

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 30th November, 2016

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

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

PRAYER

COMMUNICATION FROM THE CHAIR

SEVENTH EDITION OF THE EAC INTER-PARLIAMENTARY GAMES IN MOMBASA COUNTY

The Speaker (Hon. Ethuro): Order, Members, I have a Communication to make on the Seventh Edition of the East African Community games to be held from 4th to 11th December, 2016 in Mombasa County.

Hon. Senators, I wish to inform you that the Seventh Edition of the East African Community (EAC) Inter-Parliamentary games is scheduled to take place from 4th to 11th December, 2016 in Mombasa County. The games are a key aspect of building relations between the East African Legislative Assembly and the national parliaments of partner States in the East African region.

The games bring together representatives of the East African Legislative Assembly and from the East African Community partner States which include Burundi, Kenya, Uganda, Rwanda, Tanzania; and, from this year, South Sudan. The games play a major role enabling interaction and integration process among the Members of Parliament in the partner States. According to Article 5, they are meant to widen and deepen the integration process.

Hon. Senators, the games which started in 2009 are held on an annual rotational basis. Kenya is privileged to host the Seventh Edition of the East African Community Games and the Parliamentary Service Commission has chosen Mombasa County as the venue for this activity. Towards this end, a committee consisting of Members from both Houses chaired by the Hon. Dan Wanyama was formed and inaugurated by the Speakers of Parliament on 16th June, 2016 to prepare and put in place the necessary logistics for the successful hosting of the games. The following Senators have been selected to form the Senate team at the games:-

1. Sen. Daisy Nyongesa
2. Sen. Kembi-Gitura
3. Sen. Zippora Kittony

4. Sen. Isaac Melly
5. Sen. Mvita Mshenga
6. Sen. (Dr.) Agnes Zani
7. Sen. Lisa Chelule
8. Sen. Hassan Omar Hassan
9. Sen. Okong'o Mong'are
10. Sen. Moses Kajwang
11. Sen. Kimani Wamatangi
12. Sen. John Munyes
13. Sen. Stewart Madzayo

I want to confirm that we are the reigning champions as a Parliament in the region. I, therefore, urge the selected Senators to work hard and win for us these trophies. Senators are also requested to get in touch with the Office of the Clerk of the Senate for further logistical arrangements.

I thank you.

MESSAGE FROM THE NATIONAL ASSEMBLY

APPROVAL OF THE PRESIDENT'S RESERVATIONS ON BILLS

The Speaker (Hon. Ethuro): Order, Members, I have a Message from the National Assembly on the approval of the President's Reservations to the Petroleum (Exploration Development and Production) Bill (National Assembly Bill No.44 of 2015) and the Energy Bill (National Assembly Bill No.50 of 2015).

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40 (3) and (4), I have received the following message from the Speaker of the National Assembly regarding the referral of the Petroleum (Exploration Development and Production) Bill (National Assembly Bill No.44 of 2015) and the Energy Bill (National Assembly Bill No.50 of 2015) by his Excellency the President to Parliament for reconsideration.

Pursuant to the provisions of Standing Order Nos.41 and 142 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly.

THAT WHEREAS in exercise of powers conferred on him by Article 115 of the Constitution, His Excellency the President refused to assent to the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No.44 of 2014) and the Energy Bill (National Assembly Bill No.50 of 2015) and refer the two Bills to Parliament for reconsideration;

WHEREAS the National Assembly on Tuesday, November 22nd and Wednesday 23rd November 2016 reconsidered and passed the two Bills fully accommodating the President's reservations and without proposing any amendments to the said reservations;

NOW THEREFORE in accordance with the provisions under Article 115 (4) of the Constitution, I hereby forward the Memorandum of the President containing these reservations to the said Bills to the Senate for reconsideration.

Hon. Senators, Article 115 (2), (3) and (4) of the Constitution provides as follows:-

(2) If the President refers a Bill back for reconsideration, Parliament may, following the appropriate procedures under this Part:-

- (a) amend the Bill in light of the President's reservations; or
 - (b) pass the Bill a second time without amendment.
- (3) If Parliament amends the Bill fully accommodating the President's reservations, the appropriate Speaker shall resubmit it to the President for assent.
- (4) Parliament, after considering the President's reservations, may pass the Bill a second time, without amendment, or with amendments that do not fully accommodate the President's reservations, by a vote supported-

- (a) by two-thirds of the Members of the National Assembly.
- (b) two-thirds of the delegations in the Senate, if it is a Bill that requires the approval of the Senate.

Hon. Senators, as you may recall, this is not the first time that the Senate has received Memorandum from His Excellency the President regarding the refusal to assent to Bills. Indeed, last year we received and considered the President's Memorandum on the Public Audit Bill and the Public Procurement and Assent Disposal Bill. You will also recall that these two Bills were subject to Constitution timelines of 27th August 2015 having been extended by 12 months by the National Assembly.

Considering the above, I direct that the President's reservations to the said Bills be circulated to all Senators and that the matter be listed in tomorrow's Order Paper for consideration.

I thank you.

Next Order.

PETITION

ALLEGED CORRUPTION AND MISAPPROPRIATION OF FUNDS AT THE NYAMIRA COUNTY GOVERNMENT

Hon. Senators, pursuant to Standing Orders 220(1)(a) and 225(2)(b), I hereby report to the Senate that the petition has been submitted through the Clerk by three residents of Nyamira County regarding alleged corruption and misappropriation of funds at the Nyamira County Government.

In their petition, the petitioners state that funds allocated for implementation of various projects and initiatives in Nyamira County have on several occasions been diverted either to private groups associated with them or direct for the benefit of the county governor and his family members.

Among the affected projects and initiatives cited by the petitioners is the Nyamira County Small Holders Commercialisation Programme where it is alleged that grade livestock, quails and greenhouses purchased under the programme were diverted to the governor's home. Consequently, the petitioners pray that the Senate investigates this matter and makes appropriate recommendations to address the situation.

Hon. Senators, pursuant to Standing Order No.226, I shall now allow comments, observations or clarifications in relation to the petition for not more than 30 minutes.

Sen. Obure: Thank you, Mr. Speaker, Sir. First of all, I want to thank the three citizens from Nyamira who have raised this petition drawing the attention of this Senate

and, indeed, the general public to what is going on in Nyamira County. Those kinds of events or happenings concerning misappropriation of funds by those responsible or diversion of public funds to individuals and personal use is not only restricted to Nyamira. It happens in other counties as well.

I want to urge this Senate, particularly the relevant committee to which this matter has been referred, to take a serious view and carry out proper investigations so that those who are culpable or those who are found to be responsible are punished accordingly. However, this is a common feature in our counties today where there is open plundering of public resources and open “thieving”, if I am allowed to use that word.

The Speaker (Hon. Ethuro): Order! You are not allowed to use that word.

Sen. Obure: Mr. Speaker, Sir, open plundering that is going on. We have situations where reports are made to the effect that funds are allocated for specific projects. However, when you go down to inspect those projects that are completed and paid for, there is absolutely nothing existing on the ground. We need to grapple with this and make sure that this situation is arrested and those responsible punished.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I want to laud the three residents from Nyamira for being bold enough to raise pertinent issues regarding public funds and expenditure in their counties. We, as a Senate, wonder why there is delay of releasing oversight funds to us because this would have helped the Senator for Nyamira County to notice such anomalies a long time ago. It is a pity that it is left to the citizens to raise those happenings in the counties. It is surprising that a county government purports to buy cows to give to the poor people while they take them to the home of the governor.

Nyamira County is a small county with scarce land. Unless the governor owns a big land, where would he keep all these cows and the greenhouses? There are a lot of problems in the counties. For example, in the construction sector, there are various construction works going on without proper budget or approval from the county assemblies.

In some instances----

The Speaker (Hon. Ethuro): Order, Sen. (Prof) Lonyangapuo!

Sen. (Prof) Lonyangapuo: Mr. Speaker, Sir, in some instances, work that is supposed to be done in the next five years has already commenced without proper budget. This is chaos being witnessed. I laud the petitioners and we should encourage county citizens to be alert like them.

Sen. Muthama: Bw. Spika, nakushukuru kwa kunipa nafasi hii. Nawashukuru wananchi wa Nyamira ambao wametuma *Petition* yao hapa. Hii ni dhihirisho ya kwamba Wakenya wamechoka, hawana nguvu na pia hawana pa kwenda. Wananchi hawa wako na mwakilishi wao hapa, ambaye ni Seneta, lakini hawawezi kuandika hiyo *Petition* kupitia kwake. Wanaona ni heri wakimbie mbele ya Bunge la Seneti ndiposa waweze kusaidika.

Wizi wa hela za Serikali hapa Kenya umepita mipaka na Wakenya hawajui pakuenda. Juzi tumedhihirisha katika taarifa iliyosema kwamba kibunda cha pesa magavana wanachangia kwa muungano wao wa *Council of Governors*. Hili ni jambo la kushangaza. Je, wanatoa wapi pesa hizo na ni za kazi gani? Magavana wanasema kwamba wanaziweka hizo hela kujitayarisha kwenda kortini kujitetea ilhali waliowachagua wanataabika.

Nataka kusalimu amri na kusema ya kwamba Kenya inaangamia kwa sababu hakuna usalama wala msaada. Wale ambao wamekusanya mali kidogo wanaishi katika nyumba kubwa, wamejikinga kwa kutumia milango ya vyuma na mbwa. Narudia maneno ya J.M. Kariuki, kwamba kati ya watu milioni kumi, kuna watu milioni 40 ambao ni maskini. Kwa hivyo, sijui kama ni risasi ama nini itazuia wananchi kudai haki yao na kuwalazimisha viongozi waache kuiba.

Nawashukuru wakaazi wa Nyamira. Tutajaribu tunavyoweza lakini najua hakutakuwa na jawabu la kuwasaidia.

Sen. Kembi-Gitura: Thank you, Mr. Speaker Sir. I want to join hands with my colleagues who have lauded the residents of Nyamira for bringing out this important issue. I want to believe that this is the very first Petition specifically talking about an issue like this one that has been brought directly by citizens of a county. When this happens, then we know that something is very wrong. Why is it that the relevant authorities have not noticed that the Governor has been giving contracts to his relatives yet the information has come to the public domain? Why is it that they have not come up with a solution? This is why we are here as a Senate.

As a Senate, we have kept on talking about the blunders that go on in the counties, yet our concerns keep on falling in deaf ears. I do not know the committee that you are going to commit this Petition to, but I hope that the relevant committee is going to get to the bottom of this issue. It should hold a public hearing and we should get results or recommendations that are going to be followed to the letter under the supervision of the Senate. Indeed if there is any culpability, whoever is responsible has to be brought to book.

I am sure that many residents in the 47 counties would like to bring such petitions to the Senate but there is intimidation. Some people cannot come out clearly with a mission like this. I want to congratulate and laud the residents of Nyamira County who have brought up such an important issue. This shows that corruption is going on and it is rampant in many counties. It is going to---

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

Sen. Kembi-Gitura: With your permission, Mr. Speaker, Sir, it is going to make people to lose faith in devolution. I have said on several occasions that devolution is the future of this nation. We have everything to worry about when the people lose faith in it. In fact, as a Senate, we should not allow that to happen. That is my plea to the relevant committee of the Senate that is going to deal with this issue.

The Speaker (Hon. Ethuro): Could we hear from Sen. Mutula Kilonzo Jnr.? Members, you must be very clear. The prayers of the petitioners is that the Senate investigates this matter and makes appropriate recommendation to address the situation. We have not investigated the matter or determined it yet. So let us not do an overkill.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I thought we were generally speaking on the subject. I want to say this with tremendous respect to everybody, that corruption in counties is officially the 48th county. In it, there are no coalitions such as Jubilee and CORD or political parties. The loyalty pledge is that there is no honour among thieves.

Mr. Speaker, Sir, one Act of Parliament that was signed into law but we do not take seriously is the Controller of Budget Act. That Act was passed and assented to by His Excellency the President without our input. The Controller of Budget is the one who

continuously approves misapplication and misappropriation of funds. She is now giving counties money using regulations as opposed to the Act.

Therefore, as we move forward, I have two proposals. You have proposed that we have a Legislative Summit which is not the Governors' Summit. We will not attend the Governors' Summit. First, as a Senate, we should form a special Directorate for Petitions. Secondly, we had requested that a list of pending petitions be presented here to enable us show the public what we have done.

Lastly, there is one infamous governor who came to the Senate hand in hand with the Chairman of the Public Accounts Committee (PAC). That is an unholy marriage between a governor and the auditors of the county. In that Legislative Summit, the Chairperson of the Committee on Finance, Commerce and Budget and the Chairperson of the County Public Accounts and Investments Committee (CPAIC) should have a session with our counterpart committees in the county assemblies. They should advise them not to have this unholy marriage where they come holding the hands of governors to the Senate---

The Speaker (Hon. Ethuro): Conclude, Senator.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, the solution lies with this interrogation. How can somebody move cows---

The Speaker (Hon. Ethuro): You are also running the risk of unholy timing.

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

Sen. Kagwe: Thank you, Mr. Speaker, Sir. I hope I can stay within the holy time. The crafters of the 2010 Constitution did not envisage a situation where devolution was going to involve devolution of corruption and malpractices. I believe that the future stability of this nation is predicated on the good running of county governments. Let us never lose sight of the reason why we have devolution. Devolution is there to help Kenya be a more stable nation.

While supporting the petitioners, it is good for us to look at the wider picture and all the management. Article 96(3) which gives this House oversight responsibility over management of county resources and devolved funds can never take effect because it is a word that only exists in the Constitution. It is not effective because it does not happen. For it to happen, the lawyers in this House must advise us on the law that effects article 96(3). This is because we should not be begging for funds to effect article 96(3), it should be in law. There should be a law that states the amount of money that the Senate must get to enable them to effect Article 96(3). Only then are we going to avoid situations where people are buying cows supposedly for the wananchi and then taking them to their own houses or buying cows to supposedly alleviate poverty in the county but just to use them as---The only way we can do this is by having a law that gives effect Article 96 (3). This House should not get money on the basis of the goodwill of others. Let it be in law that we must get this money.

Thank you, Mr. Speaker, Sir. I support.

Sen. Sijeny: Mr. Speaker, Sir, I commend these Kenyans because they are obeying the law. They are taking due processes. They are not taking the law in their hands to start fighting. They are appreciating the institutions enshrined in the Constitution. It is our responsibility and I believe where we shall refer it, it should receive the best attention that it deserves.

Mr. Speaker, Sir, this is a good opportunity for the Senate to investigate most of these issues and avoid the drama that some of the governors act by avoiding to appear before Senate committees. With this Petition, I am sure we will get all the documents and the results that we need so that the people of Nyamira County will defend what is theirs. This is applauding the devolution which was meant to send resources down to the villages and ensures enough participation by all Kenyans. This shows that Kenyans are alert, watching and they want to control all that they need.

I commend them.

Sen. Khaniri: Thank you, Mr. Speaker, Sir. I will take a slightly different angle in this matter. I hail the patriotic residents of Nyamira County for having confidence in the Senate and bringing their petition to us.

The issue of petitioning Parliament is important. That is why it is referred to twice in the Constitution. It is under Chapter Four on the Bill of Rights, Article 37 of the Constitution which gives Kenyans the right to petition Parliament. It is also mentioned under Article 119 in Chapter Eight of our Constitution.

Mr. Speaker, Sir, since we started sitting in this Senate, we have received many petitions from many quotas. The residents of counties have been complaining about how affairs are being run in their counties. The reason why these petitions come to the Senate is because these Kenyans have confidence in this House. I want us to re-examine ourselves on this issue of petitions. How many petitions have been brought before this House? How many have been completed? Sen. Mutula Kilonzo Jnr., it is a serious matter. We do not want to lose that confidence that Kenyans have in this House. I know of many petitions that have been before this House. The Standing Order No. 277 (2) is clear that once a petition has been committed to a committee, that committee has 60 days to report back to the House.

I know of petitions that have taken more than seven months and they have not reported to the House. I know of a number and they include one from Vihiga County Assembly where the MCAs petitioned the Senate and the Petition has been lying with the Committee led by Sen. Billow. I do not understand why the report of that petition has not been brought back to the House. These are some of the things that will make Kenyans to start losing confidence in us. We must stick to the rules that we made ourselves. The Standing Order No. 277 (2) is clear.

