jubilee Government has not done this. The fact that they have appointed regional commissioners, they are not fulfilling this provision of the Constitution which states: “To accord with and respect the system of devolved government established under this Constitution”

Who has power in the villages to ensure security? It is not the village council and the village administrator, but still the assist chief and the chief, a much known remote institution under the devolved system of Government. This conflict between the Office of the President and devolved system is one of the reasons why we have uncertainty at the grass root level.

I beg to support.

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, by the end of the current Session, this House will have voted for close to Kshs1 trillion to be allocated to the counties. This has never happened before and this is the kind of money that should change the lives of Kenya. However, as Senators, we have watched in disbelief as counties become citadels of corruption. The monies that we are giving out to counties are not reflected in the lives of the citizens of our country.

I thank and congratulate the County Public Accounts and Investments Committee (CPAIC), chaired by Sen. (Prof.) Anyang' Nyong'o, for doing a commendable job in tracing and asking serious questions on how this money is being used in the countryside. Through this Committee, we know that the Senate is doing a good job by following up on the amounts that have been sent to the counties. However, unless this Committee and this House are assisted by other institutions of Government, the monies that we are allocating to counties in the hope that they will help the communities will be in vain.

I single out the Ethics and Anti-Corruption Commission (EACC) that was established in this country with great hope that it would rein in some of the activities that have resulted in major losses of funds in this country. To date, there is nobody from the counties that has been nabbed and held to account for the enormous monies that have been revealed by the CPAIC as having been misused and wasted.

The Office of the Director of Public Prosecutions (DPP) and the EACC are institutions of Government that should support the Senate to hold people accountable for the enormous losses of monies that we have allocated in this country. These institutions give us various excuses such as shortage of personnel or lean budgets that Parliament gives them. This should not be an excuse for the kind of losses that we are experiencing as we carry on.

The Office of the Auditor General should be our eyes and ears. It is an office that should ring the first bell whenever there is wastage of money. However, I am disappointed about the role of the Auditor-General so far, more particularly, regarding what has happened to my own county. There is obvious wastage and looting of funds, but it is very unfortunate that the Auditor-General's report is very mild on some of the wastages. They give excuses such as lack of personnel and expertise or that they simply do not know who was responsible for the losses incurred.

As we remain in this House for one more week, we would like to address the loose ends in some of the operations and institutions. This House should ensure that the enormous funds that we allocate to counties are used to change the lives of citizens. It is incumbent upon this Senate to ensure that we look at the legislation that ensures these funds trickle down all the way to the wards and that they are used for the intended purposes. That is the responsibility of this Senate.

I support the Motion that we stay for one more week, particularly to focus on the usage of financial resources that we allocate to the counties. The amounts are mind-boggling and we should point out the changes they have brought in the counties.

Unfortunately, in my county, for example, we cannot point out any project that remains a monument of the first term of devolution within our counties. I am sure this applies to all the other counties. It is upon this House to determine what we can do to make a difference.

I beg to support.

Sen. Kanainza: Mr. Temporary Speaker, Sir, I stand to oppose this Motion. Since we have just resumed from recess, I do not see the reason we need to adjourn on 19th October. We have so many issues that Senators are putting across that we need to tackle. It will be important that we spend these two months---

The Temporary Speaker (Sen. (Dr.) Machage): What is it, Sen. Murkomen?

Sen. Murkomen: On a point of order, Mr. Temporary Speaker, Sir. My younger sister, Sen. Daisy Kanainza, may not have understood this Motion. She thinks that we are going on recess, but on the contrary, we are postponing recess.

The Temporary Speaker (Sen. (Dr.) Machage): Whereas I accept your interpretation, I would rather give her time to push her point.

Sen. Kanainza: Thank you, Mr. Temporary Speaker, Sir, for protecting me. I have read the Motion and it is clear that we are supposed to postpone our recess from 14th to 19th October, 2016.

Considering what my colleagues have said, we have a lot to deal with as the Senate. That is why I advise the Senate Majority Leader and his deputy that it is not necessary to go on recess from 19th October to 1st November, 2016. We better stay---

The Temporary Speaker (Sen. (Dr.) Machage): Order! You are out of order! I would not want to invoke Standing Order No.109, which talks of irrelevance. Can you compose yourself and either contribute to the Motion or give the opportunity to someone else?

Sen. Kanainza: Mr. Temporary Speaker, Sir, I support the Motion with an amendment. As we get close to 19th October, I will draft a Motion to say that we do not need this recess.

In the meantime, I support.

The Temporary Speaker (Sen. (Dr.) Machage): That is another slur because the Motion for Adjournment is always from the Senate Majority Leader; you have no mandate to draft that kind of Motion.

Sen. Murkomen: On a point of order, Mr. Temporary Speaker, Sir. My colleague will have an opportunity next week, when the Motion for adjournment will come up, to oppose or support it.

The Temporary Speaker (Sen. (Dr.) Machage): You are also out of order! You are anticipating debate.

Sen. Hassan Abdirahman!

Sen. Abdirahman: Mr. Temporary Speaker, Sir, I support this Motion. I have a few comments to make. First, if I heard the Mover right, he said that the Opposition did not support devolution. If I did not get him right, I stand to be corrected.

The Temporary Speaker (Sen. (Dr.) Machage): What is it, Sen. Murkomen?

Sen. Murkomen: Mr. Temporary Speaker, Sir, what I said is that there was a time we clashed with the Leader of the Opposition who was Former Prime Minister, Hon. Raila Odinga, in public over my stand on accountability. He interpreted it to mean that fighting for accountability in the counties was fighting counties. I was trying to use that

position to remind my colleague, Sen. Mutula Kilonzo Jnr., that my stand on accountability has been the same from the time we came to Senate.

The Temporary Speaker (Sen. (Dr.) Machage): In any case, whatever your view may be before or after the Constitution was promulgated, you are compelled and you have no otherwise. The Constitution provides for devolution. So, you do not have to revisit your stand.

Sen. Abdirahman: Mr. Temporary Speaker, Sir, those are still his personal views and he can hold them but I want to confirm we all support devolution.

I join my colleagues in thanking the County Public Accounts and Investments Committee (CPAIC) of the Senate for the good work they do. In fact, many a time, people say that the Senate does not have power but it has a lot of power. In fact, it has shown that we can assert our authority, effort or functions very clearly through our committees if we work very effectively. So, I would like to thank them for the good work they have done.

At some point, I personally attended one of their sittings when they were interrogating officials from Wajir County Government and I honestly felt they are doing a good job. However, that may not make much meaning if the Auditor-General's report becomes a routine inspection done year in, year out because that does not help. The reason for doing audits may not necessarily be improving financial systems. We must hold accountable those who flout financial regulations. State agencies like the Ethics and Anti-Corruption Commission (EACC), the Office of the Director of Public Prosecutions (DPP) and other organs of Government must act on culprits who have either wasted public resources or pilfered them at one stage or another because we keep on saying that there are a lot of flaws in a number of county governments.

Mr. Temporary Speaker, Sir, while on recess last time – I am not saying we will go on recess because for me, what is indicated in the Motion is very clear – I witnessed compilation of projects in all marginalised areas regarding the Equalisation Fund. My understanding is that as a Senate, we have a responsibility. The Constitution is fairly very clear on counties that are marginalised. Article 204 of the Constitution clearly says that the national Government may use the Equalisation Fund only to the extent that the expenditure is approved by Parliament.

It can either directly or indirectly allocate money through conditional grants to marginalised counties. Members of the National Assembly have funded project priorities or programmes in the counties. Therefore, the Senate's role gets diminished in this. That money is meant for counties where marginalisation existed before and the right thing should have been to take it to counties but with input from the Senators. I do think the national Government has done the right thing in doing this. It is important that we get involved as Senators.

Finally, we are coming to what one of my colleagues called a home stretch but I will call it the final lap. This is 2016. As we move towards the end of our term, we need to protect public resources more than ever. Maybe one of our representatives in the Parliamentary Service Commission (PSC) should explain to us. I happened to co-chair the issue of oversight funds with Sen. Murungi. Later, we established a committee in this House to help us move on and see when we can get the funding. It is important that we get the funds at one stage to enable us to go and monitor what has happened and evaluate the performance of counties.

