

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 11<sup>th</sup> February, 2016

*The House met at the Senate Chambers,  
Parliament Building, at 2.30 p.m.*

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

### PRAYERS

### PAPERS LAID

**Sen. Mutula Kilonzo Jnr:** Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Thursday 11<sup>th</sup> February, 2016:-

#### ANNUAL REPORT ON THE STATE OF THE JUDICIARY

Annual Report on the State of the Judiciary and Administration of Justice 2013/2014.

#### END OF TERM REPORT BY THE CIC

The end of term report by the Commission for the Implementation of the Constitution

*(Sen. Mutula Kilonzo Jnr. laid the documents on the Table)*

**The Speaker** (Hon. Ethuro): Let us move on to the next Order.

*(Sen. Mositet stood up in his place)*

Order, Sen. Mositet! You should have indicated interest much earlier.  
Proceed.

**Sen. Mositet:** Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Thursday 11<sup>th</sup> February, 2016:-

CRA RECOMMENDATIONS ON THE REVENUE SHARING  
FORMULA FOR THE 2017/2017 FINANCIAL YEAR

Commission on Revenue Allocation Recommendation on the Sharing of Revenue raised nationally between the national and county governments for the Financial Year 2016/2017.

COUNTY BUDGET IMPLEMENTATION REVIEW REPORT

County Budget Implementation Review Report – First Quarter of the year 2015/2016.

*(Sen. Mositet laid the documents on the Table)*

**The Speaker** (Hon. Ethuro): Let us get back to Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr:** Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Thursday 11<sup>th</sup> February, 2016:-

QUARTERLY REPORT FOR THE CIC: JULY – SEPTEMBER 2015

Quarterly Report for the Commission for the Implementation of the Constitution for the period July – September 2015.

QUARTERLY REPORT FOR THE CIC: OCTOBER - DECEMBER 2015

Quarterly Report for the Commission for the Implementation of the Constitution for the period October-December 2015.

*(Sen. Mutula Kilonzo Jnr. laid the documents on the Table)*

**STATEMENTS**

**Sen. Musila:** Mr. Speaker, Sir, I want to raise matters concerning Statements which I sought last year precisely in June, 2015.

KILLINGS IN KITUI COUNTY

The first Statement was on the security situation along the Kitui Tana-River Border. The Chairperson of the Committee did his best and finally they said that they wanted the Cabinet Secretary for Interior and Coordination of National Government to come and address the matter. This was to be done on 3<sup>rd</sup> November, 2015. As I reported to the House, the Cabinet Secretary did not show up. However, that matter ended there

despite the fact that we waited for him for long and he did not show up. There was no follow up of him coming again.

I rise on this point of order to demand that the Cabinet Secretary for Interior and Coordination of National Government comes to a Committee of the whole House as we had suggested before and addresses the issue of the security situation along the Kitui-Tana River Border.

#### STATUS OF CASH TRANSFER PROGRAMME

Secondly, as you are aware, I raised the matter of cash transfers for the elderly. We went as far as the Cabinet Secretary coming here and addressing us on the issue. However, there were matters that she could not compressively respond to. She undertook to bring further information. To date, this has not been forthcoming.

Since June, these two Statements which I made on behalf of Kenyans because they cut across the whole country have not been concluded. May I ask the committees responsible; the Committee on National Security and Foreign Relations and the Committee on Labour and Social Welfare to see to it that these two matters are concluded as soon as possible for the benefit of the people of this country?

**The Speaker** (Hon. Ethuro): Order, Sen. Musila. I am afraid the committees cannot help you at this stage. You need to re-file your Statement. All Statements for last year expired.

Yes, Sen. Hassan.

**Sen. Abdirahman:** Mr. Speaker, Sir, I entirely agree with you that such kind of businesses lapse. However, ordinarily, when chairpersons of the various committees undertake to provide statements within a stipulated time, they should show due diligence.

**The Speaker** (Hon. Ethuro): Order, Sen. Abdirahman.

**Sen. Abdirahman:** It is an observation, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Order, Senator. You make an observation on a matter that is alive. This matter is dead and buried.

**Sen. Abdirahman:** Yes, but I am doing this for the future.

**The Speaker** (Hon. Ethuro): No, not on nothing.

**Sen. Abdirhaman:** They will repeat this. You will allow them to do it. The other side has consistently done this.

**The Speaker** (Hon. Ethuro): Sen. Wangari, do you have a Statement on the issue of education?

Let us move on to the next Order.

#### BILLS

**The Speaker** (Hon. Ethuro): Order, Members, Order No.8 is due for a Division.

We will skip Order Nos.8, 9 and 10 and move on to Order No.11 and then we will deal with those matters later.

*Second reading*THE EMPLOYMENT (AMENDMENT) BILL  
(SENATE BILL NO. 1 OF 2015)*(Sen. Wangari on 10.2.2016)**(Resumption of Debate interrupted on 10.2.2016)**(Bill deferred)**Second Reading*THE WATER BILL (NATIONAL ASSEMBLY BILL  
No.7 OF 2014)*(Sen. Keter on 29.10.2015)**(Resumption of Debate interrupted on 3.12.2015)**(Bill deferred)***COMMITTEE OF THE WHOLE**THE COUNTY INDUSTRIAL DEVELOPMENT  
BILL (SENATE BILL NO.7 OF 2014)*(Bill deferred)***The Speaker** (Hon. Ethuro): Let us move on to the next Order.

Senate Majority Leader, if you may proceed.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, with your kind indulgence, before I move my Motion, I request to present the Statement for next week's business.**The Speaker** (Hon. Ethuro): Proceed.**STATEMENT**BUSINESS FOR THE WEEK COMMENCING  
TUESDAY 16<sup>TH</sup>, FEBRUARY, 2016**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir. I wish to present the Business of the Senate for the coming week as follows:-

On Tuesday, there shall be a Rules and Business Committee (RBC) meeting at noon to schedule the Business of the week and, subject to the decisions of that meeting, the Senate is expected to discuss various Bills, especially the following Bills which are at the Committee stage, that is, Committee of the Whole:-

1. The HIV & AIDS Prevention and Control Amendment Bill (Senate Bill No.4 of 2014)
2. The Reproductive and Child Health Care Rights Bill (Senate Bill No.17 of 2014)
3. The Parliamentary Powers and Privileges Bill (Senate Bill No.15 of 2014)
4. The County Assemblies Services Bill (Senate Bill No.27 of 2014)
5. The Public Appointments County Assembly Approval Bill (Senate Bill No.20 of 2014)

On Wednesday 17<sup>th</sup> February, 2016, the Senate is expected to conclude Business that will not be concluded at the Tuesday Sitting. We will concentrate, as usual, on the Bills that are at various stages. On Thursday 18<sup>th</sup> February, 2016, the Senate will deliberate on Motions and any other Business that may be scheduled by the RBC.

May I take this opportunity to welcome back colleagues from the Christmas recess and wish them a fruitful Fourth Session of the Eleventh Parliament. May I also thank them for the great work and commitment they have shown to the Business of this House and appeal to them to work harder this Session even as we move towards the final stages of the Eleventh Parliament.

I hereby lay this Statement on the Table of the Senate. I thank you.

*(Sen. (Prof.) Kindiki laid the document on the Table)*

**The Speaker** (Hon. Ethuro): Proceed to Order No.11.

### PROCEDURAL MOTIONS

#### APPOINTMENT OF SEN. SANG TO THE SPEAKER'S PANEL

**The Senate Leader of Majority** (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir for indulging me. I beg to move the following Motion.

THAT, pursuant to Standing Order 16, the Senate approves the nomination of Sen. Stephen Sang to replace Sen. Kipchumba Murkomen, as a member of the Chairpersons' Panel and to further preside over the Senate in the absence of the Speaker and the Deputy Speaker pursuant to Article 107 (1) (c) of the Constitution and Standing Order 18 of the Senate.

This is a straight-forward Motion in the sense that because of the changes that happened last year with the departure of one of our colleagues, Sen. Charles Keter, we have had to make a few adjustments. Sen. Murkomen has since been appointed Deputy Majority Leader and the Jubilee Alliance Party felt that because of that responsibility, we would recommend Sen. Sang to take up the position in the chairperson's panel.

Sen. Sang is a distinguished Member of this House. He has sat on that chair once or twice in the previous session. The feeling from colleagues on both sides of the House is that he did a good job. However, it is the mandate of this House to make a decision on this proposal. Therefore, without much ado, I beg to move and request the Deputy Leader of Minority, Sen. Abdirahman to second this Motion.

**Sen. Abdirahman:** Mr. Speaker, Sir, we are alive to the fact that there were changes on the other side. However, this particular one regarding Sen. Sang belongs to the entire House. I personally know Sen. Sang as a very competent Senator, though young in terms of his political career. Given the opportunity, he will do very well.

I honestly want to congratulate him for the nomination on the other side and say we expect a lot from him. This House has worked in a bi-partisan manner on issues that are of interest to all of us.

I, therefore, support him and second the Motion.

**The Speaker** (Hon. Ethuro): Order Senators!

*(Question proposed)*

**Sen. Ongera:** Mr. Speaker, Sir, I rise to support this Motion. Sen. Sang is distinguished, eloquent and hardworking. Most of the time he stays in this House up to the rise of the House at 6.30 p.m. Therefore, I believe, given this opportunity to preside over the proceedings of the House, I am very sure he is equal and competent to the task that he will be given.

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Khalwale!