Mr. Speaker, Sir, I wish to encourage the Committee that this Petition will be committed to expedite the matter so that it does not become like the petition from Vihiga County Assembly.

The Speaker (Hon. Ethuro): For the remaining Members, you have only two minutes.

Sen. Sang: Mr. Speaker, Sir, I join my colleagues in congratulating the three petitioners who presented this Petition to the Senate. The responsibility given to this Senate is partly shared with the county assemblies in terms of oversight over our counties. This House through the Committee on Legal Affairs and Human Rights enacted a legislation called The Petitions to County Assemblies Bill. This House passed but it is pending in the National Assembly.

The reason why you see members of the public in counties petitioning the Senate is because there is no mechanism or proper infrastructure for them to present them to the county assemblies.

Mr. Speaker, Sir, I use this opportunity to ask the National Assembly to look at the many Bills that we have presented, approved in this House and passed to the National Assembly. They should approve them in order to benefit Kenyans. However, members of the county assemblies need to ask themselves serious questions. When they see the influx of petitions to the Senate, what does it say about the public confidence in them? It is important that county assembly members re-examine their fidelity to the law in terms of carrying out oversight so that we can reduce the number of petitions to this House and encourage members of the public to petition the county assemblies having faith that they will be dealt with at that level.

With those few remarks, I beg to support.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir. This petition is before this House at an interesting time. It is encouraging to see that the people who matter in regard to the role of the Senate still believe in the power of this House. They value the work that we do as Senators.

I congratulate the residents of Nyamira County for the oversight role that they seem to be doing despite the inadequate resources that are at their disposal. This is an encouragement to the Senators that despite the challenges that we face, we can still do our work diligently with or without the resources that we have been seeking for some time now.

Mr. Speaker, Sir, I serve in a Committee that has been mentioned and I have had an opportunity to look at some of the Petitions that have been brought before this House. You cannot help but sympathise with the residents of some particular counties when there is so much plunder and theft. You also feel encouraged that there are residents who are watching. As Senators, the Committee that will look at this Petition should give something great to the residents of Nyamira County. As we approach next year's general elections, the confidence in the amount of work that this House does can be uplifted.

Thank you.

Sen. Wangari: Thank you, Mr. Speaker, Sir. The reason you hear Members speak with certainty to this issue is that from the Members of the County Public Accounts and Investments (CPAIC) and the Committee on the Finance, Commerce and Budget, we encounter many of these issues that you can almost make an inference. As I commend the three residents of Nyamira County, I note their frustrations as have been cited by Members here. I know Sen. Mutula Kilonzo Jnr. is afraid to name Machakos County. In fact, the governor appeared before CPAIC not only accompanied by the chairman of the County Assembly Committee on Public Accounts, but also the County Assembly Majority Whip, Minority Whip and about eight MCAs. That is where the problem lies. The frustration you are seeing from these Kenyans is because the county assemblies can no longer exercise their oversight role. They have been unable and it has been proven to us that it is not possible. Going forward, I hope the issue of timelines of 60 days will be considered.

The petition tracker is very critical. Let us name and shame the committees that sit on petitions and laud those like the Sen. Mutula Kilonzo Jnr.'s of Legal Affairs and Human Rights and others, who have dealt with their petitions. By so doing, we will do justice to the public and what is expected of us by the Constitution.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I also wish to agree with my colleagues on this significant issue. However, I wish to address specifically on the request that has been

made by the petitioners who have asked the Senate to investigate. I wonder whether the Senate has the capacity, through its committees, to thoroughly investigate particularly if we will be asking the Auditor-General to assist us in this investigation. We know that part of the problems that we have in investigating some of these issues is the fact that the Office of the Auditor-General has not done a thorough job in order to allow us to fix whoever is dealing with these issues.

This brings to the fore the question of the capacity of the staff of the Senator in that particular county. Could they have on board an auditor from the Office of the Auditor-General to work with them so that they avail useful information to the Senate so that we address these issues accordingly? As we investigate, we want to do justice to an issue that has been brought before us. Governors are now using the Integrated Financial Management Information System (IFMIS) as a scapegoat to cover for their misdeeds. They blame the IFMIS thinking that it is the “thief” of the county funds. This is not the case. It is the responsibility of the Senate to investigate and establish whether governors and other government officials are using this system to misappropriate funds in counties.

I commend the petitioners of Nyamira County who have brought this petition. Let us now show them that the Senate can actually investigate and come up with credible and possible ways of legislating differently in order to stop this kind of thing.

I support.

Sen. (Dr.) Machage: Mr. Speaker, Sir, I congratulate the three eminent and patriotic citizens from Nyamira County for the bold step that they have taken to submit a petition to this House. I take this opportunity using the press that may be around to educate the public out there on what their rights are. Sen. Khaniri has eloquently quoted two articles of the Constitution. One of them is Article 37 which gives citizens the right to petition to public institutions. However, our Standing Order No.220(1)(a) and (b) on a submission of a petition, limits that ability to this House. It says:-

- (1) A petitioner to the Senate shall be –
 - (a) submitted to the Clerk by the petitioner and reported to the Senate by the Speaker; or
 - (b) presented by a Senator on behalf of a petitioner, with the consent of the Speaker.
- (2) Notwithstanding Paragraph 1(b), a Senator shall not be eligible to present a petition on his or her own behalf.

This is the part that I want Kenyans to understand. For example, people from Migori County which I represent here wonder why I do not raise a petition on the Floor of this House on embezzlement of funds in the county. This is a wake-up call for citizens of this country to be bold enough and present their petitions to us following laid down guidelines of this Senate.

The Speaker (Hon. Ethuro): That list is exhausted. I will only allow one Sen. Okong’o for obvious reasons.

Sen. Okong’o: Mr. Speaker, Sir, I also take this opportunity to commend the good residents of Nyamira County for having sought refuge in this “Upper House”. There are many issues which some of us as defenders of devolution and counties have been fighting for. I am happy now that we are reading from the same script with them in fighting for the rights of our people and making sure that accountability is finally dealt with expeditiously.

I thank them very much and assure them that this House has no shortcuts; it will deal with the issues raised and make its recommendations accordingly.

The Speaker (Hon. Ethuro): Next Order.

Sen. Wangari: On a point of order, Mr. Speaker, Sir. I did not hear you commit the petition to a Standing Committee.

The Speaker (Hon. Ethuro): Thank you, Senator.

Hon. Senators, pursuant to Standing Order No.227 – Sen. Khaniri had quoted all of them – the petition stands committed to the relevant Standing Committee, in this case, the Standing Committee on Agriculture, Livestock and Fisheries.

In terms of Standing Order 227(2), the Committee will be required, in not more than 60 days of the time of reading the prayer, to respond to the petitioners by way of a report addressed to the petitioners and laid on the Table of the Senate.

Sen. Sang: On a point of order, Mr. Speaker, Sir. I do not want to appear to doubt the directions that you have given. Whereas the petition prominently raised issues of cows finding their way into the Governor's compound, I thought the issue was much bigger than the cows. It was about the use of and diverting public resources into personal use. Just that guidance because I think that would help.

Sen. Kembi-Gitura: Mr. Speaker, Sir, without contesting your ruling, I would agree completely with Sen. Sang because this is an investigation about fraud and not cows. It is whether or not public money was used rightly or wrongly. So, maybe that would not be the right Committee. Of course, I am not contesting it. In the event that it must go to that Committee, then maybe you can order that the CPAIC can also be coopted into it so that the issue of misappropriation can be delved into thoroughly.

The Speaker (Hon. Ethuro): I hear many points of orders, but you should know where to place your request.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, sitting next to Sen. Khaniri has some advantages. According to the Standing Orders, the Committee on Agriculture, Livestock and Fisheries considers all matters relating to agriculture, irrigation, livestock, fisheries and veterinary. The Committee on Finance, Commerce and Budget investigates. So, where the petitioner seeks to investigate ---

The Speaker (Hon. Ethuro): Order! What order is that?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, that is the Second Schedule of the Standing Orders on page 165. It says:-

“To consider all matters relating to agriculture, irrigation, livestock, fisheries development, veterinary services.”

The petitioners have sought our intervention to investigate. The only committee which has that mandate is the Committee on Finance, Commerce and Budget which reads:-

“To investigate, inquire into and all matters relating to coordination, control and monitoring of the county budgets---

Mr. Speaker, Sir, I request that you revise your directions under Standing Order No.1.

The Speaker (Hon. Ethuro): Order, hon. Senators. A number of you have raised the issue whether this should go to County Public Accounts and Investments Committee (CPAIC) or the Committee on Finance, Commerce and Budget; including the real contestation of whether to consider or to investigate.

First, one thing is very clear; it cannot be CPAIC because it is a Sessional Committee. All petitions go to the relevant Standing Committee. My understanding is

that every Committee of the Senate operates under Article 96(3). Oversight is not restricted to the specific committees. It is not finance. Some of these committees have direct provisions in terms of who receives the report of the Controller of Budget and who receives the report of the Auditor-General, but as far as I am concerned we are dealing with an issue about Nyamira County Small Holders Commercialization Programme. So, it is an agricultural programme. I also do not think the word “to consider” excludes investigation.

Therefore, when you have a programme, you consider who benefitted. In fact, the issue is not value for money. It is; who are the beneficiaries of the programme; whether it should be the governor, his family members or the poor residents of Nyamira. So, it is all a matter of saying; what is the amount of money allocated to this programme? How many cows were bought? Who are the beneficiaries of the cows? Do they qualify according to the criteria set?

Sen. Mutula Kilonzo Jnr., do you need any specialised training to check whether it is a cow and confirm whether it produces milk? In fact, if anything then, the product of a dairy cow can only be vetted by the agriculturalists. Sen. Mutula Kilonzo Jnr., on that area, you can trust your Chair.

Therefore, I maintain that the relevant Standing Committee is the Committee on Agriculture, Livestock and Fisheries.

We are already on the next order; Papers laid.

Proceed, Sen. Sijeny.

PAPERS LAID

REPORT ON THE KENYA ROADS BILL (NATIONAL ASSEMBLY BILL NO.26 OF 2016)

Sen. Sijeny: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Wednesday, 30th November, 2016:-

Report of the Standing Committee on Roads and Transportation on the Kenya Roads Bill (National Assembly Bill No.26 of 2016)

(Sen. Sijeny laid the document on the Table)

The Speaker (Hon. Ethuro): Proceed, Sen. (Dr.) Machage.

Sorry, it is Sen. Billow. I had been given the impression that Sen. (Dr.) Machage will do it but now you are here.

REPORT ON THE 2017 BUDGET POLICY STATEMENT

Sen. Billow: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Wednesday, 30th November, 2016:-

Report of the Senate Standing Committee on Finance, Commerce and Budget on the 2017 Budget Policy Statement.

(Sen. Billow laid the document on the Table)

The Speaker (Hon. Ethuro): Who has more Papers?
Proceed, Sen. Karaba.

REPORT BY THE MINISTRY OF EDUCATION ON THE
IMPLEMENTATION STATUS OF SENATE RESOLUTIONS

Sen. Karaba: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Wednesday, 30th November, 2016:-

Report by the Ministry of Education, Science and Technology on Implementation Status of the Senate Resolutions Regarding:-

(a) The Motion by the Sen. (Prof.) Lonyangapuo calling upon the national Government to institutionalize and mainstream policies to support open and distance learning.

(b) The Motion by Sen. David Musila calling upon the national Government to take immediate measures to release certificates held by heads of secondary schools since 2007 and to ensure that no head of a school, person or institution continues to withhold KCSE certificates.

(c) The Motion by Sen. Halima Abdille calling upon the national Government to construct boarding facilities in at least three established schools in every ward in Arid and Semi-Arid areas as a means of facilitating nomadic children to access education.

(d) The Motion by Sen. (Prof.) Lonyangapuo calling upon the national Government to take deliberate measures to cascade research to lower levels of education right from childhood education level.

(Sen. Karaba laid the document on the Table)

The Speaker (Hon. Ethuro): Next order!

NOTICE OF MOTION

ADOPTION OF REPORT ON THE 2017 BUDGET POLICY STATEMENT

Sen. Billow: Mr. Speaker, Sir, I beg to give notice of the following Motion:-
THAT, the Senate adopts the Report of the Standing Committee on Finance, Commerce and Budget on the 2017 Budget Policy Statement.

The Speaker (Hon. Ethuro): Next order!

Order, hon. Senators. Before we proceed with that order, I have a Communication to make.

COMMUNICATION FROM THE CHAIR

VISIT BY DEPUTY GOVERNOR OF MURANG'A COUNTY,
HON. GAKURE MONYO

The Speaker (Hon. Ethuro): I would like to acknowledge the presence of hon. Gakure Monyo, Deputy Governor of Murang'a County, seated in the Speaker's Gallery this afternoon.

On behalf of the Senate and on my own behalf, I welcome him to the Senate and wish him well.

I thank you.

Do we have any Members seeking statements?

What is it, Sen. Kembi-Gitura?

Sen. Kembi-Gitura: Mr. Speaker, Sir, with your permission, may I join you in welcoming the Deputy Governor of the County Government of Murang'a to the Senate this afternoon. I am sure this is the first time that he is sitting in the Speaker's Gallery of the Senate. I welcome him to see in real life what we as Senators do towards protection of counties.

I hope that he has watched satisfactorily the debate that emanated from the petition from the County of Nyamira about how seriously we take issues of corruption, and why we will not stop to deal with issues of corruption in the counties until counties become corruption free zones.

Mr. Speaker, Sir, this is important. I hope that we will see governors – I do not remember ever having seen a governor in the Speaker's Gallery – come here more often. Something very interesting happened here. I think Sen. Wangari raised it; about a governor being summoned then coming with a heavy delegation of Members of County Assembly (MCAs.) That tells you very clearly about the negation of the duty to oversight by the county assemblies because if they are supporting the governor when an inquiry has been made against him on issues of impropriety in the county; and the people who are supposed to have the oversight role upon the governor, come with him to encourage him to withstand the trial and the inquiry by the Senate, then as Sen. Wangari said---

(Sen. Kembi-Gitura's microphone went off)

The Speaker (Hon. Ethuro): We did not limit you, but I guess the trend now has been two minutes, so you must have exceeded.

Sen. Kembi-Gitura: Thank you, Mr. Speaker, Sir, allow me just to finish and say that it is important that we continue as a Senate going forward to see to it that corruption is dealt with firmly, and that the Deputy Governor, hon. Gakure Monyo, will take the message back to Murang'a County that this Senate is serious and is bent on dealing with corruption at all levels in the counties, and that we are not going to allow county assemblies that do not carry their oversight role seriously. This is because that is where devolution is going to be defeated and it must never ever be defeated, because it is the hope of this nation.

The Speaker (Hon. Ethuro): Order, Members. I see some interventions. Is it related to the communication?

Sen. Haji: Mr. Speaker, Sir, I join you and your deputy in welcoming the Deputy Governor for Murang'a County and also commend him for taking interest in the proceedings of the House. We know that we have had problems with governors because they are summoned to answer questions and none of them has ever taken any interest to come and see how the Senate operates. So I commend him for that.

The Speaker (Hon. Ethuro): Sen. Sang.

Sen. Sang: Mr. Speaker, Sir, I want to join you and my colleagues in welcoming the Deputy Governor of Murang'a County. I am happy to see him in the Speaker's Gallery. The last time, I saw a story of him in the papers was that his office had been vandalized, and it had appeared as if it had something to do with the impeachment Motion of his governor in the Senate. I, therefore, hope that his office is up and running and that he is busy executing his responsibilities as the deputy governor and to call upon all governors to work hard and work together with their deputies.

The Speaker (Hon. Ethuro): Sen. Wangari.

Sen. Wangari: Mr. Speaker, Sir, as you know, Murang'a is my county of birth and I--

The Speaker (Hon. Ethuro): Order, Senator! How do you expect us to know?

Sen. Wangari: Mr. Speaker, Sir, I thought I had pronounced it on this Floor over and over again, but I can inform the House that, yes, it is my county of birth and welcome the Deputy Governor of Murang'a County to the Senate, but most importantly, I want to allude to what has been touched by other Senators as a Members of the County Public Accounts and Investments Committee (CPAIC).

I would like that the Deputy Governor to pass the message to the Governor of Murang'a that we are not interested in extraneous issues. We are only interested in finding out the truth about the monies allocated to the county. We have demonstrated that, even with the most stubborn governors.

