

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 6th March, 2014

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

BEYOND ZERO CAMPAIGN MARATHON

Hon. Speaker: Hon. Members, following a request from the Chairperson of the Bunge Sports Club, Hon. Wamunyinyi, Member for Kandui, I wish to inform you of an initiative that has been championed by Her Excellency the First Lady, Margaret Kenyatta.

Recently, the First Lady launched the Beyond Zero Campaign which is aimed at containing preventable maternal and child deaths in Kenya through the provision of mobile clinics and medical equipment. She has been championing this effort and will be holding the inaugural First Lady Marathon to raise awareness and funds for this cause. The event will take place this Sunday, 9th March, 2014 in Nairobi. As this is a national event aimed at improving matters of health in the country, all Members of Parliament are invited to participate, particularly Members of the Bunge Sports Club and those who are involved in marathons and other sports. Those willing to participate should register with Mr. Silvester Ochola, the Manager of Bunge Sports Club at this office in Protection House.

Thank you.

PETITION

OCCUPATION OF MIGINGO/UGINGO ISLANDS BY USF

Hon. Speaker: Standing Order No.225(2)(b) requires that the Speaker reports to the House any petition, other than those petitions presented through a Member. I therefore, wish to convey to the House that my office has received a petition regarding alleged continued occupation of Migingo and Ugingo Islands by Uganda Security Forces (USF). The petitioner contends that the USF have subjected Kenyan fishermen to untold suffering through illegal and arbitrary arrests. The Petition signed by one, Dr. Dan Alila, Director, Africa Human Rights Bureau, is praying that the Government of Kenya including Parliament:-

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- (i) investigates the issues raised in the Petition and affirms that the contested Migingo and Ugingo islands and the surrounding waters are part of Kenyan territory;
- (ii) approves the establishment of a permanent naval base at Ugingo to protect Kenyan citizens living and working in the two islands; and
- (iii) considers compensating the victims affected by the alleged occupation.

Hon. Members, this Petition, therefore, shall stand committed to the Departmental Committee on Defence and Foreign Relations for consideration. The Committee is requested to consider the Petition and report its findings in accordance with Standing Order No.227(2) for consideration.

Hon. Ng'ongo: Hon. Speaker, I just want to thank you and the petitioners for bringing that Petition to the House. The issue of Migingo and Ugingo has been outstanding in this country. It has caused us a lot of embarrassment. Remember some of us even had to travel all the way to Uganda, Kampala, to discuss this issue when the Ugandans realized that the map was actually indicating that Migingo and Ugingo are in Kenya. That was when the whole thing was stopped; the whole discussion was stopped. We were promised and even Amani allocated funds for the survey. Therefore, I would like to request that the Committee considers where that survey has reached because some of our constituencies, like mine heavily depend on fishing and Migingois very crucial in terms of fishing around Lake Victoria. I hope that this matter this time round is going to receive due and proper attention.

But before I sit down, I would also like to thank the current Senator of Kakamega who was the MP for Ikolomani then, who brought a successful Motion to this House. This House debated and unanimously adopted that Kenya should take every step necessary to make sure that our territorial waters are protected.

Thank you.

Hon. Speaker: Hon. Onesmus Njuki.

Hon. Njuki: Thank you, hon. Speaker. I just wanted to bring to your attention the fact that since you have been blessed with a very good height, every time you stand to speak, we do not hear you from here. I just request that you look for a way of ensuring that your microphone is adjusted to match your height, so that all of us can hear you properly.

Hon. Speaker: Hon. Njuki, the problem is that I have not heard what you are saying. Is it a problem that could be between us?

Hon. Njuki: Hon. Speaker, I said that you have been blessed with a good height and, therefore, your microphone should be adjusted, so that we can be able to hear what you say. When you spoke, those of us sitting around here just heard "Migingo" but we never heard the rest of what you said.

Hon. Speaker: You never heard about the islands of Migingo and Ugingo?

Hon. Njuki: No, hon. Speaker.

Hon. Speaker: I am certainly blessed with good height. You are correct about that bit. We will see what to do about the gadgets for purposes of ensuring that everybody, at every corner of the House, is able to hear what comes from the Chair. Is there any other hon. Member who wants to comment on this matter?

Yes, Member for Sirisia.

Hon. Koyi: Hon. Speaker, I rise to comment on the petition regarding Migingo. I think it has taken too long for our Government to negotiate. The Government has spent a lot of money on the issue yet Migingo is in Kenya. So, the only thing that should be done by us, as a House, is passing a Motion to deal with the Migingo issue once and for all – that is to order our military to face the Ugandans who are on Migingo Island.

Hon. Speaker: Hon. Waluke, the petition before the House has made specific prayers. I am not too sure that the petitioner has made a prayer in the direction that you have proposed but in the fullness of time, since it is within your right to move whatever Motion, you are welcome to move a Motion as proposed by you.

Next Order!

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House:-

The Report of the Auditor-General on the Financial Statement of the National Museums of Kenya for the year ended 30th June, 2013

The Report of the Auditor-General on the Financial Statement of the Democratic Party of Kenya for the year ended 30th June, 2012

The Report of the Auditor-General on the Financial Statement of the Democratic Party of Kenya for the year ended 30th June, 2011

The Report of the Auditor-General on the Financial Statement of the United Democratic Forum for the three months period ended 30th June, 2012

Thank you, hon. Speaker.

COMMUNICATION FROM THE CHAIR

TABLING OF BUDGET AND APPROPRIATIONS COMMITTEE REPORT

Hon. Speaker: Hon. Members, on the next Order, the Chairman of the Budget and Appropriations Committee has asked that they be given a little more time to finalise editorial work on their Report. So, we will be allowing him to table his Report a little later as well as give notice of Motion because it is absolutely important that the House gets that Report and the notice of Motion is also given today. So, I will be invoking Standing Order No.1 to allow hon. MutavaMusyimi to later on do what should have happened now.

Next Order!

REQUESTS FOR STATEMENTS

MEASURES TO STOP SPREAD OF MAIZE NECROSIS DISEASE

Hon. Limo: Hon. Speaker, pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on

Agriculture, Livestock and Co-operatives regarding the spread of maize necrosis in all the arable land in the country, particularly in the Great Rift Valley Region.

Hon. Speaker, maize is a staple food in Kenya. It is produced in most parts of the country. However, an alarming spread of the devastating maize disease in parts of Narok, Bomet, Nandi, Kericho and Kipkelion threatens to affect maize production in those areas and negatively impact on the livelihood of the people in the region as well as on food security in the country at large. I would like the Chairperson to inquire into and report on the following:-

- (i) steps taken by the Government to arrest the spread of the disease;
- (ii) any measures that the Government has put in place to sensitize and equip farmers with the requisite skills to fight the disease; and,
- (iii) assistance or compensation offered to the affected farmers, who have lost their crops to the disease over a couple of years.

Hon. Speaker: Is the Chairperson on Agriculture, Livestock and Co-operatives present? Hon. Victor Munyaka, are you a Member of the Committee?

Hon. (Dr.) Munyaka: Hon. Speaker, I will take the Statement request to the Committee. We will take the matter seriously and try to respond in the next three weeks.

Hon. Speaker: What is your reaction, hon. Limo?

Hon. Limo: Hon. Speaker, whereas I appreciate what the hon. Member has said, I also wish to state that the Statement request was made during the last session. The Statement is about a very serious problem affecting farmers. The disease is spreading. There is a big worry that it will even spread to areas where the Government is making a lot of efforts to irrigate a million acres of land. It is my opinion that the Committee has not been taking this matter seriously. Three weeks is a long time. That period of time will make them to become less concerned about it.

Again, the Ministry of Agriculture has shown little concern about this disease. As we speak, in some parts of Bomet and Kericho, farmers no longer plant maize but I have not seen any statement from the Ministry of Agriculture, warning that very soon, the country will not be able to produce maize. Three weeks is not sustainable. I want the Committee to review the timing and take the matter seriously.

Hon. Speaker: Yes, hon. Munyaka, the Member does not think you are taking the matter seriously.

Hon. (Dr.) Munyaka: Hon. Speaker, this is a very serious matter. We are getting to the long rains period and the concerns are very real. But we also understand that we may need scientific investigations so as to come up with a comprehensive report. The Committee will require ample time, so that we can undergo the process. I beseech the Member to bear with the Committee.

Hon. Speaker: Well, hon. Limo, you hear that there will be scientific information that will be sought. In any event, I understand that a number of the Members of the Committee are out of the country. Hon. Limo, since you have waited this long, why do you not give them the three weeks that they are asking for? The answer is not somewhere in some cabinet or kitchen. You have made an allegation that the Ministry has not done anything and has not taken the matter seriously. So, perhaps, when the matter is brought to their attention that is when they will start going out even to find some of the information that you may have.

Hon. Limo: Hon. Speaker, I was going to be comfortable with two weeks, but if he insists on three weeks, I will seek your assistance in this to ensure that it is done within three weeks. This is not a matter of hon. Limo, it is a national concern and it is going to affect the economy of Kenya. Kenyans are aware that maize is a key driver even to inflation. If we are not careful, inflation in this country is going to rocket because maize forms a big part of our foodstuffs. I will go by your word and wait for three weeks, but I request your assistance to ensure that, that is done.

Hon. Speaker: Well, let it be three weeks. Hon. Jude Njomo, Member for Kiambu Constituency. You are not on the screen.

Hon. Njomo: Hon. Speaker, as I make my request, I would also like to send my message of goodwill to all the hon. ladies in this House and in Kenya in general during this World Women's Day. For those who are calling me Judy, remember, I am a man.

Hon. Speaker: What have women said in this Statement?

Hon. Njomo: Hon. Speaker, I have sent a message of goodwill to all the women of Kenya during this day when we mark the International Women's Day.

Hon. Speaker: Okay. Those who are present have heard and they are happy. Proceed now with business.

MEASURES TO GUARANTEE SAFETY OF ROAD USERS ON KIAMBU ROAD

Hon. Njomo: Hon. Speaker, pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing regarding the condition of Kiambu Road.

There are various activities being carried out on this major road without proper identification of who is doing the works or signage to road users on the dangers to avoid. For instance, when you drive on the road between Muthaiga Golf Club and the Kiambu Institute of Science and Technology, you will notice deep holes and trenches dug along the road after every three to five metres. This not only weakens the structure of the road, but also poses serious danger of accidents to motorists and pedestrians. There have already been several accidents due to this. In addition, the turn off to Ridgeways Mall has no provision for an acceleration lane or turn off lane, which leads to daily long traffic jams on this road costing the road users so much time wastage.

In this Statement, the Chairperson should inquire into and report on the following:-

- (i) the reason for digging up of the Kiambu Road;
- (ii) the measures being put in place to guarantee the safety of pedestrians and other road users during the ongoing road activities;
- (iii) The steps being taken by the Ministry to provide a turn off and an acceleration lane at the Ridgeways Mall to reduce traffic jams.

Hon. Speaker: Hon. Kamanda.

Hon. Kamanda: Hon. Speaker, on Kiambu Road, I need one week. However, on the condition of roads nationally, I want to say that I want the intervention of this House and in particular the Budget and Appropriations Committee. The Ministry of Transport is underfunded. They were given only Kshs18 million in the recent Supplementary Budget

yet they had requested for Kshs85 billion. There are some people at the Treasury who want to kill the country's infrastructure and if the Members are not keen, this will happen. Once you kill the infrastructure, you will kill the development of this country.

I had a similar Statement this morning and I want to report that the Members who sought the Statement came to my Committee. They are similar and we have summoned the Cabinet Secretary in charge of Treasury on 18th March so that, at least, we can put him on notice that he is killing development in this country. I can only undertake on this after the 18th when we meet the Cabinet Secretary in charge of National Treasury. However, it is a concern that we are killing infrastructure in this county.

Hon. Speaker: Hon. Jude Njomo, so in a week's time, hon. Kamanda will give you a response. Hon. Kamanda has also answered for the Ministry, that the Ministry is underfunded.

Hon. Njomo: That is in order, hon. Speaker.

Hon. Speaker: Very well. Hon. James Gakuya, Member for Embakasi North Constituency.

EMERGENCE OF STREET CHILDREN/FAMILIES IN TOWNS

Hon. Gakuya: Hon. Speaker, pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Labour and Social Welfare on the emergence of street children and families in major towns, notably Nairobi.

In the Statement, the Chairperson should inquire into and report on:-

(i) the plight of children and families that have since returned to the streets as their presence there threatens security and shatters the dreams of economic prosperity;

(ii) the coordinated effort by the national and county governments to get rid of the menace of street children and families in towns whose presence on holidays remains one of the biggest threats to security and the dream of a 24 hour economy; and

(iii) whether there are plans to integrate these street families and children into the society by enrolling the latter in schools and admitting adults in vocational training institutions where they could acquire skills on various trades.

Hon. Speaker: Hon. Were.

Hon. Were: Thank you hon. Speaker. I promise to bring the Statement in three weeks.

Hon. Speaker: Hon. Gakuya

Hon. Gakuya: Hon. Speaker, I know there is a process involved in coming up with a concrete answer. This is a big menace. You find that, particularly in Nairobi streets, the mugging is back to the streets and therefore it is a serious danger to the investors in the city. So, I would wish that the Member could have given two weeks to respond.

Hon. Speaker: Hon. Were

Hon. Were: Hon. Speaker, I would not want to promise two weeks because looking at the magnitude of the Statement that is sought, I think three weeks will be adequate to give a proper answer.

Hon. Speaker: I think it is only fair that, hon. Gakuyawe allow the Chairpersons enough time because they are not the ones in possession of this information. They have to organize their own committee diary. You know hon. Members, I have expressed myself on this procedure, and it is really not helping Members perform, especially their representative role correctly. Hon. Were, as the Chair of a Committee has other work. He has to go outside that programme as provided for under Standing Order 216; he has to veer into asking to have sittings with Cabinet Secretaries. Indeed, all other chairs of committees are having the same problem. I think hon. Gakuya let us allow the three weeks that have been suggested. Hon. OlagoAluoch

STATUS OF ONGOING WORKS IN
KISUMU/ISILO AIRPORTS

Hon. Aluoch: Thank you hon. Speaker. Pursuant to Standing Order No. 44 (2)(c) I wish to request a Statement from the Chairperson of Departmental Committee on Transport, Public Works and Housing concerning the status of the ongoing works at Kisumu International Airport and Isiolo Airport. The Chairperson should inquire into and report on:-

- (i) the status of construction of Isiolo Airport;
- (ii) Considering that during the recent fire outbreak at Jomo Kenyatta International Airport flights were diverted to Mombasa and Entebbe, why they could not be diverted to Kisumu;
- (iii) the status of phase one of the construction of the airport at Kisumu and whether the fact of providing fuel facility and installation of international traffic handling facilities have been factored in the construction.
- (iv) the budgetary allocation for phase one of the Airport in respect to reinforcement of runways and pavements to allow for landing and take-off, of large aircraft; and
- (v) the status of phase two of Kisumu International Airport construction, stating the total amount paid to the successful bidder up to date, the balance to paid on the contract, the amount if any, that the Government stands to pay as damages, penalties and compensation in the event that the tender award for phase two is cancelled.

Hon. Speaker: Hon. Kamanda

Hon. Kamanda: Thank you, hon. Speaker. The hon. Member will agree with me that he was in my committee this morning, and I know he even sympathized with the officers. Until we meet the Cabinet Secretary, it is the same issue of underfunding. I want to invite him also to attend that meeting on 18th because he will be having two questions; this one and the other one. I want to request my brother to be in that meeting.

Hon. Speaker: Well, hon. Aluoch.

Hon. Aluoch: Hon. Speaker, I notice that the Chair of the Committee---

(Loud consultations)

Hon. Speaker: Hon. Members, order! I know you must consult, but please allow the rest of the business to be transacted.

Hon. Aluoch: From the comments of the Chair of the Committee, it appears to me that he seems to take this question rather casually. The facts that I have and which I want to interrogate later at the committee level, it is not lack of funds, but diversion of funds from Kisumu to Isiolo.

Hon. Speaker: Hon. Kamanda, you know we are getting into a debate now. I thought hon. Aluoch has sought a Statement. If you start giving casual answers about underfunding, it does not give us the actual answers that we expect. Maybe you need to invite the Cabinet Secretary or even forward this to the Cabinet Secretary to give you the actual responses. You do not have to sit anyway.

Hon. Kamanda: In this case, let me give the Member three weeks so that I can get a comprehensive report on Isiolo, otherwise the other part we will be able to deal with it on 18th.

Hon. Speaker: Hon. Aluoch

Hon. Aluoch: Hon. Speaker, Kisumu is a city and it deserves a shorter time. But if the Chairman says he wants three weeks, I will concede.

Hon. Speaker: But three weeks is okay with you. Did you say three weeks is okay with you?

Hon. Aluoch: Hon. Speaker, I was saying that Kisumu is a city and it deserves a shorter period to investigate. But if the Chair wants three weeks, I will concede.

Hon. Speaker: Very well, hon. OmondiAnyanga, Member for Nyatike.

ESTABLISHMENT OF REGIONAL PUBLIC LIBRARIES

Hon. P.E.O. Anyanga: Thank you, hon. Speaker. Pursuant to Standing Order No. 44 (2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology regarding the establishment of regional public libraries as a way of improving education standards and communication among communities in the country.

(Loud consultations)

Hon. Speaker: Order, Members! There appears to be something that is exciting Members. Before it consumes us, can we also allow hon. Anyanga to seek his Statement, then we can deal with the rest that we want to deal with?