Mr. Temporary Speaker, Sir, a number of counties have spent billions on projects some of which are not even visible. So, it is important that we work out how to get funds to help Senators move to rural parts of counties, so that we see how the billions we have passed in this House have been utilised.

With those few statements, I support the Motion.

Sen. Sang: Mr. Temporary Speaker, Sir, I rise to support this Motion. This is the Senate and in the last six or so months, we have been seriously engaged on issues that fall within our mandate. The reorganisation by the Senate Majority Leader, as proposed in this Motion, will ensure that we are able to carry out our responsibility.

I agree with the concerns that have been raised. However, as the protectors of devolution, this moment is very critical especially as we proceed towards the elections. One of the things that I am sure will be happening in each and every county in this country is that every leader will be called to account on the delivery of their mandate. As a Senate, we will be called to account on what we have done. Therefore, the committees that are particularly tied with the responsibility of ensuring that this Senate carries out its responsibility should help this Senate in carrying out that mandate.

Mr. Temporary Speaker, Sir, I must join my colleagues in lauding the work being done by the Sen. (Prof.) Anyang'-Nyong'o led Committee. However, the problem is that the Committee is still handling reports of 2013/2014. One is left wondering at what point we will get to 2014/2015, 2015/2016 and 2016/2017. Is the pace at which we are carrying out our responsibilities in various committees slow? We must be alive to the fact that we have a report card to present to Kenyans particularly as a Senate. We also have our individual report cards in the various counties. Therefore, it is important that this House pushes the Auditor-General and other institutions so that they do not let this House down.

Most likely, we will proceed to elections having looked at the audited accounts of our counties for only two financial years yet we should have looked at the five financial years. Therefore, that is something we need to ask the leadership of this Senate which comprises the Senate Majority Leader, the Senate Minority Leader and others and that particular committee to take time to reflect and give some thought into the work plan of the Committee between now and 2017, so that it is seen that we did some bit of work.

Mr. Temporary Speaker, Sir, at the level of individual responsibility with regard to accountability in our specific counties, on Tuesday, I tabled the regulations pursuant to the Statutory Instruments Act. These are the regulations that are supposed to help us operationalize the Senate Oversight Fund and that is very important. We have persuaded the National Assembly and we have done several meetings and approached the Parliamentary Service Commission and everybody seems to be in agreement. Some Members of the National Assembly who initially opposed the idea of the Senate being supported and facilitated to carry out this particular responsibility have realised that the same governors they initially supported have actually supported or are funding individuals to run against them for the seats they hold.

This should be a lesson. That is why this should be a lesson that when issues of accountability and support for institutions are presented either to the Senate or the National Assembly, people must look beyond their circumstances at that point. Some of us who are running for governorship in the next election must fight to ensure this Senate is facilitated. This is because it is not just about whether I am going to be in the Senate or not or whether I am going to run for governorship or not but it is about ensuring

constitutional institutions are given the necessary facilitation to carry out their responsibility.

Therefore, we need, as a House, to give some thought to the remainder of our term. We need to ask ourselves what these bare minimums that we need to undertake as a House are. I also want to invite the leadership of this House to consider retreating with the National Assembly. I personally have four Bills that have been approved, passed through this House, they are pending in the National Assembly and they have not been listed for the First Reading. In the Senate, we have over 21 Bills that we have passed cumulatively and the National Assembly has not listed them for First Reading.

Mr. Temporary Speaker, Sir, we need to anticipate. Of course, somebody is setting up the Senate for failure so that as we approach the next election - since there has been misplaced discussion as to the relevance and importance of this House - once the National Assembly starts presenting a report card of over 100 Bills passed into law through the Senate because we have rubber stamped and we always give the first priority to those Bills coming from the National Assembly, then you look at the Bills that have been passed by this House and they are barely 10. Surely, a political argument can be made that this House has not been useful in supporting devolution and the discussion as to whether we are relevant will come up.

Mr. Temporary Speaker, Sir, I think it is important and I want to urge the leadership of the Senate that we should not wait until we are done with our term for us to start explaining. This House needs to sit down and craft a formula and start explaining to Kenyans so that we are not seen as cry babies at the end of the term. We will be saying the problems we have had with the national Assembly is that we have had these Bills, they have not been listed for First Reading and we have had challenges here and there.

It is important for us to find a formula of ensuring that some of those Bills can appear for First Reading. Once they appear and are listed for First Reading in the National Assembly, it means if they do not finalize those Bills, it will be failure on their part. As we speak, the Bills are neither here nor there and we are done with them, approved and passed them, they are in the National Assembly but they have never appeared on the order paper in the National Assembly.

That is a point of concern that I think the leadership of both the Senate and the National Assembly should address. Moving forward, since we have never had serious conflicts between us and the National Assembly in the last six months, if the leadership in this House can persuade the leadership of the National Assembly to prioritize the business of the Senate, then we will have a better account of ourselves with regard to legislation once that is captured.

Mr. Temporary Speaker, Sir, the other component would be the representation aspect. I want to laud the Senators for doing a good job in terms of representing our counties. We only need to engage a little more in ensuring we are forthright and ruthless in executing and protecting the interests of counties even if those interests are threatened by internal characters. The greatest assault on devolution today is where the county governors, county executives and county assemblies are the ones undermining devolution.

The concept of devolution was crafted to ensure power and resources go to the grassroots. If you look at the Fourth Schedule in terms of classification of functions, you could identify that drafters of the Constitution – the exciting thing is that a number of

Members of this House were key players in the drafting of that Constitution; yourself, the Attorney-General *emeritus* and the various Members of this House. One of the reasons why the functions under the Fourth Schedule were allocated to county governments were some of those critical functions that affect the lives of wananchi on a day to day basis; local infrastructure, roads, water and Early Childhood Development Education (ECDE).

These are small things the county governments were given but they have huge impacts. If you go to counties - I will give the example of ECDE in my county - the county government budgeted for employment of two ECDE teachers in each of the 600 ECDE centers. Until now, they have only employed one ECDE teacher per center on contract basis yet the amount of resources in the budget was to employ two ECDE teachers per centre on permanent basis. That is a failure.

Mr. Temporary Speaker, Sir, the county government allocated resources to build ECDE centres in each of the 600 centres in our counties. As at now, only less than 50 have been completed yet resources are no longer within the county coffers. The level of corruption in our counties is discouraging. As we wind up our term and go into the last leg, we need to focus on ensuring that we have something on our score card when we move to the next election to persuade Kenyans that this is an institution that should continue in terms of serving the interests of Kenyans.

As I conclude, I want to persuade Members to support this Motion and ensure that we give a greater thought into what we need to conclude as a Senate between now and the next elections so that Kenyans can enjoy the fruits of devolution.

With those few remarks, I beg to support.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. (Prof.) Kindiki!

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Temporary Speaker, Sir. I will be very brief. I want to take this opportunity to thank the Mover, Sen. Murkomen, who is the Deputy Majority Leader for moving this Motion.

In support of the Motion, allow me to say a couple of things; one, this Motion has not been brought by the Leader of Majority in terms of the dates. It has also not been recommended by the Senate Business Committee (SBC) in terms of the dates. These dates were agreed at the beginning of this Session. In February, when we resumed, we adopted the yearly calendar. That calendar provided that this week, we should proceed on a 10 days recess. But because we had interfered with the August recess because of the several special sittings we had, we ended up pushing the August recess by a week. We thought it wise that we need to be around this week also so that we compensate for that one week that was affected.

So, in essence, there has been no alteration whatsoever. The calendar in terms of the balance between recess and the days when we should be sitting has not been affected. The totality of that balance has been maintained. Should this Motion go through and we proceed on recess on 19th October, 2016, we are expected to resume on 1st November, 2016. We will only have one month up to 2nd December, 2016, to wind up the business for the fourth session. I want to plead with all of us that we must maximize on the last month when we come back.