Just recently, we had the "Senator" of Machakos defy summons. He came and we have proved as a Committee that we are not witch-hunting. We have dealt with the matters as they are. We are still hopeful that the Governor of Kakamega can learn from the several governors who have changed their minds, and they will be able to come to clear audit queries as it should be.

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

The Speaker (Hon. Ethuro): What is it Sen. Muthama? This is no business.

Sen. Muthama: Mr. Speaker, Sir, I do not whether you have heard Sen. Wangari referring to the Governor of Machakos as the Senator?

The Speaker (Hon. Ethuro): Is that what you said, Sen. Wangari?

Sen. Wangari: Mr. Speaker, Sir, if I said Sen. Muthama, it must have been a slip of the tongue. I actually meant the Governor of Machakos who has since honoured the summons to appear before CPAIC. I apologize.

The Speaker (Hon. Ethuro): I reiterate that the conduct of the proceedings of any committee of the House is not the incentive for a witness to come. Witnesses come to the Senate on account of Article 125 of the Constitution. So, whether you like a Member or not is really immaterial. It is a constitutional duty that every holder of a public office must subscribe to.

STATEMENTS

DEPLORABLE LIVING CONDITIONS IN POLICE STATIONS,
AP CAMPS AND PRISON QUARTERS

Sen.Nabwala: Mr. Speaker, Sir, I rise pursuant to Standing Orders 45(2)(b) to seek a Statement from the Chairperson of the Committee on National Security and Foreign Relations concerning the deplorable living conditions in various police stations Administration Police camps and quarters for prison officers in the country.

In the statement, the chairperson should state:

- (1) The various aspects and extent of police reforms being carried out by the Government.
- (2) Explain the impact of the proposed police reforms on the living conditions of officers housed in police and prison camps.
- (3) State measures that the Ministry of Interior and Coordination of National Government is undertaking to ensure that the proposed reforms are fully realized considering the large number of complaints regarding the living conditions.
- (4) State whether there are monitoring and evaluation mechanism to ensure that the reforms are functional and the overall way forward of the police officers is improved.

The Speaker (Hon. Ethuro): The Chairperson, Committee on National Security and Foreign Relations.

Sen.Haji: Mr. Speaker, Sir, I think this is a very straightforward request. We will endeavour to get it in a week's time.

The Speaker (Hon. Ethuro): It is so ordered. Let us go to Statement A. The Member is not here.

STATUS OF THE EQUALIZATION FUND

(Statement deferred)

Statement (B) by the Chairperson, Committee on Land and Natural Resources! The Vice-Chair, Sen.Khaniri! What is it, Sen. Karaba?

Sen.Karaba: Mr. Speaker, Sir, the Chairperson is in the House and is getting to his position.

CONSTRUCTION OF KIRINYAGA SEWERAGE PLANT

Sen.Kivuti: Mr. Speaker, Sir, the matter of this Statement sought was discussed in my Committee today. This Statement was sought from the Committee on Roads and Transportation and apparently, they sent it back and said it is not in their docket. It was brought to our Committee today during our meeting.

Looking at what is being sought about construction of sewerageplants; we observed that sewerage plants are these days constructed by counties.

The Ministry of water and Irrigation no longer constructs sewerage plants within townships. As such, I needed your direction whether this statement should not go to the Committee on Devolved Government, which deals directly with the county governments. I seek your indulgence and guidance on this.

The Speaker (Hon. Ethuro): We will come back to it.

Next Statement (c) by the Chairperson of the Committee on Education.

PAYMENT OF SCHOOL FEES IN SCHOOLS/COLLEGES

Sen. Karaba: Mr. Speaker, Sir, pursuant to 45 (2) (b), on Wednesday 20th July, 2016, Sen.(Prof.)Lonyangapuo requested for a Statement from the Chairperson of the Standing Committee on Education regarding payment of school fees in various institutions, including secondary schools, Teachers Training Colleges (TTCs) and Kenya Medical Training Colleges (KMTCS).

First, the Senator requested me to explain the policy guidelines of the Ministry of Education regarding payment of fees in the above mentioned institutions. The principals are expected to adhere to the guidelines which have been issued to them countrywide. For each year, a student, especially in college, is supposed to pay Kshs64, 472 spread across the three terms.

Secondly, the Senator wanted me to clarify whether there was a requirement in place of fees to be paid annually instead of spreading it across the three terms of each academic year. There is a requirement for fees to be paid annually. Payment is spread across the three terms of each academic year. For the very needy students, principals are required to accept whatever amount of fees is available and allow the students to continue learning as guardians look for the balance. It has been noted that majority of the students admitted, particularly in TTCs, are from poor households. Many students complete the two-year training leaving a huge fees balance, and as a result, the TTCs are unable to meet their financial obligations.

Thirdly, the Senator wanted me to explain whether the Ministry is aware that most school principals of the listed institutions of learning demand for full payment of fees to be done at the beginning of the first term and the remaining balance to be made in the second term, instead of spreading the payment in three equal installments per term.

As far as TTCs are concerned, the Ministry is aware that some principals demand payment of the fees at the beginning of the first term. For all cases reaching the office, the Directorate of Basic and Secondary Education has addressed the issues with the individual principals who are instructed to observe the laid down rules and regulations.

The fourth question was on the measures that the Ministry is taking to safeguard parents or guardians from the stress of having to pay fees at once for the whole academic year. During the launch of the P1 selection each year, principals are reminded of the Government policy on fees payment. Emphasis is laid on the fact that students should be admitted with or without fees so long as a commitment is made by the parents or guardians on when it will be paid. The question of payment of the full amount of fees required at the beginning of the terms does not arise.

The fifth question was on the rationale of banning fees payment using the electronic means like Mpesa and how that relates to the Government's digital ambitions as stated by the Jubilee Administration. This does not apply to TTCs. Students in TTCs are allowed to pay fees using electronic means.

The sixth question was on how much money has been spent on bursaries by the Ministry of Education, Science and Technology and the Ministry of National Treasury through the National Government Constituencies Development Fund (NGCDF) and the devolved county governments and policy governing the same. With regard to the amount of money spent on bursaries, I wish to state that the Constituency Bursary Fund is no longer being disbursed through the Ministry of Education. This stopped in 2013.

The Senator who sought this Statement should note that the KMTCs are under the Ministry of Health and that Ministry is in a better position to answer questions related to the colleges. I have served him with the detailed fees structure for the public TTCs in the country.

If it is the wish of the Senate that I read through, I will do it, but it is detailed in the answer which the Senator has.

The Speaker (Hon. Ethuro): Order, Chair. Just state the amount.

Sen. Karaba: Mr. Speaker, Sir, the amount is Kshs64, 472 per annum.

The Speaker (Hon. Ethuro): Proceed, Sen. (Prof.) Lonyangapuo.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I want to thank the Chairperson for bringing the response today, although it is several months late. I am surprised by the way the Chairperson has attempted to respond. He has evaded most of the questions that I asked. I asked about the secondary schools and TTCs in the entire Republic, but he has only concentrated on the TTCs.

The practice today is that all secondary schools are demanding full payment of fees in the first term irrespective of where the students come from. He has not stated clearly whether there is a policy on the same. Also, he has not provided a list showing how much the different categories of secondary schools are supposed to pay as school fees. This House needs to know how parents are tasked by the principals to pay in full in the first term.

Mr. Speaker, Sir, parents are told to pay fees through Mpesa and other electronic payment options due to their availability. I asked the Chairperson to state the policy on the same but he has stated that it is only TTCs that are allowed to use those options. I want the Chairperson to provide the fees structures and the policy.

Lastly, I need to see the circular that demanded the stoppage of constituencies bursary fund being disbursed through the Ministry of Education. I raise this issue because the Government is paying under the free secondary education programme, yet that money is never fully captured in the fees structure. We need to see the fees structures, so that we can safeguard the parents who are suffering. We are approaching the first term in January and parents will continue to suffer, unless the Chairperson answers this question clearly. He should tell us whether parents should pay school fees in three installments, that is, first, second and third terms.

Could the Chairperson clarify this?

Sen. Karaba: Mr. Speaker, Sir, it is true that the contents in this Statement are for the TTCs. Separate guidelines were given to secondary schools. The total for secondary school fees is Kshs54,000, against that of TTCs which is Kshs64,472. It can be paid in three installments. These institutions need to collect this money because they cannot run without this it. This amount was arrived at as a result of there being a commission which was appointed by the President and all the stakeholders agreed that this amount of money be paid.

As far as the issue of Mpesa is concerned, I have evidence that secondary school fees are also paid using Mpesa. Recently, they were advised by the Cabinet Secretary to follow and ensure that the money reaches the administration.

I have done justice to your question.

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

Sen Billow: Mr. Speaker, Sir, the chairperson has not done justice to the question. The challenges on fees in public schools are two. First, some of the national schools in particular, have developed the tendency over the years to defy any directive that comes from the Ministry with regard to school fees. They, therefore continue to charge other fees, in effect becoming untouchable or sacred cows within the Ministry. What action will the Ministry take to ensure that schools like Alliance High and other national schools that consistently do not comply with these fees guidelines do so?

Secondly, why do they want the fees to be paid at once? What is the rationale behind it? These are schools where people come in terms. Even banks allow one to pay in instalments. Why are we punishing parents?

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, the Chairperson is not coming out very clearly. In this Statement, we asked about schools and colleges. Nowadays we do not have headmasters. We have principals for schools and training technical institutes (TTCs). I asked him to explain whether the Ministry is aware that most school principals and college principals demand full payment of fees. In the response, the Chairperson only says that as far as TTCs are concerned, the Ministry is aware that some principals demand full payment of fees at the beginning of the term. I do not know what he is trying to do by not coming out candidly. Secondary schools are very many in this Republic whereas TTCs are just about less than 50.

The Speaker (Hon. Ethuro): Order! How relevant is that?

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, very relevant. Why is he evading to talk about the nerve centre where parents are about to suffer in January by being asked to pay full fees at once instead of three times in a year, which is legal?

The Speaker (Hon. Ethuro): Therefore, the issue is on why one should pay it all at once instead of three times regardless of the number of the institutions.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, the Ministry's directives must be followed with tangible actions. Fees directives have been issued and schools like Alliance High have exceeded the fees deadline. A directive for a refund must be made. Is it possible that the Ministry walks the talk by making sure that parents are refunded or given a credit for the school fees that they have paid in excess of the guidelines offered by the Ministry? Otherwise the directive is like talking to birds.

The Speaker (Hon. Ethuro): Order, Sen. Mutula Kilonzo Jnr.! For the benefit of the Chair, how does that happen?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, talking to birds is a phrase in English where you are talking to nobody. It is like playing a guitar to a goat. It does not make any sense. It is phraseology.

(Laughter)

The Speaker (Hon. Ethuro): Very well. Chairperson!

Sen. Karaba: Mr. Speaker, Sir, the understanding here is that the schools and colleges demand fees. Fees must be paid. Whether one pays it in full or three installments, the requirement is that one pays Kshs54,000 for secondary and Kshs64,000 for college. That is what has been agreed in a policy issue guideline by the Ministry.

The Speaker (Hon. Ethuro): Order, Chairperson! You are confusing the House. What is the policy; to pay in installments for three terms or to pay at once?

Sen. Karaba: Mr. Speaker, Sir, the policy is that one pays an annual total school fees of Kshs54,000 for secondary and Kshs64,000 for TTCs. How one pays it is an arrangement between one as a parent and the principal. I have been a principal, and I have experienced this situation.

The Speaker (Hon. Ethuro): Order, Chairperson! You are just making your case worse. When you invoke that you were a principal before, it worsens. In your answer, you said that principals are expected to adhere to the guidelines. For each year, a student is expected to pay Kshs Kshs64,472 spread across the three terms. Where is the local arrangement here?

Sen. Karaba: Mr. Speaker, Sir, I am talking about what I know and experience. To date, the principals have already issued fees for third term if it is the TTC.

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

Sen. Sang: Mr. Speaker, Sir, is Sen. Karaba in order to allude to some experience that he has had which contradicts the policy that he has shared with us? He could have had that experience but it is the wrong way of doing things. Is he in order to contradict his own answer by giving his personal experience which is definitely wrong?

The Speaker (Hon. Ethuro): Sen. (Prof.) Lonyangapuo, a quick one, not another dissertation.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, is Sen. Karaba in order to imagine that he is the only one who has ever been a headmaster in this House? If it is true, his experience is very old. I do not know when he was a head teacher last. It may be 30 years ago. We are talking about digital Government and hence digital principals. We want the policy as directed.

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo! Is there something you are trying to communicate but you are not also being candid? When was the last time you were a principal?

Proceed, Sen. Karaba!

Sen. Karaba: Mr. Speaker, Sir, I am talking about what is in the policy. The policy is that one pays Kshs54,000 for secondary and Kshs64,000 for TTCs. One can pay a certain amount for each term depending on private arrangements which can be done and it is in the guidelines. If one wants to pay the whole year, they can go ahead and pay. That is what some people do.

The Speaker (Hon. Ethuro): Order, Chairperson. This is a serious matter. There are few things that are very critical to manpower development of a country which also affects the income of parents. Every parent struggles to raise fees for their children. Each one of us here can confirm the veracity of these assertions. You are always called upon to fundraise and contribute to school fees. We did not want to get confused in a system of that nature. We want to make it abundantly clear that that is the correct position. You are giving the wrong position. The correct position is that there is an amount of money to be paid in one year. That amount of money should be spread across the three terms. Many fee statements have a fee structure for each of the three terms.

So, tomorrow afternoon, you need to come with a clear statement and with sample of fees structures, including secondary school, because you have only given for the teachers training colleges. It might appear basic to you as a former principal, but with the poor Kenyans out there struggling to get their children to school is a matter of life and death.

Chairman, I demand you take this very seriously.

(Sen. Karaba stood in his place)

Order, Chairman! You cannot be on your feet when I am on mine. Yours must freeze in appreciation of mine. So, tomorrow afternoon come with a comprehensive statement on the fee structures and the payment breakdown.

Hon. Members, what was the next Statement?

Statement (E), the Chairperson is gone. We will revisit it later.

Next Statement (F).

AFFIRMATIVE ACTION ASSISTANCE TO
PASTORALIST COUNTIES

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Speaker, Sir. I can see the Vice Chairperson of the Committee on National Security and Foreign Relations who was eloquently handling the same matter last time is present.

The Speaker (Hon. Ethuro): Indeed, my apologies. I had not seen the Vice Chairperson because the Chairman usually sits in a very prominent location. Last time, I asked the Vice Chairperson to respond, but I was reminded that Chairperson was in the House.

Proceed, Vice Chairperson.

Sen. Adan: Thank you, Mr. Speaker, Sir. I am sorry, I still do not have the statement with me. I have tried to get it from the relevant Ministry, but I have not succeeded. I will request to be given more time to get a response on this statement.

Sen. (Prof) Lonyangapuo: Mr. Speaker, Sir, last week, you had directed the Vice Chairperson to take this statement seriously and respond to it today after she had excused herself that she was unable to get it from the Ministry. How long will we entertain the Vice Chairperson of this honourable Committee? Yesterday, I was there and my people have been displaced. Therefore, I want to know what the Government has in store for us just like they had for Internally Displaced Persons (IDPs).

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

[The Temporary Chairperson (Sen. (Dr.) Machage took the Chair]

The Temporary Speaker (Sen. (Dr.) Machage): You have been asked a question or you want it repeated?

Sen. Adan: Mr. Speaker, Sir, I have given the position of the Committee. As I had said earlier, we have tried to get this statement. Unfortunately, we do not have it. I am requesting Sen. (Prof.) Lonyangapuo to give us more time.

The Temporary Speaker (Sen. (Dr.) Machage): You know the Constitution gives you powers if there is adamancy in releasing an answer. You need to apply those powers?

Sen. Adan: Mr. Speaker, Sir, we will apply those powers at some stage. However, for now, I am requesting to be given more time.

Sen. Muthama: Mr. Speaker, Sir, the Vice Chairperson has referred to serious stern steps to be taken at certain stages but the Senator wants an answer. I think this is the point of taking these serious steps. According to her, she wants to move it forward, but up to when? Sen. (Prof.) Lonyangapuo wants answers to the questions he raised. So, let the steps be taken now not on another day.