Hon. P.E.O. Anyanga: Thank you, hon. Speaker. In the Statement, the Chairperson should inquire into and report on:-

(i) plans if any, to establish regional public libraries and the amount of money the Government has allocated for the establishment of regional public libraries in the country during the 2013/2014 Financial Year and the number regional public libraries established in the last three years;

(ii) when fully fledged public library facilities will be established in Nyatike Constituency in Nyatike District; and

(iii) the plans the Government has in place to provide mobile public libraries as remedial measures before the establishment of permanent libraries.

(Loud consultations)

Hon. Speaker: Order, hon. Members! Kindly allow the Chairpersons to even hear and understand the requests made to them.

Hon. Sabina Chege, I hope you have heard.

Hon. (Ms.) S.W. Chege: Yes, I have struggled to hear his question.

Hon. Speaker: Have you said that you have also struggled to hear?

Hon. (Ms.) S.W. Chege: Yes, because hon. Members are consulting loudly, hon. Speaker.

Hon. Speaker: Did you hear the question hon. Anyanga asked?

Hon. (Ms.) S.W. Chege: Yes, hon. Speaker. I know he has asked about public libraries and their establishment. So, I request the hon. Member to give us two weeks so that we can consult and then give an answer.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Members and the Chairs of Committees, you really do not have to sit as a Committee to deliberate on some of these questions because there is nothing to deliberate on. You can easily get an answer, if any, in writing to say that there is nothing or there is something so that hon. Anyanga can come and seek clarifications here. So, you do not need to sit as a Committee to just find out how much money has been provided in the Budget. If there is none or if there is, it is a simple fact. How many libraries have been constructed in the last three years countrywide? That is information that should be easily available.

Hon. Anyanga, what is your reaction?

Hon. P.E.O. Anyanga: Thank you, hon. Speaker. I want the Chair of the Committee to know that there are areas in this country where people have never seen a library. Hon. S.W. Chege has confirmed that I will get the information in two weeks. I know for sure that they will have to liaise with the Ministry to come up with a more comprehensive answer. I think I am comfortable with those two weeks.

Thank you.

POLICY ON CREATION OF ADMINISTRATIVE UNITS

Hon. Ogari: Hon. Speaker, pursuant to Standing Order No.44(2)(c), I wish to seek a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the policy on the creation of new administrative units by the national Government.

The creation of new divisions, locations and sub-locations around the country is undertaken in a skewed manner. Over the years, such administrative units appear to be created for political expediency especially during elections and by-elections. Now that these units are being used for economic development and devolution, this scenario is leading to unbalanced development within the sub-counties, the counties and the nation at large.

Hon. Speaker, the Chairperson should inquire into and report on:-

(i) the national Government policy on the creation of new administrative units;

(ii) the number and names of administrative units in the country per sub-county including the sub-counties within Kisii County;

(iii) any plans by the Government to create additional divisions, locations and sub-locations in Gucha Sub-County for equity purposes; and

(iv) the current status and jurisdiction of Ibencho Division within Gucha Sub-County.

Hon. Speaker: The last bit is not in your request which I have. So, it will not be responded to. If it is not here, it was not intended to be. It might be something that you have thought after you have submitted your request. It was, therefore, meant only to excite you or to satisfy you.

Hon. Ogari: Thank you, hon. Speaker. It will flow from above.

Hon. Speaker: So, he will give a response to what is here.

Hon. Ogari: I stand guided, hon. Speaker.

Hon. Abongotum: Thank you, hon. Speaker. We will give a comprehensive Statement on the issue in two weeks' time. We will also be generous to even give the hon. Member the additional information that he wanted because he may be tempted to ask a question on that again. That is to save on time.

Thank you, hon. Speaker.

Hon. Speaker: He will respond after two weeks. Hon. Ogari, what do you say?

Hon. Ogari: That is okay with me, hon. Speaker.

Hon. Speaker: Hon. Kamama, there is a Statement that you should respond to.

STATEMENT

POLICE RAID IN MASJID MUSA MOSQUE

Hon. Abongotum: Hon. Speaker, on 13th February, 2014, hon. Nassir Abdullswamad Sheriff, the Member of Parliament for Mvita Constituency requested for a Statement regarding the police raid in Masjid Musa Mosque in Mombasa County.

The hon. Member alleged that police officers raided the mosque and attacked the worshippers after they had conducted the afternoon prayers in the name of fighting terrorism. More particularly, the hon. Member wanted to be informed on the following:-

- (i) why the police raided a place of worship without taking any precaution on the innocent worshippers or subsequent repercussions; (ii) the action the Government is taking against the police officers who raided the mosque and killed innocent Kenyans; and
- (iii) the fate of the missing persons.

Hon. Speaker, Sir, on 31st January, 2014, the Mombasa County Security Committee received information on distribution of leaflets that were inviting Muslim youth with jihad-minded ideologies to attend a jihad conference on Sunday 2nd February, 2014 from 9.00 a.m. at Masjid Musa Mosque in Majengo within Mombasa County.

The notice was purportedly written by Masjid Musa Organizing Committee and the leaflets bearing the notice had images of hooded people holding rifles and grenades resembling those used by *Al-Shabaab* and *Al-Qaeda* terrorist groups. According to the leaflets, the following topics were to be discussed during the conference.

- (1) Ihkamul jihad
- (2) Nifak in the history of jihad
- (3) Judgment of Shaheed (whom to be washed and whom not be washed)
- (4) Good youth in Islam
- (5) The importance of worship in Mujahid
- (6) Mujahid does not erase the error of judgment of Jihad
- (7) Features of the KhawarijMurjia
- (8) Union of youth
- (9) Al-WalaaWai-Baraa (unity and disunity for the sake of Allah)

The following speakers were listed as facilitators:-

- (1) Sheikh Ismael
- (2) Sheikh Swaleh
- (3) Sheikh Khalid
- (4) Sheikh Ibraheem
- (5) Sheikh Saeed
- (6) Sheikh Mohamed
- (7) Sheikh Fureiha

Subsequently, the County Security Committee advised against holding of such a meeting and pursuant to that advice the County Police Commander advised the targeted audience, the youth, against attending. A ban of the meeting was subsequently issued and the convenors were advised to cancel the conference. There were also intelligence reports that the conference's sole objective was recruitment and radicalization of youth to join *Al-Shabaab* terrorist cells in Somalia.

On Sunday, 2nd February, 2014, the radical and deviant youth assembled at Masjid Musa Mosque for the conference in total defiance to the police ban.

At about 1.00 p.m, police officers went to the mosque and found banners and flags bearing images of rifles hoisted all over the mosque and across the roads adjacent to the mosque. The black flags resemble those used by the *Al Shabaab* militants. By use of a public address system, the police officers called the convenors of the conference to come out for a peaceful resolution to the issue but, instead, the officers were met by a hail of bullets and stones from the mosque. The County Commander then read out a proclamation, after which the police officers, first, threw teargas into the mosque to disperse the convenors and participants but the youths continued firing and hurling stones at the police officers.

Hon. Speaker, the police officers realised that they were not dealing with ordinary conference participants but armed militants. Therefore, the County Commander ordered the officers to storm the mosque and arrest the participants and the convenors of the conference. During the confrontation, two officers from the General Service Unit (GSU), namely, Police Constable Thaddeus Mutuku and Police Constable Peter Makemba, were stabbed with knives by the radicalised youths at their waists and necks, respectively. Unfortunately, Police Constable Peter Makemba succumbed to the injuries while undergoing treatment.

The youths also grabbed a G3 Rifle from one of the injured officers and escaped with it into the mosque. A fierce exchange of fire ensued, which led to the death of two civilians, while several others were injured. As per their records, the police are aware of

the death of one civilian and one security officer. One Fuad Abdulla was admitted to the Coast General Hospital, where he eventually succumbed to injuries he sustained during the skirmishes. Further, the police cannot rule out the possibility of some radicalised youth having escaped with injuries. Those youth are yet to be reported to the police.

After a four hour battle, the police arrested 129 suspects while several others escaped. The following items, which are being held by the police as exhibits, were recovered from the mosque: One AK47 Rifle, one G3 Rifle, which had been stolen from the fallen GSU officer; three computer laptops, three big stones of tobacco snuff; several militant VCDs and DVDs; several swords and knives; and several banners and flags bearing images of crossed AK47 Rifles. Subsequently, investigations commenced and the police have so far charged 70 suspects with the following offences:-

1. Being members of a terrorist group, contrary to Section 24 of the Prevention of Terrorism Act, 2012.
2. Being in possession of articles connected with the offence of terrorism, contrary to Section 30 of the Prevention of Terrorism Act, 2012.
3. Incitement of violence, contrary to Section 27 of the Prevention of Terrorism Act, 2013.
4. Robbery with violence, contrary to Section 295 as read together with Section 296(2) of the Penal Code.

The investigations against the rest of the suspects that were arrested at the scene are still ongoing.

Hon. Speaker, the Government has no intention of taking any action against the police officers who participated in the raid and arrest of the radicalised suspects as the police officers acted properly within the law. Further, the Government will not relent in its war against radicalisation of the youth or persons with the sole purpose of perpetuating acts of terrorism on innocent Kenyans. Likewise, the Government will not allow places of worship to be used as centres of radicalisation of the youth for the purpose of promoting terrorism.

On suspects arrested, the police can account for only 129 suspects who were arrested and booked at police stations. However, several radicalised youths escaped arrest at the Masjid Musa Mosque during the operation. More suspects escaped at Makupa Police Station before being booked in the Occurrence Book as the station was overcrowded by onlookers and relatives of suspects, who were waiting to see their keen before being put into police cells. We do not have the records but they are being sought.

Hon. Speaker, on 14th February, 2014, Haki Africa, an NGO; filed a petition with the High Court of Kenya, at Mombasa, against the Director of Public Prosecutions, as first respondent; Inspector-General of Police, as second respondent; and the Kenya Police Service Commission, as third respondent, asking the court to order the police to produce Hemmed Salim Hemmed. In replying to the petition, Inspector Evans Wesonga, who is based at the Directorate of Criminal Investigations (DCI) in Mombasa, swore an affidavit, dated 20th February, 2014 and presented it to the High Court of Kenya in Mombasa.

Relatives of the participants of the said convention are advised to make formal reports of missing persons to Makupa Police Station or at the nearest police station for investigation. However, subsequent to the escape of a number of suspects, an Occurrence

Book entry was made on how some of the suspects escaped from the custody of police officers and booked as OB39/3/2 of 2014 and Inquiry File No.1/24 has been opened, pursuant to that escape. Both Masjid Musa Mosque and Sakina Mosque have been known for jihad radicalisation of the youth for the purpose of terrorist attacks associated with the *Al Shabaab* militant group in Somalia. Available and reliable information is that some youths at the conference were, in fact, returnees from Somalia. The returnees had received rigorous military training from the *Al Shabaab* militant group. They were back in Kenya to recruit others.

Lastly, the radicalised youths had, in fact, staged a take-over and ejected all the *bona fide* Imams of the two mosques and their committees, and replaced them with their own. The two mosques are no-go zone for ordinary Muslim faithful. Moreover, the violent attack and subsequent killing of an officer and robbery of a Government firearm necessitated firm action by the police officers in order to arrest the culprits and forestall further bloodshed.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Kamama, is there no attachment that says “supplementary information”? Was it part of this Statement?

Hon. Abongotum: Hon. Speaker, that is meant for my consumption.

Hon. Speaker: Yes, hon. Nassir.

Hon. Nassir: Hon. Speaker, I want to thank the Chairperson and his team but I would like to point out the fact that the reports that always come from them are not reports that are properly digested by them. In the response, the Cabinet Secretary has indicated that they were aware of the meeting from the 31st. The meeting was to take place on the 2nd. That means they had clear three days to take action against those who were intending to do whatever it was that was going to be done.

The Cabinet Secretary went ahead to say that they knew who wrote the leaflets and who the speakers were. In his detailed Report, the Chairperson has mentioned about nine names of the persons who were to address the convention on that day. Why did the police not arrest the individuals who were going to do whatever they were going to do? The police even knew the subjects of discussion during the meeting. The Statement mentions something about the County Security Committee. I want it to be on record that as of now, as an elected Member of Parliament from Mombasa County, I do not even know who sits in that County Security Committee. They have not called me even once to say that they have a problem.

They only called me after Mombasa was on fire, so that I would put it off. They are saying they even advised the convenors because they broke law and summoned them not to go ahead. The question is: How did they summon them? That means they know who they are. Was it necessary to attack a mosque at a time like 1 O'clock, when people had just finished their midday prayers? The leaflets purportedly indicated that there was going to be free lunch. I also personally take offence that in his Statement, everyone was arrested including nine year olds. They are being called radicalized Jihadists. There is so much that does not add up at all. They have talked about exchange of fire. There is no indication whatsoever, not even a single one, that there was exchange of fire from the mosque. They are saying that they gave warning using a public address system; there is no one to confirm this. They have also said that only one person died. We have reports

indicating that seven people died, they were killed by police. These are reports from Coast General Hospital and other various hospitals, including postmortem reports. They are saying that this took a period of four hours and we know it lasted hardly an hour.

Hon. A.B. Duale: On a point of order, hon. Speaker.

Hon. Nassir: Everyone here knows that - hon. Duale we will get to that - the issue of being told they found tobacco snuff in a mosque is serious. I would request the Leader of Majority Party to kindly allow me to----

Hon. Speaker: The Leader of Majority Party, are you on a point of order?

Hon. A.B. Duale: On a point of order, hon. Speaker. I do not want to interrupt my good friend but we also want to seek clarifications. We expect hon. Abdullswamad to seek clarifications and not to talk for too long because we also want to engage the Chair on this serious matter.

Hon. Speaker: You must conclude, so that also the Chair can respond.

Hon. Nassir: Thank you very much, hon. Speaker. This is something that is very weighty and I know that a number of Members would wish to seek clarification. Lastly, regarding Hemmed Salim Hemmed, this is a gentleman whom, when the police caught and arrested him, they said that he is a most wanted person and that he had weapons with him. The police now claim that despite the evidence, out of goodwill, on their way to the police station they decided to remove the handcuffs and he ran away.

We have detailed documents to prove that his gentleman was mentally ill and he had gone there for purposes of repairing electrical works. I know this is going to take a lot of time, and it is something that will go back and forth, so we expect the Chairperson to come back. Therefore, I will seek your indulgence to seek a Motion so that an independent Parliamentary Select Committee can investigate the matter. It should do so within a period of 30 days so that we put an end to this matter. The Executive should not use Parliamentary Question time, as a way of getting away with cold blooded murder.

Hon. Speaker: Hon. Kamama, that has been long and winding. Do you wish to say something about it as the Chair of the Committee? Hon. Members, I do not know whether all of you have read this response to the Statement? Yes, hon. Kamama.

Hon. Abongotum: Actually, as a Committee, we relied on what we were told by the Cabinet Secretary. But, the hon. Member is at liberty to actually use other avenues, within our Standing Orders to get information. As far as the Committee is concerned, we are relying on the information from the Cabinet Secretary.

Lastly, I just wanted to inform my good friend hon. Nassir, that usually, we have a County Security Committee that sits down to look at security issues at least twice in a month. It is chaired by the County Commissioner, and its members are the Commandant, Deputy Commandant, and Commandant from the regular police, an officer from the Directorate of Criminal Investigations and National Security Intelligence Service (NSIS). He comes from that county, so he is at liberty to meet them for any clarifications on any issues. That is the Statement and I do not have more to say.

Hon. Speaker: The Leader of Majority Party.

Hon. A.B. Duale: Regarding this matter, I want to speak for my constituency. It is the first time in the 11th Parliament that I want to seek clarification from a Chair of a committee from my coalition. This is a very serious matter. I need your guidance because the same committee led by hon. Kamama, can do a serious probe and go to

Mombasa to meet all the stakeholders and bring a report concerning what happened; the truth behind what happened in Masjid Musa Mosque.

We do not need to set up an ad-hoc committee. The Committee led by hon. Kamama can take up that investigation, if you order so. Secondly, the matter before the House today is so serious it concerns the violation of Article 32(1) of the Constitution, where security forces went into a place of worship. As a Member of Parliament that represents a constituency which is 90 per cent Muslim, where there are over 825 mosques--- The same goes, I am sure, for my Christian brothers; the sanctity of a place of worship is well protected in our Constitution.

This must be investigated. I want the Chair to clarify, was there any other option available for our security officers? If you look at that claim, it looks very ugly on the part of the Muslim community that some of us lead. This House has about 20 per cent of Muslim faithful. The storming of Masjid Musa Mosque is a serious issue to be discussed. Secondly, the radicalization of Muslim youth on terrorism is also a very serious matter for our country. We want the Committee also to discuss the causes of radicalization and bring a report to this House on the way forward and solutions. This House can help the Government put strategic measures in the war against terrorism after looking at the causes of radicalization.

I want to ask the Chair because he has engaged the Ministry of Interior and Coordination of National Government what prompted the action and what is the way forward? Was that the start of storming mosques? If that is the start, then we have a serious issue as Muslims.

Hon. Speaker, I ask you to direct the Committee led by hon. Abongotum to do an indepth Parliamentary investigation contrary to the reports that we have received from that department.