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I rise to support this Motion for two reasons. First, for once I have agreed with the Jubilee Coalition in realizing the obvious, that Sen. Sang is very competent in this House. Before I say my second reason, allow me to congratulate Sen. Murkomen for the dedication he demonstrated to the Standing Committee on Public Accounts and Investments, from which he has been removed. I wish him well as the Deputy Leader of Majority.

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! You are being irrelevant. That Motion comes in Order No.13. We are talking about the Chairperson's Panel not the County Public Accounts Committee and Investments Committee.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I was acknowledging the departing of Sen. Murkomen from the Committee, but I am well guided. My second reason why I want to agree with the Jubilee Coalition and, in fact, congratulate them, is that ordinarily, Jubilee would have waited for by-election in Kericho to be concluded before doing the re-arrangement.

This is a clear message to the people of Kericho that the Jubilee Coalition has conceded that it is Paul Sang of KANU who is going to win. I urge the people of Kericho to take a cue from this and come out in large numbers and vote for the KANU candidate, Paul Sang to come and take up the position of Sen. Keter.

I support.

**Sen Okong'o:** Mr. Speaker, Sir, let me from the onset also support this Motion, other than correcting the Senate Majority Leader for putting the horse before the cart.

However, we are now in agreement and we have the Motion here. I believe that Sen. Sang is up to the task and we wish him all the best in whatever he is going to do.

**Sen. Lonyangapuo:** Mr. Speaker, Sir, I rise to support this Motion. Sen. Sang has shown distinguished leadership in this House. I am hoping that as he comes to join the panel, he will serve with dedication and zeal the way he has always done. Further, just as the way Sen. Murkomen dedicated himself, I hope he steps in his shoes. I am sure that he is capable of doing it. I thank Sen. Murkomen for the service he showed in the panel.

I support.

**Sen. Wangari:** Mr. Speaker, Sir, I want to add my voice in supporting this Motion. I knew Sen. Sang when we were hustlers, before we were in this House. I am very pleased to see that his star is rising and I have no doubt, given that the work of this House for this year---

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. Did you hear Sen. Wangari refer to Sen. Sang as a former hustler? The meaning of a hustler in English is somebody who earns from unfair and criminal activities. Is she in order to impute improper motives against Sen. Sang? Can she withdraw and apologize for calling him a hustler?

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Khalwale, while I need to confirm the meaning of ‘hustler’, you have not said anything about Sen. Sang to contradict that description.

*(Laughter)*

What is it Sen. Kembi-Gitura?

**Sen. Kembi-Gitura:** On a point of order, Mr. Speaker, Sir. I want to disabuse Sen. (Dr.) Khalwale. The dictionary meaning of the word hustler is; “an enterprising person determined to succeed together.”

*(Sen. Khaniri stood in his place)*

**The Speaker** (Hon. Ethuro): Sen. Khaniri, you are completely out of order. Why do you think that because you wish to rise on a point of order, I should grant you and you go ahead and stand?

What is it Sen. Khaniri?

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. My good friend, the Deputy Speaker should have told us which dictionary he is quoting from. I do have a dictionary that says:-

“A hustler is a person who employs fraudulent and unscrupulous---“

**The Speaker** (Hon. Ethuro): Order, Sen. Khaniri! You are challenging Sen. Kembi-Gitura to disclose which dictionary he is quoting and then you go ahead and quote from another dictionary without saying which one.

**Sen. Khaniri:** Mr. Speaker, Sir, this is Collins Dictionary. It says that a hustler is a person who employs fraudulent and unscrupulous methods to obtain money or a swindler.

*(Laughter)*

**Sen. Ongeru:** On a point of order, Mr. Speaker, Sir. While I do not doubt what the distinguished Senator for Murang'a said and referred to what a hustler is, I also have another definition of a hustler from Wikipedia; the free encyclopaedia. Under the urban dictionary, it says:-

“A hustler is someone who knows how to get money from others, selling drugs, rolling dice, pimping and hustling.”

It goes further to say that a hustler is also a monthly pornographic magazine published in the United States.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Sen. (Eng.) Muriuki.

*(Laughter)*

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, whereas we have heard the dictionary from the distinguished Senators for Murang'a and Vihiga, the “hustler” which the distinguished Sen. Wangari was talking about is a political hustler. He is not looking for money and all that. He is looking for seats and that hustler is looking for opportunities where they are very thin and you have to maneuver your way to arrive there.

**Sen. Billow:** Mr. Speaker, Sir, we know we have to be cautious because this word has many meanings. Even the Oxford English Dictionary defines the word as “a person adept at aggressive selling.” In other words, somebody who very aggressively goes out of his way to earn a living. However, there is a connotation of involvement in illicit activities if it is used in the slang form. I am sure the honourable lady did not mean to use “hustler” in the very slang form that, that is the official meaning. It is a person trying to sell their stuff. That is basically what it is.

**Sen. Okong'o:** Mr. Speaker, Sir, our Parliament has origins and precedents from the Commonwealth. The only dictionaries which can be used in this House are those ones which have heavily borrowed from the Commonwealth. This is because our Parliament is grounded on the establishments of Commonwealth---

**The Speaker** (Hon. Ethuro): Order, Senator! Obviously, you will appreciate the point that Sen. Okong'o is trying to put across without putting it. This House operates on authenticated documentation. If you will rely on your personal handsets, Wikipedia or American slang or a practical explanation which was given by Sen. (Eng.) Muriuki about his understanding of a “hustler”, you are going nowhere. So, all the issues that you have



said, as far as I am concerned, are irrelevant, including the point of order by Sen. (Dr.) Khalwale because he did not really contradict Sen. Wangari.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, indeed, we appreciate your wisdom in ruling over a very sticky and touchy issue like this one, which would have pushed some high ranking individuals in this country into disrepute. However, would I be in order to request that you give us the true meaning of the word “hustler”?

*(Laughter)*

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Machage, the Chair has many roles and one of them is not giving definitions. It is the expectation of the Chair, the House and the Republic that all of you are well-read, conversant and knowledgeable and that you know where to get your information.

Proceed, Sen. Wangari.

**Sen. Wangari:** Thank you, Mr. Speaker, Sir. I take your cue and I will not go ahead to offer any definition of any *misamiati* or difficult words that I will use for the benefit of the ones that are asking. However, the most fundamental issue is that the work of the Senate is clearly cut out. We still have one year to go, we have our role to protect devolution and the work has to go on seamlessly. That said, I congratulate Sen. Sang on behalf of the people of Nandi County, for whom he is doing a great job, as well as this country.

At the same time, I congratulate Sen. Murkomen. I have no doubt that we will continue shining in this House as Jubilee under his leadership and we will continue offering leadership to this country.

**Sen. Abdirahman:** On a point of order, Mr. Speaker, Sir. The Office of the Speaker is an institution that takes care of all the sides irrespective of your party affiliation or Opposition. Is Sen. Wangari in order to indicate that Sen. Sang’ is going to represent only one side of this House?

**The Speaker** (Hon. Ethuro): Order, Sen. Abdirahman! You did not follow the contribution by Sen. Wangari. When she made reference to the Jubilee side shining, she was making reference to the Senate Deputy Majority Leader who is being replaced by Sen. Sang. If it was a reference to Sen. Sang, I would have agreed with you. However, you all know these positions. Where you sit as the deputy is a very partisan position. So, it was the same.

Sen. Mohamud.

**Sen. Mohamud:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. On the onset I would like to support the Motion. I know Sen. Sang is a brilliant young Senator as you have already seen what he has brought on the Floor of the House. I would like to congratulate him in advance and I know that he is equal to the task.

With those few remarks, I support the Motion.

**The Speaker** (Hon. Ethuro): Hon. Senators, let us conclude this. We have quite a number of similar procedural motions. I will, may be, give everybody a minute except the Deputy Speaker.

**Sen. Nabwala:** Thank you, Mr. Speaker, Sir. I would also like to join my colleagues in congratulating Sen. Sang, who has shown good leadership in this House. He has been part of the Inter-Parliamentary Union (IPU) delegation where he worked as a draftsman and gave us a lot of support in Geneva. I am sure he is up to the task and we should see the star on the other side rising as Sen. Wangari said.

I support.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. Sen. Sang and I have worked very well in the Committee on Legal Affairs and Human Rights – not hustling like Sen. Wangari said - and I would like to congratulate him. Now that Sen. Sang has been raising very interesting points of order where you have to make rulings, I am waiting to see how he will react to similar points of order particularly from this side.

*(Laughter)*

Mr. Speaker, Sir, now that I am on my feet, I thought this would be a tremendous opportunity for us to set precedence. Every time somebody raises an issue, we quote previous rulings either by yourself, Speaker Kaparo or any other Speaker. However, we do not have documented rulings of what you have said previously. I remember an instance where there was a quarrel as to whether you ruled one way or the other about the Constitution. Would I be in order to suggest that you set precedent as the first Speaker who has caused for the rulings to be put in digital format and available for reading by other people?

**The Speaker** (Hon. Ethuro): Excellent suggestion.

**Sen. Omondi:** Mr. Speaker, Sir, I also add my voice in support of the position given to Sen. Sang. I am sure of his capability. He is my Chairman in one of the Committees and has given equal opportunity to all Members of the Committee. I know that he will do the same in this House. I do not have any doubt in his capability; I know he will do it.