My plea has been that since we have done quite a bit of Bills and Motions, the aspect of oversight which Sen. Sang has already mentioned is an issue which we can do something about before the close of this Session, especially in consideration of the Auditor-General's reports by the Sen. (Dr.) Khalwale and now the Sen. (Prof.) Anyang' -

Nyong'ole led Committee. I have already taken this before the House Business Committee (HBC). This is an area where we need to do something and I hope we can prioritize that. The HBC should provide that guidance so that we do not end our term without tackling one financial year.

Part of the problem is not really the Public Accounts and Investment Committee (CPAIC). They are trying their best. They have meetings almost daily. The information is out there and we commend them because it is not easy to have Committee meetings almost daily for more than one month. The Auditor-General of the Republic of Kenya is part of the problem. As much as we are putting pressure on the CPAIC to deliver the report for the subsequent years, it is a pity the Auditor-General has not submitted those reports. I am tempted to believe and I have very good reasons to believe so, the Auditor-General of this country is in violation of the Constitution which is ground for removal from office of a public officer in that office.

We, therefore, need to put pressure and this House must exert pressure in consultation with the other House. As Parliament, we must put pressure on the Auditor-General of this country to give us the reports so that the Committee and this House can process those reports. However, it is important to note that we are still too far with the 2013/2014 reports. I see a situation where this term may end when we have not even finished considering reports of a single year. That will be tragic.

If we go on recess in December, we are likely to return in mid-February and going by the traditions of Parliament, it is unlikely that we will even have quorum because hell will have broken loose. This is one country where in the year of elections, life almost comes to a standstill. The energy and the distraction that is caused in campaigns is so grave that sometimes I wonder if we will be able to succeed in doing things that we are currently doing.

We have even important things like the budget, especially for the Senate, the annual County Allocation of Revenue Bill and the Division of Revenue Bill. I hope that we will find a way of getting quorum because I suspect that next year's distraction is going to be very major. In fact, the Executive has recommended that the budget process be brought forward so that it starts a bit earlier, around December so that the Division of Revenue Bill and the County Allocation of Revenue Bill will have been passed by around 30th April, 2017. This is because it will be very ambitious to expect to have people to be here passing Budgets in May and June.

Thirdly, on the issue of oversight funds, it is important that this has been mentioned by others. We have made some progress and this issue has really been delayed to the detriment of our oversight functions in the counties. I am happy to note that we are at the tail end of that exercise and the matter is now before the delegated Legislation Committees of both Houses. We hope that the matter will be resolved in the next few days so that we can commence this oversight fund business in whatever form so that the next Senate will have a seamless early start and will maybe do a more concrete work. It is better to be late than never, as they say.

Finally, I hope that as we conclude this Fourth Session, we will be able to pursue the issue of Bills which have not obtained consideration and concurrence in the National Assembly as anticipated in the law. As a lawyer, I have been thinking whether it is in order for a constitutional office or an institution created under the Constitution to frustrate a constitutional process without consequences. If individual officers can attract

consequences, I see no reason why a constitutional institution can frustrate a legal process or a constitutional process without consequences.

My thinking is that during the remaining period, we shall engage administratively with our counterparts in the National Assembly and resolve this issue. I have been considering that the cure for this problem in the long term would be to amend the Constitution of our country so that concurrence becomes automatic either actively or by default.

What I mean by this is that in the matter of the law making process, if the Executive tries to frustrate Parliament such that the President refuses to sign a Bill within a certain period of time, then that Bill automatically becomes law. That is at the inter-institutional level. That is the institution of Parliament *vis a vis* the institution of the Executive.

Likewise, we need intra-institutional mechanisms to ensure that likewise, no single House within the legislature can frustrate the other. Therefore, in the future, we might need to have a clause similar to the one I have given example to, whereby if one House receives a Bill from the other and there is no concurrence within a certain period of time, then by default, at the lapse of the defined period, that is taken as concurrence by acquiescence or concurrence by default.

The Attorney-General *Emeritus*, Sen. Wako is in the House, he will validate that there is something called approval by acquiescence or what we call in international law, tacit approval. Those would be my thoughts that in the long term, we must make this process of concurrence time bound, definite and when a House wants to play games by sitting down or by sitting on the legislative process of another House, then by default that law takes effect; the same way the Executive cannot frustrate the institution of Parliament

With those many remarks, I beg to support.

Sen. Wako: Mr. Temporary Speaker, Sir, the Mover of the Motion correctly put emphasis on our oversight role as enshrined in Article 96 of the Constitution. It states that we oversee the national revenue allocated to the counties. This is a very important role of the Senate. The Senate would have succeeded in this role if we ensured that corruption at the national level is not devolved to the county level. Owing to the transitional problems that we have had, the institutions which deal with this matter have had problems. The Senate and the Judiciary have had problems.

The seed of corruption has been planted in the counties. It is about to sprout. We would have succeeded as Senate if in the remaining term of our tenure, we ensure that whatever has sprouted or is about to develop roots is uprooted. I say so because it has been proved that corruption in this country is normally at its highest levels when we are approaching elections. This is evident from Independence to date. Whenever we approach elections, the levels of corruption go up.

We, as the Senate and the oversight body must triple our efforts in the remaining period to ensure that this year is an exception particularly in relation to county governments. I sit in the County Public Accounts and Investments Committee (CPAIC). In a number of counties, the budget allocated to the governor for this year is double or even triple what has been the average allocation to the office of the governor in the previous years. In my county this has happened in spite of me going to the county assembly and addressing them that they must interrogate that particular item before they approve it.

Mr. Temporary Speaker, Sir, interestingly, when I tried to find out why they approved it, some of the Members of the County Assembly (MCAs) were very candid. They said that they approved it because they were told by the county government led by the governor that: "Herein lies the money for you to campaign for elections." So, right from the word "go" the county assembly has gone to bed with the governor because of the impending elections. They are colluding to see how public money can be diverted to private use and interests of the MCAs to be re-elected. They are doing this with impunity. That is why I would urge various institutions concerned with corruption to be alert.

Mr. Temporary Speaker, Sir, somebody has talked about the Office of the Auditor-General. I disagree with the Senate Majority Leader that the Auditor-General has strayed and that he must go. My Committee called the Auditor-General and he had his reasons which were valid as to why he is not working up to the optimal level that he would want to work at. One is inadequate staffing. Unfortunately, he cannot rectify that inadequacy not only because of the poor terms of service but because of an amendment that was made in the National Assembly.

Instead of the Auditor-General being in charge of his staff, that area was moved to the Public Service Commission (PSC). Therefore, having removed the powers of the Auditor-General over his staff through an amendment by the National Assembly, how can we blame the Auditor-General for not doing his job properly? This is a critical time. For some of us who have been in the Government service for a long time, at times the Public Accounts Committee (PAC) used to consider audited reports of six or seven years before when the people who were involved were long gone from the Government. The records would not be there by this time. At least on that one, there has been an improvement. The audited reports are interrogated on time. In fact, the audited reports for the Year 2015/2016 are ready. As a Committee we shall embark on considering them as soon as possible.

I commend the County Public Accounts and Investments Committee (CPAIC) chaired by Sen. (Prof.) Anyang'-Nyong'o, ably assisted by Sen. (Prof.) Lonyangapuo. Whereas this Motion is about going for recess, in the last recess we did not go for recess. In fact, we doubled our meetings. We were meeting from Monday to Friday in the morning and afternoon. In one day we would consider three county governments. That is why we are about to complete. Otherwise, without that discipline and denying ourselves the recess to meet our people, we would be far from completing. Our people are complaining that we are never seen on the ground but we are busy doing our oversight. Without doing that, we would be nowhere near completing the audited reports for 2014/2015.

Mr. Temporary Speaker, Sir, if we have to grapple with oversight this year, maybe we should not depend so much on some of those reports. We should take into account that corruption will be on the increase this year. We should enable the Auditor-General to do immediate special audits when required to do so. For instance, if I hear something drastically wrong in my county, I should not wait for the end of the year or elections so that burdens come up after elections.