Hon. Sakaja: On a point of order. This matter that has been raised by hon. Nassir is indeed, wider than just the security. I hear he has requested that an ad hoc committee be formed to look at it. But, I think if you look at the Committee on National Cohesion and Equal Opportunity, if it works together with the Committee on Administration and National Security or an ad hoc committee; this is actually how we should look at it. There are issues of profiling a lot of young people in this country. They are either being profiled as terrorists or *Mungiki* and it is unfairly so.

Hon. Speaker, part of the mandate of the Committee on National Cohesion, which I chair - I am sure many hon. Members may not know that - if there are any cases that certain sections of the society are discriminated against by virtue of age, gender, religion, tribe or health status, it look into the issues. I think this is a matter we want to take up very seriously. This is also a Committee that has, not only hon. Members of the National Assembly but also Senators as well.

I have personally met the National Muslim Youth Leaders both under NMLF and SUPKEM on this issue. I am not officially informed, but I think this is something we would like to take up as well, together with the Committee on Administration and National Security or as an ad hoc committee.

Kindly, we seek your direction on that.

Hon. Speaker: Unfortunately, hon. Members we must be alive to what hon. Nassir has said. Those issues would only be directed under the issue of the causes and

what lead to--- We cannot set up a select committee to just go and start running around looking for who is being discriminated on the basis of religion or height. Of course, I am very much concerned about height, as it was earlier on pointed out and other aspects of human anatomy.

I think the hon. Member made some proposal. To respond to his remarks is to say that it is within your power and right to move a Motion to set up a select committee which should go to investigate only this. Of course, remember as Parliament we have certain handicaps that at the end of the day, you will only be able to make recommendations for implementation by others. That is the only thing that one must caution. That you may say you have this evidence, and then you start investigating and you find you are going nowhere. It is not fair also for Parliament to act in vain. As we say, courts must not act in vain; Parliament too must not act in vain. Whatever it is that you seek to investigate and inquire into, the recommendations that you come up with must be capable of being implemented by whichever agency of Government.

That is not the subject now, hon. Nassir; you can move with speed and propose the Motion. There is nothing to worry about your request. You can move the Motion, but we can get hon. Abongotum to address the issues raised by the Leader of Majority Party. Or we hear from your neighbour there, the man with extremely rescinded hairline, the hon. Elmi. You should not be discriminated on account of that.

Hon. Elmi: Hon. Speaker, I should not be discriminated because of my hair style. I have a special barber.

Mine is on three clarifications. I want to ask through the hon. Chairman why the police took that action. In their view, was it radicalizing or not? Do you not think that probably that action radicalizes more youth across the country on live television?

Secondly, what programmes are there? If the hon. Member and other people knew that there was a problem at the mosque, what action did they take? They have no programmes to stop youths from being radicalized. What measures will the Government take to top radicalization or are we as a country allowing this thing to go on?

Finally, when giving a statement people must be credible. *Al Shabaab* is a clandestine movement in our country. If you are talking of people who were making announcements and you were not arresting them--- Any Kenyan knows when the prayer is called, people enter mosques. Any Muslim passing by will enter a mosque next to him, if it is prayer time. I saw the police storming that mosque and it made me feel so bad. I saw somebody shooting at the mosque. That thing was terrible! So, the question is who gave that order? Why did they not arrest all those people, if they were so bad? The bad people will not invite people for prayers, food and recruitment into *Al Shabaab*. They hide.

When people give Statements to Parliament, they must give credible. Hon. Chairman, did you question this Statement before you brought it to the Floor of the House?

Hon. Speaker: I think I want to protect the Chair from your questions because they are questions not clarifications at all. First of all, you cannot ask the Chairman what plans are made by the Government to stop radicalization. This is why I am telling you, that this procedure is not right. When you ask your colleague seated next to you what plans are there, is it his business to make plans? This is the work of the Executive; that is

the work of the Government. You have asked another question, who gave the order? Do you need to get clarification? He is seated next to you and the Statement he read to you gives the name of the officer who gave the order. Now, you are asking him to read it again. Either you were not listening or you were not in the Chamber by the time he was reading the Statement. It is clear. The Statement he read said who gave the order and after what.

Therefore, unless you want us to engage in repetition, I even think you have very important information hon. Elmi, but the proper place for it would be in a debate of a motion. The information we have will be very useful if there was a Motion. But this thing of requesting for a Statement and you want to debate and the chairman is going to say: "I do not know what plans the Government has to stop radicalization," will we have achieved anything really? I agree with you, hon. Elmi. It is important that the issue be addressed holistically. But can we really address it through these requests for statements and you are asking your colleague next to you questions? Hon. Elmi, I am not in any way criticizing what you have said, but I am just trying to speak on the issue of the hopelessness of this procedure we are currently using.

Indeed, questions like the ones you have raised - the three of them - if the Cabinet Secretary was in this Chamber, everybody would take him to task. But now, your colleague who is seated next to you holding a Statement can tell you who gave the order. What plans are there? He even does not talk about plans because I have no idea about what plans they may be having.

Anyway, maybe hon. Abongotum has an idea about the plans the Government has about stopping radicalization and the rest.

Hon. Abongotum, the Floor is yours.

Hon. Abongotum: Hon. Speaker, I want to respond to the clarification sought by the Leader of Majority Party and hon. Elmi on who ordered the storming of the mosque and the reason. I said this and you have also alluded to it. I wish to repeat that when the police officers called out using a public address system for the convenors of the conference to come out for a peaceful resolution of the issue, they were met by a hail of bullets and stones coming from the mosque.

Hon. Speaker, supposing hon. Elmi or the Leader of Majority Party were the commanders of police, really when you get bullets from a mosque or a church the officers have all the rights to enter that place, arrest the people in there and deal with them according to the law. That does not only happen in Kenya, but all over the world. That is how the police operate. We regret that the police officers were not Muslims to enter the mosque. I know it is very hurting to people who profess the Islam faith. It is the same thing for Christians.

The second clarification was sought by hon. Elmi. We work very closely and we also participate in meetings with the Cabinet Secretary because we engage them on various policy issues most of the time. I want to confirm that there are serious policies to reduce radicalization amongst our youth, especially in Eastleigh and Majengo in Mombasa. There are other places too, but those two places are where you get a lot of youths getting radicalized.

Lastly, I will not oppose any option that you will choose. If you want us to choose the route of emotions, I have no problem. If you want us to work with the Committee on

National Cohesion and Equal Opportunity, I have no problem. We are ready for your instructions, hon. Speaker.

Hon. Nassir: Hon. Speaker, as you had directed, I will reserve the right of my parliamentary obligations and I will seek a Motion. In that Motion I will include the views of hon. Sakaja, hon. A.B. Duale and able minded parliamentarians. We wish for this because a Parliamentary Select Committee cannot go for too long and it has to be directed on particular issues. We will wish for this to take effect at a very short time so that we get an answer at utmost speed. We do not wish this to be a debate any more. We want that once the Parliamentary Select Committee comes up with the truth of what exactly transpired then everybody will be at liberty to debate it. Right now we are debating on something, but the person who signed the document and gave it to hon. Kamama is not here to be questioned in order to give answers to what exactly transpired.

Just a point of notification: Yes, it does hurt that a mosque was entered with shoes. What is more painful is that deaths occurred in that mosque. When killings happen in that mosque it is more offensive to a Muslim than even the fact of the shoes.

Hon. Speaker: Hon. Nassir, I told you that it is your right. Move with speed to bring the Motion, if you so wish.

Hon. A.B. Duale: Hon. Speaker, as I said earlier, the matter before us is a serious one. You know the process of a select committee. A Motion has to be brought before this House and voted on. Through your indulgence, I will be very happy if the already established Departmental Committee on Administration and National Security and the Committee on National Cohesion and Equal Opportunity, which is chaired by hon. Sakaja, easily went together to the ground to get facts in Mombasa and also from the Ministry concerned. They will have to talk to the Muslim leadership and other key stakeholders and bring to this House a broad product report bigger than Masjid Musa Mosque and touching on the general radicalization of Muslims.

Hon. Speaker, I seek your indulgence that we go that way. You could order that both committees have a joint-sitting as opposed to going the select committee way. This is because as you said, the budget is involved; a Member has to bring a Motion which has to go to the HBC and then it is debated here for approval. That, in my opinion, will take long; we already have a parliamentary committee. It is the Chairperson who should oversee that Ministry. I am sure that if he does serious investigation on this matter he can table a report within three weeks.

I seek your indulgence.

Hon. Speaker: Hon. Members, I want to draw your attention to the fact that I know the sizes of Committees. You also know the period of the year we are in. The Departmental Committee on Administration and National Security has 29 Members. The other committee chaired by hon. Sakaja has Members of this House and Members from the other one. Now, I do not know. If you start saying that they start sitting, even if you were to give them 15 days to come up with a report, it is going to be almost impossible. Unless there are issues that Members really want to go and interrogate besides what hon. Kamama's Committee can do--- Hon. Sakaja's Committee has that mandate. Even on their own they can go and find out why youth are discriminated or radicalized. They do not have to seek authority here.

So, hon. Sakaja can call his membership which is from both the National Assembly and the Senate so that they go ahead and do that one. This one is only specific to this mosque and this particular incident. So, you may, perhaps, want to go the route of hon. Kamama's Committee. One of the reasons we may require that to happen is that contrary to tradition, this Report – unfortunately even hon. Sheriff Nassir did not look at it---

(Loud consultations)

Hon. Oburu Oginga, I can hear your voice a bit too loud.

Hon. Sheriff, in Parliament we do not do this. Reports or statements which are supposed to be signed by a Cabinet Secretary are not signed for. This one purports to be signed by somebody, but he has put "F" which stands for "For" and then there is the name Joseph ole Lenku. So, you do not even know who it is that has signed this one. Even the information that we are being told that this and that person gave orders--- You see Parliament usually has to deal with substantive holders of offices so that if this information is found faulty then he is the one you will deal with. But then this one is signed by some other fellow.

I know about the amount of requests that have come to you, hon. Kamama. I do not know whether you will have the time to go and do thorough investigation of this incident. Hon. Kamama, you could help us.

Hon. Abongotum: Hon. Speaker, I agree with hon. Nassir that we come up with a Motion and then we get a Select Committee to go and investigate this matter. This is so that when we get that report from them it is now incumbent upon our Committee to task the Cabinet Secretary and the Government to implement it. So, I will follow the route of the Select Committee.

Hon. Speaker, then on the issue of signing for somebody, you know we do not have Deputy Cabinet Secretaries and normally some Cabinet Secretaries can be away. So, normally the Principal Secretary and his Deputy can sign, otherwise Parliament will have to wait until a Cabinet Secretary comes from abroad. So, normally this can be delegated. It is within the procedure of the Civil Service.

Thank you, hon. Speaker.

Hon. Speaker: If we go ahead to accept this style, hon. Members, you will be given a lot of these kinds of Statements and perhaps at some point even though the Cabinet Secretary may be aware of the Statement, if you find something which is not correct or not truthful, he can easily come and say before the Committee or even before the plenary of this House that he did not sign and you cannot hold him accountable.

So, are you suggesting that these Cabinet Secretaries are permanently out of the country? If you read this Statement, I think it has been on the shelves for some time because it is even purporting to talk about something that is coming on 26th February. We are now on 6th of March. So, you can see it has been on the shelves for some time. So, it may be that this Statement was done some time back. Of course even matters which have come before court have been mentioned. So, I do not want to allow Parliament to get used to receiving Statements which are not signed by the substantive holders of offices because you will put yourselves as Parliament in very difficult situations when it comes

to holding people to account. Just like Members are responsible for the accuracy of the Statements they make on the Floor of the House, we also require a document that is presented to the House to be signed by the holder of the office so that the House can then hold the person to account.

Leader of Majority Party, you know I cannot change that because I think it is important that they sign. If the document is expected to land on my desk, I will not take it when it is signed for. The House will find itself in a bigger problem if we continue accepting documents to be presented to you when they are signed on behalf of the substantive holders of the offices, to whom perhaps the request has been presented.

Leader of Majority Party, you had something to say?

Hon. A.B. Duale: Sorry, hon. Speaker. Today I misplaced my card. I think it is in the wrong suit but I can confirm that I only have one home. So, it must have got lost within the same home.

Hon. Speaker, I totally agree with you that communication has been made to the Government, even regarding the Bills that I signed. For Bills, it is the Attorney-General, the Solicitor-General or the Chief Parliamentary Counsel who can sign. For the other arm of Government which is the Executive, it is the Cabinet Secretary or the Principal Secretary.

Hon. Speaker, so, I totally agree with you. Any document not signed by anybody other than those two is not valid even if I speak for the Government. Secondly, Mount Kenya Safari Club is just here in Nyeri. Somebody can go there and ask Lenku or Iringo to sign.

Hon. Speaker, so, I agree with you and that should be the format because for documents placed before Parliament by the Executive, those offices must be accountable to them. So, I totally disagree with my Chair and Chairs should not accept documents signed by junior officers. We have done this via correspondence as late as even yesterday when we received the Mining Bill from the Government. The person who signed it was a junior officer. We had to tell them either the Attorney-General or the Solicitor-General had to sign it and this morning I do not know where they found the Attorney General and the Solicitor-General since the Bill was back with the signature of the right officer. So, I totally concur with you.

Hon. Speaker: Very well. We are not going to have further debate on this. There is no Motion. The Member has already consulted the Chair on this. So, he is aware of that and indeed he did not consult the Chair alone. He was in the company of hon. AsmanKamama and I think it is something that is agreeable mutually. It is the best way to go. So, propose to see how it can be fast tracked. In fact, the Party Leader is here. He can even sponsor it.

An hon. Member: On a point of information, hon. Speaker.

Hon. Speaker: No, you cannot inform. Hon. Members, let us now proceed to other business. Hon. MutavaMusyimi, Chair of the Budget and Appropriations Committee. We are well past Order Nos. 5 and 6 but I had announced to the House that we will use Standing Order No.1 to allow you to do this because it is very important to the House and the country as a whole.

PAPER LAID

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Hon. Musyimi: Hon. Speaker, I am much obliged. I beg to lay the following Paper on the Table of the House, today, Thursday, 6th March, 2014:-

The Report of the Budget and Appropriations Committee on the Budget Policy Statement, 2014

Hon. Speaker: Yes. Proceed to give notice.

NOTICE OF MOTION

ADOPTION OF REPORT ON BUDGET POLICY STATEMENT

Hon. Musyimi: I am much obliged, hon. Speaker. I beg to give notice of the following Motion:-

THAT, pursuant to the provisions of Section 27(7) of the Public Management Act No.18 of 2012 and Standing Order No.232(7), this House adopts the Report of the Budget and Appropriations Committee on the Budget Policy Statement, 2014 laid on the Table of the House today, Thursday, 6th March, 2014.

I thank you, hon. Speaker.

Hon. Speaker: Very well and I think Members take note of the Paper that has been laid by the Chair of the Budget and Appropriations Committee. It is the Committee's Report on the Budget Policy Statement (BPS) which had been presented and I think it is an extremely important Report. I would urge that all of us familiarise ourselves with it before debate on it commences next week. Take advantage of the weekend. If we can do less of the other things and read this document, then we will have informed discussions on the Report. The office of the Clerk is directed to distribute sufficient copies to all Members.

Hon. Leader of the Majority Party.

BUSINESS FOR THE WEEK COMMENCING 11TH TO 13TH MARCH, 2014

Hon. A.B. Duale: Hon. Speaker, pursuant to Standing Order No.44(1)(2), on behalf of the House Business Committee (HBC), I rise to give the following Statement regarding the business appearing before the House the week beginning Tuesday, 11th March, 2014.

In a meeting held on Tuesday this week, the HBC gave priority to the following business: Next week, the House will consider a number of Bills that are already before the House for the Second Reading, in the event that they are not concluded today. Some of these Bills include the County Governments (Amendment) Bill, No.2 of 2013 from the Senate; the Constitution of Kenya (Amendment) Bill, No.1 2013; the Kenya Qualifications Framework Bill, 2013. The House will also debate the Reports of the Public Accounts Committee (PAC) on the Government of Kenya Accounts for the Financial Years 2008/2009 and 2009/2010 also listed on the Order Paper today, in the event that debate is not concluded.

I wish to urge hon. Members to take a keen interest and familiarize themselves with the contents of these reports to enable them make informed debate when the matter

comes up. I wish to remind hon. Members that in your Communication on Statements at the beginning of this Session, you guided the House that Statements and Motions that lapsed at the end of last Session can be revived. Those Members who are interested in reviving them can go ahead and do so by filing them afresh. However, I wish to encourage Committees to give priority to Bills in the Budget making process, petitions, treaties or conventions; the oversight function and other functions provided for in the Standing Orders. Further, I also wish to thank your Office and the Clerk for your concerted efforts to find a better alternative on how to handle Statements in the House. This will enable hon. Members to get response to issues affecting the country and hold the Executive to account in a more effective way.

Finally, I want to urge hon. Members that they expedite the process of formation of the Uwezo Fund Constituency committees so that money can be sent to the respective constituencies in time before the financial year ends. The HBC will meet on Tuesday, 11th March, 2014, again, at the rise of the House to consider business for the rest of the week. I now wish to lay the Statement on the Table of the House.

(Hon. A.B. Duale laid the document on the Table)

Hon. Ng'ongo: Hon. Speaker, I appreciate the Order of business that has just been read by the Leader of Majority Party, but I have two concerns. First, if you look at our calendar, what we are likely to embark on especially the Budget making process, we have very limited time and we have about eight Constitutional Bills to pass in this House. I am particularly concerned that one of those Bills is supposed to implement Article 227 of the Constitution; that is procurement. That is a Bill that we need to put a lot of our time on. Besides that, there is the Consumer Protection Bill among other Bills including the one on Environment. So I would like to ask the Leader of Majority Party to be proactive and think seriously on how the Government is supposed to process these Bills to bring to the House.