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, Sen. Sang has been on that Chair several times representing the Speaker. Therefore, he has already exhibited his capability to be a Member of the Chairperson's Panel. He has also exhibited his dedication in this House by bringing some of the Bills that have propagated and pushed the Senate to a new level. He is committed and has already demonstrated his ability. He will do well.

With those remarks, I support this Motion.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, I would also like to take this opportunity to welcome Sen. Sang to the Speaker's Panel. I am confident that he will serve competently in that panel because as my colleagues have said, he has in the past helped and presided over the Senate. The Motion is correct because it states that he joins the panel and further presides over the Senate in the absence of the Speaker and the Deputy Speaker which is exactly the role that the Speaker's Panel plays.

This Motion assumes correctly that there are moments when the Speaker and his Deputy cannot preside because of other official duties. That is why both the Constitution and the Standing Orders provide for a Panel in the Speaker's Office so that all of us can assist in the very onerous job.

Mr. Speaker, Sir, I raised the issue of the wording of that Motion which is important because sometimes towards the end of the last Session, I was in Brussels attending the ACP-EU Joint Parliamentary Assembly meetings which are statutory and happen every once so often; they are scheduled. While attending a meeting at the European Union (EU) Parliament, I remember reading media reports of this country and the glaring and blaring headline on *The Standard* newspaper was that both the Speaker and the Deputy Speaker were globetrotting; none of them was here to preside over the Senate. What it did not say - because it came from the House - is that the House was still continuing; the House was meeting, nothing was stopped because there is a Panel in the Speaker's Office.

Therefore, the business of the House was going on, and because it assumes in the Constitution and the Standing Orders that the Chair - particularly the Speaker - has very many duties to attend to both locally and internationally; it is not right in my very considered opinion for a Member to have raised an issue in the House; that the Speaker and his Deputy Speaker were globetrotting because all they needed to do was to check with your office or mine to realise that you were attending to matters of national importance to do with the Senate, and that, I was in Brussels attending to scheduled meetings which are in the calendar of the ACP-EU Joint Parliamentary Assembly to which its Committee is among the very few committees that I sit in.

Mr. Speaker, Sir, so it is important that we as Senators, in appreciation of the bipartisan role played by the Speaker as an office, to appreciate that even the Speaker, his Deputy and the Panel that helps him to do his work also has other duties just like the Senators. That is the reason why nobody raises an issue when Senator so and so is not in the House because he or she is attending to some international travel or other matters of national importance, whether locally or internationally.

So, I just thought that it is important as I welcome Sen. Sang because he will help us as a young man with a great mind. I know that he will make a lot of difference. I request my colleagues to appreciate very much that the role of the Speaker and his Panel is to be as bipartisan as possible, to serve the House as Sen. Hassan said correctly, so that the business of the House can continue.

However, at no time has the business of the House been stalled because the Speaker, his Deputy or one of the panelists is not around; that is the correction I thought is important to make so that we do not ridicule this House and the Office of the Speaker by making a statement which, in truth, is not based on any truth at all.

*(The Speaker (Hon. Ethuro) spoke off record)*

**The Speaker** (Hon. Ethuro): I hope the Senator for Kwale has taken that into account.

*(Laughter)*

*(Question put and agreed to)*

APPOINTMENT OF SEN. MURKOMEN TO THE  
STANDING COMMITTEE ON ENERGY

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to Standing Order Nos.177(3) and 179(1), the Senate approves the nomination of Sen. Onesmus Kipchumba Murkomen, by the Rules and Business Committee, to be a member of the Standing Committee on Energy to replace Sen. Charles Keter, former Senator for Kericho County.

Mr. Speaker, Sir, this Motion is related to the Motion that the Senators have just passed. I thank them for passing it. The Committee on Energy is a Standing Committee of this House. We know very well, as my brother, the Senator for Kakamega was trying to remind me, that there will be a by election and Kericho County will soon get a Senator. However, as a party, we have considered that when that happens, we will make adjustments.

Categorically, we are very confident that we will get the endorsement and support of the people of Kericho County as Jubilee to get the next Senator. In any case, Sen. (Dr.) Khalwale who is not here should know that KANU is part of the Jubilee Coalition. All the Members of KANU sit on the right side of the Speaker of the Senate, meaning that they are on the Government side. So, the issue of conceding defeat is neither here nor there but for sure, even within Jubilee, we are very sure that the next Senator for Kericho County will come from the Jubilee Alliance Party (JAP).

Mr. Speaker, Sir, having said that, I would like to add one other thing. The Committee on Energy is a Standing Committee and, therefore, the activities of the Committee have to proceed. It is important that the party balance is maintained and the work of the Committee is not hampered by the absence of a Member. So, I plead with hon. Senators to pass this Motion.

Without much ado, I beg to move. I request the Deputy Leader of Minority to second.

**Sen. Abdirahman:** Mr. Speaker, Sir, I wish to support the nomination of Sen. Murkomen as a Member of the Committee on Energy. Traditionally, committees require regular attendance. Some of our Members on the other side are not known to pay attention because they have been moving around the country. I hope that business has stopped.

I would like to comment on the by-elections. The KANU candidate is not favoured as opposed to what my brother on the other side is saying but I personally believe he will win. The new Senator who may be Hon. Sang, whom I very well know is likely to come here although he is not your preferred candidate.

I second the nomination of Sen. Murkomen as a Member of the Committee on Energy.

*(Question proposed)*

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, my leader has put it correctly that we are in the Government; that is, the Jubilee Coalition and not the Jubilee party. I give credit to this side of the House because of the competition that we allow on our side which is very healthy. We are expecting the same to happen on the other side of the House.

I want to oppose this Motion for the reasons that Sen. Murkomen has just taken the position of Deputy Leader of Majority and at no time did we say that when you are the Deputy Leader of Majority you also become a Member of the Committee on Energy. This has to be delinked. It has to be fully delinked so that my leader can do the arrangement well. It should not follow. I expected somebody like Sen. Wamatangi or Sen. Haji. Why should Sen. Murkomen migrate to where the other one was sitting? I have also learnt that he has migrated from his spacious office to the other one.

I oppose this one by saying that let Sen. Murkomen continue where he was. He was doing very well in the previous Committee and I am told that it is going to come later. It may be better that we do not approve it now but allow somebody else.

**Sen. Okong'o:** Mr. Speaker, Sir, let me support this Motion with one reason in mind. The nation of Kenya is very much interested to know the status of oil exploration. Now that the former Senator for Kericho is now the Cabinet Secretary for Energy, and now his nemesis, Sen. Murkomen would be sitting in the Committee for Energy, I am going to come with many questions on the status of exploration. I want to support this Motion so that I will be closely following up with Sen. Murkomen to give Kenyans the answers they need on the exploration of oil.

With those few remarks, I beg to support.

**Sen. Ong'era:** Mr. Speaker, Sir, I also rise to support this Motion. I do not want to lift the veil of Jubilee and know the reason why Sen. Murkomen has taken over from Sen. Keter, but I think Sen. (Prof.) Lonyangapuo has valid reasons in what he is expressing. Be it as it is, I do not want to lift that veil because that is a matter for the Jubilee Coalition. However, Sen. Murkomen is a distinguished Senator in this House and has served as the Chairman of the Committee on Devolution and he has served us very well. He has also been the Chair of the Speaker's Panel, a job that he did well also. I think that if he goes to the Committee on Energy, he is going to do a good job. We hope that he will bring for us concrete reasons on what the Ministry for Energy is doing in regard to the exploration of oil.

**Sen. Bule:** Mr. Speaker, Sir, I stand here on behalf of my able county; Tana River, which is one of the best in Kenya. The decision made by the Rules and Business Committee is a wise one and we have to respect it. In fact, we have faith in them.

Sen. Murkomen is one of the Senators in the House who is able to perform. We have hope that he can do better when he works with the Cabinet Secretary for Energy. I concur with what Sen. Okong'o has said. He can do the best that can be done. So, let us forgive and forego. People are thinking that it is a party issue but I think Sen. Murkomen can do this job well and I support him.

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

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. Sen. Bule has asked this House to “forgive and forego”. Could he enlighten us on what he is supposed to forgive?

**Sen. Bule:** Mr. Speaker, Sir, I am saying that the issue of parties and the issue of opposing any opinion proposed by the best committee – the RBC is the one that plans the business of the House.

I support the appointment of Sen. Murkomen---

**The Speaker** (Hon. Ethuro): Order, Sen. Bule! You have responded to Sen. (Dr.) Machage very well.

**Sen. Billow:** Mr. Speaker, Sir, I also rise to support the Motion. I think there is nothing wrong with this. When you take over an office, you do so completely. You should sit on the chair properly. With all due respect to my neighbour here, I think Sen. Murkomen deserves to inherit all that pertains to that seat of the deputy majority leader. This should not only affect the membership of the Committee on Energy but everything that comes with it.

I strongly support.

**The Speaker** (Hon. Ethuro): I now call upon the Mover to reply.

**The Senate Majority Leader** (Sen. (Prof.) Lonyangapuo): Mr. Speaker, Sir, I thank colleagues who have supported this Motion and for the debate.

I beg to move.