The Auditor-General should be enabled to move with speed, gusto and efficiency to do an immediate audit and our Committee looks at it urgently. The Ethics and Anti-Corruption Commission (EACC) should also look at it and that governor or whoever is involved is put behind bars. That is the only way we will ensure that corruption is not

devolved to the county level. This should be done particularly this year so that you bring people to book. Of course, people say, "that is now politicizing; this is an election year why are they doing this now." However, if you have to deal with the issue of corruption - provided we are objective, investigations are thorough, if we put the governor or whoever is responsible in, we would have gone a long way in succeeding in our mandate.

Mr. Temporary Speaker, Sir, let me touch on the Ethics and Anti-Corruption Commission (EACC) and other institutions. We have seen in a number of cases the EACC going to counties with a lot of gusto and newspaper reporting. We then hear that people are being investigated in Nairobi and in county headquarters, some are on the radar and so on. After two or three days, the whole thing dies off and we never hear of that again. This demoralises people who know that corruption is going on.

People then begin having unfounded suspicions that maybe something has happened. So, it would be useful for the EACC to, at least, keep people informed if they go in such big style with headlines and so on. Let them keep people informed that this is where we are in the investigations so that people are aware. Otherwise, people will be disillusioned and the culprits will begin to boast that they know what to do. When culprits begin talking in that manner, then you know that impunity has arrived.

Still on oversight, I hear the Speaker of the National Assembly has signed the regulations which relate to the oversight fund. I urge the leadership of Parliament to ensure that Senators get that money. We can only exercise that role properly in the remaining period where corruption levels are high if we move around and alert the Auditor-General: "Please, do a special audit here." I hope that before or immediately after the recess on 1st November, 2016, we shall have funds in our accounts so that we can begin this important exercise of oversighting county governments.

Let me also touch on the Bill that was passed yesterday; The National Cohesion and Integration (Amendment) Bill. I was not here, but it was brought by Sen. Elachi. I support the Bill. As we know, the aim of that Bill is to give the Commission ways of following up on mediation ---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Wako! May I remind you of Standing Order No.109, which prevents you from discussing irrelevancies? Going to a motion of a Bill that was done yesterday, to me, is a high degree of irrelevancy.

Sen. Wako: Mr. Temporary Speaker, Sir, thank you for reminding me. Just to say that I support the Bill and hope the commission will now be able to do its work. For example, particularly in counties which are multi-ethnic or cosmopolitan, some people like governors are now saying: "I come from the biggest ethnic group in this county." He goes on to tell his people: "We can rule this county forever and ever. At least 30 years and so on," inciting other ethnic groups that are there. On the other hand, the commission is not doing anything about it.

So, as we move towards elections where the temptation for politicians is to try to rely on their supporters who may happen to come from some ethnic group, trying to tell them to come out to vote for them by inciting them, they should know that they are also creating ill-feelings in the other ethnic groups. That is why the powers that we will give NCIC under this Bill will assist this country.

Let me also talk on the issue of legislation. As my Vice Chairperson, Sen. Sang, stated, there are so many legislations which we have passed, but are still lying before the National Assembly.

The Temporary Speaker (Sen. (Dr.) Machage): Order! Time is up!

Sen. Wako: With those few remarks, I support.

(Sen., Murkomen stood in his place)

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Murkomen, remain standing.

Sen. Murkomen: I respect the Speaker.

(Sen. Sang entered the Chamber)

The Temporary Speaker (Sen. (Dr.) Machage): Could you both be seated? The quorum must be maintained all the time.

I have this communication to make.

(Interruption of Debate on Motion)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF STUDENTS FROM THE KENYA SCHOOL OF LAW

Hon. Senators, I wish to recognise the presence of the visiting students of the Kenya School of Law (KSL) from Nairobi County. They are seated in the Public Gallery.

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

Thank you.

Sen. Murkomen: On a point of order, Mr. Temporary Speaker, Sir. Am I in order, in one minute, to also join you in congratulating and welcoming the delegation?

The Temporary Speaker (Sen. (Dr.) Machage): You are completely in order.

Sen. Murkomen: Mr. Temporary Speaker, Sir, thank you. I congratulate and welcome the students from the KSL, a very important institution in the legal profession. As their senior colleague, I tell them that this is the right place to be, where two senior counsel, Sen. Wako and Sen. Orengo, are seated.

I suspect that one or two of them, might have been my students, and one of the clerks seated here was my student. So, I have done a lot of things in this country. Let me just tell them that at their very young age, they have made the right decision to come to the “upper” House – a place of inspiration. In their careers, they need not only serve in the corridors of the courts, but some of them will do public service in political environment, serve as clerks in Parliament and many other positions. In the old days, the legal profession was a place for only litigation and conveyancing. However, there are many areas where lawyers are required to provide legal services across the country.

I welcome them and wish them well as they prepare for their bar exams.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. Let us now continue with the Motion.

(Resumption of Debate on the Motion)

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I join my colleagues in supporting this Motion of altering the Calendar of the Senate. This is in respect to Part Three of the Fourth Session which was meant to have a recess from this Friday, 14th October, 2016. We had had a long recess as a result of the many Bills that we were handling from July and our recess was interrupted.

This Motion seeks to defer the recess to start a week later; that is from next week, 19th October, 2016 and we resume on 1st November, 2016. As mentioned by most of my colleagues here, recess is a time where we go to look at our work in counties where we represent the people of Kenya. We are supposed to protect the interest of every county, including county governments. We should give them funds which we do faithfully every year as indicated in Article 96(2).

Lastly, we are also on behalf of the people of Kenya, supposed to do oversight. This is an area that has become a complete challenge and a very serious one for that matter. Many things are going astray in our counties. A Senator who represents a county is not in a position to make things move the way they are supposed to in the counties.

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

[The Temporary Speaker (Sen. Sang0 took the Chair]

Mr. Temporary Speaker, Sir, when we came to the Senate, one Bill that was to compel all the elected leaders to sit once in a month or quarterly was the famous Sen. Sang's Bill. The County Development Board Bill would bring together the National Assembly Members, Members of the County Assemblies (MCAs) and the previous leaders - who have an interest for the county - for a meeting to look at the agenda and approve the development agenda per year, noting that the Senator has worked tirelessly to bring certain amounts of money.

The people in the counties, looking at the poverty level, would be ambitious to come up with grand plans to eradicate all those problems at a go without knowing that the funds is the limiting factor.

Mr. Speaker, Sir, that Bill was great. Today, a few of them have regretted, particularly our colleagues in the National Assembly who sided with the governors when they were competing with the Senators as to how the Bill could be implemented.

Many issues have arisen in our counties. When you drive along the county roads, you see some developments that you wonder why they are there. As Sen. Wako said, we have faithfully been sitting in the County Public Accounts and Investments Committee (CPAIC) looking at the Auditor-General's Report for the year 2013/2014. As they come, a lot of scenarios are seen from every county. One overriding factor is that they say they broke all the procurement laws because they did not have the staff capacity. They allege

that they inherited weak staff from the local authorities and that next time, they will not repeat.

Mr. Temporary Speaker, Sir, if you look at the expenditure incurred, you will be shocked. These are some of the things that are coming out which will make the work of the Senate more needed than ever before. As we push for another week to carry on with business, a number of Bills and Statements relating to security are still pending. Sen. Murkomen had a challenge along the River Kerio. There has been a lot of insecurity in some areas that requires serious attention. We, as leaders from the region, have agreed that we must all go and appear before our people and show the solidarity that, we do not want to hear those types of things happening again.

Mr. Temporary Speaker, Sir, may I commend the leadership of Turkana, West Pokot, Samburu and Baringo counties for the challenge they took early last year to move from one place to another, talking to the residents. There were many cases of cattle rustling then. It is as simple as this; when the Senator leads the team, accompanied by the governor - who is charged with the implementation of the county projects - and the National Assembly Members together with the MCAs, suddenly the residents will see the common good. Sometimes they want to see us talking.

I have told Sen. Murkomen that we need to go to Kerio Valley. When they see Sen. Moi, Sen. Murkomen and I sitting together, that symbol will make the thieves to be proud that they have seen the leaders together. This is the psychology that we want to do. For that reason, we require some break. If there are no funds---

The Temporary Speaker (Sen. Sang): Sen. (Prof.) Lonyangapuo, did you say the thieves will be happy to see the three of you sitting? What are you saying?