Secondly and of great concern to me – this I address to the Leader of Majority Party as one who is speaking on behalf of the Jubilee Government – if you look at the Bills we are transacting of late and probably the Bills that are lined up for discussion in the coming weeks, you do not see serious Government Bills; Bills that are going to help the lives of Kenyans; that are going to change their lives. The Jubilee Government must know that it is not business as usual. They were not elected into office to continue running the Government as it was run before. We need change and that change can only come through deliberate legislations; legislations that are going to help Kenyans have more jobs. We want procurement to be streamlined. We want serious legislations to be brought in the House. We will not be happy to get the same Bills like the Heroes Bill and the National Flag Bills. We are seeing the amendment to the Constitution, like the attempt that is being made by the Senate to rewrite the Constitution and make them CEOs of counties when Kenyans have governors. The Jubilee Government needs to do better than this.

Hon. Speaker: I thought you rose on a point of order but you also need to be informed that one of the Bills you mentioned, you might have forgotten because you went for campaigns; the Consumer Protection Bill is already in place. You passed it in

2012 because it is an Act of Parliament. It is in existence. Indeed, even the people who really push for it can confirm and the Act has been brought to my attention.

Hon. (Eng.) Gumbo: Hon. Speaker, allow me to start by thanking you most sincerely for the directive you made that we should amend our Standing Orders so that Cabinet Secretaries should be coming here to answer Questions, like what you have just dealt with. I think this is a matter that this House has talked about for a long time. I have been in the forefront talking about it and I want to thank you for leading from the front. But since we are going for the weekend, allow me to start by being a little prophetic. I subscribe to the Christian faith and subscribing to the Christian faith means I am a follower of Jesus Christ who is regarded as one of the most knowledgeable and wisest of all prophets.

They say knowledge speaks; wisdom listens. So if you have knowledge and wisdom, you are a man of virtue. But even this virtuous prophet in one of the verses in the Bible, when he was speaking, one day he turned to his disciples and asked: "Who do people say I am?" In other words, Jesus Christ was looking for feedback. I have heard the Leader of Majority Party talk about the Bills and I want to take over from where my colleague has left. Today, the biggest problem in our country and this affects everybody; whether you are in CORD or Jubilee; whether you are white or black; is the cost of living and youth unemployment. In fact, it is said that other than the Democratic Republic of Congo, which is basically a dysfunctional state, Kenya has the second largest youth unemployment at 40 per cent in Africa. These are matters which concern us. There is the issue of insecurity; the issue of poverty; the rich-poor divide; corruption issues and national cohesion. I can go on and on.

Hon. Speaker: But you should not make it a debate. I thought you rose on a point of order.

Hon. (Eng.) Gumbo: I am not making a debate. What I am trying to say is that it is good that the Leader of Majority Party brings his programme here but what I would ask is, if you look at Article 94 of the Constitution, we are here on behalf of the people of Kenya. Listen to what the people of Kenya say before you read your programmes for the week because these are the issues which concern them. Yesterday morning, we spent a lot of time discussing what was largely a self-actualization Bill.

Hon. Speaker: If you want to do a self-assessment, we should request that we hold a workshop. If you say what you spent time doing yesterday, what you intend to spend time in the next few hours doing, how does that help? I think the point you are making, hon. (Eng.) Gumbo and which was made by hon. Mbadi is that the Leader of Majority Party should prioritize certain Bills; certain legislative proposals, especially the ones to actualize and implement the Constitution and the others which address the issues you are talking about; insecurity and youth unemployment. If a point is made like that, it does not need to be repeated because the danger I can see is that some other hon. Members would want to say that they think there is something about short people or tall people. So, we will spend a lot of time doing the wrong things. But the Leader of Majority Party was on a point of order.

Hon. A. B Duale: I am reporting on behalf of the House Business Committee in which hon. Ng'ongo and hon. Gumbo have serious representation of the caliber of hon. (Ms) Wanga and hon. Midiwo. This Statement is on behalf of the House Business

Committee. It is not on behalf of the Jubilee Coalition. As you said, hon. Ng'ongo was busy in Kasarani and I do not know whether organizing the men in black. I want to read to him the Bills that came before this House and I want him to go back tonight and sleep over where these are touching the people of Kenya. This House passed the Uwezo Fund Regulations. It touches on the heart beat of our people. This House passed the Supplementary Budget, giving the people of Kenya the mandate they deserve. This House passed on Thursday, the National Police Service (Amendment) Bill. I am sure he is sitting next to the able Chair of the Finance Committee. More than seven Bills that were assented to, touch on the economy.

The procurement law by hon. Sakaja, which is before this House is a serious Bill. The VAT Amendment that he himself has brought is a very serious Bill that touches on the lives of our people. The NSSF Bill, the Wildlife Conservation Bill, the Insurance and above all, the Budget Policy document, which was tabled this afternoon. Next time, when hon. Ng'ongo is busy organizing the men in black I can brief him when he comes back. I am ready to do that, but I am sure this House is doing serious work. In the pipeline, the Bills that we have signed and you have approved are the Companies Bill, the Insolvency Bill from the Government, the Business Registration Bill, the Mining Bill, the Water Bill and so on. My office is ready to brief hon. Ng'ongo every time he is busy organizing the men in black in any function.

(Laughter)

Hon. Speaker: Hon. Ng'ongodo not get agitated. You conclude please, we do not want this to be the business

Hon. (Eng.) Gumbo: I actually wish the Leader of Majority Party--- this is not meant to be a criticism at all. What I was calling for is that in my view, instead of discussing the Emblems and the Flags Bill yesterday which is---

Hon. Speaker: Hon. Gumbo, I will tell you this; the House in its wisdom debates every business that is before it. So, you cannot now start saying instead of debating this, you debate this. You are a Member of the House, if you think the House should not discuss a particular Bill, just oppose it and get the necessary support and the House will move on. You cannot say that the House should not be debating this, that is wrong. It shows that you have no business in the House.

Hon. (Eng.) Gumbo: Hon. Speaker, I did not say we should not; I just talked about priority compared for example to the VAT Bill which affects every Kenyan.

Hon. Speaker: Please, whatever business is before the House, it is properly before the House and Members are at liberty to criticize it, indeed, even raise objections as to whether it should be in the House or not. It is up to the Chair to make a ruling. Maybe something else which is coming, we should be addressing it.

Hon. Members: On a point of order, hon. Speaker.

Hon. Speaker: Hon. Members, no more points of order on that. Let us go to where you can debate so that you can express yourselves. I know you are very knowledgeable people. I can see so many requests here already. Hon. Eng Gumbo, I know you have a lot of stuff that you want to tell Members here. Next Order

BILLS*First Readings*

THE CLIMATE CHANGE BILL

THE KENYA NATIONAL AIDS AUTHORITY BILL

(Orders for First Readings read – Read the First Time and ordered to be referred to the relevant Departmental Committees)

Hon. Speaker: Who do you want to reform? What is out of order hon. (Ms.) Nyamai.

Hon. (Ms.) Nyamai: I thank you hon. Speaker for giving me this opportunity. I take note of the Kenya AIDS Authority Bill which is presented here by hon. Opiyo. I would like, for the purpose of record, to inform the House that the Parliamentary Committee on Health has been working on a similar Bill. We have engaged hon. Jared Opiyo and as the Bill is being referred to the Committee on Health, I would like him to kindly support the Bill that the Committee has been working on.

Hon. Speaker: You know the Bill stands committed to your Committee without Question put. Just right now, update yourselves on the Standing Orders. The rest you can deal with when hon. Opiyo comes to you as the Mover of this Bill, so that you can agree. It is not unusual hon. Members even in the former system. Bills could be proposed from even the Executive, when Members were also moving theirs. All you need to do is sit down and harmonize. If you are not able to agree, every Bill will be brought to the Floor of the House for a decision by the House. So, this is not unusual. I am sure sometimes it gets a little bit exciting, but it is not unusual. Next Order.

Second Reading

THE COUNTY GOVERNMENTS (AMENDMENT) BILL

(Hon. Chepkong'a on 4.3.2014)

*(Resumption of Debate interrupted
on 5.3.2014)*

Hon. Speaker: Who was on the Floor? Hon. Members, this is continuation of debate. Hon. Ekomwa was contributing and you have a balance of nine minutes.

Hon. Ekomwa: Yes, thank you hon. Speaker. I rise to support this Bill with amendments. If we look at Article 10(2)(c) of the Constitution, national values and principles of governance include good governance, integrity, transparency and accountability. The Board is very key because it ensures transparency and accountability in our counties. Whatever is done by the county government, we need to check. They

need to be transparent to Kenyans in whatever they are doing. So, this Board is very key because it plays the oversight role.

Article 95(2) says that the National Assembly deliberates on and resolves issues of concern to the people. This Board is not just being established for the sake of it or because maybe we have some issues with the Senate. However, this is being established to play an oversight role. As Parliament, we are supposed to discuss issues that are of concern to our people. We heard what happened yesterday and that was an issue of concern to the people.

The citizens of Kenya were complaining. We heard what was happening in Kakamega and it was a concern. So, we cannot just watch citizens suffer, bleed with needs and we assume. We have to solve their problems.

Hon. Speaker, I also support this Bill because this forum reduces hostility and does away with wrong perceptions among leaders at the county. You can confirm that there is hostility in some counties as leaders have never met since the elections. They see others as enemies. However, this Board will create conducive environment for leaders at the county to sit down and settle their disputes or differences instead of solving them in public *barazas* or in public abusing each other. This will also be a forum in which leaders will sit, reduce their tension and declare their interest. I think this forum is key.

Let me just give an example of my county. I have never seen the governor nor have I sat with him since he was elected. You can imagine this. When will I play my oversight role if I do not sit with him? When it is optional, it cannot happen. It is the law that will force leaders who are not ready to meet to meet.

Hon. Speaker, this Board also gives leaders an opportunity to solve teething problems that have been observed in devolution. This is because we are learning since devolution is being implemented for the first time. Because we are experiencing problems, we need to have a Board that will solve them so that we advance. This Board is also aimed at mitigating the embezzlement of funds by county governments. I want to give you a clear example of what happens in my county and this is very painful.

The county government constructed a county road that KURRA had constructed at a cost of Kshs1 million at Kshs23 million. That is an eight kilometre road and the same funds have come from the national Government. I constructed the road at a cost of Kshs.1 million but the county government used Kshs23 million to construct it. That is not enough. This money was used to just grade and gravel the road.

Hon. Speaker, the other example is that the county government has used Kshs33 million to construct a road that KURRA, through the CDF, constructed using Kshs4 million. This is the case and yet this is taxpayers' money that the same Government is using in different ways. This is what I call embezzlement of funds. That is not enough.

The county government used Kshs33 million to repair a house that the Constituencies Development Fund (CDF) constructed using Kshs20 million. You can imagine that. This is gross violation of the law and we need a Board to oversee this. Governors have realized that the national Government has now tightened the nut in the way resources are being used and they have come up with ways to make money. This is what we observed in Nairobi and I am very sorry to say it. However, observation is not a sin. Because there are very many vehicles in Nairobi, the only way you can get money

is by increasing the parking fee. What is available in Kakamega is maybe chicken and so you increase the levy on chicken.

If you go to Turkana, you will get what is available there are goats and therefore you increase the levy on goats. This is exactly what we are saying. People are getting alternative ways of looting from the public. We thought that devolution was coming to reduce the burden of ordinary citizens but we have observed that the ordinary *mananchi* is suffering. That happened yesterday. *Wananchi* are crying. They thought that devolution would reduce their burden but they have realized that it is not the case. Instead, it is creating more harm to them. We are seated here for the common good of the citizens. Surely, it will be a shame to us when they suffer and we are quiet.

Hon. Speaker, the Senators have a hidden agenda on the oversight role. I am aware that they have been enjoined in the case of doing away with the CDF money. However, I want to tell them wherever they are that they cannot compete with this House. This is a supreme House and it is self-contained. It has everything inside and it will never be manipulated by anybody. For the sake of *wananchi*, I will propose an amendment next time.

The Ward Development Committee should not be there. The Constituency Development Committee should also not be there. I want to say that the mindset behind that was that they wanted to replace the Constituency Development Fund Committee with the CDF. That was in the mindset of the Senators. To replace the CDF gradually, they should initiate what we call "Constituency Development Committee". That one should not be there because we are aware of it.

Hon. Speaker, devolution is not taking money to the headquarters of a county to remain there and devolution is not taking money to the governors so that they can use it the way they want, devolution is solving the needs of the people. Devolution is also providing water to the people and devolution is providing health services to the people right to Wanjiku or Akai in the village. So, we will be unfair to the citizens of Kenya if we take this money to the county where it is embezzled.

We only have one hospital in Turkana County which has been marginalized for the last 50 years. This is the case and yet the county measures 77,000 square kilometres. How many hospitals are here in Nairobi? So, when will Turkana be like Nairobi if we get the little resources for devolution and then we embezzle them? I have fears that we might not enjoy even the oil that we have discovered because of this.

Hon. Speaker, I would like to participate in playing an oversight role in all the resources that come to my county. One way I can participate in doing that is by being a Member of that Board so that I can ensure that every little resources that come to my county are taken and---

Hon. Speaker: Well, the hon. Member for Turkana South that happens to host Lokichar, I am sure that you are a happy man. You represent the oil-producing region of this country.

Hon. (Ms.) Nyasuna: Thank you very much, hon. Speaker. I rise to support this Bill---

Hon. Speaker: Just a moment, hon. Nyasuna. There is a point of order from hon. Ichung'wah.

Hon. Ichung'wah: On a point of order, hon. Speaker. I rise to seek your guidance because I have spoken on this Bill and I am, therefore, not entitled to speak on it again. However, my support for this Bill was in principle. I think the Member for Turkana South has clearly mentioned something that has also touched my heart. The CDF is something that I am very emotional about.

Hon. Ng'ongo: Hon. Speaker, Sir---

Hon. Ichung'wah I do not know why hon. Mbadi is not patient to allow me to seek your guidance, hon. Speaker.

If you look at the provisions of Article 112 of our Constitution on the question of rejection and acceptance of Bills emanating from the other House, I am inclined to believe that I would be safer as a Member of the National Assembly with our CDF funds in rejecting this Bill and allowing---

Hon. Speaker: Hon. Ichung'wah, that is contributing a second time. The easiest way to go about it is the way you vote. That is the way you will now express yourself in your new found frame of mind.

Hon. (Ms.) Nyasuna: Hon. Speaker, I hope that my time has now been adjusted because hon. Ichung'wah has taken quite a bit. He was on the road to Damascus. I rise to support this Bill. In supporting it, I want to say that devolution must work. I agree with those who say that devolution must work or there will be a revolution.

Kenyans voted overwhelmingly for devolution because they wanted it to work. They wanted it to adjust the inequalities that had dogged this country for many years. I made this point when I contributed on the Equalization Fund Bill and I said that devolution cannot stand alone. No single person or office can claim to be the one protecting, defending, living and dying for devolution. Devolution is for all of us and the more I read Article 174 of the Constitution, the more I am convinced that devolution is not for any one person to say that they will defend and live for it. When you read Article 174, it is very clear. When you read part (c), "The objects of the devolution of government are –

(c) to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State."

You see very well that devolution is about inclusion and not about exclusion. This is why I am supporting this Bill.

All of us are stakeholders and this Bill is saying that all of us have a stake, all of us must sit together to agree on what development is being done without our counties.

This board brings all of us together. Even the Bible says in the book of Hebrews that:-

"Do not forsake the coming together of brethren".

This is because it is recognized that when people sit together, they are likely to produce more results than if they are apart and everyone is on their own. When we talk about this Bill being unconstitutional, I do not see how it can be. When I look at the functions of the Board, I just see that it is to provide a forum at the county level for consultation between national and county governments. Consultation has never been of any harm. Consultation can only do good; it can only bring better results. It will bring better understanding and a sense of ownership for everybody. If we go the way we are going where it is believed that devolution is a preserve of only some offices, we are going to end up with destruction of

devolution. When you even look at the County Governments Act, this involvement is not only anticipated among the leaders. It is anticipated also for the general public. It is anticipated that the public must be engaged at all levels. If you read Section 97 of the County Governments Act, it speaks about involvement, including the public in the matters of the county. Having these boards where all Members of Parliament sit, members of the county assemblies sit and then the governor, they can agree to streamline what is going to each constituency. This in my instinct can only be a good thing. I do not think it can be a destructive thing. I know there is an issue of who chairs this committee and I think that can be discussed and decided. But also in the spirit of acknowledging that everybody is a party to devolution, I do not see any harm in the way the Bill has been designed.

When I read Article 174(e), one of the objects of devolution is also to protect and promote the interests and rights of minorities and marginalized communities. If this Bill goes through, these boards must look very critically at how minorities and marginalized groups are streamlined within devolution, including affirmative action groups. If we leave this in the hands of just a few people, this is politics and sometimes people just look at what numbers are in this corner and what numbers are in the other corner. If I ignored this corner, can I still win an election? If I ignored this population, can I still win an election? If I discover that I can win an election even with ignoring a certain small population, I will ignore them and I will win the election because their numbers do not count. That will be going against the objects of devolution as outlined in the Constitution. That is why we must all be on the table. In this House, we represent every corner and every marginalized group voted for a Member here and that marginalized group will be affected if that group is not taken care of. The Member here will be affected.