*(Question put and agreed to)*

#### APPOINTMENT OF SENATORS TO VARIOUS SESSIONAL COMMITTEES

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to move:-

THAT, pursuant to Standing Order Nos. 177, 179 and 210, the Senate approves the following Senators nominated by the Rules and Business Committee to serve in the respective Sessional Committees as indicated below:-

#### A. COUNTY PUBLIC ACCOUNTS AND INVESTMENTS COMMITTEE

1. Sen. Wamatangi Kimani
2. Sen. Stephen Ole Ntutu
3. Sen. (Eng.) Karue Muriuki
4. Sen. (Prof.) John Lonyangapuo
5. Sen. Wangari Martha
6. Sen. (Dr.) Boni Khalwale
7. Sen. Omar Hassan
8. Sen. Amos Sitswila Wako
9. Sen. (Prof.) Anyang'-Nyong'o
10. Sen. Kennedy Mong'are Okong'o
11. Sen. George Khaniri

**B. COMMITTEE ON DEVOLVED GOVERNMENT**

1. Sen. Kipchumba Murkomen
2. Sen. Lesuuda Naisula
3. Sen. Billow Kerrow
4. Sen. Beatrice Elachi
5. Sen. (Prof.) Wilfred Lesan
6. Sen. Amos Sitswila Wako
7. Sen. Janet Ong'era
8. Sen. Omar Hassan
9. Sen. Henry Tiole Ndiema

**C. COMMITTEE ON IMPLEMENTATION**

1. Sen. Haji Mohammed Yusuf
2. Sen. Bule A. Ali
3. Sen. Liza Chelule
4. Sen. Mbura Emma Gertrude
5. Sen. (Dr.) Godfrey Gitahi Kariuki
6. Sen. Ali Hassan Abdirahman
7. Sen. James Orengo
8. Sen. Muthama Johnson
9. Sen. Nyongesa Kanainza Daisy

**D. COMMITTEE ON DELEGATED LEGISLATION**

1. Sen. Stephen Sang
2. Sen. Joy Gwendu
3. Sen. Hosea Onchwang'i
4. Sen. Mbura Emma Gertrude
5. Sen. Daniel Karaba
6. Sen. Stewart Madzayo
7. Sen. Judith Sijeny
8. Sen. David Musila
9. Sen. Godliver Nanjira Omondi

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

*[The Deputy Speaker (Sen. Kembi-Gitura) took the Chair]*

Hon. Senators, as you are aware, at the beginning of every Session, we reconstitute Sessional Committees. It is, therefore, on this basis that the RBC recommends to this House the reconstitution of our committees. We have retained the

same membership as much as possible to allow for continuity mainly and ensure that committees are not disrupted in the fourth and second last Session of this Parliament. Therefore, we have endeavoured to as much as possible remain constant in terms of membership. There have been very slight changes occasioned by the departure of the Senator for Kericho County. Other than that, we felt that Members should as much as possible be allowed to continue with the good work that they have been doing.

I take this opportunity to thank each and every Senator for the great job that we have done through our Committees. I thank both the Members of the majority and minority parties because we have seen Senate Committees go to visit the remotest part of Kenya. The Senate has set a precedent in terms of being a grassroot and countryside based House. We have reached as many counties as possible.

I remember last year, there are some Committees that went to Tana River County while others went to Turkana County, where our Speaker comes from. I remember one of our colleagues, Sen. Hassan Omar had to borrow an oversized tie to be allowed entry into the County Assembly of Turkana because he had no tie as usual. He normally carries one in the pocket but I think he must have lost it somewhere in the flight in between Nairobi and Lodwar.

Mr. Deputy Speaker, Sir, our committees have done a good job. A couple of weeks ago, I saw that one of our committees was in Kisumu. Another committee also visited Siaya County. It is very encouraging to see the Senate engaging with the counties at that level. I am very grateful for the commitment that Senators have shown to the work in the Committees. I do not want to take it for granted. I know that I am speaking on behalf of my brother, the Senate Minority Leader, when I say that we are very happy. We urge colleagues to work even harder during this Session. The kind of output that was read to us by the Speaker on Tuesday in his Communication; 33 Bills and many Motions that have been dealt with at the Senate. Many of the Bills and Motions originated from the work of Committees either by the whole Committee or individual Members of Committees with the blessing of other Members.

I hope that once the House endorses or passes these reconstituted Committees, through your office and the Office of the Clerk, they will be facilitated as soon as possible to elect their Chairpersons and Vice Chairpersons to begin their work immediately or literally hit the ground running.

Without much ado, I beg to move. I have been working with the Senate Deputy Minority Leader but the Senate Minority Leader is here so I do not know who to ask to second this Motion.

I request the Senate Deputy Minority Leader, Sen. Abdirahman, to second this Motion.

**Sen. Abdirahman:** Mr. Deputy Speaker, Sir, let me inform my brother on the other side that there is never a vacuum on this side. If I walk out, you will find my leader here.

I stand to second this Motion and agree with the Senate Majority Leader that for purposes of consistency, it is important to retain membership of such Committees.

On Tuesday, we passed the names of the Members of the Rules and Business Committee. It is important for people to carry forward and complete that unfinished



business. A number of these Sessional Committees have done a lot of the county visits and I am sure that they have a lot of work to do with the county assemblies and the executive. Therefore, it is important for us to give them more time to do what their mandate entitles them to. Now that we are in the Fourth Session, it would be good to take stock at the county level to see much of what has been achieved.

I beg to second this Motion.

*(Question proposed)*

**Sen. Murkomen:** Thank you Mr. Deputy Speaker, Sir. I would like to thank the Majority Leader, the Rules and Business Committee (RBC) and the Senate for approving my nomination to sit in the Energy Committee. When I came in, I was not quite sure what exactly was going on, only to be told that that was what the business of this afternoon was. I appreciate.

Mr. Deputy Speaker, Sir, I want to also say that I concur with what the Majority and the Deputy Minority Leaders said about the need for continuity. It is good to remind ourselves that this is the only one full calendar year we are going to serve in this Senate because in the next session, half way through next year, we will be going to elections. This is the year for us to consolidate the gains we have achieved as Senate and it is important that the Members who have been sitting in these various committees have an opportunity to consolidate the work they have been doing.

If I may use by way of an example, having served in the last three years as the Chair of Devolved Government Committee, a position which I am not seeking going forward, we had gone through so many issues, we had planned for things that we needed to accomplish, there are counties we had visited, there was a structure of the things we wanted to audit in those counties and it helps when you have committee Members who understand what was going on, to continue that business from where we left and to ensure that we try to consolidate those gains.

Mr. Deputy Speaker, Sir, I want to say that I know we have gone through various challenges as a House. This year, we also need to pull our socks in as far as monitoring the affairs of our counties is concerned. Soon, the Division of Revenue Bill and the Allocation of Revenue Bill will be brought to this House. One of the critical issues is to ask ourselves; having funded our counties to the tune of every county getting at least Kshs10 billion in the last three years, what gains have our people achieved?

These committees, particularly the County Public Accounts Committee and the Committee on Devolved Government have a critical role in overseeing inter-governmental relations and also ensuring that our resources are used prudently by the county governments.

Mr. Deputy Speaker, Sir, this is important for us now. In fact, my advice to the County Public Accounts Committee is that they must not be bogged down by mundane issues. They must look at the critical issues related to use of our funds. There are worries. Somebody stopped me the other day and said that if my county has not done what they ought to do for the last three years, what miracle will they do in this one year? I said, perhaps, miracles will happen.

The fear that person had was that, now that the allocation of money is going to go higher, their fear was that it is possible that that money may be misused particularly in an election year. Remember next year's budget will be very critical because it is being implemented by people who are facing threats of re-election or failure to be re-elected.

Mr. Deputy Speaker, Sir, we must continue being alert. If you can notice from this list, I used to be in the County Public Accounts Committee and I am no longer a Member of that Committee but I wish the best for the Senators who are there. I can see they are men and women of passion who can ensure that our counties are held accountable in so far as use of resources is concerned. I think we have continued to work in a bi-partisan manner as a House when it comes to matters related to our counties.

There might be differences of political opinions on other issues but in so far as our counties are concerned, we have always worked as a team and I believe that this Committee is going to work as a team. I wish them the very best and I look forward to a very fruitful year. Those who are coming to serve in the leadership of these committees, even as we go for elections, should continue steering the committees and the House in the right direction.

I support.

**Sen. (Dr.) Machage:** Thank you Mr. Deputy Speaker, Sir. Whereas I do support the Motion, I am a bit worried about the precedent that is being set on appointment of Sessional Committees. Indeed, the beginning of this term has seen appointment of Committees as they were in the last Session. The necessity of actually having new committees is to inject new minds, may be somehow alleviate and improve on performance. I am personally concerned with what we have had before in the performance of the Committee on Implementation. I really do not know what they have done with regard to the Committee on Delegated Legislation.

Mr. Deputy Speaker, Sir, this was to me an opportunity where new minds would have been injected to these committees not necessarily by denying the Members to be Members of Sessional Committees but shuffling up the Members of the four committees and having new minds in those committees. For lack of a proper English word, I would say the leadership of the Minority and the Majority Leaders were "lazy". I do not know which other word I could have used. I lack a proper word but I think that is the most sensible word to use here. These are Members of this House and they have shown their abilities in other places. I wish them well.

I support.

**Sen. Billow:** Thank you Mr. Deputy Speaker, Sir. I rise to second this Motion – I am not seconding- for a number of reasons. One has been said...

**The Deputy Speaker** (Sen. Kembi-Gitura): Are you seconding or supporting?

**Sen. Billow:** I support, Mr. Deputy Speaker, Sir for reasons that have been mentioned earlier. One is for continuity because we are almost coming towards the end of our term and I think the experience and knowledge that has been acquired by these Members is critical in steering the work of the committees.