(Loud consultations)

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, first, there are some loud consultations.

The Temporary Speaker (Sen. Sang): Sen. Kivuti and Sen. Mutula Kilonzo Jnr., your consultations are too loud.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, what I am saying is that when the cattle rustlers, thieves or murderers see leaders together, they are disarmed by our presence. That alone is sufficient.

I have heard for the last two days Sen. (Prof.) Anyang'-Nyong'o talking about his presence with Sen. Sang at the boundary of Kisumu and Nandi counties when there was a problem last year. The moment you appear there, they will go talking in low and high tones that they saw their leaders. They will also say that the dispute has become painful that their leaders have left their offices to come to the bush and talk to them. That is what I meant.

Mr. Temporary Speaker, Sir, this is what we require. However, you remember that for a Senator to move from this Chamber to such areas, he must use his personal resources. Suppose you have taken a loan. How will you move from one place to another? This is where we have failed. We have not effected the Constitution properly. We should have had an oversight fund.

The manner in which the National Assembly was given more power on Money Bills was not right. We should have been getting our own oversight funds from the funds

that we allocate to the counties. We should have taken about two per cent just like the National Government Constituencies Development Fund. That is a percentage of about two point five of the national funds. In our case, it should be money for the county governments. It should also be audited by the Auditor-General because it is not our funds.

This is where we would put order on how some of these projects are done. We have come to learn during the sittings with the governors. Some of the projects that are done haphazardly are driven by the desire to get some cut of about 10 or 20 per cent. I do not know how much it has risen to nowadays. When you build things like that, you do not care whether they will be finished or not. You do not care which financial year it will be ended. It may extend from one financial year to another.

Mr. Temporary Speaker, Sir, some of the Members of the National Assembly have issues because they see the money allocated to the counties and they start listening to the governors instead of doing their oversight roles. It is essential that we all sit and wait for the funds that may be allocated. I do not know how much the money can do, but since we should have received the money for the last three financial years, it should be an accumulated amount.

We can then get the professionals that will assist as proposed in the regulations. They will work in the Senator's oversight office. It is not the Senator's duty to do that, but he or she can get the people to internalise and produce a report that can be used, together with the reports of the Auditor-General and the Controller of Budget.

Mr. Temporary Speaker, Sir, a number of the Members are now busy, but we have a calling to work to the last day. I commend our colleagues who have worked tirelessly to make sure that devolution is anchored. There are Bills that have been brought here and others were shot down like the one that I introduced recently that tried to put sense into what has happened. There are some people personal to the governors who are called ward and sub-county administrators.

Mr. Speaker, Sir, those people are now very busy in the field. Today Sen. Wako was telling me he found one who told him they were busy and nothing can be done to them. These are some of the excesses that can easily be checked.

Finally, even the national Government has failed in its own duty. How can a county commissioner, deputy county commissioner and police Commander be at the disposal of a governor? These officers are protecting the governors everywhere. They should do their work independently and in consultation with the governors, but instead, they accompany them everywhere. Police vehicles are now used for the purpose of protecting the governors. If the governors want vehicles with sirens, why can they not buy theirs instead of using Administration Police (AP) and the Regular Police vehicles? Besides, what is the reason for running around with sirens? I thought it is only ambulance vehicles which should have sirens. We have a long way to go, but one day we shall be there and our people will enjoy devolution.

I agree with Sen. (Prof.) Kindiki who said we should be bold enough to audit the Constitution and go for a referendum to correct some of the weaknesses with devolution. This will make us go far as a nation in terms of development. Fortunately, the way we work here we do not have opposition and Government. We work as a team. When it comes to issues that touch the people of Kenya like security, we come together. Also, we come together on the issues of examination and how universities are run, but when it comes to politics and ideologies, we can compete.

Sen. Cheruiyot: Thank you, Mr. Temporary Speaker, Sir, for giving me this chance. I rise to support. I do so with a very valid reason in my own considered opinion because the Senate occupies a very important place in the new dispensation of devolved system of government in our country. When the history of how the success or failure, depending on what really happens of devolution, is written, the Senate will occupy a very huge space. So, it is upon us to make sure that when history is written, we shall occupy a place of pride. This is something that we can all be proud of in years ahead if God would have allowed us to live and see.

It is important that we consider that the very reason why we were elected into this House is so that in accordance with Article (96) we may be the custodians of devolution. We will determine whether this first phase of devolved government have been a success or a failure. The question is: Did we, as Senators, play our part rightfully? Unfortunately, history will not afford us the opportunity to explain ourselves.

If people come to read that the reason devolution failed is because money was devolved, abused and misused and the body that was supposed to check that preferred never did anything, we will not be there to explain that we did not have oversight funds and people did not listen to us.

So, it is incumbent upon us, as Senators, to stand up strongly, take our positions and use as much time as possible to do the right thing for this country. That is why I support that next week, let us be here and all gather together for the very important pieces of legislation that we need to put together and even reflect together as a House. It is important for us to question whether the dream of devolution is still on course. This is the dream to make this country great, take services and resources closer to the people and to manage them in a devolved way, rather than the centralised function that we are used before. Is this dream still on or has it been abused and wasted? What has been our position as a House?

Mr. Temporary Speaker, Sir, these are very serious questions which, over time, we need to ask ourselves what is it that we did. When history is written, where will they place us? Did we stand up to fight for the people? When young children from extremely disadvantaged backgrounds cannot access education because a certain governor misappropriated funds to an extent that Early Childhood Development Education (ECDE) classes were never build; those children will be denied opportunity of standing here as hon. Senators and debate like us here. They will not have a chance to tell their story.

Mr. Temporary Speaker, Sir, something challenged me this morning as I was listening to the radio. There was a story of a pregnant lady who trekked for three days looking for water. She hails from one of these extremely marginalized counties where water is scarce. She was complaining that she had not seen her baby of two weeks for those days. She was wondering whether the baby had eaten or not. She had to make a hard choice. If she stays at home with the children, they would still die anyway because of lack of water. So, she decided to look for water.

Looking at such a county government, I wonder what they prioritise. Our children depend on us, as a House, to articulate their issues. This is an important season we are going into. It is high time that we reflected further and questioned ourselves; how can we tighten the loop of pilferage of public funds that is so exorbitant, so obvious and so clear?

Some of us sit in committees where petitions are brought by residents and we study them. You can see clearly that while the law may provide for some loopholes, any straightforward person can see this money was lost. However, we do not have any individual charged up to date. We want to highlight about the Judge or Magistrate in Nyeri who last week sent one county official to prison because of abuse of public office and public funds. That is such a small number, especially when you know what is happening in counties.

While there are success stories, there are things that break our hearts as leaders. We need to fix those things. As we get close to 2017, we know one of the seats that will be hotly contested is the governor's. We need to answer some questions. Is it that we have left the loopholes so open that everybody now wants to be a governor so that they can transform the lives of people? Is it because they are also hungry and salivating for a chance to have their hand in the cookie jar?

Mr. Temporary Speaker, Sir, it is the Senate to stand up to defend devolution. We must see to it that it lives up to its dream and expectation. Are we getting value for our taxes? Is the colossal amount of money we allocate to counties helping our people?

I agree with my colleagues that one of the things we may need to look at is the audit process. How long does it take us to know what is happening in a county in a given financial year? It is so unfortunate that we are in 2016, but we are still talking about audit reports of 2013/2014 Financial Year. What will happen by the time we read the reports of 2016/2017 Financial Year?

We know that given the realities of the political space in our country, this is likely to be the year where people are likely to disappear even with entire budgets of departments if we do not have time to interrogate and question the decisions that are being made. Are the citizens of this country getting value for their money? If we are still doing over 50 per cent of taxes going to recurrent expenditure which, to me, is just for paying salaries, do we really need the number of employees that are in county governments?

There would have been better ways of doing it. For example, what legislation can we put in place and live with their realities? One of the challenges that have been raised in this House is the number of employees that were inherited by county governments from the defunct local authorities. What have we done about it? Why are we allowing county governments to pay salaries for services that have not been rendered?