That way, we sit on the table, then we can say: Can you bring in my community however small it is and ensure that it gets development? Can we bring in the people with disability however few they are, so that they benefit from devolution? I really support this Bill and I hope that counties can put in place measures to deal with minorities, marginalized groups and affirmative action groups. As this Bill goes through, we will be looking at how to ensure that this happens; that affirmative action groups, which have been ignored by the County Governments Act to date, are also streamlined within the Act.

I understand the mood. I am a big believer in the CDF because it has made a lot of changes to our communities. I hope that nobody is going to interfere with the CDF. I also hope that, that does not make us do away with a very good principle that is even going to enhance and bring more benefits to our people.

I support and I urge Members to support this Bill.

Hon. Baiya: Thank you, hon. Speaker for giving me an opportunity to contribute to this Motion. From the outset, I will possibly come open, that I am a Member of the Justice and Legal Affairs Committee and I did give my position, which I am also making in my contribution.

The spirit of this Bill is quite apparent and sincere, in so far as it seeks to bring leaders together to deliberate on matters of development within their constituencies. Nevertheless, we passed a Constitution and entered into a system of devolution which we must therefore operate within, the Constitutional principles which we have already

enshrined. If you look at Article 6(2) of the Constitution, it states:-“The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.” This is a principle of devolution, which this Bill does not seek to uphold as I am going to outline.

If you also look at Article 175(a) of the Constitution, it also sets out principles of devolved government. It states-“county governments shall be based on democratic principles and the separation of powers.”

These are two principles; democratic governance and separation of powers. If you look at certain provisions of this Constitution, they automatically appoint certain Members without subjecting them to democratic principles, for example a Senator as a chairperson, an MP as a sub-county chair and a Ward Representative as a chair of a ward.

The Members of this Committee also do not respect the principle of separation of powers. Some are from the county government and others from national Government. This becomes quite clear when you look at Article 176(1), it states:-“There shall be a county government for each county, consisting of a county assembly and a county executive.” That is the Constitution. Those are the only members of the county government; county executive and county assembly. These other members we are bringing in the county board, including members of the national Government, that is County Commissioners and Departmental Heads, it is unconstitutional and against devolution.

If you go to Article 189(a) of the Constitution, another principle is about the relationships between levels of Government; national Government and county government. It states:-“Government at either level, shall-

(a) perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of government at the other level, and respects the constitutional status and institutions of government at the other level and, in the case of county government, within the county level.” What does this really mean? Even us as legislators, when we are legislating, we must bear in mind these Constitutional principles, they are not provided for in vain; all legislative provisions must uphold these Constitutional principles.

Hon. Speaker: What is your point of order, hon. Chepkong’a?

Hon. Chepkong’a: On a point of order, hon. Speaker. I rise pursuant to Standing Order Nos.83 and 107(f) in particular on giving false information. Is it in order for hon. Baiya, who is a very able Member of my own committee, to mislead the House that this Bill is in breach of separation of powers yet, he was in the Committee? If you look at the first function of the County Development Board as contained in Clause 91(2)(a) of the Act, it states very clearly that it provides a forum at the county level for consultation between the national Government and the county government.

He has just read Article 6(2) of the Constitution which clearly states as follows: - “The governments at the national and county level are distinct and inter-dependent--” They do not operate as separate; they are dependent and shall conduct their mutual relations on the basis of consultation and cooperation. That is what this Bill is seeking to do. In fact, it is stating very clearly, “consultation between the national government and the county government.” In fact, he is just misreading the law.

Article 95 of the Constitution is very clear, the Members of Parliament represent the interests of the people. Article 95(2) states very clearly that Members of Parliament deliberate on and resolve issues of the people. This particular Bill seeks to deliberate and resolve issues of the people. This is just purely a forum. Secondly, it is not a debate it is clear hon. Speaker---

Hon. Speaker: Hon. Chepkong'a, you are now out of order to respond to hon. Baiya.

Hon. Chepkong'a: I submit to the ruling, hon. Speaker.

Hon. Speaker: Do not respond in whispers.

Hon. Chepkong'a: In fact, I thank you, hon. Speaker. Is it in order for hon. Baiya to misinterpret the Constitution so that he supports his view?

Hon. Speaker: You know, hon. Chepkong'a, listening to what you have just said, you are advancing one view and hon. Baiya is advancing another view.

(Applause)

This is really the role of Members of Parliament when debating so let hon. Baiya, advance his and you are at liberty to agree or disagree.

Hon. Baiya: Thank you, hon. Speaker for coming to my aid. I respect my learned colleague and I will make my remaining arguments. If you look at Article 190(1) of the Constitution, it actually obligates Parliament to support county government. It reads:- "Parliament shall by legislation ensure that county governments have adequate support to enable them to perform their functions." That section does not actually require Parliament to usurp the functions of county assembly.

(Applause)

It does not require Parliament either National Assembly or Senate to usurp either of the functions of the county government, but to enact legislation to support them. It is clear the Act as brought before the House, violates these very clear Constitutional principles. It is true, we appreciate that we have problems and challenges at the county level. We know that the county governments are not functioning as they are designed to. I believe the recourse or solution to these challenges is not to violate the Constitution. It is to seek solutions within law or the Constitution.

(Applause)

For instance, in the Tenth Parliament, we passed the Intergovernmental Relations Act where we created institutions like the Governors and President Summit. Within that, we also have a technical committee which will bring out issues that are actually affecting devolution. We also passed the Transition to County Government Act which the governors have violated in terms of implementing. We have the institutions of oversight, such as the Controller of Budget, the Auditor-General, the Ethics and Anti-Corruption Authority. These are the institutions we need to strengthen and ensure that the governors are compelled to discharge their mandate within the law. For those who prove

incompetent to do so, they will certainly be shown the door by the legal process. I beseech this House, let us respect the law. Already we are playing to the hands of some of the players; the villains. They are waiting for us to make legislations that they can actually challenge in the forums, and they know where they are. Let us not give them these forums. The law requires us to operationalise and get them to perform or be knocked out and they remain non-operative.

For those reasons, I beg to oppose to this Bill.

Hon. Speaker: Hon. Ng'ongo, you have been burning to speak to this Bill, now you have your chance.

Hon. Ng'ongo: Thank you, hon. Speaker. Actually, I had wanted to contribute to this Bill from yesterday, but because we are 349 hon. Members, I have been patiently waiting for my time which has finally come.

First of all, I want to start by saying that I was looking at the functions and the role of the Senate. Our Constitution provides for the role of Senate, hon. Members of Parliament and the governors. Each office has a distinct role to play in the Republic of Kenya. My concern is that, in this country it appears that wherever we have issues, instead of looking for ways of solving them, we think we can go back to where we came from. I want to remind this House that one of the reasons why we made amendments to the Constituencies Development Fund (CDF) was to remove hon. Members from chairing the CDF. We realized and appreciated the fact that as an hon. Member you are a legislator, you are supposed to oversee. You are not supposed to be directly involved in implementation.

Hon. Speaker, if you look at the current CDF Act, you will see that contrary to public perception, hon. Members are not involved in CDF management. Actually, as a matter of fact, it is even wrong to attend CDF meetings. This is because the hon. Member is not supposed to make a decision. If we did that, we appreciated the separation of power. We appreciated that hon. Members, including Senators, are not supposed to chair forums or meetings which directly allocate funds. Then that would mean we are involved in legislation.

Hon. Speaker, here comes the Senators, people we thought were going to take care of the interests of counties and take an upper role in impeaching the President, now they want us to get involved in the day-to-day running of the activities in the county. We will get it wrong. Senators are supposed to represent the counties and serve to protect the interests of the counties and their governments.

The Senate should participate in law making; debating and considering Bills that concern counties. They are supposed to help in allocation of national revenue among counties as provided in Article 217 of the Constitution. I think the Supreme Court has given them something that I have checked in this Constitution and I have not found. Even allocating resources between National and county governments, they are supposed to be involved. Once they do that, the other thing they are required to do is to exercise oversight over national revenue allocated to the county government. Finally, they impeach State officers.

Hon. Speaker, I do not see why the Senate feels that it is only them who can chair committees in the counties and allocate funds and then counties will run. The people of Kenya elected governors. If these governors are not performing, there is an election

waiting for them. By the way, even before election time, you can do what Kenyans call “to Wambora them” through an impeachment. Why can the Senate not utilize those avenues as provided in the Constitution? Why do the Senators want to chair development activities at the county level yet they are supposed to play oversight role? They are required to receive reports on the expenditure at the national level.

Hon. Speaker, I have heard my colleagues talk about duplication of projects. Sure, that is not a good thing. But it is because we have refused to accept that there are functions which were devolved to the counties and some remained at the national level. What on earth would make a Member of Parliament allocate CDF funds to do a county function to an extent that you do the same project as the county government. Why should county governments, for example, allocate money to primary schools or secondary schools to build classrooms when it is clearly spelt out in the Constitution that, that is the function of the National Government?

We can eliminate some of these duplications. We should read the Constitution and understand it and carry out functions as provided in it. I do not think there are answers in sitting every quite often to debate on which projects should be taken by county governments. It is clear in the Constitution and functions of the county governments are spelt out in the Fourth Schedule. Why do you not read it? You should manage the CDF, allocate funds based on functions of the national government and leave the county governments to do their job.

Hon. Speaker, I have even heard from my colleague – I cannot see him today – a former councilor, that Members of the County Assemblies are councillors. If we have such mentality, this country will not move forward. We should tell Kenyans that those people elected as MCAs or we are electing as MCAs are no longer councillors. They elected people of integrity and who are competent enough to make decisions at the county. If they were making good decisions at the county level, we would not be spending time here discussing these serious issues that we see at the county. Some people look at it that we are supporting governors. It is not that I support governors, I know there are bad things that they do, but the solution is not to take away power from them and give it to someone else. If you give it to a Senator, you think these are angels? These Senators are also Kenyans like governors. They are the same as hon. Members. Therefore, I completely oppose this Bill.

Further, you see Senators and Members of Parliament now wanting to form some boards at the constituency level, and I do not know the role of those boards. We have other laws like CDF Act which clearly spells out how we should engage the public in coming up with priority projects. Now you are creating a board and charging it on county government funds while we are complaining about Recurrent Expenditure and increasing wage bill. We are again participating in increasing the recurrent costs at the counties.

Hon. Speaker, we gave our counties money and we want to go there and develop them. The governor was elected and was given a mandate to execute for five years. The governor should work with his executive and the county assembly. If they do not deliver, the public is out there waiting for them. The public will discipline and show them that this is the way we want our counties to be run. But the solution is not in trying to take away power from them, which is given by the Constitution.

Hon. Speaker, I have also heard – I know this may not please many people – people saying that they did not elect mini-presidents in the county. I want to repeat that we elected mini-presidents in the counties. If we did not want to elect mini-presidents in the counties, we should have amended the Constitution.

Hon. Speaker, once you are a Member of Parliament you would want to be a governor in future, or senator. I would want to be a governor and I can run a county. Why not? I have the expertise in finance and I have the experience in politics. I can do it. Therefore, instead of being jealous and envious of what the governors are doing, let us also work hard and go and replace them. If you so wish and if you want that stress of running the counties where people can even come and lock your office just for a small technical mistake---

Hon. Speaker, I want to plead with this Parliament. This is my last comment let us not get into the turf wars of Senate and governors. Let us give the governor space to operate. What really troubles me at times is the fact that wherever there is a small mistake, we amplify it as if devolution has failed. Devolution has just started, let us give these governors space, but we criticize them constructively. I criticize my governor a lot. I tell him where he should change; but where he has also done well, I appreciate.

I appreciate and that is the spirit that we need to embrace. It is not that we do not want to work with the Senators, but it is them who wanted that seat. In fact, if you look at the role of the Senate, the people of Kenya wanted these people to have peace of mind. It was a House to relax in; it was not a House to give yourself trouble like they are doing now trying to give themselves too much trouble by giving themselves too much work of chairing meetings almost every three months. People will ask them questions: You told us that this will be done, how come it has not been done? Let the Senators relax!

Hon. Katoo: Hon. Speaker, let me say that one of the things that this Bill is proposing is harmonization of development. There is need to harmonize development to avoid duplication and also to attain order and proper planning. There is also need to involve as many stakeholders as possible to achieve project ownership by all. Thirdly, there is need to streamline development plans to curb resource wastage as well as maximizing usage of the ever limited resources. There is also need to pool resources together for optimal efficiency, effectiveness and impact on people's lives. Fifthly, there is need to consolidate development plans and goals to spur economic growth at the grassroots level.

Hon. Speaker, I find it very difficult to support this Bill and, therefore, I stand to oppose it on the following grounds.

(Applause)

Yesterday, I heard my colleagues who contributed questioning the constitutionality of the Bill. I think we are past that stage. Whether the Bill is constitutional or not, that is now water under the bridge. What is left for this House is either to amend or reject this Bill. This Bill originated from another House, the Senate. In my view, that was the stage at which the constitutionality of it would have been addressed. It is now past that stage.

The reason I am totally opposed to this Bill – I do not mince words because I oppose it with or without amendments – is that the issue of planning and most budgeting-- The main purpose of this Bill in its objectives is financial budgeting in the county. I am not ready as a Member of the National Assembly to be drawn to boardrooms to do financial budgeting at the governor's office. This is an assignment or a responsibility of the governor and his county executive committee.

If you look at the national level, we are part of the national Government. However, we have never sat down with the President and his Cabinet as Members of the National Assembly or the Senate and try to plan how much to spend here and there. Let them initiate their budgeting. That is the level which we will be called upon as Members of the National Assembly to look into the matter and also give our own views and critique. That has to come through the Departmental Committees of this House.

Hon. Speaker, this afternoon the Chairman of the Budget and Appropriations Committee, hon. Mutava Musyimi laid a Paper on Budget Policy Statement. It is at this stage that this House needs to critique the planning and budgeting of the Executive. Therefore, what the Board is proposing to do, in my view, should be left to the county assembly to receive a proposal of budgeting and planning from the governor. The Budget and Appropriations Committee of the county assembly can then inform the county assembly which will give its views and either amend or vary that. That is what is required by law.

Yesterday, I sat very attentively in this Chamber following very keenly what hon. Members were saying. Let me pick from what the Seconder of the Motion said yesterday. When hon. Bishop Mutemi was seconding this Motion, he said that in this Board we will bring together all the NGOs in the county and also all the CDF committees for proper planning and budgeting. That is what the Seconder said and it is the HANSARD. He said that CDF committees and NGOs will all be put together under this Board for proper planning and budgeting. I do not think that is the way to go.

[Hon. Speaker left the Chair]

*[The Temporary Deputy Speaker
(hon. Cheboi) took the Chair]*

Look at Clause 2, it talks about the functions of this Board: “(a) To provide a forum at the county level for consultation between the national Government and the county government.” This is already provided for. Consultation between the national Government and the county government is through the Act concerning intergovernmental relations. You have seen the Council of Governors sitting down with the President and the Deputy President on quarterly basis. It is at that level that the consultation between the national and the county government is done. Actually, my view is that--

(Loud consultations)

Hon. Temporary Deputy Speaker, protect me from my good friend, hon. Mbadi.

The Temporary Deputy Speaker (Hon. Cheboi): Order, hon. Mbadi! You are actually interrupting debate.

Hon. Katoo: The Executive, both at the national and county level already have a forum for consultation. Maybe we should think of the legislature both at the county and national levels in terms of a forum on which we should be consulting. This is what is lacking, that is, the framework for consultation between the national legislature and the county legislature. I am, however, very sure that for the Executive levels, both national and county, the law is there for consultation.

I have been reading Sub -clause (b) and hon. Members need to take note of this: “Coordinate and harmonize county development plans and projects.” What will make your CDF not be part of the functions under this Board? Even the CDF at the constituency level is still within a county. You do not need to sit and decide on county funds and you do not want CDF money to be managed by this Board. Look at (c) very carefully. It states: “Consider and make recommendation on county integrated development plans before they are tabled in the county assembly for approval.” This means that even the CDF projects have to be tabled in the county assembly for approval. Surely, in the County Government Act, 2012 there is a provision for County Integrated Development Plans where leaders meet and try to interrogate. I have actually sat in one of the meetings with my governor.

Hon. Members need to look at (f). It states: “To consider and make recommendation on any issue of concern that may arise within the county.” Surely, this is so ambiguous and my colleagues who are lawyers here will tell you that, that is open to abuse. It can be exploited.

Finally, (g) says: “Perform any other function related to the mandate of the Board.”

So, hon. Temporary Deputy Speaker, I would wish---

The Temporary Deputy Speaker (Hon. Cheboi): Your time is over. Let us have hon. Marcus Muluvi.

Hon. Muluvi: Thank you, hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this Bill. First, from the outset I oppose the Bill in total for various reasons.

(Applause)

One is that I have checked the composition of all members drawn from the county. In particular, I have realised that among others is the Leader of Majority Party.

(Loud consultations)

The Temporary Deputy Speaker (Hon. Cheboi): Order, hon. Members! The hon. Chair of The National Alliance (TNA) consult in better tones.

Proceed, hon. Muluvi.