The Temporary Speaker (Sen. (Dr.) Machage): Maybe we are being too hard on the Vice Chairperson because, obviously, she cannot make the statement now. The steps cannot be made now since she is in the House. How long do you want to take to bring the answer to this question?

Sen. Adan: Mr. Speaker, Sir, having in mind that we are going on recess tomorrow, I will try my best to see whether I can get the answer tomorrow. However, I am not certain that I will get it although I will try my best.

Sen. (Prof) Lonyangapuo: Mr. Speaker, Sir, I wish the Vice Chairperson would provide the answer tomorrow as directed. Any more stories after tomorrow will be disapproved. We will wait for tomorrow and then deal with it from there.

The Temporary Speaker (Sen. (Dr.) Machage): You have put it well that you wish she could respond to the statement tomorrow. However, if all wishes were true, you know the rest of the sentence. Try and bring the answer tomorrow. We have to understand also the positions of Chairpersons in trying to get answers to the Members. Sometimes it is tricky and especially so in a busy Ministry like she handles.

Let us appreciate that the gracious Lady Senator has been very good in her conduct in answering questions in this House. I believe tomorrow you will do your uttermost to bring the answer.

MURDER OF MR. MUSA KOECH FROM NANDI COUNTY

The Temporary Speaker (Sen. (Dr.) Machage): Do you have the answer?

Sen. Adan: Mr. Speaker, Sir, I do not have this one also. I would request to be given more time.

The Temporary Speaker (Sen. (Dr.) Machage): Can you bring it tomorrow, if possible?

Sen. Adan: Mr. Speaker, Sir, I will try my best.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. It is so ordered.

(Statement deferred)

DETENTION OF MR. PHILIP MBITHI MUTISO BY TANZANIA AUTHORITIES

Sen. Adan: Thank you, Mr. Speaker, Sir. It looks like today is not a good day for me, but you will remember last time the Ministry requested for two weeks. However, I was requested by the Speaker to try and make sure that we have the answer this week. So, I have discussed the same with Sen. Muthama and I will try and persuade the Ministry to give us an answer together with the others.

The Temporary Speaker (Sen. (Dr.) Machage): Tomorrow?

Sen. Adan: Yes, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): It is so ordered.

Sen. Muthama: Mr. Speaker, Sir, on a point of order. This is the third time now that we are postponing this response. The issue here concerns a person who is locked in a foreign country and the family here really needs to know whether they can hire a lawyer to help him in the legal process. The delay is causing a lot of anxiety. It is my wish that the response is given tomorrow and I will ask for the indulgence of the Chair. However, if it is not there, commit the Committee through the Senate for the Cabinet Secretary of Interior and Coordination of National Government to appear on this matter.

The Temporary Speaker (Sen. (Dr.) Machage): We cannot anticipate what will happen tomorrow. Let us hope you will bring the answer tomorrow and anticipate for the best.

Sen. Muthama: Mr. Temporary Speaker, Sir, we are not pushing for this matter because of the Chairperson, it is because someone somewhere is not doing his work yet he is being paid to do his work---

(Statement deferred)

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Muthama. That somebody somewhere is not our concern. It is you who is our concern because you are the one who asked for this Statement. We do not know about that somebody somewhere.

Could we hear from the Chairperson of the Committee on Legal Affairs and Human Rights? The Chairperson is not around but I can see the Vice-Chairperson. Sen. Sang, do you have an answer for Sen. Wangari?

MISERY OF RESIDENTS OF KASARANI IN MALEWA WEST WARD,
GILGIL CONSTITUENCY

Sen. Sang: Mr. Temporary Speaker, Sir, we do not have an answer for this. As I indicated yesterday, this Statement was directed to our Committee and we directed the same to the Attorney-General's Office. Then it appeared that it should have been taken to the Ministry of Interior and Coordination of National Government and some bit of it should have gone to the Independent Boundaries and Electoral Commission (IEBC). We are pushing the Attorney-General's Office for a response. However, we have written directly to the Ministry of Interior and Coordination of National Government and to IEBC. We are doing everything that we can to ensure that we get an answer. I request Sen. Wangari to give us more time to allow us to get the response.

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

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

Sen. Wangari: Yesterday, the Speaker directed that this issue be brought to this House because it is long overdue. I have waited for this response for over a month yet I do not hear any commitment from the Chairperson. He is not telling us when he will bring the response. We do not want to be caught up in a situation where there is some recruitment going on and the same problem recurs yet we have not mitigated the previous problem.

I would like to hear from the Chairperson of what has changed from yesterday and what has he done to ensure that we can close this week with that matter resolved.

Sen. Sang: Mr. Temporary Speaker, Sir, I understand the frustration of Sen. Wangari. I know that she is a Vice-Chairperson of another Committee and she appreciates that there is so much that you can do. I commit to Sen. Wangari that we will have a response before any other recruitment for the police, National Youth Service (NYS) or any other.

The Temporary Speaker (Sen. (Dr.) Machage): What if they announce that there is recruitment tomorrow afternoon?

Sen. Sang: Mr. Temporary Speaker, Sir, I will try.

The Temporary Speaker (Sen. (Dr.) Machage): Very well.

INCREASED NUMBER OF POLICE CHECK POINTS
ON MAU-SUMMIT-SOTIK ROAD, KERICHO COUNTY

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

The Temporary Speaker (Sen. (Dr.) Machage): What is your point of order Sen. Cheruiyot?

Sen. Cheruiyot: On a point of order, Mr. Temporary Speaker, Sir. Last week on Wednesday, I requested for a Statement from the Chairperson of the Committee on National Security and Foreign Relations. The Speaker directed that it be on the Order Paper this afternoon.

*(The Temporary Speaker (Sen. (Dr.) Machage)
consulted the Clerks-at-the-Table)*

The Temporary Speaker (Sen. (Dr.) Machage): Could you repeat what you just said?

Sen. Cheruiyot: Mr. Temporary Speaker, Sir, I was notifying you that last week on Wednesday, I requested for a Statement from the Chairperson of the Committee on National Security and Foreign Relations. The Speaker directed that the answer be brought today. Unfortunately, it is not on the Order Paper.

The Temporary Speaker (Sen. (Dr.) Machage): It will be on the Order Paper tomorrow.

Sen. Cheruiyot: Tomorrow is okay.

The Temporary Speaker (Sen. (Dr.) Machage): Yes, tomorrow.

Sen. Cheruiyot: Thank you, Mr. Temporary Speaker, Sir.

ELEVATION OF PROVINCIAL SECONDARY SCHOOLS
TO NATIONAL SCHOOL STATUS

The Temporary Speaker (Sen. (Dr.) Machage): We still have three more Statements. Could we have the response on the elevation of some provincial secondary schools to national school status from the Chairperson of the Committee on Education? It was sought by Sen. Kagwe.

Sen. Karaba: Thank you Mr. Temporary Speaker, Sir. Pursuant to Senate Standing Order No.45(2)(b); on Wednesday, 20th July, 2016, Sen. Kagwe requested for a Statement regarding the upgrading and the elevation of some former provincial schools to national school status. The Senator requested the Chairperson to state:

1) The number of national schools and the list of such schools per county in the country. The answer to that is; the number of former provincial schools elevated to national status is 85 going by the list of schools per county. I have 47 counties, with your permission, I can go through it.

The Temporary Speaker (Sen. (Dr.) Machage): Please, table the document.

Sen. Karaba: Mr. Temporary Speaker, Sir, there are two national schools per county except for Nairobi and Kiambu counties. If you so wish, I could go through it.

The Temporary Speaker (Sen. (Dr.) Machage): Just table the document.

Sen. Karaba: Mr. Temporary Speaker, Sir, it will be tabled.

The Temporary Speaker (Sen. (Dr.) Machage): Just comment on the status of Nakuru and Kiambu counties.

Sen. Karaba: Mr. Temporary Speaker, Sir, in Nairobi, we have Pangani Girls which has been elevated to national school status. Otherwise, there are quite a number of national schools in Nairobi County.

It is the same thing in Kiambu County because we have a number of national schools there. We have the Alliance Boys' and Alliance Girls'. In Nakuru County, we have Nakuru Boys' and Nakuru Girls'. We then have two national schools in every county. The number of old national schools are 18. We also have 18 new national schools. These include Mang'u and Starehe Girls'.

2) The Senator also wanted to Chairperson to state how much money was allocated to each school to enable them transform to national school status. The answer to that is; the amount of money allocated to each school to transform them to national school status was to Kshs25 million. Each of the 18 old national schools was allocated Kshs48 million.

3) The Senator also wanted the Chairperson to explain the rationale that guided the aforementioned allocation in (1) above. The rationale that guided the aforementioned allocation was the need to establish enough national schools. It was as a result of;

- i) The Sessional Paper No. 1 of 2005.
- ii) Continuous demand for national schools places by the public
- iii) Presidential directive in January 2011 for the Ministry to establish additional national schools.

The Sessional Paper No. 1 of 2005 outlined the policy framework for expanding access, equity and quality of education. In addition, in the Constitution of Kenya 2010, the education sector has been charged with the responsibility of fostering national unity and social cohesion. This is besides offering quality education and preparing the learners for the job market. In the Sessional Paper, the Government through the Ministry of Education was to work towards establishment of two national schools, one for either gender in counties that had none.

Mr. Temporary Speaker, Sir, the objectives here were:-

- (1) To enhance access and ease pressure on the demand for Form One places in already existing national schools.
- (2) To enhance national cohesion and integration.

- (3) To stimulate academic excellence and improve education standards in all counties for national development
- (4) To improve and expand infrastructural facilities for the provision of quality education.
- (5) To enhance equity in line with the new Constitution.

The Ministry of Education planned to elevate provincial secondary schools to national status in three phases of 30:30:27. The Ministry developed criteria to determine schools to be elevated. The criteria is as follows:-

- (a) Consistent good performance in KCSE exams.
- (b) Equity:-
 - (i) Geographical distribution.
 - (ii) Affirmative action: in exceptional cases, where no school in the entire county meets the set criteria, affirmative action would be applied.
 - (iii) Gender parity.
- (c) Infrastructure:-
 - (i) Reliable supply of water, power and communication network.
 - (ii) Quality boarding facilities.
- (d) Adequate land to accommodate broad curriculum and co-curricular activities.
- (e) Three or more streams
- (f) Community support for ownership

The fourth question was: Explain whether there are plans to allocate more funds to the same schools in the future. Subsequent allocations were to be based on each school's individual needs after an assessment is carried by the Ministry. However, the budget allocation for this purpose was reduced by the National Treasury in the Financial Year 2015/2016. Therefore, the Ministry has not been able to implement the plan as expected.

The fifth question was on the mechanisms put in place by the Ministry to ensure that the new national schools match with the national schools status that earlier existed. There is a huge demand for infrastructure improvement in all categories of secondary schools, including old and the new national schools. The Ministry will continue to provide funds for infrastructure improvement to national schools depending on annual budget allocations.

The Ministry has developed a concept on resource requirements for secondary schools improvement, which if approved, will address the shortfalls in schools facilities for quality education and 100 per cent transition to secondary schools.

Thank you.

(Sen. Karaba laid the document on the Table)

Sen. Kagwe: Mr. Temporary Speaker, Sir, first and foremost, I congratulate the Government for the policy to expand the national schools across all counties. It is a good thing, especially towards what the Chairman has just said on national cohesion. In fact, I am believer that many schools as possible should be made national schools. Our children should live and integrate with each other from as early an age as possible, so that the future Kenya can be stable and less tribal than the current one.

Mr. Temporary Speaker, Sir, having said that, I want to seek clarification on two things. First, the Chairman has told us that 18 'old' national schools like The Alliance Boy High School, Alliance Girls High School, Maseno High School and others were given Kshs48 million per school. The new ones like Kagumo High School, Lugulu Girls School and others were given Kshs25 million. Actually, logic would have it that it should be the reverse, because The Alliance High School is already established; it already has the infrastructure. Kagumo High School does not have the infrastructure for a national school. This question arose when I went to Kagumo High School as the guest of honour on their parents' day. I realised the stress the school is in as a result of the shortage of funding. There are students from all over the country and their boarding facilities are bad.

Mr. Temporary Speaker, Sir, I am not against the Alliance Schools getting the Kshs48 million because there can never be too much money in those kinds of schools. What I am against, and I seek that it must be corrected, is that at the minimum, they should have been given an equivalent amount of money. In fact, logic would have it that they would be given more money.

When will the newly upgraded national schools be given at least an equal amount of money with the old national schools, so that they can achieve national school status? They are provincial schools renamed national schools, but not funded as national schools. That is the issue and I would want to hear from the Chairman. That is the issue.

The Temporary Speaker (Sen. (Dr.) Machage): Chairman, hold on for another one.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I am not 'another one.'

(Loud consultations)

The Temporary Speaker referred to me as 'another one.' Was it 'another question' or 'another Senator'?

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Wetangula!

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I am sorry, but I think the rules apply to all of us.

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

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, allow me to seek the following clarifications. In addition to what the distinguished Senator for Nyeri has raised, I have three or four questions to ask.

First, we have no issues on the criteria to have two schools per county as a base. However, where is equity when a county as large as Kakamega County, with a population of over two million people, is given two national schools and another county, with a population of 110,000 people is also given two national schools? I thought the more rational approach would have been two schools basic for each county and upgrade the number in accordance with the population. Counties that had many schools like Kiambu County did not deserve to get any more national schools because they were already oversupplied. However, there are counties like Kisumu, Machakos, Nyeri, Kakamega, Bungoma and Nandi and others, which should have been more than two national schools, so that we can accommodate the population.

Secondly, the Ministry went to counties like Nyeri and took the best performing schools that have had universities entrance rate of almost a 100 per cent. I can tell you of Kamusinga High School in my county, which fields 187 students and in any exam, the last one would have a C plus. That means every student qualified to join a university. Now that it has been given national status, standards are being compromised by drawing children from everywhere. We have no problem with that, but admit children who are qualified, so that the schools are not pulled down in their performance in the name of giving them national status. That is what should be done.

(Applause)

I have visited these schools. There was no accountability for the Kshs25 million that they were given for a start. Half of the money was stolen by the boards. Nothing came up. These schools have been elevated from provincial status to national with no facilities. They have no dormitories, laboratories or anything. So, you get a student who has got marks to go to The Alliance Boys' or Alliance Girls' High School in Kiambu County and take him somewhere where there are no facilities. If you go to The Alliance Boys School in Kiambu County--- Allow me to say a little---

The Temporary Speaker (Sen. (Dr.) Machage): No. I have to limit you. Please, seek clarification.

The Senate Minority Leader (Sen. Wetangula): Thank you, Sir. I am seeking clarification. If you go to The Alliance Boys School, the residents of Kiambu County alongside the national streams have built a full stream to take children from the county. We have done the same in Friends School Kamusinga. Now, children from such places are taken to a place where he will be lucky if, at the end, he will even qualify to go to a diploma college.

We want as you elevate schools to the national level, pump in money and give them all the facilities that they require. It is because "national" as a description does not help the school, if it has no facilities.

Lastly, can the Chairperson tell this House---

The Temporary Speaker (Sen. (Dr.) Machage): So far, everything that you have said did not seek any clarification.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, that man is so brilliant. He has picked the questions already in all these.

(Laughter)

Lastly---

The Temporary Speaker (Sen. (Dr.) Machage): Order! Sen. Wetangula, God forbid that we will have such a President in this country. You least qualify to even present yourself as a presidential candidate.

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I do not want to altercation with the Chair. However, when the Chair says such outrageous and preposterous things---

The Temporary Speaker (Sen. (Dr.) Machage): You again repeat what you said yesterday?

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I have to protest in the strongest terms possible. We are on air and you cannot dare address me like that, whether you are on the Chair or not. I will not take this. Jokes aside; this is a House of honour. You cannot use a seat of privilege to insult me. I will not take this.

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

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

The Senate Minority Leader (Sen. Wetangula): If you want you can send me out. I will not take this.

Sen. Sang: Mr. Temporary Speaker, Sir, on several occasions based on the emotive nature of the debate in this House, it has never happened that a Member would dress down the Speaker of this House. Even if the Senator has issues with the directions of the Chair, there are better ways and times to raise those issues. If we are on air, the same Member then disparages the entire House by dressing down the Chair in the manner that he has done. Is he in order to do so?

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Members of the Senate, communication is a two way process. Respect is a two way process. However much English you may know, it is bad to talk in idioms or a satirical manner to demean the intelligence of any Member in this House.