I have noted within my county that some drivers are paid more than other professionals like accountants and procurement officers because of the number of years that they have served. Is this good value for money? The Constituencies Development Fund (CDF) set for us a good example. About 4 per cent can be spent to pay salaries and then dedicate about 96 per cent to real and actual development.

I may not have been part of the drafters of our Constitution, but I believe that was the dream they had for our country. When they provided for devolution, they did not envisage a situation where 70 per cent of the money will be used to just pay salaries and rent. It is so unfortunate that we have allowed it to go this far. I expect us, as Senators, to rise to the occasion and question what we can do about this.

There are emerging challenges that we have not properly addressed. Some of them are unique challenges that we have been observing. Of late, we have observed a unique case in Murang'a County where the governor would launch a particular project

that would turn out to be a public relations exercise. The governors erect billboards along the road and put advertisements in newspapers and television showing what they have done

We need to question whether this is prudent use of resources. How can we divorce the success of an office and the funds that have been devolved? It is unfortunate for Senators - it is not that we are salivating at that opportunity – that we pass the County Allocation of Revenue Bill in this House and funds go to the counties, but we never get the chance to be invited even to one occasion and be thanked for the good work we do here in Nairobi.

It is time to go back to the villages and sit with the old ladies and listen to their stories of how much their lives have been changed since the advent of devolution. I should be facilitated, as a Senator to go back to the county and sit with my people in their tiny, dusty houses and find out their expectations and aspirations.

At the advent of counties, we established the County Integrated Development Plan (CIDP), which I consider an emerging challenge. It is time to question what happened. How much has a county government lived up to or deviated from that plan? If they have deviated from the plan, do they deserve a second term? Have we, as Senators, spoken about those issues? It will be interesting to hear the opinion of the Controller of Budget who constitutionally knows well that if a county government deviates from budgetary allocations and how it spends funds, the law does not allow them to release funds to this county.

How is it that some of the counties were able to access funds continuously, not once, twice or thrice, yet they deviated from their main budget? We need to call some of these people and listen to what they have to say. We need to find out from the Auditor-General why we are still talking about the audit reports for the Financial Year 2013/2014.

Mr. Temporary Speaker, Sir, I support this Motion with a sober mind and heavy heart. I know that as much as we have done our part, more still needs to be done. There is still time for us to do our part and live up to the expectation and dreams of the people who queued on 4th March, 2013 to vote for a new dispensation, believing that for the first time money would go to the grassroots; more schools would be built and there would be clean water to drink and access to electricity. We, as the Senate, may not be managers of the funds, but we need to reflect and finalize on some of the things that have bogged us for too long.

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

Sen. Hassan: Thank you, Mr. Temporary Speaker, Sir, for this opportunity. First, I want to join my colleagues in all that they have said in the last hour or two in support of this Motion, which I also support.

What appears necessary at this point in time is to undertake a critique or an audit on the extent to which county governments across the board have been able to realize Article 174 of the Constitution that articulates objects of devolution. I read, re-read and re-emphasize Article 174 because if county governments decided to initiate their programmes to respond to Article 174 of the Constitution, a myriad of the problems that we face today in terms of whether or not devolution is working would not be an issue in the public domain.

Mr. Temporary Speaker, Sir, the reasons devolution is said to be working might have been articulated, but reasonable as they might be, it is an extreme travesty to the

spirit and letter of devolution. Some may say that devolution is working because the governor has drilled a few boreholes or put up a few cabro roads. We have trivialized what devolution was supposed to do.

The first object of devolution is to promote democratic and accountable exercise of power. Reflect upon it and show me one county government that has built or is attempting to build a genuine model of democracy. The county assemblies are inept; some are an extension and rubberstamps to the executives. Hardly any of them are building a democratic and accountable exercise of power. In fact, to the contrary, few governors appreciate the very essence of oversight or accountability.

The other object of devolution is to foster national unity by recognizing diversity. One of the things that have been functionally devolved, particularly counties that are organized on basis of clans from northern Kenya--- People have alienated other clans and used devolution for selfish greed and perpetuation of clan and pastoral interests. In fact, diversity is under threat. Therefore, the Senate, in terms of oversight, must stretch its imagination beyond just money. It must also audit some of these Articles of the Constitution which gave rise to devolution.

The other object of devolution is to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them. This Constitution intended to build a model of citizen engagement, so that citizens can feel ownership of their counties, resources and decision making processes. This was not simply to, once in a while when debating a budget, carry an advert for people to assemble in a hall. It was about building a model of citizen engagements. The county governors are given the powers to appoint administrators at all levels, so that, that model can be realised.

You are not supposed to appoint your sycophants, supporters and people to mobilize for you politically, but to put in place a model of citizen engagement. We need to audit the priority areas of county governments. County governments today tarmac roads, where people need water. We need to have better priorities.

This is because Article 174(f) says:-

“To promote social and economic development and the provision of proximate, easily accessible services throughout Kenya”

It is intended to ensure that as per the functions of county governors, we enhance access to water, basic sanitation, health care, decent and affordable housing. That was supposed to be the impact of devolution. It was to instill dignity in our people.

We are not supposed to mirror the national Government. Let the national Government deal with major infrastructure while the county governments deal with the things that improve the livelihoods of our people. Politics in this country is exercised without anybody giving consideration to Article 10 and Chapter six which is about national values, inclusivity, gender parity, social justice, human rights, equity and equality. These are all national values that were supposed to be the makeup and framework of how a Government becomes a Government of the people, for the people and by the people.

Which governor internalizes these issues? When I structure my audit, it will go beyond the parameters of whether the balance sheet adds up, to whether the values also add up. How many of us today in our appointment and conduct of our politics are conscious that there is a Chapter Six that exists on leadership and integrity? How many

governors or their associates have undermined the very credibility of various offices? How many governors today, are conscious that they must give decorum to their offices? Let us, therefore, audit widely. Let us ensure consciousness in the Kenyan public so that we energize them.

It must not be lost on us that this oversight that we intend through the oversight fund that has been mentioned here is coming so late into the day. It might be value addition, but it must also be a rope that hangs each and every Senator. This is because at this point in time, many people can attest to the fact that the Senators have no funds. As we go with this oversight fund, there needs to be sufficient marketing for people to internalize, realize and appreciate the role of the oversight fund. Dubious political competitors might give an impression that the Senator can now give bursaries and be responsible for development. It must be made clear that the oversight fund is simply supposed to critically assess whether the governors have delivered their mandate.

Mr. Temporary Speaker, Sir, I support this Motion. Let us take that extra week, but also the Senate Business Committee must prioritize some of the businesses of the House. There are a lot of colleagues who have brought very good legislation. Let them also leave a legacy. Let us conclude some of the legislations which will require the concurrence of the National Assembly so that our colleagues can come up with Motions and legislation that can be said to have emanated from the Senate.

I think only two legislations emanating from the Senate, that are simply amendments, have seen the light of day as part of Kenya's legislative framework. There is the Sen. (Dr.) Khalwale Bill which is now law and the Sen. Wangari amendment Bill. It is important for us to fast-track legislation because the Sen. Sang Bill, as it was called, is now a matter before courts. We, therefore, need to carry out an audit after the Senate's first term where we can say: "These are the legislations that emanated from the Senate, were passed and informed the discourse with respect to the legislative arena in Kenya".

Therefore, as we take this extra week or two, let us have a very robust calendar. I will also be proposing that the future Senate gets rid of this Statement Time because when a Cabinet Secretary (CS) brings you a response of how much was used on, for example, a road, it consumes so much of our time and energy. If anybody has a query, take it to the relevant Committee. Apart from the political dynamics or acrobatics, I want one person to persuade me what action these statements lead to.

For example a Member seeks a statement that goes: "Mr. Speaker, Sir, I want the Chairperson to tell us why people were killed and the Government took no action?" The Chairperson comes the next day and says: "Mr. Speaker, Sir, the Government is committed. The Government says that nobody was killed. It has taken action. Investigations are going on." So what? Go and say those things in the Committees if you want. This is a total waste of time. That is why I was quite silent during that Statement Hour unless you just want to play to the gallery of people in the village. It is the same thing in and out. "Mr. Speaker, Sir, can the Chairman tell us why the Ministry did not do this". Then the Chairman responds: "Mr. Speaker, Sir, the Ministry has undertaken to do this and that." So what?