Hon. Muluvi: Thank you, hon. Temporary Deputy Speaker. I had just said that I am opposing this Bill for the following reasons: One, I have checked the composition of the members who have been drawn from the county assembly. Among them I have noted

that the Leader of Majority Party and the Leader of Minority Party will be members of this County Development Board, if this Bill passes.

Hon. Temporary Deputy Speaker, I have also seen that from the Executive they have also drawn the likes of the Finance Executive Officers and these are people who will be assisting the governor to do the budgeting.

Hon. Temporary Deputy Speaker, the County Development Board is a preserve of the Executive within the county. I wanted to say that the doctrine of separation of powers among other things lays the responsibility of oversight with the Legislature both within the National Assembly and also at the county. Therefore, if we mix Members of the county assembly and Members of the Executive, it will be very difficult. This is because if this Budget is taken to the county assembly for approval then you can see the confusion.

Hon. Temporary Deputy Speaker, my serious concern on this Bill is pegged on the premise of the doctrine of separation of powers. This is because if we say that we want a consultative forum, the Constitution is very explicit that the county governments and the national Government have established a Summit which sits I think biannually, if not annually to consult. Therefore, there is no provision within the Constitution for Members of both the Senate and the National Assembly to be also consulting with the Executive of the county. Therefore, I am saying the idea may be very noble but we must respect our Constitution.

Hon. Temporary Deputy Speaker, like my friend has said, when you read Article 175 and Article 12(b) of our Constitution, it is very explicit that democratic principles are enshrined and pegged on the separation of powers. Therefore, it will be very unfair for us to say that we want to go and sit with the Executive of the county and also draw the Members of the county assembly to come up with a development agenda which will need to be approved at the Assembly.

Hon. Temporary Deputy Speaker, the other thing is the timing of this Bill. In my very considered opinion, it is very suspect. This Bill has also come at the point when the Senate and the governors are at arms. So, I do not need to belabor the point. If we allow the Development Committee of the county to be chaired by the Senators and deputised by the County Women Members of Parliament and the governor becomes the secretary, I think it will be bad.

I want to dwell on the separation of powers. The county people have given the mandate to the governor to run their county and all executive duties within the county both by the Constitution and by law are vested in the governor and his county Executive.

Hon. Temporary Deputy Speaker, therefore, I stand to oppose this Bill. Thank you.

The Temporary Deputy Speaker (Hon. Cheboi): Thank you, Major Muluvi. Let us have hon. Ali Rasso.

Hon. Dido: Thank you, hon. Temporary Deputy Speaker. At the outset, I stand to support this Bill in its totality. We come from different parts of this country and we are faced with very different circumstances and I see an attempt to negate this Bill as an attempt to negate Article 95(2) of the Constitution which states:

“The National Assembly deliberates on and resolves issues of concern to the people.”

I think what the Senate has told us is that the counties are not providing services to the people. Clearly Article 174(e) of the Constitution says:

“The objects of the devolution of government are –

(e) To protect and promote the interests and rights of minorities and marginalised communities.”

That is the intent of devolution. The question that we must ask in this House is: “Is this what is happening in our counties?”

Article 174(b) of the Constitution says:

“To foster national unity by recognising diversity.”

What we are seeing continuously since the establishment of the counties is actually balkanisation and more marginalisation of communities and also of the country where different counties actually represent different communal entities. That in itself is actually not making this country unified.

Hon. Temporary Deputy Speaker, Article 175(a) of the Constitution which talks about principles of devolved government says:

“county governments shall be based on democratic principles and the separation of powers.”

I think in the spirit of this Bill what actually the Senate is telling us is that this is really not happening. We are also seeing that the counties are levying and taxing burials, chicken and all kinds of things to raise taxes but under part (b) of this same Article we are told that:

“county governments shall have reliable sources of revenue to enable them to govern and deliver services effectively.”

However, more and more as we read the activities of different county governments in this country, they are spending money on buying vehicles, travelling and all sorts of largesse that actually do not provide services to our people. We are seeing competition between different entities in this country, that people are actually postulating different interests by supporting or opposing this Bill. I want to say that devolution does not mean that you give fief powers to any individual. That resources are used with opulence; that resources are concentrated in one hand and that resources can be skewed based on political preference.

Hon. Temporary Deputy Speaker, if you look at all this and come to the prayers of the Senate to come up with the County Development Board--- What we have witnessed since 2013 when the county governments came into being is lack of participatory democracy where we, as legislators, have not at any point--- Maybe, I might say that some are exceptional to contribute to the affairs of the county in which the constituencies that we represent are represented; and where our people are.

If we do not rein in the bull and stand by the Senate to have a structured system where services are rendered to our people, this House may lack its purpose and we may not serve what we are expected to provide to our people under Article 95 of the Constitution.

Hon Temporary Deputy Speaker, I beg to support the Bill.

Hon. Midiwo: Thank you, hon. Temporary Deputy Speaker. I rise to oppose this Bill. I want to oppose it and even plead with the section of this House that may be leaning towards supporting it that it is a decision they will live to regret.

As we talk today, the Senate has enjoined in a case to kill the Constituencies Development Fund (CDF). We sat here when we were threatened with a court case. Under the Chairman of the CDF Committee then was the current Speaker of the Senate.

We took very many hours to amend the first Bill, and the Members who were in this Parliament a year ago will bear me witness. Hon. Chachu is here. That very Speaker of the Senate wanted to take the CDF to the Senate. He did that on this Floor but we refused. We said that the CDF is a constituency fund that cannot go to the county. I stand corrected if I am lying, but the HANSARD will bear me witness.

Hon. Temporary Deputy Speaker, the Senate is proposing to chair decisions over the very funds they are supposed to oversee. I have heard our County Women Representatives (CWRs) support this Bill, but they are only supporting it because we have refused to give them some funds to work with. However, even if it was given to them, it will not help them because it will be chaired by their enemy.

I was in my car driving here this afternoon when I heard a Senator call Members of this House “Members of a Junior House”. They do not want us to share anything. I do not fear to say him because I heard him say that. That is the Minority Leader in the Senate, hon. Wetangula. He repeatedly called this House a Junior House. We will be their juniors if we give them a committee to go and chair and we sit there.

Hon. Temporary Deputy Speaker, that is not even the point; the point is that this Bill should have never seen the light of day because it is unconstitutional. Let me plead with Members of this House that many Kenyans have died for this thing called “devolution”. Many people have suffered, be they Kenneth Matiba and Rev. Njoya. They have suffered to bring us here. I want to plead with Members of this Assembly to be patient with devolution. If you take the example of Nigeria, you will find that when they devolved, 21 governors ended up in jail or exile because it is challenging to establish structures. What problem does a Member of Parliament have with a governor buying a car in his county? How do you want him to move in his county? The Constitution is very clear who a governor should be. This is a job any of us should admire. This is not an ordinary person. You cannot even sit here and compare us with governors because we are not the same. The same applies to Senators and governors. We cannot. That was not the intention of the framers of our Constitution. The intention was to create somebody with authority who is powerful enough to oversee billions of shillings.

Hon. Temporary Deputy Speaker, last week, the Senate was going after Wambora, who is my friend. If accusations - if you followed those proceedings - were related to corruption, there is an independent Commission known as the Ethics and Anti-Corruption Commission. Now Parliament or the Senate has given itself powers to check corruption and get rid of governors and yet that thing cannot happen here. We cannot, in this House or in the Senate, call His Excellency the President and grill him. That is not oversight. What they are doing is not what they are supposed to do. We must be patient with this baby called “devolution”. This is the only way that we are going to develop our country.

This House is being duped into a war or a fighting match between the Senate and the governors and the Senators do not know that they are actually junior to the governors. They are not equal.

(Applause)

Collectively, they can look over their issues but not individually. It is not my duty to go to Siaya and Chair or sit in a Committee where the governor is a secretary. What are we trying to do? Which part of our Constitution can allow that kind of thing? What we are trying to do is help the system move forward and not regress the system.

Hon. Temporary Deputy Speaker, we, as Members of this Assembly our role is very distinct. The Senate is trying every day to take powers which are given to us by the Constitution. It is a shame that we could even stand here and try to give them those powers. Just a couple of weeks ago, we were talking about the Uwezo Fund and I said that I do not want to see Uwezo Fund, let me deal with the CDF. I have not even seen the list. My County Women Representative has done all of it. I have not died because Christine did it.

(Hon. (Ms.) Ombaka cheered hon. Midiwo)

Hon. Midiwo: Let us accommodate each other but let us not try to give opportunities to kill this baby called “devolution” because we will all live to regret it. We must be patient.

The Temporary Deputy Speaker (Hon. Cheboi): Order, hon. Jakoyo! Why is the CWR for Siaya punching the air? I hope it is not anything violent!

(Laughter)

Hon. Midiwo: She is violently happy!

The Temporary Deputy Speaker (Hon. Cheboi): She is actually cheering you. However, there are ways you can cheer, hon. Ombaka.

Proceed, hon. Midiwo.

Hon. Midiwo: Thank you, hon. Temporary Deputy Speaker. If you are saying that this Bill is supposed to create a forum where we are marrying the activities of the county government and the national Government, there is the governors’ forum chaired by the President; that is Executive and Executive. If you want to deal with those issues, have a good rapport with your ward representatives who are our equivalent. However, this Bill is meant to deny them a chance to build capacity. I would love to see my ward representative being like me because they are MPs. We are here debating and they are calling themselves *waheshimiwa* and some people have flags. We are lowering the dignity of this House. What do you care about a flag? Really, it is a symbol of our unity.

If you read the history of how we arrived at the colours of our national flag and the emblem, you will appreciate that it was something that was well thought-out by the founders of our nation. We should be happy. Even if we walk in the colours of national flag, why would it bother anybody? Just because the governors are flying the national flag on their vehicles, we have to legislate to bar them from doing so. These are simple things. I would love to fly the national flag, given an opportunity because I am proud of my country. It is a sign of pride. So, I am pleading with my colleagues, there is a mix up

here. Let us sort out the issue of a fund for our lady sisters, who are the County Members of Parliament. It will all be good. In any case, all of it is going to our people.

Secondly, let us not give the Senate power that the people of Kenya never tried to give them. If Kenyans want to give the Senate different powers, they will revise the Constitution. The way of revising the Constitution is also provided in the Constitution.

Therefore, I strongly oppose this Bill. Please, let us not allow it to see the light of day.

Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon.Cheboi): Hon. Mohamed Haji of Banissa.

Hon. Abdi Mohamed: Thank you, hon. Temporary Deputy Speaker, for giving me the opportunity. From the outset, I want to say that I oppose this Bill in the strongest terms possible.

Firstly, this Bill has been prepared in a hurry. It is not a well thought-out Bill. Probably, it was meant for settling political scores in the ongoing supremacy war. Therefore, we should not be drawn into that war by this Bill. We cannot sit in a forum that authorises public expenditure and then come back to Parliament and purport to oversee that same forum. We will not have the moral authority to play oversight over such a forum. On that basis, therefore, this Bill must be opposed.

Secondly, as Members of Parliament, we already have a problem with the Constituencies Development Fund (CDF) Committees, where we just sit as ex-officials on the basis of the principle of separation of powers. We now want to sneak through the back door and sit in a board which takes care of the funds of the county. On the basis of the principle of separation of powers, we must steer clear of those boards to allow the governors do their job.

Hon. Speaker, the Constitution of Kenya gives governors the authority to run the counties. We have five years to find out whether they will have done their job or not. What the Senators are trying to do is snatching that authority through the backdoor. That is not proper. We should give the governors some breathing space. Let us give them a chance to prove their worth. We should allow them to implement their agenda. As politicians, we should appreciate the fact that everybody would not have the same development priorities. It looks like the Senators, with the help of Members of the National Assembly, want to impose their priorities on the counties. That is not right. We do not have to support that initiative.

Long before the counties came into being, in the 1980s, we had a programme called "District for Rural Focus". After that, we had the District Development Committees (DDCs). Thereafter, we had the District Steering Groups (DSGs). At those forums, development programmes were discussed and coordinated. Everybody was involved. The Bill before us is exclusionist. It is going to leave out the development actors. Before the counties came into being, the organisations that drove development at the county level were the NGOs. This Bill has excluded the NGOs and so many other development actors that I cannot enumerate. This is an exclusionist Bill and, therefore, on that basis, we should kill it.

Hon. Temporary Deputy Speaker, what this Bill seeks to do is already being done through another Act of Parliament. The Constituencies Development Fund Act, in Section 36, says:-

“There shall be established for every county a committee to be known as county projects committee whose main function shall be to co-ordinate the implementation of projects financed through this fund.”

As a House, we should appreciate that the forum being sought through this Bill has already been provided for in an existing Act of Parliament. We just need to slightly amend that provision. If you read through the Act, you will appreciate that all the persons that this Bill seeks to include in the committee have been included in the CDF Act. Therefore, we should not be legislating in futility. This is a duplication of effort. We have already legislated. We have Section 36 of the CDF Act, which provides for a forum. Therefore, we do not need to create another forum. The forum provided for in the CDF Act is sufficient.

Hon. Temporary Deputy Speaker, lastly, as a House, we should be tasking our mind on one issue. Yes, we have devolved funds. Yes, the governors have funds to spend. The problem is that the governors have discretionary powers on how to spend the money. It is possible that the governors can exclude some constituencies because of certain reasons. What we need to do, as a House, is legislating to compel governors to spend certain amounts of money in constituencies directly, so that all constituencies in a given county can develop together.

With those few remarks, I beg to oppose this Bill in totality.

The Temporary Deputy Speaker (Hon.Cheboi): Hon. ChachuGanya, this would be an opportunity for you but allow me to try and see if I can give chance to the other gender, so that I do not risk anybody shouting “*Hakiyetu!*” You will be next.

The top most on my list of requests amongst the ladies is at number 10. Ladies, I am saying this in order for you to understand that you need to be slotting your cards in your booking gadgets a little earlier for you to join the queue. So, we have hon. WanjikuMuhia at number 10.

Hon. (Ms.)Muhia: Thank you, hon. Temporary Deputy Speaker, for giving me the opportunity.

On the outset, I want to oppose this Bill. The reasons for opposing are four. Firstly, I view this Bill as having been brought here with malice. I see the malice in the way issues have been stipulated in it. For example, it proposes to have the board at the constituency level and the ward level.

At the constituency level, the Chair is the Member of Parliament. We already know that the constituency Member of Parliament is the chief executive of the constituency. At the ward level, the Member of the county assembly is the Chair. At the county level, the governor is the secretary. So, I see malice there. Therefore, I conclude that the Senate wants to involve this House in their war of supremacy with the governors, so that we can support them.

Secondly, if enacted into law, this Bill will undermine Members of the county assembly. Article 185(3) clearly stipulates the roles of Members of county assemblies. In the future, Members of county assemblies in most counties will have the capacity to play their oversight role. In some counties, particularly in my county, Members of county

assemblies already have the capacity to play their oversight role. I voted for Uhuru Kenyatta because of the laptops and my daughter always asks me if Uhuru will give her a laptop. I also voted for him for the railway gauge and many other factors. It is in the same way that *wananchi* elected governors. It was because of their specific agenda.

Thirdly, when we look at this Bill, it is said that these boards will even make recommendations and in the process maybe deviate from the governors' agenda.

Fourthly, governors must be accountable. We cannot break the system because of specific individuals. We all know the behaviour of our governors and for sure we cannot even define their character. It is just bad luck that we got the wrong governors. We shall have good governors. Maybe, hon. Sakaja will be a governor for Nairobi for that matter and he shall show the way. Therefore, these specific governors are the ones to be held responsible and be answerable to the Auditor-General and all those other bodies. We do not need to spoil the system that was put by the drafters of the Constitution, which Wanjiku – my name – wanted to be the way it should be.

Finally, I want to say----

An hon. Member: Are you sure you are Wanjiku?

Hon. (Ms.) Muhia: Yes, I am Wanjiku and you voted for Wanjiku. The Constitution is meant for Wanjiku and that is the way the Constitution should be.

Finally, at the end of it all, the boards comprising Members of the Senate and this House will make recommendations to be integrated in the development of counties. Therefore, who will oversee the boards if they are put in place? So, the Senate has to do its work as it is stipulated in the Constitution. If the work is less, I have always said that the wage bill is quite high. Therefore, they can do the necessary.

Thank you, hon. Temporary Deputy Speaker.

Hon. Ganya: Thank you, hon. Temporary Deputy Speaker. From the outset, I want to say categorically that I oppose this Bill. This Bill by the Senators is in very bad faith. The Senate is looking for relevance because they have seen that they have very little to do; they are looking for relevance, the responsibilities and powers not envisaged in the Constitution.

Hon. Temporary Deputy Speaker, if this Bill is approved by this House, it will basically enhance further the supremacy battles the Senate has been launching with almost everybody in this country, whether it is the National Assembly and now with the county assemblies and the governors. We should not allow it.

Hon. Temporary Deputy Speaker, this Senate Bill is trying to usurp Constitutional responsibilities and mandates of other office bearers; like the governors and now even the Members of County Assemblies (MCA). If they really want to do this job, I encourage them to run as MCA and then they can effect those budgets. They can do the necessary scrutiny and even plan those development plans and proposals they are talking about. They cannot do that as Senators sitting in Nairobi.

Hon. Temporary Deputy Speaker, why should a governor, who is a president of a county or a CEO of county, delegate his constitutional powers to a senator based in Nairobi, working at that level of national Government by serving as secretary at the county? By so doing, the governor will not uphold the Constitution he took to uphold. This is not acceptable.