Mr. Deputy Speaker, Sir, these committees are very important ones. The County Public Accounts Committee is the key Committee that really determines the most important mandate of this House which is oversight. This is the oversight that we are

required under Article 96 to exercise over revenues that have been allocated to county governments; that mandate is with this committee.

I want to urge those who are Members of this Committee - I can see all of them here; very able men and women - that they need to make a difference this year. It must come out clearly from this House that public funds allocated or sent to the county governments are spent for the purposes for which the Kenyan people through their representatives here voted for.

We have a serious challenge. We have seen from the number of petitions that we have received in this House and the reports by the Auditor-General, the concerns that have been expressed over the rising misappropriation, mismanagement and outright looting of public funds. There is no county which has not had challenges with regard to the management of resources. It is really a shame. We went for devolution to run away from the mess in Nairobi. With the new team now - a governor with an executive, which is like a cabinet and a county assembly elected by the people to oversight that county government - we thought there would be a difference.

Mr. Deputy Speaker, Sir, we thought that the people in those counties would actually determine their priorities for development and the resources that are sent to those counties would actually be used strictly for development and provision of services. However, what is happening from the countless number of audit reports that we have seen is a shame. We have seen in counties recruitment of cronies, cousins and relatives. We have also seen outright misappropriation of funds running into billions and poor lack of foresight.

I want to cite the example of my own county, so that I do not appear to talk about other counties only. We are spending billions in what I believe is not a priority for the people of Mandera County. The areas of priority are known in that region. You need to give people water, hospitals, medical services and so on. That is where you need to put your billions. Instead, money is spent on putting up residencies, hotels and office complexes, which can wait. We are not in a hurry to give people luxury.

You will find every now and then county executives and county assemblies going all the way to Mombasa or Narok from Mandera for meetings. This happens when there are villages which do not have access to water. We are using water bowsers to supply some water. Mothers are dying during delivery yet we are spending billions on other things. This Committee has a mandate to ensure that these things stop.

Mr. Deputy Speaker, Sir, we want to see a few people locked up, based on the recommendations of this Committee. I do not know why three years down the road no one, based on the recommendations of this Committee, has been hauled before the Office of the Director of Public Prosecutions (DPP) or any other office. I think it is time we sent a lesson very strongly that the taxpayers' money is meant to make a difference in the lives of people and not wasted.

I know that elections are approaching and many people think that the role of this Committee will be to engage in witch-hunting, it must be decisive. Even if you want to vie for the position of a governor, a Member of the National Assembly or any other office and you are a Member of this Committee, you have a mandate while you are in this Committee. With all due respect to the Members, they must exercise fairness, but carry

out their mandate as long as they are in that office, to ensure that these problems are addressed.

The Committee on Devolved Government is critical and many critical aspects of devolution are still pending, including the transfer of functions. Three years is the period that the law has given to transfer all the functions in the Fourth Schedule. That still has not been done and there is a lot of work cut out for this Committee; that needs to come out very strongly.

Mr. Deputy Speaker, Sir, we have passed several Motions in this House. From the day we passed some of them we have not heard anything. We have also passed Bills and resolutions. We need to follow up and find out what happened to them. For example, last year my Committee tabled a budget policy statement which is a policy paper that guides the process of making the Budget. It actually guides the Printed Estimates of the financial year prepared by the Treasury. Those recommendations must be implemented in the Estimates.

This Committee, therefore, has a significant role and we want them to call some of the Government officials to explain why they have not implemented the many decisions that have been passed in this House, including putting up a university and a Level 5 Hospital in every country. How far have these resolutions been implemented? There are so many other Motions that these distinguished Members have passed.

Mr. Deputy Speaker, Sir, lastly, on the Committee on Delegated Legislation, governments everywhere in the world normally do their things through delegated legislation. When Parliament has passed laws they do all other things through the regulations that are done by the ministers. There are a lot of delegated legislations and regulations in public finance and many other sectors that have been done by various ministries and institutions. It is important that we critically look at them to ensure that they do not impact negatively on devolution or operations of the county governments.

I beg to support.

**Sen. Mohamud:** Thank you very much, Mr. Deputy Speaker, Sir. I have no problem with the idea of the same Members of the Committees continuing to serve, for the purpose of continuity. However, I have a concern with the County Public Accounts and Investments Committee. Looking at the list, the Committee is not constitutionally constituted, because one gender forms less than 10 per cent of the membership.

For that reason, I beg to oppose.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, I rise to support this Motion. This is a very crucial time in the life of devolved governments. We are approaching the last year of the first five years of the devolved government system. The County Public Accounts and Investments Committee has played a very crucial role, for the time that I have been a Member, in pursuing and looking at, particularly, the Auditor-General's reports on how the funds that have gone to the counties have been spent.

We are shocked at the way money has been spent in the counties. It seems like there is no consensus regarding what should be done in the counties. The county governments just start projects everywhere without consultations, as though the lives of those county governments end after five years.

I commend Sen. (Dr.) Khalwale's leadership in this Committee for the last one year. When the Committee started looking at the books of Kakamega County, the governor turned his focus on Sen. (Dr.) Khalwale. I want to insist that when this Committee dispenses its duty, it has nothing to do with individuals. Whenever the accounts of a county are being considered, the Senator for that county is invited to the proceedings. But when the governors see those Senators, they become confrontational on the ground. This Committee is supposed to safeguard and do its work in accordance with Article 96 (3).

Some of the projects that are being implemented in the counties by the governors should be stopped. For example, in my county so many projects that would have been implemented in the next 20 or 30 years have been done. There is no development vote head at all.

Mr. Deputy Speaker, Sir, some grapevines in the villages allege that the 2017 campaigns will be competitive and that Senators will be in trouble because the governors have millions of shillings. In my view, the governors get these millions from the projects they are carrying out all around. The Committee on Devolution chaired by Sen. Murkomen should be terminated because it is of no importance. In my county, each County Executive Member (CEC) is building an office headquarter with two or three floors. Therefore, if there are ten CECs, there are ten offices. These buildings will not be completed by the end of this current Parliament but they will roll over to the next. Therefore, a lot of money meant for provision of services for an ordinary citizen is being wasted.

Mr. Deputy Speaker, Sir, it is important that this Committee Members that have been retained in their respective Committees, should go a notch higher to see to it that their work is done. Most Members of County Assemblies (MCAs) have been paralysed by the executive arm and therefore nothing is going on. In my county, some circulars are sent from Nairobi indicating that there should be one Committee for bursaries in the county. However, the governor and his team have created another committee in each ward. If a county has 30 wards, it means there are 30 committees apart from those already approved.

Therefore, there is a lot of money being wasted through claims of sitting allowances. As Sen. Billow mentioned, a number of Motions were passed in the last three years. For instance, the national government should by now have liaised with the county governments to be allocated land to build a public university or a college. In the last few weeks, we have seen the Commission for Higher Education (CHE) closing campuses in various counties which were opened by Kisii University in various counties - This is an aggressive university - instead of encouraging county governments to allocate land to build universities.

The question is; where has the Committee on Implementation been? In fact, I wanted to see them last week when Kisii University was being harassed. It should have advised the Ministry of Education to put aside substantial amounts of money for putting up universities instead of closing them up. It is time that we stood firm because a lot of accusations will come our way.

Mr. Deputy Speaker, Sir, when we had the impeachment of Murang'a County Governor, among the resolutions that we passed was the removal of billboards that displayed his pictures in the entire county. However, I am told the Governor has added more instead. We also saw it on TV that he did not cooperate with the officials that went to his county to check on the expenditure of funds but instead fought the officers. I am also told that he is walking free as though he is among the untouchables.

Some of the officers, including the governors from the opposition, who should be investigated, have run away and hidden in the national executive, associating themselves with the President and the Deputy President. This is where we need to stand tall and make it clear that we are not fighting anybody. We are looking at what should be done. Lastly, I read in one of the dailies that some Senators will be vying for gubernatorial positions in 2017. According to me, that was a creation to allow governors to claim that when the Senators are asking them questions, they will instead inform the electorate that the Senators are after their positions in 2017.

Our position is clearly cut out; that we carry out an oversight role. When I am in West Pokot County, I am always told that my governor shouts around every time I inform him that some matter is wrong just because I was among those who are allegedly planning to oust him in 2017. They should wait until 2017 when we shall have made a decision to run for presidential, gubernatorial or a Senatorial position. For now, they should play their roles. A message should be sent that they should not misinterpret the roles set out by the Constitution.

It looks like some Government officials stopped reading the Constitution from 4<sup>th</sup> March, 2013 and that they no longer know their roles. That is why you see, like I saw one yesterday, informing the Senator for Makueni that he did not expect him in his meeting and that the Senator has no room to address the audience. The Senate represents and protects the interests of the counties. When a governor claims that we should not attend Committee meetings, it means they have stopped reading the Constitution. Such an officer should be asked to quit or read the Constitution instead of undermining the responsibility of a legislator.

I support these Committees and hope that we shall overcome the many challenges that we shall be interacting with.

**Sen. (Dr.) Zani:** Thank you, Mr. Deputy Speaker, Sir. The whole exercise of allocating Senators to the various Committees has been an interesting lesson on the advantages of continuity and change. From the logic that has been used in allocating Senators to the various Committees, certain things stand out.