As the Temporary Speaker, I will hit you hard when you show such tendencies. I will not care whether we are on air or not. I have a job to preside over this House and it must be presided to run with decorum.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, thank you for that direction. In conventional terms, the Speaker does not participate in debate.

Let me make my last point. Could the Chairman, in his response, tell this House whether he will engage the Ministry to ensure that no schools, coupled with adequate resources are promoted to national level, but with clear criteria that in densely populated areas, a specific quota is set aside for children from those counties? This is so that they are not dispossessed of the opportunity to go to schools that their parents have painstakingly built over the period.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Temporary Speaker, Sir. With your permission, I will seek just one clarification. Following what Sen. Kagwe has said, what exactly is this money supposed to do? Each of the 18 old national schools was allocated Kshs48 million and the newly elevated ones got Kshs25 million. I am asking this because in the case of Makueni County, Mbooni Girls High School does not have water. They have been calling all of us for fundraising to build laboratories and dormitories. So, what exactly was this money supposed to do if at all it was ever disbursed?

The Temporary Speaker (Sen. (Dr.) Machage): That is the kind of clarification that I expect from Members of this House.

Sen. Mutula Kilonzo Jnr.: Thank you for the compliment.

The Temporary Speaker (Sen. (Dr.) Machage): Not stories of giving the Chair a difficult time of trying to see what exactly you want to say. Clarifications. Very well, Sen. Mutula Kilonzo Jnr.

Sen. Billow: On a point of order, Mr. Temporary Speaker, Sir. It is certainly a very warm afternoon.

(Laughter)

I think the issues raised regarding the fees, especially by the Senator for Nyeri are very important. Would you tell us whether, after these schools have been elevated into national schools and Kshs25 million pumped into each of them several years down the line, there has been any evaluation on the performance of these schools? Are they still performing well academically as they used to when they were provincial schools? This was the whole reason for elevating these schools.

Secondly, in Mandera County and the former North Eastern Province where we have serious shortage of teachers, what is the Ministry's policy regarding the teacher-student ratio in these national schools? Is it the same story as it was in provincial schools or is there a minimum ratio that must be maintained at all times?

Seng Sang: Mr. Temporary Speaker, Sir, I have two clarifications to seek from the Chairman. One, as said by Sen. Wetangula, some of the schools that were elevated were schools that communities, leaders and counties had worked hard to improve their facilities. Kapsabet Boys in my county is an example. People lost their livestock to build this school and then the national Government elevated them to national schools. Even some of the local arrangements where the leadership had invested in getting facilities to create a class or two for the locals ended up being eliminated.

In the last two financial years, we have seen the Ministry give finances to support infrastructure in schools. Now that these counties lost some of their best investments in terms of the provincial schools, is it possible for the national Government to create one or two of such schools and upgrade their facilities to match the status of those schools that we lost? This is to avoid a situation where needy children from those schools or counties are unable to get quality education from the schools that we lost.

Sen. Karaba: Mr. Temporary Speaker, Sir, I will answer all the questions. The first one is about the amount of money given. I stated in the response that Kshs25 million was given to the new national schools and Kshs48 million to the old ones. That is the way the Government found it fit. We thank the Government for coming up with this policy because in previous years, we have not had this kind of development. There are schools in some counties which are given Kshs25 million to start off.

As I respond to Sen. Kagwe's concern, this is a process of upgrading schools which does not start off within the first one year and stops. It continues. So, the Kshs25 million may be given this year; next year they might get Kshs20 million and the other year, they might get even Kshs30 million, going by what is called evaluation of schools, performance and the population demand of that area.

The other issue is upgrade in population. We have heard about Kakamega where population is high. It is important to appreciate the two schools which were not factored in have been considered, and more will be considered.

The Temporary Speaker (Sen. (Dr.) Machage): Mr. Chairperson, if I heard correctly, the question was; what was the rationale of allocating Kshs48 million to already very developed schools and allocating Kshs25 millions to less developed schools. If I may quote Sen. Kagwe, “the inverse should have been the practice.”

Sen. Karaba: Mr. Temporary Speaker, Sir, the rationale is that even the established schools had not reached the threshold of the population optimum of the students. Some of these old schools – you can hold me right or responsible for the utterance – a school like The Alliance Boys High School had two or three streams. The three streams were not able to cope with demand of the pupils and the population in the neighbourhood and the country. So, for them to continue with the standards, of course, on infrastructure, they had to be given more so that they can add more classrooms, facilities, teachers, and so on. That was one of the reasons. Other criteria had been met before establishing these funds at national schools.

Secondly, the people, according to what we heard from Sen. Wetangula, he said that money was given and then after evaluation, some money was found to have been stolen. That is the problem of the board of management. They are supposed to take stock of how much money they are given by the Government and make sure that the money is prudently used. If the money is stolen, that is not the fault of the Government but the board of management.

Facilities vary from one school to another. That is why you find that in some of these schools which are said to be in very populous areas, they might be having some constraints in facilities. That is why they are given that money. So, it is the hope of the Government of the day, that with time, they might capture maybe the third or fourth school as they come up with other criteria to include population as a factor.

As a result of that, more bright boys will join national schools irrespective of where they come from. That is why we are talking about national cohesion. You might find some people moving from Kakamega or Bungoma all the way to North Eastern Kenya. That is allowed in the national policy as it was before. Those in counties in the northern part of Kenya will also join Kakamega and other national schools countrywide. They will not necessarily join the counties of the origin of national schools in the counties. So, the population factor is equally important, going by Sen. Mutula Kilonzo Jnr.’s concern.

So, if there is no water, provide! Every time, schools should not turn to the Government to ask for funds. Some funds are devolved. The governors are supposed to spare some money and make known ---

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

Sen. Kagwe: On a point of order, Mr. Temporary Speaker, Sir. The Chairperson on the Floor is not just the Chairperson of the Committee on Education, which I am a Member. He is also, as he well knows; a former headmaster of one of the schools involved in this thing. He is also a Senator and understands the Fourth Schedule of the Constitution. Secondary schools are not devolved functions. Secondary schools fall under the national Government.

Is the Chairperson in order to speak so irrationally about a subject that is so clear? When he says that there is rationale in giving established schools more money, would I be in order to propose to the Chairperson to reconsider his answers very carefully, given

his background and the actual situation on the ground? He is wavering from one end of the pendulum to the other. He is totally irrational in his inconsistent answers.

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

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. Please, prod the Chairperson to move away from that irrational position that he has taken. I thank the Senator for Nyeri for bringing this because it is very important. Could he also – I do not expect him to have this now – take time and bring to this House statistics of every school from the time they were elevated to now, the progression of performance, the population of students, number of teachers in each school and the cost of maintaining those schools?

The Temporary Speaker (Sen. (Dr.) Machage): Very well.

First, the Chairperson retired as a principal to come to the Senate. We should give him due recognition.

Secondly, Sen. Wetangula, Sen. Billow, Sen. Kagwe and I have had an opportunity to serve with the Senator from the Ninth Parliament. I do not read any irrationality with his behaviour today. It is his mode of communication. So, we cannot do much about that.

(Sen. Mutula Kilonzo Jnr. stood up in his place)

Just a minute, I will give you a chance. Let me finish or is it burning?

Thirdly, the issue so desired by Sen. Wetangula, although very important, may require another question. So, come up with another question demanding for the statistics of performance of those schools to perpetrate your thinking on these promotions of schools. For that, let that lie there.

Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, the question of expense is not a question of an opinion. Maybe that is where Sen. Kagwe is coming from. We cannot say, logically, that it makes sense when it does not when the criteria is not there. It is a technical question. It can only be answered by technical expertise.

The Temporary Speaker (Sen. (Dr.) Machage): If I listened to the Chairperson carefully, he said the established schools had more streams and the addition of students required establishment even of more facilities that required even more funding. That is his argument. However, you cannot casually make that kind of opinion which is yours. That is why another question, properly designed---

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, but even then my additional question was; even the Kshs0 to Kshs18 million is a figure. It is a well calculated budget whether it is Kshs18, 25 or 48 million, there is a criterion. That criterion cannot be based on an opinion that is so general because a school in Mbooni is not the same as a school in Mwea.

The Temporary Speaker (Sen. (Dr.) Machage): Mr. Chairperson, what do you have to say about that? If you do not have that with you, just say so, then, I will decide what to do.

Sen. Karaba: Mr. Temporary Speaker, Sir, that is what I am saying. I do not have the figures. As I said earlier, land, water, telephone and roads were part of the criteria used to identify the schools to be upgraded to national status.

Sen. Kagwe: On a point of information, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Who do you want to inform?

Sen. Kagwe: Mr. Temporary Speaker, Sir, this is a very crucial and important aspect of the management of our educational system in this country, and towards cohesion for our nation.

So, I want to inform the Chairperson that all secondary schools in the second category (B) moving from category A which is the 18 schools are suffering very seriously. You remember that one of the issues that the Chairperson raised very eloquently was that more money was going to be given to these schools. If the Chairperson would undertake, and I am a member of his Committee, so I can assist him in the process, as well, to sit down with the Cabinet secretary (CS) until such a time as the schools have been given at least an equivalent amount of money to the others and we fight for that. If he promises us that, we are prepared to support him as a House. I would like to inform him that we are prepared to help him.

The Temporary Speaker (Sen. (Dr.) Machage): This is a very emotive subject on matters of education. Just like the former question which raised that kind of emotion, I do not want to recap or remind you on the comments of the Speaker who was presiding. Elevation of schools to national level has its own emotional brackets that must be carefully considered, and this Senate demands some answers. However, I will not want the Chairperson to hide under our own Standing Orders that the lapse of this Session will save him. I, therefore, demand that tomorrow, you answer all the supplementary questions that have been raised. It is so ordered.

(Statement deferred)

Senator Billow, you have a Statement in reply to Sen. Hargura.

STATUS OF THE EQUALIZATION FUND

Sen. Billow: Mr. Temporary Speaker Sir, with regard to the Equalization Fund, Sen. Hargura asked how much money had been allocated to the Fund since the promulgation of the Constitution. The table has been provided in the Statement. The total entitlement for the six years is Kshs20 billion but Kshs12.4 billion has been provided so far.

s/n o	Financial year (a)	Most Recent Audited		Equalization Fund Allocation Kshs. d	Equalization fund Entitlement (0.5% of most recent audited and approved revenues) Kshs. E	Variation (note 1) Kshs. F=(d-e)
		Revenues Approved By The National Assembly Base year for most recent audit revenue s approv ed Nationa l Assemb ly b	Audited and approved revenues by National Assembly Ksh. (c)			
1	2011/1 2	2008/20 09	468,151,970,000.00	0.00	2,340,759,850.00	(2,340,759,850.00)
2	2012/1 3	2009/20 10	529,300,000,000.00	0.00	2,646,500,000.00	(2,646,500,000.00)
3	2013/1 4	2009/20 10	529,300,000,000.00	0.00	2,646,500,000.00	(2,646,500,000.00)
4	2014/1 5	2012/20 13	776,900,000,000.00	400,000,000.00	3,884,500,000.00	(3,884,500,000.00)
5	2015/1 6	2012/20 13	776,900,000,000.00	6,000,000,000.00	3,884,500,000.00	(2,225,500,000.00)
6	2016/1 7	2013/20 14	935,600,000,000.00	6,000,000,000.00	4,678,000,000.00	1,322,000,000.00
Total amount due to Fund			The Equalization	12,400,000,000 .00	20,080,759,850.00	(7,680,759,850.00)

The arrears of Ksh7.6 billion will be provided in the subsequent financial years.

The second question was on how the Fund has been utilized to date. The Fund has not yet been utilized for several reasons:-

- (a) Delay in the approval of the Equalization Fund Policy prepared by CRA as required under Article 218(4) of the Constitution by Parliament.
- (b) Delay in the approval of the Equalization Fund Regulations by Parliament to operationalize the provisions of the Constitution and the Public Finance Management Act,(2012).
- (c) Delay in the approval of the Equalization Fund estimates of revenue and expenditure for financial year 2016/17 by the National Assembly.

The third question was on how much of the Fund was allocated this Financial Year, 2016/2017 and the counties that benefited. The Government allocated Kshs6 billion this financial year. The amount was added to the earlier allocations of Kshs6.4 billion, bringing it to a total of Kshs12.4 billion. The fourteen counties identified by the Commission for Revenue Allocation (CRA) have been allocated that money according to the schedule below:

S/No	Name of County	NT Estimates for FY 2016/17
1	Garrissa	764,000,000.00
2	Isiolo	746,900,000.00
3	Kilifi	763,500,000.00
4	Kwale	795,300,000.00
5	Lamu	722,200,000.00
6	Mandera\	967,600,000.00
7	Marsabit	886,200,000.00
8	Narok	809,500,000.00
9	Samburu	869,700,000.00
10	Tana River	859,000,000.00
11	Turkana	1,050,200,000.00
12	TaitaTaveta	751,700,000.00
13	Wajir	929,800,000.00
14	West Pokot	866,100,000.00

Fourthly, he wanted to know the projects that have been identified for implementation by the Fund, and how much the allocation is per county.

The projects are in road, water, energy and health. They are in line with Article 204 of the Constitution as indicated below.

ANNEX I: EQUALIZATION FUND PROJECTS FOR EACH COUNTY

1. GARISSA COUNTY PROJECTS

S/No	Type of Project	Project Name	Amount allocation for FY 2016/17 Kshs.
A.	Water Projects	Garissa Sewerage l&ll	221,000,000.00
		Masalani Water and Sanitation Project	70,000,000.00
B.	Health Project	Construction of classrooms in KMTC, Garrissa Campus	35,000,000.00
C.	Roads Project	Jimct A3 (Sifa) - Aridlands Office - Airstrip/ MnaraSch- Unicef/ Gen Mohamed Loop/ Unicef- CommiResidence/ Southern Link Rd	438,000,000.00
Total Allocation for Garissa County for financial year 2016/17			764,000,000.00

(2) ISIOLO COUNTY PROJECTS

S/No	Type of Project	Project Name	Amount allocation for FY 2016/17 Kshs.
A.	Water Projects	Isiolo Water and Sanitation Project	97,000,000.00
B.	Roads Project	KG 41 1428u,435,442,446,454,437,456,460	426,000,000.00
C.		Projects to be identified through consultative process for Isiolo County for inclusion during supplementary budget	223,900,000.00
Total Allocation for Isiolo County for financial year 2016/17			746,900,000.00

S/No	Type of Project	Project Name	Amount allocation for FY 2016/17 Kshs.
A.	Water Projects	Baricho Water Works Lot 1&11	85,000,000.00
B.	Roads Project	Jnc BS(Malindi) - Sala gate	678,500,000.00
Total Allocation for Kilifi County for financial year 2016/17			763,500,000.00

3. KILIFI COUNTY PROJECTS**4. KWALE COUNTY PROJECTS**

S/No	Type of Project	Project Name	Amount allocation for FY 2016/17 Kshs.
A.	Water Projects	Mkanda Dam Water Project	200,000,000.00
B.	Roads Project	Kwale - Mwalugaje Sanctuary	595,300,000.00
Total Allocation for Kwale County for financial year 2016/17			795,300,000.00

5. LAMU COUNTY PROJECTS

S/NO	Type of Project	Project Name	Amount allocation for FY 2016/17 Kshs.
A.	Water Projects	Mokowe Water Project	100,000,000.00
		FazaVumbe Water Project	105,000,000.00
B.	Health Project	Lamu County Referral Hospital - Construction of ICU, Theatre and 4 wards	100,000,000.00
c.	Roads Project	Mokowe Township Roads	417,200,000.00
Total Allocation for Lamu County for financial year 2016/17			722,200,000.00

6. MANDERA COUNTY PROJECTS

S/No	Type of Project	Project Name	Amount allocation for FY 2016/17 Kshs.
A.	Water Projects	Rehabilitation of Mandera Water Supply	37,000,000.00
B.	Energy Project	Mandera Power Station	700,000,000.00
C.	Roads Project	Bambo - Rhamu	230,600,000.00
Total Allocation for Mandera County for financial year 2016/17			967,600,000.00

7. MARSABIT COUNTY PROJECTS

S/No	Type of Project	Project Name	Amount allocation for FY 2016/17 Kshs.
A.	Water Projects	Augmentation of Marsabit Water Supply	210,000,000.00
		Rehabilitation of Moyale Water Project	40,000,000.00
B.	Energy Project	Marsabit Power Station	130,000,000.00
C.	Roads Projects	Laisamis - Ngurunit	506,200,000.00
Total Allocation for Marsabit County for financial year 20 16/			886,200,000.00