This Bill is basically asking Parliamentarians to go down to the counties to co-ordinate, scrutinize the budgets of those county governments and ensure there is some harmony. That is purely administrative; an executive role and it is not a role for a Parliamentarian who is supposed to do oversight, legislate and represent his people.

The Temporary Deputy Speaker (Hon. Cheboi): Order! Order, hon. Ganya! Hon. (Ms.) Tobiko, are you on a point of order?

Hon. (Ms.) Tobiko: On a point of order, hon. Temporary Deputy Speaker. In the interest of time and all of us contributing to this debate, can we, kindly reduce the time to five minutes?

Hon. Member: Let it be three minutes.

Hon. (Ms.) Tobiko: Or even three minutes. We are requesting kindly.

The Temporary Deputy Speaker (Hon. Cheboi): We actually have quite a lot of requests and I am really trying to see what to do. I know there will be time, but probably that is the direction we need to go.

Proceed, hon. Ganya as we see what to do.

Hon. Ganya: Hon. Temporary Deputy Speaker, this Bill is trying to commit funds of county governments by demanding that boards and structures that this Bill will create, be funded by the county government resources. We have no business determining how county governments are going to use their resources.

Hon. Temporary Deputy Speaker, Article 176 of the Constitution clearly gives the county executive the mandate to only account in terms of how they use county resources only in their county assemblies. By committing the funds of the county governments in Nairobi, we are basically usurping those constitutional powers that the Constitution gave to the county assemblies.

In addition, the Constitution actually gives county governments under Article 176, the powers to organize their governments. If they need to delegate some functions to the constituency levels, those powers are clearly stipulated in our Constitution. This Bill is trying to usurp those powers by creating structures at national, county and ward levels. It is not acceptable. Moreover, involving the National Assembly, legislators like us, or the Senators in the affairs of county governments or other levels of government actually goes against the principles of established functions and powers within the national Government and the county governments.

Hon. Temporary Deputy Speaker, I support the spirit of the Bill. They need to have well harmonized development plans and proposals at the county level. But I will not allow an ordinary Bill, like this one, to undermine the constitutional mandate of a devolved government. Devolution is the future for the marginalized counties like mine. We have largely delegated resources and power, and those resources that have been delegated to the counties must be managed at the county level by the county governments and the county assemblies.

Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, just to get concurrence of the House, hon. (Ms.) Tobiko has suggested that we should give hon. Members five minutes each. I want to seek the view of the House.

(Question, that speaking time be

reduced, put and agreed to)

It is agreed that we take five minutes each.

Hon. Bowen: Thank you, hon. Temporary Deputy Speaker for giving me this opportunity to oppose this Bill.

Many of my colleagues who have contributed before me have raised a lot of concerns. One of the most important points to note in this Bill is the levels of these boards. You can imagine at the county or ward level, the MCA is the chair of the board and we have Members of Parliament and governors sitting in the same board. The idea of constituting boards is good because Article 6 of the Constitution provides for consultation and co-operation between the county government and the national Government. Even yesterday, hon. Ichung'wah brought a Motion here on what happened in Nairobi City yesterday. When I got here I thought the Jubilee Government was in some celebration because they have attained one year. There was a celebration mood in town, however, I realized that it was the *matatu* strike.

Most of the MPs in Nairobi County raised the issue of the governor raising fees without consulting the Members of Parliament from this county. The development forum--

The Temporary Deputy Speaker (Hon. Cheboi): Order, hon. Bowen. Let us get a point of order from hon. Jakoyo Midiwo.

Hon. Midiwo: Hon. Temporary Deputy Speaker, I rise under Standing Order No.30(3)(a) that this House resolves to extend its sitting time by 30 minutes pursuant to Standing Order No.30(3)(a). I am only trying to do this so that more Members can get a chance to contribute to this interesting Bill.

The Temporary Deputy Speaker (Hon. Cheboi): Seeing the number of requests, I think it is something that we are willing to entertain, but also subject to the concurrence of the House. Hon. Jakoyo Midiwo wants the House extended by 30 minutes. I will put the Question.

(Question put and agreed to)

The extension of 30 minutes is granted. Proceed, hon. Bowen.

Hon. Bowen: Hon. Temporary Deputy Speaker, under Article 95 of the Constitution, as Members of Parliament we have a role of oversight. The MCAs also have an oversight role. The work of the MCAs is to oversee the County Executive. If we, MPs, can go and sit in a budget-making process of the counties, then we shall be taking over the work of MCAs. The MCAs are not the councillors we used to know. They have a role in our Constitution and the work of budget-making at the county level falls under the power of the MCAs.

The governors of this country are not in office by mistake; they were elected by Kenyans. If there is a problem or any misappropriation, just as my colleagues have said, we have so many other agents of Government doing the monitoring. We have the Kenya Anti-Corruption Commission, the Auditor-General's Office and so on. These are areas of oversight.

The Temporary Deputy Speaker (Hon. Cheboi): You will get an additional time of one minute.

Hon. Bowen: Yes, hon. Temporary Deputy Speaker. You could reject this Bill at this point and it is taken back to Senate. We will then have that consultation committee so that we amend this Bill and we do away with the ward and constituency levels. If we can have a forum only at the county level where all the elected Members can come together based on Article 60 of the Constitution, that will be a good thing.

With those few remarks, I want to oppose this Bill. It should stay as it is until it is amended to the level it is accepted by everybody.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Lelelit.

Hon. Lati: Thank you, hon. Temporary Deputy Speaker. I rise to oppose this Bill in its current form. I am doing this with a clear understanding that if we reject this Bill as a House, it will have to go to the Mediation Committee. So, I prefer that we do the necessary amendments to water down this Bill because I think this Bill as it stands today is a big fallacy. If you look at the things that this Bill is trying to bring, one of them is the creation of three boards at the county level. Why would somebody want to create a board at the constituency level? The only viable board at the constituency level is that of CDF. So, unless somebody has some malice and is trying to sneak into the CDF through the back door there is no reason to have a sub county board at the sub county level; it is unnecessary. The same argument applies at the ward level. I do not see what project or funds are so decentralized to the ward level that we need a board.

However, I can see what is in the mind of the Senate by looking at this Bill. They thought that they were trying to incorporate the Members of the National Assembly to make them do something. I want to say that we do not want to do anything as far as the boards are concerned. If you look at the Board that was supposed to be established at the county level, I can understand that, probably, there is a reason to have a forum for leaders of all counties to meet at the county level and discuss development projects, but I do not understand why somebody would create a board and immediately assign himself the role of a chairman. I think it is illegal. Even for legitimacy reasons and for you to feel that you are the chairman, why do you not leave that open for elections so that you have a board which will elect the chairman? That is the way to have the legitimacy. I think there is somebody here trying to get a job that he does not have. We cannot buy into those simple things. We have been elected by our people and we have a job to do. We will keep doing that job.

Hon. Temporary Deputy Speaker, the other part that does not look good in this Bill is that MCAs are supposed to be part of this forum. If you look today at the establishment of the county assemblies, in our Constitution, the county assemblies are actually parliaments of those counties. They have committees and they debate in parliament. At the end of the day, they will still sit in committees and then have the final say on all the projects that go through their Budget and Appropriations Committees within the county level.

It, therefore, makes no sense to have an MCA sitting on the board. I think there must have been a problem with the people who framed this Bill. I always sympathize with the Kenyan Senate. This is because there is something that was wrong with the establishment of the Senate. If you look at the first senates that were there starting from

the Roman Senate to the USA Senate and the constitution from which we borrow heavily, there are things that are special about these senates. If we wanted a strong senate we would have gone the USA way. We would have borrowed from the Constitution of the USA and even borrowed from the history of the USA. If you look at the Confederation of States in Philadelphia they establish the senate as the representatives of the State, the same way our Senate is for the counties – it is not for the people. This took time. If you want to make the Senate strong today, there are no nominations anywhere in the world on the senate side. Why would you nominate 43 per cent of people who represent nobody and they still ask for power in the Senate? What do they want to do? If you want to strengthen the Senate, please, stop nominating. Counties do not need affirmative action. There are no genders in counties. We do not have female and male counties. We do not have disabled and not-disabled counties. There is nothing affirmative about representing a county. I think the Senate is a fallacy and there is something that Kenyans must try to do because it is not a Senate; rather it is a committee of representatives of all kinds of people.

The Temporary Deputy Speaker (Hon. Cheboi): That marks the end of your time, hon. Lati. Let us have hon. Sakaja.

Hon. Sakaja: Thank you, hon. Temporary Deputy Speaker. I am glad that since yesterday, I have not been able to catch your eye because it has given me an opportunity to listen to the sentiments by the Members. I have been hearing the Members saying that they only support with amendments, which is a fallacy because Second Reading has no amendments. If we were to amend this Bill, in my opinion, for it to pass, we would have to amend all the clauses because it is fatally flawed and unconstitutional. I, therefore, stand to oppose it.

This week marks a year into the new Government and a new system of Government where Kenyans went and voted overwhelmingly, a record 86 per cent turn out voted in a new Government and a new system. The hopes of Kenyans were tangible. Kenyans voted for an MP for a certain reason. They voted for a Senator for a certain reason. They voted for a governor to perform certain functions. They voted for their President. This whole year, and I want to say that we, as a National Assembly, must take some blame, we have treated Kenyans to side shows and battles of ego and supremacy; who is superior to who and who has more powers than who. Kenyans are getting frustrated. In fact, I dare say that certain arms of the Government, maybe including this one, have sometimes shown an irritatingly juvenile disposition as when a baby has his bottle snatched away from him.

Devolution depends on a set of institutions that are independent or interdependent on each other, but working well. I see no reason for us to try, through the back door, to crawl back on the gains of devolution in this country. Yes, there are some challenges. Yes, our governors need to do better. In fact, I agree that it is, indeed, unfortunate that we have to legislate to make a governor sit down with other leaders. It is unfortunate because any good governor should know that he has Members of the National Assembly and a Senator and it is important to sit down with them. It is unfortunate. However, the only person who has been given executive mandate of a county is the governor. Let us help them work. Let us help them be able to execute that executive mandate. I also understand

that this House and the Senate have the authority to legislate on any matters, but let us not flex legislative muscle just to try and sort out issues of character.

If you look at this Bill and it is not wise to draft legislation when you are in a bad mood, it looks like somebody was in a bad mood, meaning that it is in bad faith. Let us allow our governors to work. Let us allow them to execute their mandate. When a governor was elected, even if he went and said: "I want to build swimming pools for this county" and the people said: "Yes, we want swimming pools in every person's house," how now do you come in a board and say: "Instead of swimming pools, let us have fish ponds?" These governors will have you share in the blame, but when there is glory, it will be for them.

I also want to oppose the fact that as a nominated Member, I come to this House and I become a national Member. I do not want to be constrained into one county; to do what in one county? I serve the youth of this entire country. I wish you could add me just one minute because I have heavy points on devolution. I must say that the notion that certain people are anti-devolution is being debunked in this House today and yesterday. The National Assembly must stand up in support of devolution.

If you look at certain elements of this Bill, as I finish---

The Temporary Deputy Speaker (Hon. Cheboi): Finish quickly, you have about six seconds.

Hon. Sakaja: You see that there are certain mandates---

The Temporary Deputy Speaker (Hon. Cheboi): The six seconds are over. Let us have hon. Tobiko.

Hon. (Ms.) Tobiko: Thank you, hon. Temporary Deputy Speaker. I am very grateful to get this opportunity. When we were in that institution called Moi High School, Kabarak, together I believed one day you would be seated on that seat.

The Temporary Deputy Speaker (Hon. Cheboi): You will still have to follow the queue, hon. Tobiko.

Hon. (Ms.) Tobiko: Hon. Temporary Deputy Speaker, I stand to oppose this Bill. Sometimes you wonder why people do not just accept their positions as they are and exactly what they went to ask the Kenyan public to give them. Every elective position has a job description pegged to it by the Constitution. When you asked to be a constituency MP, there were certain duties that Kenyans expected you to perform. If you asked for the seat of the Women Representative, there are certain roles that Kenyans expected you to play. If you went for the Senate seat, the same thing applies.

I see that this Bill is not in good spirit. This Bill tries to take powers through the back door. The Senators are not angles. They cannot be any different from the governors and we would want to see most of them in 2017 going for the governor's seat and we see how they will perform. I voted for President Uhuru Kenyatta and I am imagining today what would happen if you appointed the President a secretary of some board to be creating some funny laws, when all Kenyans voted for him to become the Executive President of this country. It is my prayer to this House that the powers of the governors are not diluted. We should give them their due according to the Constitution of Kenya.

When you go through this Bill, you will see in many clauses the Senators have tried to give themselves powers; powers to be the chairpersons and to nominate I do not

know how many people. This Bill should not go through the Floor of this House, particularly because I see them also trying to take the CDF in the same way.

I beg to oppose this Bill and I urge the Members of this House to do the same. If the Senators are trying to take their battle with the governors to another level the best thing for them to do, if they do not have enough to do, is to save the Kenyan public a lot of expenses by just getting rid of that House.

The Temporary Deputy Speaker (Hon. Cheboi): Well, let us have honourable Ntutu.

Hon. ole Ntutu: Thank you, hon. Temporary Deputy Speaker for giving me this opportunity and I stand to support this Bill because of a few reasons that I am going to give to this House.

First of all, nobody is against devolution and I want to say that before the new dispensation, we had District Development Committees, Provincial Development Committees and Local Divisional Committees.

Hon. Ng'ongo: *Hiyoniya KANU.*

(Laughter)

Hon. ole Ntutu: Hon. Mbadi, I know that they were used by the KANU party but I want to tell you that your devolution is not working. So, I would rather talk about something that has worked for 50 years for this country.

If you look at the membership of this Board, it is made up of the governor, the Senator, Members of Parliament and also other members that have been mentioned in this Bill. However, the reason why I am supporting this Bill is, we have given our governors Kshs210 billion this year and if we are going to give them another Kshs210 billion for the next five years, that comes to 105 trillion. Now, somebody is saying that we just give them that money to mess up. For us pastoralists, our lives have been messed up for the last 50 years and we cannot wait anymore for the governors to mess our lives for the next five years.

Hon. Temporary Deputy Speaker, when I listen very carefully to some of our lawyers like Amos Wako, James Orengo, Wetangula and our able Speaker, I have seen something very amusing. If you are against a Bill or any Motion that comes to this House, the easiest thing for one to say is that it is unconstitutional. It is very unfortunate when you hear people saying something is unconstitutional because it is very easy to say that. Even my friend, hon. Mbadi, always says things are unconstitutional so that he can get away with it.

Hon. Temporary Deputy Speaker, I want to say that this Bill is here and it is constitutional. We will have to discuss it with all Members who are in this House. If you look at the objects of this particular Bill, you will realise that all that we are trying to create is a consultative forum where all of us can sit down and really look at the agenda of our counties.

Hon. Temporary Deputy Speaker, when you look at what we have been doing, a lot of this---

Hon. Angatia: On a point of order, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): Order. What is your point of order, hon. Savula?

Hon. Angatia: Thank you, hon. Temporary Deputy Speaker. I am rising on a point of order to request the Member who has just been on the Floor to declare his interest in this matter because by supporting this Bill, he is actually supporting his fellow family member who is a Senator and who happens to be his brother. Can he declare his interest first before he comments on this topic?

(Laughter)

Hon. Members: Declare! Declare!

Hon. ole Ntutu: Well, just listen then. Yes, the Senator of Narok County is my brother and I am the Member of Parliament for Narok West. We were elected by the people of this country and it does not matter how you look at it. I have a right as a Member of Parliament for Narok West to support this Bill because I think it is good for our country.

The Temporary Deputy Speaker (Hon. Cheboi): Now, your time is over, hon. Ntutu. I actually increased your time by one minute. So, let us have another Member. I am trying to balance all these names and it is very difficult. I cannot see the other gender. So, probably I will pick hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Temporary Deputy Speaker. I want to say that I oppose this Bill for the reason that it violates the principle of separation of powers. Even though the Bill seeks to say that it provides a consultative forum between the two levels of governments which is the national and the county, it actually crosses the threshold and mixes the Legislature together with the Executive. If they actually wanted to provide such a forum, then the forum should be between Senators and Members of the County Assemblies (MCAs). It cannot be between Senators and governors. If such a forum is intergovernmental, it is actually provided by law which is the Summit.

Hon. Temporary Deputy Speaker, the other reason why I am opposing this Bill is that I happen to know, and I think it is hon. Jakoyo who alluded to it, and my good friend hon. Gumbo was here, that there are Members of the Senate who are very bright. In the last Parliament a few of us remained here and opposed the amendments that were sneaked in that were making the Constituencies Development Fund (CDF) really a Fund for Senators.

Hon. Temporary Deputy Speaker, I want to say that if you actually look at the way the Constitution was drafted, we did not actually notice that the Senators were not given a lot of work. I am urging the Speaker of this House and the Speaker of the Senate that we need to sit down soberly and relook at the provisions relating to the role of the Senate and together come up with more concrete roles for the Senate instead of having Senators looking for roles which are for Members of Parliament and for MCAs. This is because really if you look at this, how can we go to sit at a ward level as an *ex officio* member with MCA? I will now be taking over the role of the MCA as well?

Hon. Temporary Deputy Speaker, this is confusion galore. We are going to have drama in this country. Already, even without all these very many structures this is a

public *baraza*, if you look at what is provided here. Why can we not just say that there shall be a public *baraza* at the ward level, constituency level and the county level?