Initially, Senators were nominated to committees out of their choice, experience and professional background. They felt that they would contribute best in those committees. They have been doing well over the last three years and they wish to move on. I have also learnt in this House that it is good to have impetus and have new Members coming in. However, the logistical issue has to do with the structure and probably features that the Senate as a House should think in advance which Senators belong to certain committees prior to the nomination and adoption of the Motion. The idea of moving Senators from one committee to another requires logistical planning and

sometimes it requires consultations and establishing from the specific Senators if they wish to remain in the previous committee or move to another.

It is fine for now but in the next House, there should be consultations among the Members on the committees they wish to serve in. Looking at the composition and what we have achieved, most of the committees have done a lot of work and have also done the Senate proud. People out there talk about the Senate as a House of reason and action through the effort of committees.

Our committees have reached out to various assemblies but we do not interfere with the independence of those legislatures because, constitutionally, we cannot. All we want is to have them learn from us, understand and articulate issues.

As the Committee on Education, we visited one of the counties and they articulated some of the issues they felt we should streamline. We told them that as the Members of County Assemblies (MCAs), they are supposed to hold the governors to account. We told them they should oversight the governors and ask about the specific issues. It is that sort of interaction that over time enables some sort of empowerment to MCAs and county assemblies in general, because this is a new system that we are implementing in this country. It would probably take the second or the third cycle for us to get more conversant with the various roles that need to be put in place and that becomes very critical.

As we approve these names, I hope that provisions have been made for the new Senator who might join us, so that they will also find allocation in a specific committee of their choice. I think that will be put into consideration.

I want to appreciate the Members who have been selected to serve in various committees, especially the County Public Accounts and Investments Committee (CPAIC), for the work that they have done and the courage they have shown in doing their work by calling governors to account. The role of oversight that we have to play in the Senate either as an assembly of Senate or as specific Senators within specific counties has been clearly stipulated. I have seen various documentations of various Senators holding governors to account.

We need to move ahead and not to look at it as a fiery issue, but an issue of accountability. In fact, bearing in mind most of the information that is being sought, we need to move to a process or position of open governance in our systems, so that we can have the data ready and show who has been employed. We should tell people the amount of money that a county received, the budget and the way it has been implemented, without waiting to be asked. You are not asked for this information because somebody wants to fight you.

If some Senators will be elected as governors and vice versa in the future, that is okay. Anybody is free to vie for any position they want. But let us look at the institution and the specific roles that they have to play. Let us create a culture and sense of accountability, especially as governors and other public officials.

I have attended various CPAIC sessions and seen governors who come with members of their staff with their books ready to answer to some of the queries. What is wrong with that? In fact, in my understanding, the more resistant you are to come, the more suspicious people become about exactly what it is you are hiding.

We have touched on the Committee on Devolved Government. What we need to do more in this area is to create more linkages with the county assemblies. We need to liaise with them more, have conferences and meetings with them and find out what issues they are talking about at the county levels. We need to identify the key issues they want to quickly bring to the Senate; macro issues that can be handled at the Senate, so that we can discuss them.

Many times when we visited other committees in some counties, one of the issues they kept raising was that they wished they could feel the impact of the Senate directly within the county assemblies in terms of an association and through the Speakers' Forum, where Speakers of all county assemblies meet with the Speaker. That has been achieved to some extent. We need to have a bigger conference even if it is regional - if we cannot do per county - so that we can have the specific interaction.

Further, devolution to a lower level is also something we need to begin thinking about and the Committee on Devolved Government could lead us in this process. For example, they could take devolution down to the wards, for example. This is because even at the county level there seems to be still an element of centrality, especially as a result of the way governors have gone about handling the issues within their particular counties. We need to have further devolution structures that will go to the wards and communities, so that communities can feel they have a direct link and say in what is happening. I do not know what it is with the issue of centrality that Kenyans love. I think it is a sense of power and the feeling that "I am the person, I am the final word and everything lies with me." We move towards centrality even in a process where we are trying to devolve.

Just the other day, when I was in Kwale County, I had a young lady visiting from Nairobi. She was amazed at the Kwale County Office. There is just a reception and immediately you meet the Governor. She said that, that was one of the simplest structures she had seen in the county governments that she had visited. I was surprised and when I inquired more from her, she said that in some counties, before you get to the governor, you have to pass through at least three different offices. You have to pass through a reception and another place before you finally meet the governor. That is the worst example of centrality; moving away the governor who should be closer to the people. Are the governors and the County Executive Committee (CEC) members as accessible as they should be? They should be more accessible. We need to relook at all these issues and assess.

We should also look at the issue of public participation, which has come up, over and over again. In the Budget Policy Statement Paper (BPS), there is a proposal for public participation, whether or not that money will be given after the debate. However, in one way or another, county governments need to do proper public participation and more education for people to know that the best oversight is from the people themselves. If the people themselves hold the county governments accountable, they will be answerable for more things. The people's oversight is a question of public participation and more civic education, so that they can know their intersession point. When budgets are being made and projects being implemented, how are the people being involved? It



will be interesting to visit public galleries in the county assemblies to see whether there are any people who go there.

The Committee on Implementation is very critical when it comes to Bills and Motions and ensuring that they have been implemented. More needs to be done in terms of putting in place a system of giving quick feedback. Given that this is our third year, we would like to know, for example, some of the Bills and Motions that we discussed. It would be good for us, maybe during our *kamukunjis*, to have a sense of how much achievement we have made on the ground; this is in terms of the level of implementation and whether that has happened at a successful rate.

Let me just go back again to the issue of devolved governance because I forgot a point. We need to deal with the issue of conflict resolution. Too much time has been spent on squabbles. People are thinking about 2017 and talking of possessing seats. If you express interest in vying for those seats, you automatically become their enemy. Such people need to know that a seat becomes theirs only when they have been elected or nominated to that position. The conflict that keeps coming up because of power struggles has really taken us back. We need to have more initiatives to address this issue.

I commend the Senators who have been nominated to serve in various committees because they are up to the task. Let us bring the experiences that we have had over the three years. I am sure we will successfully push the agenda for these committees to the next level. I hope that the Committee on Delegated Legislation will look at the Bills and how they will be implemented. This is the year, and Kenyans are watching.

Thank you, Mr. Deputy Speaker, Sir.

**Sen. Adan:** Mr. Speaker, Sir, I rise to support this particular Motion. First, the Members nominated to this Committee are up to the task. I believe they will deliver on the mandates they are required to carry out in this Committee. For the purpose of continuity, it is important to retain the same Senators. Unfortunately, for the County Public Accounts and Investments Committee, as Senator Halima has raised, it is important if we could have one more lady to add to Sen. Wangari who is the only lady in the group.

The County Public Accounts and Investments Committee has done a lot of work especially summoning the governors and relevant departments within the counties. Unfortunately, we do not know how far they have gone with the interrogation and investigation into misappropriations that have been done by those counties. If there is a way, it is very important for this Senate to know how far the committee has gone, what has been implemented and what is actually pending.

Clearly, the Committee has done a lot. However, for the purpose of the public and the House, it is really important to know what the Committee has done and where we are in terms of ensuring that we have carried out our oversight role.

The Standing Committee on Devolved Government has also done a lot of work especially at the devolved level. One of the things we discussed with Sen. Murkomen at some stage is to audit all the counties in terms of the work they have done. There are counties that have done so well especially in devolution. However, before we end our term, it is really important for this Committee to carry out an audit to establish how the counties have performed on devolved functions.

There are liabilities especially those that were under the Transition Authority (TA) and the former local authorities. Those liabilities have not been properly audited and accounted for. This is a task that we really need to follow up on as a Senate to make sure that accountability has been realised and the liabilities have been handed over to the county governments.

For the Standing Committee on Implementation, this House has done a lot of work especially on Bills and Reports. Some of the work requires financing while others do not require financing. It is really important for the Committee on Implementation to move with speed and ensure that whatever decision has been made on Bills and Motions and which and does not require finances to implement, has been implemented, so that we can assess the impact of the issues that are brought to this House.

Finally, on delegated legislation, there are legislations that are established by both the national and other institutions, as well as the county governments. Unfortunately, for the county governments, you will find that with the lack of a county attorney, some of the counties have been passing Bills and legislation which may not be in tandem with the current Constitution. It is really important for us to establish whether those delegated legislations are in tandem with the Constitution or not.

It is important to retain the same Senators in these particular committees. However, it is necessary for us to establish what these committees have done, where we are and where we are heading to before we break.

I support.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I rise to support this Motion with very good reasons. As Sen. (Dr.) Machage said, it would have been very good if Members could change committees. However, it is very late in the day and we need a collective memory of Members of these committees.

*[The Deputy Speaker (Sen. Kembi-Gitura) left the Chair]*

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

I belong to two committees; the County Public Accounts and Investments Committee (CPAIC) and the Standing Committee on Finance, Commerce and Budget. I want to commend our two chairpersons; Sen. (Dr.) Khalwale for the County Public Accounts and Investments Committee and Sen. Billow for the Standing Committee on Finance, Commerce and Budget. The two chairpersons have done their job with distinction. We, Members, have been very happy how these committees have been conducted. We may be having elections for the chairpersons and their deputies soon and that will be handled competently by the committees.

One of the reasons why CPAIC has had a backlog of work is because we have cases in court where the governors were challenging us that they cannot appear before Senate Committees to be accountable to the people of Kenya. Fortunately, this case was judged in our favour and then the governors started coming. This means that a lot of audited accounts of counties, which should have been discussed by the committees, were piling up. We have had to meet extra hours, even today, we had to meet at 8 a.m. and 10

a.m. to clear the backlog. I hope the House will understand the difficulties under which the committee has operated and credit it with the excessive hours we have been sitting to clear the backlog.