8. NAROK COUNTY PROJECTS

S/NO	Type of Project	Project Name	Amount allocation for FY 2016/17 Kshs.
A.	Water Projects	Augmentation of Suswa Water Supply	70,000,000.00
B.	Roads Project	Narok Bypass - University	739,500,000.00
Total Allocation for Narok County for financial year 2016/17			809,500,000.00

9. SAMBURU COUNTY PROJECTS

S/No	Type of Project	Project Name	Amount allocation for FY 2016/17 Kshs.
A.	Water Projects	Augmentation of Maralal Water Supply	350,000,000.00
B.	Roads Project	Archers Post - Samburu Game Reserve and Junction A2- Losia	519,700,000.00
Total Allocation for Samburu County for financial year 2016/17			869,700,000.00

10. TANA RIVER COUNTY PROJECTS

S/Imo	Type of Project	Project Name	Amount allocation for FY 2016/17 Kshs.
A.	Water Projects	Hola Water Supply	50,000,000.00
		Bura Water Supply	60,000,000.00
B.	Health Project	Hola County Referra Hospital - Construction of ICU, Theatre and 4 wards	100,000,000.00
C.	Energy Project	Hola Power Station	40,000,000.00
C.	Roads Project	Junction B8 - Masalani	609,000,000.00
Total Allocation for Tana River County for financial year 2016/17			859,000,000.00

11. TURKANA COUNTY PROJECTS

S/No	Type of Project	Project Name	Amount allocation for FY 2016/17 Kshs.
A.	Water Projects	Lodwar Water Project	280,000,000.00
B.	Energy Projects	Lodwar Power Station	700,000,000.00
		Lokichoggio Power Station	40,000,000.00
C.	Roads Project	Al Keekorsogol - Nakalel	30,200,000.00
Total Allocation for Turkana County for financial year 2016/17			1,050,200,000.00

12. TAITA TAVETA COUNTY PROJECTS

S/No	Type of Project	Project Name	Amount allocation for FY 2016/17 Kshs.
A.	Water Projects	TavetaLumi Water Project	8,000,000.00
B.	Roads Project	Wundanyi Township Roads	300,000,000.00
		Voi Township Roads (Edward Maghanga 1.8km, Mwatamaa 0.8km and Main Access 0.75km.)	143,700,000.00
		Makutano ~ Hola	300,000,000.00
Total Allocation for Taita-Taveta County for financial year 2016/17			751,700,000.00

13. WAJIR COUNTY PROJECTS

S/No	Type of Project	Project Name	Amount allocation for FY 2016/17 Kshs.
A.	Water Projects	Habaswein Water Project	80,000,000.00
B.	Energy Project	Wajir Power Station	150,000,000.00
		Habaswein Power Station	40,000,000.00
C.	Roads Project	Wajir - Tarbaj	659,800,000.00
Total Allocation for Wajir County for financial year 2016/17			929,800,000.00

14. WEST - POKOT COUNTY PROJECTS

S/NO	Type of Project	Project Name	Amount allocation for FY 2016/17 Kshs.
A.	Water Projects	Siyoi Muruny Dam Water Supply Project	700,000,000.00
		Pusol Water Project	44,000,000.00
B.	Roads Project	Makutano - Kacheliba - Konyao	122,100,000.00
Total Allocation for West Pokot County for financial year 2016/17			866,100,000.00

The fifth issue is on how the projects were identified. The Equalization Fund projects were identified through the National Government structures and the MTEF budget process. The framework for the public consultation is an open process which involves leaders and non-state institutions. Members are aware that the legal framework in force governing public consultations during budget-making process has been divided into two; the National Executive Public Consultations, and the Legislative Public Consultations. Accordingly, the estimates of the revenue and expenditure from the Fund have undergone the first process of public consultation through the Medium Term Expenditure Framework (MTEF) process. The second process of the public consultations by legislature is ongoing.

After this answer was submitted to Parliament, a schedule that has been advertised in all the public media. They will hold public hearings again on these projects in the 14 counties and members of the county assemblies will be at liberty to change any of those projects or to introduce new ones or to simply approve those projects which are listed in this answer.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Hargura.

Sen. Hargura: Mr. Temporary Speaker Sir, I have received the answer and gone through it. I would like to seek some clarifications.

It is very clear on the issue of how much has been generated, how much has been budgeted and what is outstanding. We hope the Ksh7.68 billion will be forthcoming. On the identification of the projects, the answer states that it was done through National Government structures and MTEF Budget process which entails public participation. At no time, as a Senator from one of these counties, did I come across any invitation of this nature, whereby I was supposed to participate in a process of identifying these projects. I do not think any Senator from the 14 affected counties has been invited to this kind of a process.

These projects have been identified by the Members of the National Assembly which churned the funds which are supposed to benefit counties so as to bridge the gaps of marginalization. Could the Chairperson clearly state at what point this consultations were done because I am not aware? I do not think the identified projects were the priorities of my county.

For the last two days, there has been an advertisement that on 5th and 6th, there will be consultations to be held at the affected counties by Government officers headed

by Principal Secretaries. What is the purpose of those consultations? Already, the Government has identified projects for us which are not our priority and they claim to do public consultation. Is that not a process of sanitization of what they have done wrong by being arm-twisted---

The Temporary Speaker (Sen. (Dr.) Machage): Let us not assume what is supposed to be. The Chairperson will answer that. Before the Chairperson answers, we can take another clarification from Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I know that my Chairman in the Committee on Finance, Commerce and Budget has strong views on this matter. I know that the Statement that he has read to this House is not in sync with his thinking.

The Temporary Speaker (Sen. (Dr.) Machage): I will not allow that. We would rather he makes that kind of statement.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, the Equalization Fund was set up under Article 204 of the Constitution. This Senate engaged in the process of identifying 14 counties; the dispossessed of the dispossessed and the marginalized of the marginalized. They include Mandera, Wajir, Kitui, Tana River and Kilifi counties, where there is poverty beyond believe. We consulted with Commission on Revenue Allocation (CRA) and agreed.

This is a clear case of indictment of the Houses of Parliament for allowing themselves to be captured by the Executive and the National Assembly hijacking the role of this Senate. What we have now is not an Equalization Fund as envisaged under the Constitution, because the National Assembly has sat and decided that every constituency will have a share of the Equalization Fund.

Mr. Temporary Speaker, Sir, I hope that Members of the Senate will not pass the Bill at Order No.13 that tries to sanitize that irrational decision. We may have a pocket of poverty in Kiambu, but it is born out of greed and neglect; it is not because of historical injustices. We are addressing historical injustices. Could the Chairperson tell us whether the Committee that he chairs can recommend to the Senate to encourage the Speaker of this House to lead the Senate, like he has done before, to go to the Supreme Court to challenge the irrational decision in the manner in which the Equalization Fund is being managed? I have heard roadside pronouncements from the Executive in rallies that they will send Equalization Fund to do a particular project in a particular place. That is not the way to go. Could the Chairperson clarify?

The Temporary Speaker (Sen. (Dr.) Machage): Very well. I will encourage shorter clarifications, so that the Chairperson can focus. What Sen. Wetangula has said is true, but he has said it with very many words.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, I am concerned that the national Government has published in the dailies what they call public participation on this. The Committee on Finance, Commerce and Budget has raised serious concerns about this Fund. One of the concerns is that 10 per cent of the money that the Chairperson has mentioned will go to administration. That is why they can splash headlines and spend Kshs1 million on advertisements, yet the Fund is supposed to be used for needy courses.

Is the Chairperson satisfied that the proposals that we made as a Committee to the Senate were not that important for purposes of ensuring that they came back or de-gazetted them? The proposals ensured that, one, county governments are involved, two,

that the involvement of the respective counties and people who are affected were put in the board to ensure that this matter is not left to the national Government.

Sen. Billow: Mr. Temporary Speaker, Sir, the clarifications that have been sought are very important. To start with the last one, I am not satisfied that the National Treasury has taken into account the concerns of the Committee on Finance, Commerce and Budget and this House with regard to the regulations for the Equalization Fund. It is a matter that we are still pursuing. The National Treasury has been elusive on this matter and it seems to be under siege on this matter, but we will continue to insist that the 10 per cent and other issues that we have raised are addressed by the National Treasury.

Regarding the second query on the projects, I agree that the process of selection of projects is still shrouded in controversy. The projects that have been listed here do not make sense in some of the counties. Some of them are already ongoing and funded by the national Government. In essence, the National Treasury is circumventing the provision of additional Kshs20 billion by simply flagging the projects in the areas where the national Government is doing the normal course of their work as projects under the Equalization Fund.

Mr. Temporary Speaker, Sir, that is why they have been forced to call a public meeting in all of the 14 counties and all the leaders, including the Senators, governors, Members of the National Assembly and the Members of County Assemblies (MCAs), have been invited to discuss whether or not any of the projects listed here are acceptable. If they are not acceptable, they can do away with them and propose new ones. For example, in my county, all the three projects are not acceptable. They want to give Kshs700 million to Kenya Power, which does not make sense. They also want to spend Kshs230 million on a road that the President and the Deputy President launched, which is completely unacceptable. We will have the opportunity to do away with some of the projects.

Lastly, I know that we are not the only ones who are not satisfied with this. The Council of Governors (CoGs) and the CRA have gone to court and the Senate has also been enjoined in this matter. These things are still before the court because of the regulations and the way the entire Fund is being managed. Six years after the Constitution was promulgated, not a shilling has been spent. Clearly, there have been concerns and I agree that the Government has not been keen in getting this Fund on the ground. We will be cautious to ensure that the projects that will be funded will be approved by the people through elaborate public participation.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Wetangula, in his opening remarks, tried to describe your feelings on the issue of this Fund, and it is in the HANSARD. Do you want to comment on it or we leave it as such?

Sen. Billow: Mr. Temporary Speaker, Sir, I have already commented on this and that is why I said, my own county. In the Senate Standing Committee on Finance, Commerce and Budget, we have raised a number of issues on this Fund and the way it is being run. In fact, it is within our plan to get the National Treasury to come before the Committee and pursue some of the issues we have raised. What they are doing is not in line with the regulations.

Sen. Hargura: Mr. Temporary Speaker, Sir, as it has come out from the comments by the Chairperson and the other Members, the way these funds are being planned for is not in line with what it is supposed to happen. I agree with the Chairperson

that he needs to summon the Cabinet Secretary for National Treasury. This will help these things to come out clearly and those people from marginalized areas can get these funds to do what Kenyans thought when they passed the Constitution.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. I see a point of order by Sen. Mositet.

Sen. Mositet: Mr. Temporary Speaker, Sir, the purpose of the Equalization Fund was purely to bring those marginalized areas in our country at par with those that are perceived to be developed. Going by my own county, the poverty survey which was done classified Kajiado among the richest counties. The people who did that survey must have gone through Ngong, Kiserian, Ongata Rongai and Kitengela and thought that was Kajiado County whereas Kajiado County is about 26,000 square kilometers.

Mr. Temporary Speaker, Sir we have areas---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Mositet! I gave you the opportunity to seek clarification not to debate the issue.

Sen. Mositet: Mr. Temporary Speaker, Sir, we are talking about the National Treasury going to the perceived poor or marginalized counties, however, we still have quite a number of counties which are more marginalized than the ones the National Treasury and the Commission on Revenue Allocation (CRA) had identified as the most marginalized.

There is no way one can say that Narok County is more marginalized than Kajiado County and neither can one say that Narok is more marginalized than Makueni or Kitui counties. For that purpose, we need to review and map out the most marginalized areas in this country rather than going with the list given by the CRA.

Sen. Billow: Mr. Temporary Speaker, Sir, as per the CRA workings, the 14 counties were identified and that is the first one. There will be a review that will be done next year. Probably some will be dropped and new ones will be added. A case was raised about Mwingi Constituency among others. He is right that that is not the final list. CRA will do the entire review for that and hopefully that will be taken into consideration.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. That is the end of Statement Time. I will defer Order Nos.8 to 20 on the Order Paper.

What is it Sen. Karaba?

Sen. Karaba: Mr. Temporary Speaker, Sir, earlier on, there was a ruling by the Speaker that the Statement be revisited to establish in which Ministry the Statement falls. Is it the Ministry or Lands Housing and Urban Development? The Chairperson of the Committee on Lands and Natural Resources denounced it and pushed to the Ministry of Transport and Infrastructure. At the same time, he talked about the Committee on Devolved Government and that it could fall under the Ministry of Devolution. It has not been established which Ministry will handle this.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Mositet, who do you want to inform?

Sen. Mositet: Mr. Temporary Speaker, Sir, I want to inform the Chair.

The Temporary Speaker (Sen. (Dr.) Machage): The Speaker does not want to be informed by you at all.

Sen. Mositet: Mr. Temporary Speaker, Sir, it is on the same matter.

The Temporary Speaker (Sen. (Dr.) Machage): You could use the point of order and figure out how to put your information.

Sen. Mositet: On a point of order, Mr. Temporary Speaker, Sir. Would I be in order to let my colleague, Sen, Karaba, know that the sewerage and treatment works in the whole country are done through water services boards mapped out in the whole country? These water services boards are directly under the Ministry of Water and Irrigation. For example, we have a very big sewerage project in Kiserian which just started last year under the supervision of the Athi Water Service Board and is also under the Ministry of Water and Irrigation.

We also have one which is yet to start in Oloitokitok on sewerage treatment plants and some water works. All are under the implementation of Athi Water Service Board. When the Speaker directed that it should be handled by the Ministry of Roads and Infrastructure, maybe that was an oversight.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. My office will look at that issue and direct the question to the appropriate committee. Let us leave it at that.

I will defer Order Nos.8 to 20 on the Order Paper.

BILLS

Second Readings

THE COUNTY STATISTICS BILL
(SENATE BILL NO. 11 OF 2016)

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

THE WAREHOUSE RECEIPTS SYSTEM BILL
(NATIONAL ASSEMBLY BILL NO. 12 OF 2015)

THE IMPEACHMENT PROCEDURE BILL
(SENATE BILL NO. 8 OF 2016)

THE CONSTITUTION OF KENYA (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 26 OF 2013)

THE CONSTITUTION OF KENYA (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 2 OF 2015)

THE CONSTITUTION OF KENYA (AMENDMENT) BILL
(SENATE BILL NO. 16 OF 2015)

(Bills deferred)

COMMITTEE OF THE WHOLE

THE PRESERVATION OF HUMAN DIGNITY AND
ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL
(SENATE BILL NO. 8 OF 2015)

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL
(SENATE BILL NO. 13 OF 2015)

THE BASIC EDUCATION (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 35 OF 2014)

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

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

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

(Committee of the Whole deferred)

Next Order!

BILL

Second Reading

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

(Sen. Moi on 22.11.2016)

(Resumption of Debate interrupted on 22.11.2016)

The Temporary Speaker (Sen. (Dr.) Machage): This Bill was being seconded at the time we stopped debate. Sen Wetangula was on his feet. He had 55 minutes to go. I saw him within the premises.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. I request that you use Standing Order No.1 to allow Sen. Wetangula who seems to have responded to an urgent call which could well be a call of nature because all his documents are here. He just went behind the Speaker's Chair. Kindly use your powers to allow him to speak when he comes back, probably, shortly.

The Temporary Speaker (Sen. (Dr.) Machage): It is an interesting request, indeed. Usually, it is the Speaker who can request for such. However, the way it has been eloquently put by Sen. (Dr.) Khalwale, I am thinking about it and will give my decision in a moment.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I thank you for that direction. I have requested the Office of the Serjeant-At-Arms to go behind and make sure that Sen. Wetangula comes quickly.

(Sen. Wetangula walked into the Chamber)

The Temporary Speaker (Sen. (Dr.) Machage): Very well. Thank you, Sen. (Dr.) Khalwale, for being so patriotic to see the importance of this Bill. Again, being a medical doctor, you recognize that Biology sometimes demands that we answer calls of nature.

Sen. Wetangula, I had called on Order No.21 on the Order Paper. You had only taken five minutes of your 60 minutes. You, therefore, have 55 minutes to continue your seconding.

Sen. Wetangula, proceed!