Sen. Murkomen, if you are here in the next Senate, get rid of that time, *bwana!* Let those things be interrogated and concluded at the Committee level. It is a gimmick. So what when the Government or the Chair gives you a cliché answer?

So, what we need is to improve the efficiency of this Senate. This Senate must be strengthened. It must be the “upper” House of this country. This Senate must have veto power against any legislation, speak to any issue and make decisions on any matter. It must be a House of last resort. We will broaden its mandate to not only take care of devolution, but to safeguard the integrity of the nation. This is because we have seen what national assemblies and congresses across the world can do. This Senate must, therefore, be given teeth to bite.

Mr. Temporary Speaker, Sir, you shall sit in this Senate if you are re-elected. It shall be a Senate that can veto any proceeding anywhere, particularly in the National Assembly. Every law must come here for you to speak to it. That is how I will commit myself, because I know that for a country and devolution to function, the Senate must be strengthened. We must raise the bar with respect to impeachment. In retrospect, we might have failed in the Wambora Impeachment. At that time, we were to drop hard. However, after that, a wider array of trivial impeachments was brought. When these trivial impeachments came to the Senate, the Senate decided not to impeach these governors. So, a perception was created out there that the Senate is not firm in its mandate. It is letting go off governors. We must set the bar on impeachment so that governors can get the space to work.

Mr. Temporary Speaker, Sir, as we come back after these two weeks when we go on recess, I believe I will have the energy---

The Temporary Speaker (Sen. Sang): Add him one more minute.

Sen. Hassan: Mr. Temporary Speaker, Sir, I want to do the final leg of our political processing. So, I am sure that when that day comes in that last bit, most of you here, I can see Sen. Murkomen are people who are called “home of long distance runners.” You know what you do in the last few meters; you *chomoka*. You take off. This is now where we have been able to conserve the energy and we must finish at the top.

I beg to support.

The Temporary Speaker (Sen. Sang): Very well. I see no other interests to contribute to this Motion. I, therefore, call upon the Mover to reply.

Sen. Murkomen: Thank you, Mr. Temporary Speaker, Sir. I have listened to the eloquent contributions which have been made by Senators on the important matter of the role of the Senate on accountability. I have listened to Sen. Hassan profess passionately the importance of participation and mainstreaming proper governance as per Article 174 of the Constitution. What is key is that as a House, we must never forget that the work we are doing is for posterity. It is not for now. Those of us who have come here must leave a footprint. It must be remembered. The reason why we speak on record is because it must be remembered that we had a role and we have played our role.

Mr. Temporary Speaker, Sir, since Senate came into being, we have played a critical role in various ways in terms of passing legislation and strengthening county assemblies. Our desire to strengthen county assemblies was informed by the jurisprudential aspirations of the Constitution which are basically that county assemblies were going to be oversight entities which were going to act independently of the county executive. Of course, there is a difference between text and the practice. In many of the counties now, Members of the county assemblies are appendages of the executive.

Mr. Temporary Speaker, Sir, yourself, I and Sen. Hassan are young people. It is frustrating because what we read in law school in the university – incidentally, we are all

lawyers – was that classically a constitution as enunciated by Montesquieu is that there will be checks and balances in the arms of government. It was expected that the Executive arm of the Government would be checked by the legislature. What has been extremely frustrating for me, if there is a greater frustration in terms of politics is the difference in practice and the theory itself and the hopes that Kenyans put in the Constitution.

This is where the paradox is. When it comes to votes and voters, we are not judged by what we do as per Article 96 or the Articles of Chapter 11 of the Constitution on matters of devolution. Subtly, the voters are asking for very funny things. People are now concerned about whether you attended a fundraising to help him to buy a wire mesh for fencing his land. The things that people demand are not written anywhere in the Constitution. In fact, it can only be through practice. You will realize that those who are doing theatrics, punching walls, yelling and dancing are more heard and seen to be active than the rest of us who are focusing on passing the law and providing oversight to ensure Kenyans are enjoying representation.

You will realize that it is not the amount of questions that you ask here on behalf of your county that will make you to be re-elected, neither is it the amount of legislation that you pass that will leave a legacy for you. Unfortunately, what has become important are the harambees, theatrics and organization of demonstrations which are - although very important in the direction of representation - they are not the key issues that we are called to do. Unfortunately, you must be able to do both. We must continue doing the work expected of us in the Constitution with zeal because that is where posterity comes in.

When the people wake up in the future when the madness of politics has settled down, they will sit down and ask themselves what they were expecting Senators to do. That is where legacy, posterity is. That it will be remembered that Sen. Hassan, Sen. Sang, I and others worked so hard to change the formula because we cared about marginalized communities. On the formula of sharing of revenue, we left very important information that will be used in future by a better and more competent CRA that will actually come and do a proper work in sharing of resources.

Sen. Hassan said when we were debating that the formula suggested by CRA is just a formula that was so simple and there was no thought into it because they feared the unchartered waters. They did not want to think broadly. They never thought about the concept of marginalized groups; they never looked at the question of the wage bill in so far as urban areas and urban cities are concerned.

Some of the things that we have done are already on record. We looked at the Devolution Committee of transfer of functions and recommended in the report what needs to be done and there is Sen. Sang's Bill. When the Judiciary wakes up one day, the country will realize the importance of leaders working together. They will come back and say that Sen. Sang had a point. I saw Sen. Sang conversing with the former Chairman of the Committee for the Implementation of the Constitution (CIC) and he was asking him how he will participate in the development of his county when he comes to this House because he is aspiring to be a Senator.

Some of the things that we have done may never have been accepted. When we were forming the County Public Accounts and Investments Committee where Sen. Hassan was the Vice-Chairperson at that point, many people including ourselves in this

House were wondering whether that is an area we should go. But look at what we have done as a result of that Committee. We have been able to make many Governors and County Governments to become more vigilant, they think through what needs to be done.

I am a believer in this House. The reason why I am coming back to this House is because I believe that we will develop the jurisprudence, the history and what will become the traditions of this House. We will become part and parcel of those who will put the Senate's role into perspective. Indeed, people out there, take us seriously. They took us seriously when we were sitting in the Committee to deal with the IEBC reform, when we were looking at the issues that we will use in future to amend the Constitution and even in the impeachment of Governor Wambora even though we did not succeed. This tamed the run-away corruption in many counties and it became a warning to many governors who are likely to misuse public resources.

I have heard the contributions of many Senators. I can say without any fear of contradiction that all of us are passionate about changing this country. That is why we must also deal with our citizenry. We must ask Kenyans to decide what they want. People are asking, "What have you done that is supposed to directly translate to food in my house?" What have you directly contributed to my pocket?

Mr. Temporary Speaker, Sir, people have to make a decision. Leaders are not elected to do things for people. They are elected to lead people to do things for themselves. The taxpayers' money is used to construct roads and so on. Public servants who are doing that are doing it on behalf of the people. The people are doing it for themselves. So, leadership is there to carry the vision, inspire, motivate and encourage people to do things for themselves. That is why sometimes when they ask me, "What will you say you have done in five years for the people of Elgeyo-Marakwet County? I will tell them that I inspired so many young people to work hard in their education. I inspired so many people to think how they will invest and how they should live in peace. That was my role.

Building classrooms or donations by leaders, are not exclusive. They can be done by everybody. In a country like the United States of America (USA), retirees or big businessmen like Mr. Mark Zuckerberg, a young man, has said that he will donate a lot of his resources towards bridging the digital divide all over the world. We must start inculcating in our people through training, public speaking, encouragement and meetings that our role as leaders is not to do things. Our role is to inspire them to do things for themselves and allow them to dream.

Former President J.F Kennedy is remembered for Americans going to the moon, but he is not the one who designed the equipment that took people to the moon. He did not sit in the laboratory to work on them. He never travelled to the moon, but he inspired those people to dream and think, focus and invest in science. The country voted in a budget that will invest in science. All these things must encourage us to continue nurturing the role of leaders in inspiring people to do things for themselves and be what they want to be and reach their full potential.