Secondly, the audit queries have been massive due to substantial mis-governance in the counties. Part of this is as a result of naivety on the part of governors and executive members on exactly what they should do to follow the law. Part of it is in ignorance of the law, particularly the County Governments Act and the Urban Areas and Cities Act, which apparently in a county like Kisumu, the county government did not really understand its responsibility.

It is our responsibility as Senators to point these things out. When we point them out, governors should not think that we are undermining them. We are doing our role according to Article 96 of the Constitution. In fact, they should compliment us for bringing out these issue so that there can be good governance in counties. We are not raising these for ourselves. We are doing it for the public and for the good of the Republic and for upholding and defending the Constitution.

Another issue I noticed concerns problems of transition. At the moment, there is a debate going on whether the term of the TA should be extended or not. There are pros and cons for doing this. I hope that when Sen. Wako brings his Bills to the floor of the House, we shall be enlightened on what we need to do to make sure that we make a decision as a Senate which is for the good of the country and in defence of devolution.

I want to speak about the Auditor-General. Today, we had a forum at Ufungamano House on the Eurobond. The forum went on very well and I was the moderator of the forum. The former Prime Minister was there and he did put across, along with others who spoke there, a very clear elucidation on the Eurobond issue. The Auditor-General has a tremendous responsibility to guide the nation on what happened to the Eurobond.

This is a moment in history that we must wake up to. The indebtedness of this country as a result of enormous foreign borrowing will not only affect the effectiveness with which counties finance their projects, but also, we, as Kenyan citizens, in terms of the amount of money we shall have to take from our pockets to pay for taxation in order that our foreign loans can be serviced or paid. Therefore, this thing has a direct bearing on the lives of Kenyans.

Rather than use that tax for development, we are going to use it for paying loans. When we ask genuine questions as to which projects were financed by the Eurobond, very few answers are coming out of the Jubilee Government.

Mr. Temporary Speaker, Sir, instead, we were asked by journalists whether we are aware that the Auditor-General is under siege and may actually be removed from office by the Jubilee Government because of some cooked up reasons. This House must rise up to the occasion. As we have said, the Auditor-General's institution is already substantially undermined by amendments to the Act establishing and running that office, which were not warranted at all. The undermining of constitutional commissions and offices by the Government is something that this House, as a House of senior legislators and patriots, must look at very carefully.

The cooked up reasons that the Auditor-General is practicing nepotism in his office is something that must not be used to undermine the Auditor-General. If anything, the Government itself is on record in practicing nepotism. Just yesterday, as Mr. Simeon Kirgoti was being removed as Chief Executive of the National Health Insurance Fund (NHIF), we know who was put there. Just recently, the Chief Executive of the National Oil Corporation (NOC) was being removed from that office as a woman, we know who was put there. There is a litany of examples of a perception by the Government that leadership in the public service must be dominated by individuals from only two communities. This is an unconstitutional, unpatriotic, anti-democratic and anti-people move by the Government.

Mr. Temporary Speaker, Sir, most important is that this backward practice in filling offices on a tribal basis must not be used to undermine the Office of the Auditor-General. Let me give notice to this Senate that those of us who have been in the forefront in fighting for the second liberation and upholding the principles and values in the Constitution will not sit down when this is happening. I think that is very clear. Putting the Office of the Auditor-General under siege is something that this nation must resist.

Further, regarding the Committee on County Public Accounts and Investments, I was its Chairperson in the 7<sup>th</sup> Parliament – I think it was 1994, 1995 and 1996. I know the enormous responsibility that such committees have in the defence of the wealth of this nation and investments that are put in place to advance this nation. We were the first to produce an extremely voluminous report – the fifth and sixth reports of the Public Investments Committee (PIC) that led to the enactment of the Economic Crimes and Anti-Corruption Bill and the setting up of the modern Economic Crimes and Anti-Corruption Commission.

Therefore, these Committees can lead to substantial changes in the governance of this nation. So, I hope that we shall not only be given a good back-up of staff and research capacity in these committees because of the very important work of this Senate, but as we do so, the space that has been created for committees to work on set days, that is Tuesdays, Wednesdays and Thursdays morning, will definitely be dedicated to that work.

Finally, Mr. Temporary Speaker, Sir, let me talk about the Committee on Finance, Commerce and Budget, to which I also belong and to which my Chairman, Sen. Billow, spoke earlier. We are not discussing that Committee today, but this committee, which is closely related to the Public Accounts and Investments Committee is an extremely important Committee. It has other portfolios too but also works very closely with the offices of the Auditor-General, Controller for Budget and the Commission on Revenue Allocation (CRA). These three institutions, with regard to these two committees, are extremely important to this Senate.

I hope that as we frequently have these *kamukunjis*, you will create some time during this Session that we have these two Commissions – Commission on Revenue Allocation (CRA), the Auditor-General and the Controller of Budget – in this Chamber. That way, our two Committees can ventilate --- in a *kamukunji* some of the problems that we are having in making sure that these institutions work properly.

Mr. Temporary Speaker, Sir, one problem that I would like to ventilate, before I sit down, is the problem of manpower or human resources particularly in the Auditor-General's Office. One of the things that we should do as the Senate before our five years are over is leave this Chamber when we have established that the Auditor-General's Office is properly human-resourced and that the Government gives that office and the Auditor-General sufficient latitude to hire professionals for working with him. We shall have handed over to future generations a very good heritage of and an institution central to the governance and financial health of this nation that works properly.

When, therefore, some of us are declaring that we want to be governors, we are not going there because of money. I mean, at this time in my life, the last thing I am looking for is money. In any case, if I wanted to make money, I would never have been in politics because I was doing work that was paying much more than this in all kinds of places; that was much more senior than just being a politician. However, we came into politics to save this country from bad governance and ensure that we have development and national development plans that can save this country from poverty and degradation.

When we, Senators, have seen that we are taking resources to the counties which are being misused, we owe it to this nation to take the responsibility in our hands and go back to these counties and put them right. This is our mission. If there was anything that some of us, Senators, want to do as our last lap in political life, it is to make sure that counties work and we have no apologies to make. Anybody that goes out there or writes in the papers that Senators want to go to counties because there is a lot of money there, such people do not know our history nor do they appreciate some of the debates that have gone on in this House. Some of them do not know how our committees work and the kind of information that we receive in a Committee like the Committee on County Public Accounts and Investments and the mess that we are seeing going on; that we, as Senators, must now take responsibility and go there and put it right.

Mr. Temporary Speaker, Sir, I believe that when some of us become governors, there will be a better relationship between county governments and this House. Therefore, it is a mission that some of us are committed to, a mission we shall fulfill, a mission we shall go through and whose destiny we know and we know that in our hands, counties will do better than they are doing now. We are not afraid or shy to say so, we say so with clean conscience and commitment with the sense that we shall build for the future; *profuturo edificanos*.

**The Temporary Speaker** (Sen. (Dr.) Machage): Do I say "Amen?"

**Sen. Hargura:** Thank you, Mr. Temporary Speaker, Sir. From the outset, I would like to support this Motion knowing that all the Members of this Senate are competent and capable to serve in any Committee of this Senate and also taking into account the need for continuity. We should also take into account the need for allowing others also to participate in these Committees. So, we should have balanced the two – continuity and also change so that others can also participate in these important Committees.

For example, the first Committee on County Public Accounts and Investments is important because our main responsibility is to oversight counties and as we stand now, we know very well that Senators have not been facilitated to do that role. You know what we tried in the last Session which is yet to be implemented. However, this is one of the

Committees which will enable us realize this function of oversight. So, our Committee on County Public Accounts and Investments should not be like the one of the National Assembly, which waits for the Auditor-General's reports and works from those reports.

We know very well that the Auditor-General's reports are basically audits which are done in the office; checking the procedures and all that but at the county level, the main issue is on the ground. How do the funds allocated to that county translate to development or delivery of service on the ground? So, we need to make use of the county assemblies. Unlike the National Assembly, we have counterpart assemblies which could assist us in generating this oversight role.

Having similar county assembly committees carrying out physical audits of the activities on the ground is crucial. From there, we could see what is being done right throughout the budget process; whether there was involvement of the public in prioritization of those projects in first place. That is one area which one of the Senators who spoke before me was alluding to, where you have projects which are not priorities of the community. So, how did those projects end up in the budget or the work plan of that county if they are not a priority of the community?

Therefore, we have to start from there. We have to check how the procurement process is done because that is also another area where there is nepotism in most of the counties. That is why we feel that governors are busy rewarding their cronies through that process which is not transparent. Having the county assembly on the ground, they could easily see what is going on and question the executive at that level. This will ensure that the procurement process at the county level is fair and allows each and every Kenyan who is qualified and possesses the necessary registration required to bid for a project has equal chance. It should not be the unwritten rule that only those who are on good terms with the governor or an executive officer get tenders or jobs.

That is what is happening on ground. People have lost hope in getting jobs in the counties because it is not what you are worth or experience in terms of work but who you know. That is what matters. It is not procurement procedures but underhand dealings which the county assembly committees at that level could easily unravel and which could easily be brought to the attention of the Senate committees like this one so that they can follow up.