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Temporary Speaker, Sir. It is unfortunate the Mover and proponent of this Bill is not here.

I had just started contributing to the Local Content Bill (Senate Bill No.13 of 2013) and I had given a short preview on why local content as defined in the Bill should be expanded beyond the extractive industry. I had said that we need local participation. In fact, the term that is easily understood by everybody is local participation where Kenyans have an opportunity to participate in ownership and benefit of resources.

When you go to countries like China, Cuba and others, the local participation is by the state. If you trace our history back, you are, probably, not old enough to know, but Sen. Karaba would. In the old days, county councils were the custodian of public good. They owned property on behalf of the public. They invested on behalf of the public. I do not know whether Sen. Karaba benefitted, but many people of his age went to school on county council bursaries.

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

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

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. I want to apologise to my party leader for interrupting him, but I just want the record to be straight. Did you hear my party leader say that you are not old enough to know about the history of county councils in this country? Given that county governments ended only four years ago, could he be imputing improper motive on the Speaker?

The Temporary Speaker (Sen. Mositet): Order, Sen. (Dr.) Khalwale. Sen. Wetangula, I heard you clearly and I was waiting for you to finish and for sure maybe you could have been wiser to say before the grabbing mania went into the councils. Otherwise, I was born so many years ago and I saw it happening. You have to withdraw.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I was coming to that. What I meant was even I who is much older than you, did not benefit from the bursaries of county councils because they had already been phased out through corruption. So, I did not mean to be derogatory. You are much younger than me, but I did not even benefit. That is I why I am saying that the Senator for Kirinyaga probably went to school on bursaries of county council because he is much senior citizen than we both are.

The Temporary Speaker (Sen. (Mositet): For the record, in fact, what you are saying is quite correct. Somebody like the late (Prof.) Saitoti benefited out of that for him to go to America.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, my own father is now 87 years old. He went through school on county council bursaries up to Massachusetts State University in the US to get a degree in those early years which was fully paid. I am saying where to place local interest, local content because looking here, there is a real danger in this Bill, the devil is in the detail. If you look at this Bill, we are trying to create oligarchs because what Sen. Moi is trying to do, even as the idea is good, the rich are salivating for oil and minerals.

There is no way a Masai man from Kajiado will have an opportunity to participate in extractive industry. It is the rich who are going to get richer and keep the poor poorer. So this so called local content must be defined very clearly. You will see as I develop my submissions why the devil is in the details. Those good old days, in 1959, the County Council of Elgon Nyanza, the successor entitled to Bungoma, Sen. (Dr.) Khalwale can tell you, led money to her Majesty's Government in England from local management of resources.

Today, as we went into devolution, greed had entered all county councils and everybody fought to become a councillor for only one singular agenda – to steal public land, get contracts and money directly. By the time we went to devolution, even the outfit that we put in place called Transition Authority (TA), they stole even more. They stole assets, public land, public houses and they did all manner of things. Then they handed over the button to governors who are stealing even more. So, we have a serious problem of probity in this country and we really need as we pass any law, Waswahili *husema*: “*Aliyeumwa na nyoka akiona ung'ong'o hushtuka.*” We have been roughed to the extent where we live under permanent fear of watching each other, in law, we ask “who will watch the watchers?” You send a watchman and you have to send another watchman to watch the watchman whether he is going to steal or not and you have to send a third person to watch the man watching the watchman to see whether they will join together to steal public property.

That is why when you look at this Bill - I hope our good clerks will pass the HANSARD to Sen. Moi - first of all, the establishment of a Local Content Development Committee is a good idea. However, I wish that we are setting up a public corporation and not a committee. This Committee, as we go through the Bill is going to be a department of government; a department controlled 90 per cent literally by the Ministry concerned.

If you look at the history of this country, all these tycoons you see in central Kenya, the likes of Kiereini, the late Michuki, the late Philip Ndegwa and others, all of them were public servants. They were recruited from school without a second suit, walked into offices and worked for themselves instead of working for the country. They are owners of property in this town, county and everywhere. They have all been public servants who spent their time working for themselves and not for the public.

So, when you talk of local content, I would want to see that if the minerals in Kajiado – and we provide for local content as we were providing – the stakeholder for that local content is the County Government of Kajiado. Your governor today may not be good, but I know your governor is not a bad person. That when the bad one leaves,

there will be a good one. Nothing lasts forever. All the current thieves will go either through natural attrition, some will go to jail midstream or they will be invaded and raided out of office by *wananchi*. When *wananchi* get tired, nothing will stop them. When we want to make a law for posterity, we should not look at the immediate gains.

After recess, I will go to the Committee to argue my case when the Bill goes there after this debate. I will do that because I believe that this is a good law coiled in mischief. People are already sharing national resources and there are those who are being given contracts to own geothermal power plants. How can an individual be called local content? It does not make sense. The Kenyan beneficiary and how they benefit must be rationalized, particularly the people in the counties.

You will remember the law on minerals that was moved by Sen. (Dr.) Zani. We said that a percentage will go to the community that has looked after this mineral even without knowing that it was there because they were the custodians of that land. A certain percentage will go to the county government while another percentage will go to the national government because they must have revenue for running their affairs. The investor will then get the rest.

Mr. Temporary Speaker, Sir, Moscow has the highest concentration of dollar billionaires than anywhere else in the world. This is because when communism collapsed, they passed a law like this where every public servant became a local content. President Mikhail Gorbachev and his friends would sit at dinner and share public facilities. They would say *we chukua hiyo na wewe chukua hii*. All those oligarchs buying teams like Roman Abramovich, the owner of Chelsea, is worth a trillion dollars yet there is no evidence that he has ever worked anywhere. He was just a friend of President Mikhail Gorbachev. We should not create that in this country. We should not have a situation where people just sit in offices and leave every evening carrying a briefcase full of money yet they have done nothing. That is how inflation is fuelled.

I saw a social media clip where the President, his Deputy, and two other people donated Kshs80 million in cash to a church in one afternoon. Those are the local content. We should not do that to our country. The law we are passing today is the law that will stop the Deputy President, William Ruto, and all his crooks who have found their way in the public office from stealing. Somebody once said that we do not have governors who are thieves; instead, we have thieves who have found their way into the governor's office. They are already taking the country as this law is being discussed here. As the Senator for Kajiado, you will be shouting from the periphery yet you know the real oligarchs who are raping your county.

I want this Committee to be changed into a public corporation which must represent all shades of interest with little limited control by the Executive. That is the only way. We have public commissions such as the Ethics and Anti-Corruption Commission (EACC) which enjoy independence yet it is not in the Constitution. The people who run it are not doing a good job but they have enormous powers and independence.

Mr. Temporary Speaker, Sir, Clause 7 states that the Committee will be set while Clause 8 states that the Committee will ensure measurable and continuous growth in the development and adoption of local content with respect to all activities in extractive industry. Again, poorly managed, a law like this can wreak havoc to the economy. In Zimbabwe, the octogenarian President, Robert Mugabe, decreed that no foreigner can

form or register a company in Zimbabwe without a local owning 51 per cent. He then unleashed his cohorts on the investors. When you go to invest as a miner, he sends his bodyguards to come and own 51 percent of your mine without putting in anything.

This can be very counterproductive. That is why the State is the custodian of public good in a free market economy, developed and growing state like Kenya. You cannot divorce the interest of the State and supplant it with the interest of individuals. We have a history that everybody is afraid of. It is a history that we must learn from. The idea of patriotism and the citizens participating in the economy is very attractive and I support it fully. I want to see Kenyans being innovative, productive and rich but not *kupitia kwa njia ya mkato*.

I was amused the other day, when I saw the Deputy President describe himself as a hustler on television. I looked for the definition of a hustler in the Oxford English Dictionary. It says that a hustler is a swindler, a pimp and a thief. This is not me, it is the Oxford English Dictionary that says so. We have a Deputy President who is a confessed hustler.

The Temporary Speaker (Sen. Mositet): Sen. Wetangula, just stick to the debate on the Local Content Bill. Do not personalize some of these matters.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I want to encourage you to google on your phone and read the definition of a hustler. I did not call him a hustler. He is the one who calls himself a hustler. We shall soon start using the alternatives of a hustler as defined in the Oxford English Dictionary.

Clause 9 states that the committee shall, within a period of six months from the date of its constitution, develop and keep a regular review, a comprehensive register of all equipment and service categories required to effectively supply the needs of the extractive industry. It also states that the committee shall assess the capacity of the local industry to supply the goods and services.

Again, we should not be too intrusive in private enterprise. If somebody buys a gypsum mine in Kajiado County, it is on the white hill, on your left as you go to Namanga, and invests his equipment, he is a private investor. This is because he has invested to make profit or losses. The state has no business to go and take an inventory of his equipment. There is nobody who is foolish enough who could borrow money internationally to come and to invest just to make a loss. Knowing Kenya, we could probably take an inventory and insist that we should be the suppliers of spare parts to private enterprises. We should not be so intrusive into private enterprises, so that we let them grow.

The membership of the committee is where the devil is. The chairperson shall be appointed by the Cabinet Secretary in accordance with subsection (2). If the chairperson is appointed by the Cabinet Secretary, we should have that person nominated by Cabinet Secretary vetted by Parliament, meaning, both Houses, like in the case of the Inspector General of Police. Such a person can be subsequently appointed chairperson by the Cabinet Secretary. Otherwise, people will appoint their relatives. I am sure you know that the brother of hon. Adan Duale is a Principal Secretary in this Government and the brother of so-and-so is serving in another position; they have shared the country unashamedly. Unqualified people are now sitting in places of qualification because they have their brothers in Parliament.

The Temporary Speaker (Sen. Mositet): You are implying that I know that hon. Adan Duale has a brother who is a Principal Secretary. I do not know that.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, since you are not a central player in the Jubilee Government, you are unlikely to know that.

(Laughter)

Mr. Temporary Speaker, Sir, the Bill then says:-

“The Principal Secretary responsible for matters relating to petroleum and natural gas or a representative designed in writing.”

Again, the Principal Secretary responsible for petroleum and natural gas should not sit on this committee, because this is a professional outfit that advises the executive. The executive cannot advise itself. The tycoons in this country are all the Ministers and Permanent Secretaries at Independence. So, we are just creating an ‘eating’ House. All these fellows we are listing will abandon their jobs and concentrate on local content, because they are the local content.

Mr. Temporary Speaker, Sir, in fact, it has loaded many people, including the Principal Secretary in charge of petroleum and natural gas, the Principal Secretary responsible for matters relating to finance or a representative designated in writing, the Principal Secretary responsible for matters relating to industry and enterprise development. All those people have no business in this committee. This is like an ombudsman; it will check on the conduct of public officers. It will check whether public officers are using their offices for self-gain or to serve the public.

Therefore, this corporation - if Sen. Moi will agree to change it - must have independent people. We can have nominating entities like the Kenya Private Sector Alliance (KEPSA), Central Organisation of Trade Unions (COTU) and other bodies. I agree with Clause 10 (1) (e) which talks about the chairperson of the Council of Governors, only to the extent that the Council of Governors is represented. We should have a nominee of the Council of Governors, but vetted and approved by Parliament. The nominee will then sit in the committee. What we are doing is that every chairperson of the Council of Governors will have a stake in any enterprise that emerges at his or her tenure.

Mr. Temporary Speaker, Sir, I have seen somewhere the Bill says that this committee serves for four years. Under the law, the chairperson of the Council of Governors serves for a maximum of two years. It, therefore, means that when the chairperson of the Council of Governors leaves, another one will take over and so on. We will lose continuity. The Council of Governors, as a custodian of the interests of Kenyans in the counties, should sit and nominate two or three persons. In my opinion, the Principal Secretaries should exit and allow for this. We will then vet, with gender parity, and put them in the committee to protect the interests of resources based in counties.

We should avoid a situation where people sitting in Nairobi revoke titles in Lamu and allocate themselves the same land, redraw old blocks or allocate themselves forests and sell the land. We must move away from this, because this committee is purely and simply a public watchdog.

Mr. Temporary Speaker, Sir, apart from the Tullow Oil, what are the stakes for Turkana County? In fact, I told my brother, Sen. Munyes, that it does not help the people of Turkana when they block roads and claim that the locals are not employed to clean at the oil rig yard. They should ask: What is the stake of Turkana in this oil well, so that when the oil is extracted, it will send the Turkana children to school and will give Turkana women water. In most cases, you would see a Turkana woman with a child on the back, a Kalashnikov on the shoulder and a hundred cows ahead of her. We must liberate our people from this abject poverty, suffering and risks. That is my idea of local content and participation.

I have seen it work so well in many countries. I was in China two weeks ago and met some entrepreneurs, who are minors, in a public function. They told me that they invested in mining in Africa, Asia and South America, but the government obligated them to cede 39 per cent of their stake to the state for the interest and benefit of the people of China. They access loans to start their business, sit on boards and the money goes to help the people of China. That is how we can grow and emerge as an economic superpower in this region. Like G.M. Kariuki once said, this is a country with ten millionaires, now billionaires - even hustlers are billionaires - and many poor people.

Mr. Temporary Speaker, Sir, I know your county well. If you go to the villages in Kajiado County, I can swear on the Bible that your people are poorer today than they were 10 years ago. This is true of everywhere else. My father inherited 21 acres of land from his father. He has two wives; my mother and another mother, with 30 children. With 30 children, how do you share 21 acres? He is now poorer than he was in 1960 because we have not implemented policies properly.

We have emphasized the importance of owning land and living on it without the importance of production. Sen. (Dr.) Khalwale can tell you that we have boys in the villages who kill their parents for not giving them half-an-acre of land. As soon as they are given the land, they sell it, go to the market, drink and finish everything. They then go back and say: "I was born here; where do you want me to go?"

(Laughter)

The Bill goes ahead to say that a person shall be qualified for appointment as chairperson of the board if that person meets the requirement of Chapter Six of the Constitution. That is a routine in every appointment. It further says that a member of the board shall hold a degree from a university recognised in Kenya and have knowledge and at least five years experience in matters relating to the extractive industry. Sen. Moi agreed with me that he will recast this so that the Bill is not just about extractive industry.

Yesterday, I was listening to the British Broadcasting Corporation (BBC) and heard that Chinese fish poachers have invaded West African waters. On a single day, they are fishing one million tonnes of fish. You cannot believe this. I said it here, but you were not in the Chair last week, as your Foreign Affairs Minister in charge of Maritime Boundary, I extended our territory from 200 to 450 nautical miles. That is our territory. Out there, the Chinese, Spanish, Koreans and Indians are battling on our waters on who should fish where. You know from the Horn of Africa to Mozambique has the richest stokes of tuna anywhere in the world.

Those resources must also have local content. The Government can do this very easily by floating a company and putting it in the Stock Exchange and allow Kenyans to buy in shares. A Mama Mboga can buy shares with her Kshs5,000. At the end of the year, she gets another Kshs5,000. That is 100 per cent return per annum. If she put that money in a bank, they will give her an interest of 6 or 5 per cent. *Kijana wa jua kali* will put there his Kshs10,000 and get a dividend of Kshs 10,000, at the end of the year. That is how to grow the economy. I hope that this Senate, as a custodian of counties, will do this.

Mr. Temporary Speaker, Sir, regarding meeting the requirements of Chapter 6 of the Constitution, I said a person is not qualified for appointment as a member of the committee under Section 10, if he has violated Chapter 6 of the Constitution. That is all right. If he is bankrupt and has not been adjudged, that is fine. If you look at (c), this is where I always never agree. It says:-

“Has been convicted of an offence and sentenced to imprisonment for a term of more than six months.”

This blanket statement always gets me wondering. Supposing today as you drive home, a reckless driver coming from the other side collides with you. As usual, the police come and the man you collided with is richer than you and he bribes them. The police grab you and take you to court and you were just driving home. In court, the rich man who made the police charge the innocent still follows you because you have to be convicted for him to get insurance payment. He pays a magistrate who convicts and sends you to jail for 10 months. *Raia!* Does that in itself exclude you from holding public office? I do not think so.

We should qualify that persons convicted of fraud and offences of dishonesty are the ones who should not sit on public boards. For example, if you legitimately quarrel with your neighbour on a boundary where your neighbour moves your boundary and you ask him not to so. He continues to do so and insults you on top of that and you quarrel, he then uses his might, takes you to court and you are jailed. How does that preclude you from sitting in a public corporation? So, we must qualify this. This is because if we just blanketly say that if you have been jailed for six months, you cannot serve anywhere, then what is the purpose of us calling our prisons correctional services?