Sadly, we have a nation that needs a lot of work from us. Many people are pessimistic about life. All the time you meet people, they say, you know, this country will not be successful next year. We will not have meaningful resources. There is a lot of doubt in this nation. Our role as leaders is to give people hope. Someone said that the leadership and leaders are dealers in hope. It is our responsibility to ensure that people

are hopeful and focused on what they need to do and live in peace because we are preaching peace.

Mr. Temporary Speaker, Sir, part of the roles and works of leadership is to bring people together. Sen. (Prof.) Lonyangapuo, I and other leaders from Elgeyo-Marakwet, West Pokot and Baringo are working hard to ensure that the border fights in the Kerio Valley triangle between the three counties stop. That is part and parcel of leadership.

There are two things we need to do. We either decide that we want to lead and live by morals of leadership or use short cuts and get votes. Where we just want votes, we will lie to the people; tell them things that we want them to hear. We will ask them to clap for us. Sometimes we must tell people the truth, the whole truth and nothing but the truth despite how painful that pill will be to swallow.

Mr. Temporary Speaker, Sir, I thank the Senators who have contributed to this Motion. I believe that the next one week will be used in a positive way to advance the interest of our people to continue dealing with these issues.

Hon. Senators, there are many pending many Bills that are supposed to go to division. We should pull up our socks next week, sit down and vote on those Bills for them to become law. Let me say this without fear of contradiction, there might be no other Parliament since 1963 that has a House other than this Senate that has many Private Members Bills. Many private Members have come up with Bills in this House. When auditing is done in future, it will become apparently clear that despite the bottlenecks that we are facing in terms of working with our sister House, this House has tried its best to ensure that we have Bills that are beneficial to the people of Kenya.

With those many remarks, I beg to reply.

The Temporary Speaker (Sen. Sang): This is not a matter affecting counties.

(Question put and agreed to)

Very well. Next, Order.

(Sen. Murkomen stood in his place)

Order, Sen. Murkomen!

BILLS

Second Readings

THE PUBLIC APPOINTMENTS (PARLIAMENTARY APPROVAL) (AMENDMENT) BILL (SENATE BILL NO.2 OF 2015)

The Temporary Speaker (Sen. Sang): Order, No.10 is a Division and Sen Adan is not in the House. The same applies to Order Nos.11, 12, 13, 14 and 15. We defer these Orders.

THE SELF HELP ASSOCIATIONS BILL (SENATE BILL NO. 2 OF 2015)

THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL
(NATIONAL ASSEMBLY BILL NO.36 OF 2014)

THE NATIONAL COHESION AND INTEGRATION (AMENDMENT)
BILL (SENATE BILL NO.6 OF 2016)

(Bills deferred)

COMMITTEE OF THE WHOLE

THE COUNTY GOVERNMENTS (AMENDMENT)
BILL (SENATE BILL NO.4 OF 2016)

THE PHYSICAL PLANNING BILL
(NATIONAL ASSEMBLY BILL NO. 46 OF 2015)

The Temporary Speaker (Sen. Sang): For Order No.15, I give directions that Sen. Mutula Kilonzo Jnr. who has several amendments on this particular Bill to consult with the Chairperson of the Committee, Sen. Kivuti. I, therefore, direct that this appears on the Order Paper on Wednesday, next week for the Committee of the Whole. At that time, they will have agreed and synchronized the amendments.

(Committee of the Whole deferred)

Next Order!

BILLS

Second Readings

THE COUNTY GOVERNMENTS (AMENDMENT)
(NO. 2) BILL (SENATE BILL NO. 7 OF 2016)

The Temporary Speaker (Sen. Sang): Sen. Mutula Kilonzo Jnr. is not here. I order that the same appears in the Order Paper on Tuesday, next week.

(Bill deferred)

THE TREATY MAKING AND RATIFICATION
(AMENDMENT) BILL (SENATE BILL NO.5 OF 2016)

The Temporary Speaker (Sen. Sang): The Chairperson is not here so, we defer the Bill.

(Bill deferred)

Next, Order.

The Temporary Speaker (Sen. Sang): Next Order. Sen. Khaniri is not there. So we defer the Motion.

MOTIONS

COUNTRYWIDE AUDIT ON DISTRIBUTION OF TEACHERS IN PUBLIC SCHOOLS

WHEREAS Article 43(1)(f) and 53(1)(b) of the Constitution guarantees every citizen a right to education and every child a right to free and compulsory basic education, respectively;

NOTING that the Teachers Service Commission is mandated to handle employment, deployment, remuneration and discipline of teachers in public schools in Kenya;

CONCERNED that there are great disparities in the distribution of teachers in public schools across the country leading to oversupply in some schools and undersupply in others and ultimately leading to major teacher shortage especially in rural and marginalized areas; efforts made by the national government to improve the teacher pupil ratio to international standards in all public schools through yearly employment of teachers;

FURTHER CONCERNED that the statistics on the number and distribution of teachers in public schools is not readily available;

NOW THEREFORE, the Senate directs the Ministry of Education, Science and Technology to conduct a countrywide audit on the distribution of teachers in all public schools indicating the requisite establishment per school and the corresponding number of teachers who are in-post and further that the Ministry submits a report to the House on the matter within ninety (90) days.

(Motion deferred)

The Temporary Speaker (Sen. Sang): Next Order. Sen. (Prof.) Lonyangapuo is not there. So, we defer the Motion.

Next Order.

CREATION OF AN OFFICE TO AUDIT THE BASIC EDUCATION INSTITUTION FUND

THAT, whereas Article 53 (1)(b) of the Constitution provides that every child in Kenya has the right to free and compulsory basic education;

RECOGNIZING the importance of education in the alleviation of the main challenges facing Kenya's sovereignty identified at independence, namely; poverty, illiteracy and disease;

APPRECIATING the gains made following the implementation of the free primary education program in 2003 and cognizant of the principles set out in the Basic Education Act of 2013 whose objectives include promotion and regulation of free and compulsory basic education besides providing for accreditation, registration and management of basic education institutions;

NOTING the substantial resources invested by the national and county governments, parents, sponsors and development partners in the provision of basic education;

FURTHER NOTING that pursuant to the Basic Education Act, the County Director of Education is vested with numerous responsibilities including facilitation of auditing of all basic educational institutions in the respective county thereby leaving fundamental gaps of governance especially in the management of the available resources;

NOW THEREFORE, the House recommends to the Cabinet Secretary for Education to facilitate the creation of the office of an auditor to specifically audit the basic education institutions' funds to enhance transparency and accountability and improve governance in the management of these institutions.

(Motion deferred)

The Temporary Speaker (Sen. Sang): Next Order. Sen. (Eng.) Muriuki Karue is not there. So, we defer the Motion.

INSTALLATION OF CCTV CAMERAS IN POLICE STATIONS AND POSTS

CONCERNED about the numerous reports of the arbitrary arrests of innocent people by the police;

FURTHER CONCERNED that a large number of those arrested are allegedly locked up in police cells without being recorded either in the Occurrence Book or elsewhere;

DEEPLY CONCERNED that some of the arrested people disappear without a trace and that many who are subsequently traced are found dead away from where they were known to have been locked up;

ALARMED by the recent incident where three young men were locked up for hours at Syokimau Police Post without any record indicating they had been at the police post, only for them to be found days later, in another area far from the police post, having been brutally killed;

APPRECIATING that the Closed Circuit Television (CCTV) system installed by the Government in Nairobi has helped a lot in criminal investigations;

NOW THEREFORE the Senate calls upon the National Government to install CCTV cameras in all police stations and police posts in order to record each and every person going in and out of the station; b) have the CCTV system designed in such a way that it is capable of capturing the Occurrence Book entries every twelve hours; and c) ensure the CCTV system is connected to a central depository in order to minimize chances of subsequent tampering.

(Motion deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Sang): Hon. Senators, there being no other business to transact, the Senate stands adjourned until tomorrow, Thursday, 13th October, 2016, at 2.30 p.m.

The Senate rose at 6.20 p.m.