(Applause)

Hon. Temporary Deputy Speaker, I want to encourage the Senators, and I notice from even the way this Bill is drafted, the Senators have some of the brightest legal minds in this country. The Senators are some of the people who have served the longest in this country. So, you can see that what went through here is not idle. It is actually very clever because one of the things they tried to do is that when you want to put the Women Members as the vice-chairs, then you are also trying to create divide and rule between us here in the National Assembly. I want to tell our Women Members that we want to support them for the Fund that is coming here. On the advice of a woman who was a Nominated Member, I want to tell you to be focused on what you want, either you want to be the vice-chair and be glorious or you want money to serve the people. If I were you, I would go for the money to work for the people. I will support you 100 per cent when that money comes here, that the women have a similar amount and if the Senators want, we will support them to have some little funds so that they are not idle.

Hon. Members: No.

Hon. (Ms.) Odhiambo-Mabona: However, hon. Temporary Deputy Speaker, that is for me. I know the other Members may not want to support them but we really need to rethink the role of Senators because they do not have much. I know that it is not every day that they will be impeaching governors. It comes once in a long while because the governors are now also very alert and they have been doing their work well. Instead of waiting to impeach governors, I would want to urge them very soberly that we sit down together and help them reformulate.

Hon. Temporary Deputy Speaker, I know that the Inter-Governmental Relations Act already provides a forum which even sometimes Members do not use. A lot of these meetings have to do with personal relations. I know the Members from Homa Bay County have spoken. I chair the Parliamentary Group for Homa Bay County. We sit with our governor very frequently, not that he does excellent work but where we think he is going wrong, we tell him and we warn him. We give him the provisions of the law we will use if we think he is going wrong.

Hon. Kabando wa Kabando: Thank you, hon. Temporary Deputy Speaker for the permission to contribute. I am very satisfied by the trend that seems to be taking shape in this House.

Clearly, and I say this because I have done consultations with some prominent Senators in this country including my Senator, there were no adequate consultations within the Senate before submission of this Bill. There is a rush and it is agreeable that governors are running amok, but there are basic and requisite steps that we need to take so that we check the excesses that are being experienced. I think we should start by blaming the Executive without any fear. Some of the concessions that were made by the Executive including the President were ill advised in the beginning. We listened to very many things quickly and gave a lot of ground.

For instance, Clause 4 of the County Governments Act, 2012 clearly states the duties of the county governments. This includes the establishment or coming up with a flag, emblems and names for the county. This is the case and yet we have allowed the law to be broken and impunity to be perpetrated across the country. We are now coming here to move amendments to this law and the other law because of the failure to comply with the existing laws. The county governments have that responsibility. Having their flag should have been contemplated and seen because that law exists.

(Hon. Kaluma made gestures)

Hon. Temporary Deputy Speaker, let us agree that although these mistakes exist, there are some very basic fallacies within this Bill. For instance, you say in one section that the County Women---

The Temporary Deputy Speaker (Hon. Cheboi): Order, hon. Kabandowa Kabando! I want to encourage hon. Members to stop engaging in sign language with strangers. That is totally out of order, hon. Member for Homa Bay Town.

Hon. Kabandowa Kabando: Hon. Temporary Deputy Speaker, I know that is not meant for me because I know I behave very well in the House. For instance, a contradiction that---

Hon. Kaluma: On a point of order, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): What is your point of order, hon. Kaluma? You know what you have just done.

Hon. Kaluma: Hon. Temporary Deputy Speaker, there is a Member of Parliament seated at the Galleries and I was seeking how we can bring her to take her place. She is not a stranger really.

The Temporary Deputy Speaker (Hon. Cheboi): That is a sideshow!

Hon. Kabandowa Kabando: Hon. Temporary Deputy Speaker, that is administrative and we are legislating here. Let us not eat into my time or anybody else's time.

In one section you say that the Woman Member of Parliament shall be the vice-chair of this Board. In the same Bill you say that in their first meeting they shall elect a vice-chair. It is a basic contradiction.

Thirdly, the Transitional Authority---

Hon. Lessonet: On a point of order, hon. Temporary Deputy Speaker. I request that you put the Question because we have the requisite number so that we can dispose of this matter.

The Temporary Deputy Speaker (Hon. Cheboi): That is entirely up to you. First, we will allow hon. Kabando to finalise his contribution because he has about a minute and then we will make the decision as a House.

Hon. Kabandowa Kabando: Hon. Temporary Deputy Speaker, please add me one minute because my time has been eaten by these points of order.

I want to finish by making three points; we need to continue playing oversight role and as much as we agree that there are mistakes, the oversight role of the Senators and the National Assembly is very key.

Secondly, we do not need to start degenerating in our responsibilities as national leaders. Can you imagine a situation where you are sitting in the National Assembly and in the Senate and then you are required by this Bill to be an *ex-officio* at the ward level and as a Senator, you are required to go and sit at the constituency level.

(Applause)

The Temporary Deputy Speaker (Hon. Cheboi): Your time is over. Before I proceed in that direction, first, let me know whether the Chair of the Committee is in because we would not want to make a ruling in vain, or if there are any instructions as to who else would move on his behalf. Is there anybody? I have to be very clear. If the Mover is not here, he must have left specific instructions with a particular Member. Is there any Member? Hon. Member for OlJorok, can you confirm that if hon. Chepkong'a was here, he would confirm that he has given you instructions?

Hon. Waiganjo: Hon. Temporary Deputy Speaker, it is true. The hon. Chair for the Committee on Justice and Legal Affairs left instructions that I should reply.

The Temporary Deputy Speaker (Hon. Cheboi): It is entirely up to you. The Question I will put is that the Mover be called upon to reply.

(Question, that the Mover be now called upon to reply, put and agreed to)

Hon. Waiganjo: Hon. Temporary Deputy Speaker, I wish to most sincerely thank the Members of this august House.

Hon. Kipyegon: On a point of order, hon. Temporary Deputy Speaker. I just wanted to seek your guidance. If my memory serves me right, I remember hon. Waiganjo had opposed this Bill. So, I do not know if it is in order for him to reply yet he had opposed. I seek your guidance.

The Temporary Deputy Speaker (Hon. Cheboi): First, let us agree that we are hon. Members and when we give our word, we will take it. The first thing I just wanted to confirm is that he has instructions from the Chair of that Committee and I am sure you can confirm that the Member for OlJorok is a Member of the Justice and Legal Affairs Committee, which you are also a Member and which I am also a Member. So, I think he is perfectly in order. So, I rule that he has the right to proceed and reply.

Hon. Waiganjo: Hon. Temporary Deputy Speaker, for purposes of the record, unless hon. Ng'eno was not in the House---

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Ng'eno, if you continue behaving in a disorderly manner, I might have to crack the whip.

Hon. Waiganjo: Hon. Temporary Deputy Speaker, unless hon. Ng'eno was not in the House, I supported this Bill. I wish to most sincerely thank the Members who have contributed to this Bill. There has been a very vibrant debate on both sides of the House. It is a Bill that has brought up a lot of constitutional issues, but the fact of the matter is that the Speaker in his wisdom had already ruled that the Bill was constitutional and that they had consented that this matter comes before the House, between him and the Speaker of the Senate.

It is clear that Members felt that this was a necessary Bill because there was need for a forum in which governors would consult with elected Members of various constituencies. It has been noted that there is suspicion between the Members of this House and the Members of the Senate. Of course, we have seen various contradictions like Sections 91(a)(1) and 91(a)(5), which can be cured by amendments. The Members have also expressed genuine fears on the CDF and the taxation by the county governors on their citizenry or their constituents.

Therefore, I urge hon. Members of this House to objectively look into the merits of this particular Bill so as to make an informed decision and decide whether they want to lock themselves out of a consultative forum within their counties. They should realize and determine whether they will be able to oversee something they are not aware of because if they are out of these boards, then it will be difficult to know what is going on there.

Hon. Temporary Deputy Speaker, hon. Members expressed optimism that it will be easier for hon. Members to sit in the boards and bring some balance in the development of counties in as much as their constituencies are concerned.

With those few remarks, I beg to move.

(Applause)

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, I want you to be very careful and listen to the Question.

(Question put and negatived)

Order! Order, hon. Members! I can see the Chair of the Public Accounts Committee (PAC).

MOTION

ADOPTION OF PAC REPORTS

Hon. Ababu: Hon. Temporary Deputy Speaker, I beg to move the following Motion:-

THAT, this House adopts the Reports of the Public Accounts Committee on the Government of Kenya Accounts for the Financial Years 2008/2009 and 2009/2010 laid on the Table of the House on Wednesday, November 13, 2013.

Hon. Temporary Deputy Speaker maybe, you need to remind hon. Members that the House is still in session.

(Several hon. Members withdrew from the Chamber)

The Temporary Deputy Speaker (Hon. Cheboi): Order, hon. Members. As you exit, you should do so quietly.

Hon. Ababu: Hon. Temporary Deputy Speaker, it is my pleasure, on behalf of the PAC of this august House, to present to the House reports of the audited accounts for the Financial Years, 2008/2009 and 2009/2010 for adoption.

Let me bring to the attention of the House that these two reports were laid on the Table of this House around January 2013; just before the House was dissolved ahead of the last elections. But because of time, they were not debated. These are the reports that had already been laid on the Table of this House, but they are brought before this House afresh because the initial laying on the Table had lapsed.

What I am just about to do on behalf of PAC is historic in its own way, because this is the first time this House will have opportunity to consider two reports from two consecutive financial years at the same time. We do this because of the urgency and necessity for this House to dispense of with the backlog of these reports to allow this House to be up to date with the work of the PAC that we are currently seized of.

Hon. Temporary Deputy Speaker, this House will take note of the fact that division of revenue, in accordance with the Constitution, is supposed to be based on audited accounts approved by this House. The audited accounts will help in determining the share of national revenue to be shared between the National Government and the county governments.

It is, therefore, of critical significance to ensure that we are up to date.

*(Hon. (Ms.) Nyasuna and hon.
(Ms.) Odhiambo-Mabona consulted loudly)*

The Temporary Deputy Speaker (Hon. Cheboi): Order! Order, hon. Members! Hon. (Ms.) Nyasuna and hon. (Ms.) Odhiambo-Mabona---

Hon. Ababu: They are in a jolly mood, hon. Temporary Deputy Speaker. Therefore, the PAC wishes to bring to the attention of this august House that it is essential that we bring up to date, as much as possible, the audited accounts approved by this House because that is the basis upon which the national Government will determine the division of revenue between the national Government and the county governments. Therefore, it is my pleasure to present to this House these two Reports on the audited accounts for the Financial Years 2008/2009 and 2009/2010 for consideration of the House.

On behalf of the Public Accounts Committee and pursuant to the provisions of Standing Order No. 181(3), it is my pleasant privilege and pleasure to present to this House the Report of the Public Accounts Committee's findings of the Government expenditure for the Financial Years 2008/2009 and 2009/2010. Let me put it on record that the mandate of the Public Accounts Committee is derived from Standing Order No. 187(1) and it states as follows:-

“There shall be a select committee to be designated the Public Accounts Committee for the examination of the accounts showing the appropriations of the sum voted by the House to meet the public expenditure and of such other accounts laid before the House as the Committee may think fit”.

The main objective of the Committee is to ensure that public funds are well utilized and the public realizes value for money in all Government expenditure. The basis

of the Committee's execution of its mandate is annual and specific audit reports prepared by the Auditor-General.

Hon. Temporary Deputy Speaker, Sir, at the time when these two Reports were prepared, the following were the members of this Committee, and allow me this opportunity to recognize and appreciate the then members of the Public Accounts Committee that prepared these two Reports. They were:- The hon. (Dr.) Bonnie Khalwale, M.P. - Chair; The hon. (Dr.) Julius Kones M.P. - Vice-Chair; The hon. Martha Karua, M.P.; The hon. Daniel Muoki, M.P; The hon. Charles Onyancha, M.P.; the hon. Alex Mwiru, M.P.; The hon. Boaz Kaino, M.P.; The hon. Francis Chachu Ganya, M.P.; the hon. (Dr.) Nuh Nassir Abdi, M.P.; the hon. David Ngugi, M.P. and the hon. Edick Anyanga, M.P. Of course, you will notice that because of the natural attrition that afflicts the political scene, several of these Members are no longer Members of this House. Others have since moved on to do other duties like the hon. (Dr.) Khalwale who is now the Senator for Kakamega County. Hon. (Dr.) Nuh is the Speaker of the County Assembly of Tana River. It will also be noted that the Committee has new membership as approved by this House in May last year.

The Standing Orders mandate the membership of a Public Accounts Committee to serve a period of three calendar years. The Committee constituted thereafter, serves for the remainder of the parliamentary term. Having been constituted in June, 2009, the then membership of this Committee that I have just mentioned got the benefit of serving for the remainder of the term of the Tenth Parliament. Therefore, the Committee that prepared this report indeed served as the Public Accounts Committee of the Tenth Parliament for the whole duration of the Tenth Parliament.

Hon. Temporary Deputy Speakers, Sir, the Committee noted at that time that it faced a number of challenges in the execution of its mandate and those challenges included failure to raise quorum in time and the inability of some members to be present at sittings till conclusion of business. This was largely owing to the fact that all the Committee Members served in other Committees and had to attend business of those Committees alongside the business of the PAC, which, of course, has direct implication on continuation of membership of any Member in any particular Committee; which is based on regularity of attendance.

Hon. Temporary Deputy Speaker, the Committee did express its sincere hope that the challenges experienced by the Committee at that time would be addressed during the review of the Standing Orders, which was going on at that time. Indeed, we have attempted to address those challenges by especially reducing the number of Committees in which a particular Member can serve in.

I have already applauded the contribution of the then Members of the PAC but let me also take this opportunity to applaud the current Members of the PAC, who have made it absolutely clear that it is important to prioritise the finalisation of these Reports, so that we can create space for the accounts of Financial Year 2010/2011, which the PAC is currently working on. Allow me to recognise the Members of the PAC who are in the House right now. They are hon. Manje, hon. Bett, hon. Rop and hon. Junet. Those hon. Members, amongst other Members of the Committee, have worked tirelessly around the clock to attempt to bring the PAC Reports up to date for the purposes that I have already explained.

Hon. Temporary Deputy Speaker, you will notice that I will be referring to both Reports concurrently as I present both. In preparing these two Reports, the then PAC held 74 sittings for purposes of the accounts for Financial Year 2008/2009 and a total of 66 sittings for purposes of the accounts for Financial Year 2009/2010, which brings this to a total of 140 sittings for purposes of the two Reports. During the review, the Committee interrogated Accounting Officers on audit queries raised by the Auditor-General.

The Committee also did, as is tradition, meet the Big Five, namely; the Attorney-General, the Head of the Public Service and Secretary to the Cabinet; the Permanent Secretaries, Ministry of Finance and Ministry of State for Public Service; and the Auditor-General to discuss cross-cutting issues amongst Ministries and Departments as the issues identified were the same as previously discussed with them in respect of accounts for the previous financial years. All minutes of the Committee's sittings on evidence taken are attached to both Reports.

Hon. Temporary Deputy Speaker, during its sessions, the Committee took both oral and documentary evidence. It also made fact finding tours, where necessary, to collect additional evidence. The fact finding tours, for purposes of the latest Report, which is on the accounts of the Financial Year 2009/2010, were made to a project for the construction of the official residence of the Vice-President of the Republic of Kenya in Karen, Nairobi; a project which has since been completed and put to use. The Committee also visited a project for the upgrading of facilities at Othaya Sub-district Hospital in Othaya, Nyeri. That was for the accounts of the Financial Year 2009/2010. For the previous financial year, 2008/2009, the Committee visited three projects as follows:-

- (i) a project for construction of police posts by the former Office of the President and Ministry of State for Provincial Administration and Internal Security, in Nakuru area;
- (ii) various stalled and ongoing projects at the Kenya Industrial Training Institute (KITI) in Nakuru by the former Ministry of Industrialisation; and,
- (iii) land purchase by the former Ministry of Information and Communications for implementation of various Vision 2030 projects, which include ICT, Science, Industrial and SME parks at Konza in Machakos, popularly known as the "Konza City Project".

Hon. Temporary Deputy Speaker, while taking evidence for both Reports, the Committee was guided by the existing procedures and modalities of operations of the National Assembly derived from the Constitution of the Republic of Kenya, Acts of Parliament, the Parliamentary Standing Orders, conventions, common practices and rulings and directives of the Chair. Article 226(5) of the Constitution of Kenya, 2010 stipulates as follows:-

"226(5) If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not."

COMMUNICATION FROM THE CHAIR

MEDIATION PROCEDURE ON SENATE BILL

The Temporary Deputy Speaker (Hon. Cheboi): Order! Order, hon. Namwamba! You will continue when debate on this Motion resumes

Hon. Members, I have a short Communication on Order No.10, which we have just concluded. You should be notified, and you should look at Standing Order No.149 on how to transact business like the one that we have just concluded. Standing Order No.149(ii) states“ A Bill shall be referred to the mediation committee whenever the Assembly-

(ii) rejects a Motion that a Bill which originated in the Senate be read a Second or Third Time.

The Speakers of both Houses shall set up a mediation committee to address that particular issue. That is something which has to come out very clearly. I am sure that you are familiar with that provision.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, it is now 7.00 pm, time for us to end our business today. The House is, therefore, adjourned until Tuesday, 11th March, 2014 at 2.30 pm.

The House rose at 7.00 p.m.