We take people to prison to rehabilitate, correct and bring them back to be good people. In fact, I can tell you that if there had been no conviction, we know many fraudsters who have found their way in this Parliament. Some are even continuing, in fact, in the past, present, future and future continuous. You heard one of us here whose name I will not mention, busy every time we mentioned Ms. Ann Waiguru. They would jump in her defense as if they were being electrocuted. Now, they are the ones who are saying: “Ms. Waiguru is targeting me because I am close to so and so.”

Sen. (Dr.) Khalwale: Murkomen!

The Senate Minority Leader (Sen. Wetangula): Now, they are the ones saying---

The Temporary Speaker (Sen. Mositet): Order, Sen. (Dr.) Khalwale!

The Senate Minority Leader (Sen. Wetangula): Now, they are the ones saying: “*Kila mtu abebe msalaba wake.*” *Na yeye pia abebe msalaba wake.* What is good for the goose is good for the grander.

I would like us to pay attention to that because this law is so important. We represent counties, and I keep on coming to your county because it is the nearest and most disposed county. If we do not have a good law to protect resources in your county and the biggest resources land, in another 20 or even 10 years, there will be nothing for you. So, this is very important.

Mr. Temporary Speaker, Sir, Clause 14(1) says:-

“The office of a member of the committee appointed under section 10(1)(f) shall become vacant if a member –

- (a) is adjudged bankrupt;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of at least six months.”

That is usual when you become bankrupt or if you are convicted. The conviction there can cover all because if you are jailed for six months, you will obviously miss meetings and it can be grounds for removal.

Clause 14(c) says:-

“is convicted of an offence involving fraud or dishonesty”

Now, this 14(c) is what should be 13(c) as well.

The rest of Clause 14 says:-

“is absent, without reasonable cause, from three consecutive meetings of the Committee.

(c) resigns in writing addressed to the Cabinet Secretary (CS);

(f) is removed from office by the Cabinet Secretary (CS) for –

- (i) being unable to perform the functions of his or her office by reason of mental or physical infirmity.”

We should include this phrase “proven by a medic” because the Cabinet Secretary (CS) has no capacity to tell whether you have mental infirmity or not. Physical infirmity is not disability. We have our sister here who has just gone out. She is a Person With Disability (PWD), but she is so vibrant, able and so empowered. So, for us to say that persons suffering physical infirmity cannot sit on boards is an assault on Kenyans who live with disabilities. In fact, I was reading a book where a creative writer said that these are not people with physical disabilities, but with special talents.

Mr. Temporary Speaker, Sir, I have a brother who is the Member of Parliament (MP) for Westlands. He was a footballer, walking upright like you and I and working hard. A criminal shot him and a bullet went right through his spine. We, as a family, were devastated beyond belief. He was rehabilitated in Brussels and came back. He did not seek to be nominated. He fought in Westlands Constituency against, among others, the biggest billionaire in this country called Mr. Kamlesh Pattni and defeated all of them. He is now an MP.

These are people with special talents. God has removed some facilities from them that give them even greater abilities in how they live. It is an assault on PWDs to say that when you suffer a physical infirmity, you must leave a board. Supposing you are walking as you are, slip in your house and break your leg and you cannot recover, do you move away from the board? This should be looked at afresh.

Clause 15 states that the Committee shall conduct its affairs in accordance with the provision of this schedule. I have looked at the schedule. It is okay.

Clause 17 states that the Cabinet Secretary shall designate an appropriate administrative unit. This is the bigger devil. In this clause, the Cabinet Secretary will micro-manage the committee. He is the one who will give them a secretariat. He will also appoint an administration unit in the Ministry relating to matters to extracting industry to serve as a secretariat to the committee. If we wanted to do this, then why are we setting up a unit on local content? The Ministries can do it. The Cabinet Secretary and the Principal Secretary can set up a desk in the Ministry and say; you will be responsible for local content and report to me.

Mr. Temporary Speaker, Sir, in all public corporations and boards, the corporation and the boards must be empowered in unlimited terms to appoint a secretary to the organisation; a person they hire and fire where necessary.

Then you go on and continue diluting the intention of this Bill. It states, "The director who shall be competitively recruited by the Public Service Commission (PSC) and appointed by the Cabinet Secretary." You know what it means by competitively appointed by the PSC. People just sit and share jobs. You know it. If you go to the PSC today, 60 per cent come from one community. They will just be sitting and say, *leta huyo mtu*. Jobs will be shared in public clubs. We should not allow this. The board must appoint, hire and fire its secretary. We are creating a vibrant private sector. How do we subject a private sector organisation to the PSC?

If this goes through, the next secretary will be a former DC with a stinking record for the last 20 years. He has stolen land across the country. Everywhere he has worked, he stolen land. Such an officer and such other public officers, the Cabinet Secretary shall in consultation with the Committee, designate for the proper --- so, this means that the entire secretariat of the committee will be designated by the Principal Secretary. If that is the case, then why are we creating an outfit? We can as well pass the law and tell them, administer, decide who local content is and who is not.

The functions of the secretariat include providing technical and administrative services to the Committee then, implement the decisions. These are routine things. On behalf of the Committee, establish and maintain relationship with international, national. The Committee must be a wholesome unit. Here, we are trying to divorce the secretariat. Remember. already the committee consists of three Principal Secretaries, Chairman of the Council of Governors (CoG) and a few other people. Then, you have a secretariat that does not belong to them. First, the Principal Secretaries do not go to meetings. They will pick a university greenhorn and send them there – *enda pata* allowance. They will not do the job. So, this is strangling the child at birth. It will not work. I told Sen. Moi to sit here and listen to me.

Another one is; collaborate with state agencies, financial institutions and other stakeholders in the implementation of policies, strategies and programmes developed pursuant to the Act.

Conduct studies, research and investigations in order to enhance the development of local content and so on.

Something that is lacking is that this corporation should be assisted by the Office of the Attorney General and any other bodies including Kenya Private Sector Alliance (KEPSA) and manufacturers association to develop rules and criteria. That is how we shall insulate fraudsters and hustlers from taking state resources. They will be required to prepare rules and regulations which will be subject under the Constitution to come to this

House for approval, that will determine the manner in which local content is determined, including, an appeal.

We may have a situation where people will just start as soon as the law is passed; somebody walks to a five star hotel on the beach and says, I am the local content. What are my shares? The same way President Robert Mugabe in Zimbabwe was just saying, “my Minister, *wewe chukua hilo shamba, fukuza huyo Mzungu mara moja.*” That is what they did.

You may remember the famous *Africans Series* by the late Prof. Ali Mazrui in 1983, 1984 and 1985. Immediately after Independence, Zimbabwe was the most food-reliant country in Africa. It was the most industrialized country in Africa South of Egypt and North of South Africa. Today, it is worse than Eritrea or Somalia. One time I met the Vice President of Zimbabwe. She amused me – President Mugabe has since sacked her. She is called Ms. Joyce Mujuru. She told me, we have now bank notes with so many zeros. We have been told one is called million, another, a billion, a trillion and a gagillion. She went on and on. She continued to say; “you can go with them but you cannot walk out of a supermarket with a loaf of bread”. That is how local content can run down a country. We must be very careful.

The care we must exercise is the content in this Bill that will insulate this country. There are some things we cannot say on the Floor but at a quiet evening when we are enjoying a beer, I will tell you.

Clause 19 states that the Cabinet Secretary shall, in consultation with the Committee and by notice in the Gazette, set the minimum local content to be applied by an operator engaging in any extractive activity undertaken under this Act. First, there is no point setting up a committee and then leaving the authority to the Cabinet Secretary. The Cabinet Secretary will, if you followed the tenure, be the one appointing all these people. There is no way he can call them to his office and give them his views and they resist. So, it will be the views of the Cabinet Secretary all the time.

That is how to kill this child at birth. I suggest that the corporation that we set up will then sit – I discussed with Sen. Moi and Sen. (Dr.) Khalwale – I said, you know, you are now talking of the mining, the extractive industry and petroleum – the country will look very messy if after passing a Bill on petroleum, gas and mining and then you run and pass another Bill for local content on agriculture and floriculture, fishing, forestry. A composite law with every applicable situation is more important than a sectoral narrow based law so that now the rules and regulations they will pass will cover the fishing and coffee sector.

Let me finish so that I leave it to you, *mheshimiwa*. How many minutes do I have?

The Temporary Speaker (Sen. Mositet): Continue, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, we must resist the temptation for the executive to invent itself and run such an important organization.

The Bill says that an operator, in No.20, “Shall, before applying for or bidding for a license permit or interest and before engaging in any extractive activity prepare and submit to the committee a local content plan with respect to the extractive activity in the prescribed form.”

This, like I said, will only make sense if counties and the National Government are going to protect public interest and not individuals.

There are many other things in this Bill that we can talk about. I will avail myself at the Committee when they sit and discuss with Sen. Moi. I promise to give my memorandum in writing on all issues I have talked about. I encourage the clerks at the table to extract the HANSARD and give it to him so that he can be able to see this, because anything less, we are simply perpetuating Kenyattaism, Moism, Rutoism, hustlers, name it.

Sen. Hargura will not have any money to go and buy wind power in his own county, but these fellows will turn up and be the local content. I support this Bill to the extent that the idea is good, and I will come with issues that I hope the House will concur with me.

The Temporary Speaker (Sen. Mositet): Sen. Hargura.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Mositet): What is it, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, it is African culture that a parent taps the shoulder of a good child. Could you use Standing Order No. 1 to congratulate the Coalition for Reforms and Democracy (CORD) for keeping the Senate going since 4.00 o'clock?

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, it is only fair.

The Temporary Speaker (Sen. Mositet): Sen. (Dr.) Khalwale, when the Senate Minority Leader is given one hour, he should utilize it all. He fell short by five minutes. However, all in all, he did very well and I think the better part is the one where he has said that he will put up a memorandum in writing. Otherwise, congratulations and you have always done well.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Temporary Speaker, Sir.

Sen. Hargura: Mr. Temporary Speaker, Sir, I would like to thank Sen. Moi for coming up with this Bill since it legislates on an issue which we have been grappling with, we who come from counties which are once in a while visited by these investors.

In my county, we have had three oil explorations, the first one being in 1988/89 by an American oil company, Amoco, then we had Tullow Oil and Africa Oil and we now have other multinationals engaging in use of our resources like the wind and we expect solar and all that in the future.

We have been struggling as locals on how to get our local content from these mega projects but there was no legislation on how we could go about that.

I can remember the case of Africa Oil, where it took the communities to block the roads and demonstrate for them to come and listen to the communities so that they could develop this kind of an agreement on what the community could supply. If there was this kind of legislation, then this would not have happened because as the Bill indicates, the company would have even submitted to the local content development committee what their local content will be before they go out and do the actual extraction.

The whole issue is about promotion of maximization of value addition and creation of employment opportunities in the extractive industries value chain through use of local expertise, goods, services, business, financing and their retention in the country.

We have had several cases where these multinationals will come and they will not want the locals to supply goods and services but they will just get it from where they want and there will be nothing which will be forcing them to consider the locals in that.

So, this is a good Bill. If it becomes law, we who come from these areas which are frequently visited by multinationals who do not usually have regard for the locals, will have something to hold against them. This is a good idea because the Bill also provides a framework of making sure that the local content is monitored since a company or individual submits what the local content will be in their project. Once approved, there will be a way of monitoring whether they are actually doing that.

In most cases, the locals may be said not to have the capacity, but I think it is a requirement that when you have an extraction of any resource in your area, the extractor should also be required to develop the capacity of the locals. For example, in the case of Turkana where we have oil exploration which is a new venture, the locals must be developed in that industry by being taken for training so that with time, we replace the expatriates so that the skill is retained within the locals. They should have their capacity building in terms of provision of goods and services. Once they are given that opportunity of doing business they will still grow and may be even once the project stops the capacity will be there and business will have developed in that area terms of service provision.

This is a good way to go because this is what we have been fighting for with these companies. I noted that there is a tendency by the sponsor of this Bill to limit this local content to gas oil and mineral resources. There are many other resources which are being exploited. For example, there is wind, green energy and solar which are all found within communities and community lands. There must be some way for those communities to benefit in terms of input of this local content by being given skilled and unskilled jobs. That must be very clear.

What they can provide in terms of goods and services for that must be a requirement and not a favour as it is now where you have to negotiate. It must be a requirement in law that even these other resources like wind and solar need to be incorporated in this local content law once the Bill goes through. How do the communities benefit when the resources are harnessed and the power being taken somewhere else; to the national grid, since they often cannot consume it? When the project is being undertaken, they should be fully involved in provision of services where they can.

When a project is allocated, the people should be involved in the provisions of services where they can. Right now, there is no structure, local content law or development committee. More often than not, people would approach a politician who will determine who gets employed including the casual labourer. This is what we have been experiencing with the projects that require manpower. They have become someone's way of campaigning. For people to be employed or have their equipment hired, they have to go through the local politicians. If we had a legalized structure, people would not have to go through that because politicians would be bound by law to be fair and make sure that the local content is provided. The local content development committee will ensure that there is monitoring, so that goods and services are provided in an orderly manner and the locals will have equal rights to access opportunities.

Some projects involve skills which were not within our education system before. For example, petroleum, wind and solar industries are new in the country. It should be the responsibility of the extractor to develop capacity of the community by training students in those fields, so that they can take over the running of those projects or develop community-based projects based on the acquired skill. We need to pass a legislation on this. We should not leave our people at the whims of foreigners who in most cases do not have any goodwill.

We have seen cases where foreigners come, go round our systems and grab our land. When they are asked about it, they say that the indigenous people do not have legal rights; they only have grazing rights. They will even define who an indigenous person is and the rights they have in their ancestral land. We cannot rely on the goodwill of such kind of people. They are pure capitalist who are only interested in the money. If we have this kind of law, we will safeguard the rights of our people. Much as we encourage extraction or exploitation of our resources for the development in our country, it must not be at the infringement of the rights of our people, their land or opportunities. In most cases, these extractions take place in marginalized areas. However, outsiders think that any Kenya can provide the local content and the marginalised end up being further marginalized.

We talk about the Equalization Fund because we have accepted that we have marginalized parts of our country. We should have checks and balances in this system to ensure that the first local content is from the immediate community, so that they do not continue to be marginalized. More often than not, multinationals come through the relevant Government departments stationed in Nairobi where the jobs will be shared. Therefore, the local people will not be represented because any other Kenyan can provide the local content. There must be a way to give priority to the immediate community, the county and the rest of the Kenyans so that the local people benefit first.

Mr. Temporary Speaker, Sir, what Sen. Wetangula raised in terms of the administration needs to be taken into account because it is where we normally lose most of these legislations. We legislate and at the end of the day, a lot of bureaucracy is introduced and the locals are technically locked out using the law. We need to look at the kind of administrative structure that we will put in this law, so that the locals are not technically locked out by giving powers to the Executive to decide everything in Nairobi. This will prevent people to come to the ground cleared and with approved local content plans.

Mr. Temporary Speaker, Sir, I would like to end by thanking the Mover of this Bill. I hope that the necessary concerns will be taken into account to widen the bracket in terms of the extractives, other resources and the administrations. I also hope that this will go a long way to make sure that our resources are not just exploited and we are left with nothing to show for them.

We have to learn from history. Nigeria is the largest oil producer in Africa, but the communities which are found in areas where that oil is found live in worse conditions compared to those in other parts of the country. Most of them are busy fighting. We do not want to create such situations. We need to learn and put the necessary laws in place, so that our people do not end up that way.

I beg to support.

Mr. Temporary Speaker, Sir, pursuant to Standing Order No. 54 (3) I would like to request that you defer the putting the question on this Bill.

The Temporary Speaker (Sen. Mositet): I will defer putting the question.

(Putting of the question on the Bill deferred)

Next Order.

Second Reading

THE CYBER SECURITY AND PROTECTION BILL
(SENATE BILL NO.12 OF 2016)

The Temporary Speaker (Sen. Mositet): Since Sen. Kagwe is not here, we will defer the Bill.

(Bill deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Mositet): It is now 6.30 p.m., the time to adjourn the Senate. The Senate, therefore, stands adjourned until tomorrow, Thursday, 1st December, 2016, at 2.30 p.m.

The Senate rose at 6.30 p.m.