We also have cases where the actual projects are implemented because that cannot be captured by the Auditor-General's Report. So, we need to liaise with the relevant committees like the Public Accounts and Investments Committee at the county assemblies. They should carry out physical audits of the works which have been done. In my county, towards the end of last year, the county assembly was engaged in an exercise of physical audit of projects for the first financial year after the elections; that is 2013/2014, to establish whether what was in the budget was translated to the ground. From what I am hearing, it is an interesting report which I hope will reach the Senate.

From there, we can have a way of engaging the county government through the county assembly. I urge those who are in the County Public Accounts and Investments Committee to develop those kind of relationships with the county assemblies so that we will not feel helpless when the governors are not doing the right thing; that, we do not have facilitation to audit what they are doing, then we just wait for the Auditor's report

which comes much later; and which is inadequate because it does not go to the ground. There is no physical audit in that case. Therefore, they need to do some physical and social audit so that we can now work on that. That is one of the ways of holding the county governments accountable.

Concerning the Committee on Devolved Government, I would like to thank the Members who were in the last Session because they visited my county, represented by Sen. Murkomen, Sen. Lesuuda and Sen. Billow. We had very fruitful discussions, especially, with the county assembly to encourage and enlighten them on what they are supposed to do. These committees are useful so long as they engage the county assemblies as one of the Senators have proposed, even if it is to do some regional meetings so that we enlighten them on what they need to do, what they expect from them so that we can also, through them, effectively conduct our oversight.

As is in the case of the Committee on Devolved Government, I remember in the Second Session, we had an elaborate exercise by the Senators who broke up into regions and came up with very clear reports on the transfer of functions. However, I would like to bring to the attention of the Senate, that, in one of those recommendations we made; the transfer of the roads function to the counties, we are yet to get there because as a Member of the Committee on Roads and Transport, recently, we had a workshop where the Ministry of Transport and Infrastructure and the Transitional Authority (TA) were represented.

I would like to remind the Senate that we had recommended that the roads function be devolved to the counties. By then, only 39 counties asked for that function to be devolved. When the Senate recommended that transfer be gazetted by the Attorney General, we were told that there was an objection by the National Assembly Committee on Roads and Transport. With that, the Attorney General did not gazette that and the Council of Governors had to go to court. The court found our position to have been correct and the Attorney General was found to be on the wrong for not doing that.

Two weeks ago, the TA and the Cabinet Secretary for Transport and Infrastructure went ahead and gazetted a list of roads based on classification of the county roads and national Government roads. Looking at that list, it was very clear that what was gazetted was not what was known to have been the roads as they were. I remember that the Senate's recommendation was that Class A, B and C roads be the national road while Class D, E and unclassified be the county roads. However, the national Government through the Cabinet Secretary for Transport and Infrastructure gave the TA a list of roads classified not as they were before the new Constitution was passed but it was a new list with new classifications. I say this because I have the benefit of having been in that sector for a long time. By the time I left as the regional manager of Kenya Rural Roads Authority (KeRRA) – I know the classification of roads and what was given that day is something different. So, the only logical reason why those things were done was that there was this aspect of the Members of the National Assembly through their current Constituency Roads Committee handling some particular roads.

For Members of the National Assembly to continue handling those roads, then the roads have to be classified as national roads; which means they have to be either class A, B or C. So, if you go through that list casually, even class E roads are now classified as

class B roads. This was done after the enactment of the new Constitution. There was a requirement to have public participation; the stakeholders have to be involved. I believe the Senate is one of the major stakeholders when it comes to county issues.

We were not involved. There was a backdoor generation of new classification of roads because even if you check right now, the existing classification even at the county level through the KeRRA managers as it was previously. I challenged the Kenya Roads Board (KRB) Director General on that because if you check their website and generate the map of your county, it is the same classification which we know, the old ones.

However, now the ones they give on paper are not in any map. I am sure that they are not even in the annual road work plans they are using. So, that is a clear way of trying to defeat the purpose of devolution by retaining the roads function at the national level while the national Government has been known to be very skewed in terms of resource.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order. May I caution legislators that the rule of relevance is also important. As you flower your contributions, try to be closer to the subject on the Floor of the House.

**Sen. Hargura:** Mr. Temporary Speaker, Sir. I am guided. We have a lot going on without our attention. This is one of the Committees that need to handle the issue on the transfer of those functions. We have a lot to do as the Senate and these Committees are very instrumental in doing that. Let us engage the Committees as much as possible so that we fulfill our role of oversight at the county level.

**Sen. Nabwala:** Mr. Temporary Speaker, Sir. I rise to add my voice on the issue of the Sessional Committees before the House. I would like to comment on the County Public Accounts and Investments Committee (CPAIC). This is a very important Committee as it deals with oversight and the performance of counties. It is, therefore, very important that the Committee works closely with the county assemblies who conduct oversight in the counties. The Committee also needs to guide the county assemblies on how to legislate so that some of the legislation is not punitive. For instance, in my county, rates that used to be Kshs10,000 have almost tripled now yet no explanation has been given as to why the rates have gone up.

I have no issue with the list of the names given because I know that most of the Senators are experienced and are very vocal on issues. I think it is good because they speak for the Senate. We are here to carry out the oversight role through the committees. For instance, CPAIC in the past has had issues with governors who did not want to appear before them for their own reasons. I think the relationship is improving now although I read in the newspaper that the Governor for Kakamega County is to appear before the court because he failed to appear before the Senate. I must admit that being in the Committee on Finance, Commerce and Budget, I am privy to the information that many other governors refused to appear before us.

Mr. Temporary Speaker, Sir, we should encourage the governors to work closely with the Senate because for them to achieve their goals, they need the Senate. We are the people who allocate funds and when we do that, we must follow up to find out whether they are being used for the purpose they we budgeted for. There is an outcry in most of the counties that money is not being used properly; it is being misappropriated and that



some of it is being stolen. It is the CPAIC which can help us because they receive the audit reports.

I would like them to sample the reports because some of the counties have serious audit queries. They should visit those counties and sit down with the governors as well as the county assemblies and find out what the problems are and why development is not happening in those countries. Why is revenue not being collected in those counties? One of the challenges that we have in the counties is revenue collection. Revenue is not being collected as it was before the devolution era.

Mr. Temporary Speaker, Sir, talking about the Committee on Devolved Government, we are aware that functions were devolved without costing. I think that this is one of the issues that they need to follow up. Most counties are not receiving enough money. They only receive money that they can use to pay salaries and for other necessary operations but very little is happening on development. *Wananchi* out there are not feeling devolution. The Committee on Devolved Government should do a little bit more and push for more money to go to the counties and not just the 15 per cent. We should go above that because we know that most of the money being retained at the national Government is not fully accounted for.

Mr. Temporary Speaker, Sir, talking about the Committee on Implementation, we have been told that 33 Bills have been passed by this House. So many Petitions have been handled by either the Committees or individuals. I would like to know the number of Bills that have been enacted into law. We can pass a Bill but is it being enforced? These are the things that we need to be told by the Committee on Implementation. We have decided to maintain the same Membership for purposes of continuity. However, we would like to find out what those Senators have done in the last three Sessions because we are heading to the Fourth Session yet people out there are complaining that the Senate is not being felt. How are we going to be felt? What will we tell *wananchi* after the five years about what we have done?

I am not just challenging these Sessional Committees but other Committees as well. I am a member of the Committee on Finance, Commerce and Budget and the Committee on Health, and I know that with our able chairpersons, we will go to the hospitals and make noise until we witness change.

Mr. Temporary Speaker, Sir, the Committee on Delegated Legislation needs to follow up on legislation. We need to know the kind of legislation that county assemblies are passing. Are the counties operating on legislation that is different from their neighbouring counties? All legislation in the 47 counties should read the same. If rates are to be charged at 10 per cent, that should be reflected in all the counties. There is no reason as to why others should be higher than others unless it is in Nairobi because properties in Nairobi attract more revenue and are more viable. However, in the rural areas, I think that if we pass legislation that is punitive, we are punishing our people.

I beg to support.

**Sen. Ong'era:** Mr. Temporary Speaker, Sir, I would like to add my voice in supporting this Motion. In our wisdom as the Senate, we set up Sessional Committees to ensure that it gave us an opportunity to review what we do as the Senate. These are important Committees because Committees like CPAIC, the Committee on Devolved

Government, Committee on Implementation and Committee on Delegated Legislation carry the core of our activities.

The purpose of the CPAIC was to provide us with an opportunity to interrogate and give oversight to the counties on how they use their resources. I am afraid to say that in the last three years, we have done very well in tackling this issue. There has been wanton expenditure of resources in the counties that cannot be checked. We have not been very effective in checking the over-expenditure.

Mr. Temporary Speaker, Sir, I am not saying that the CPAIC has not done anything. They have done an exemplary job in trying to manage and hold the county governments to account. It is unfortunate that the governors found a way through the courts in which they have stopped and hampered the activities of this important Committee. One of the things that sadden me is that we have not felt devolution trickle-down to the people it was supposed to serve. I had expected to see devolution have a tickle effect in my village in Otanchi. I expected to see dispensaries, good schools, an Early Childhood Development Education (ECDE) centre built there and so much more. Unfortunately, we have not seen the trickledown effect of devolution as is required by the Constitution.

Therefore, it behooves us in this Senate through these Committees, particularly the Devolved Government Committee to see how we can have this trickle-down effect of devolution felt by our people.

Mr. Temporary Speaker, Sir, there are many issues we could speak which we feel that these committees should handle. For example, we are now faced with a Government of scandals. In fact, one person has said it is not a Government of scandals or a country of scandals; it is actually a scandalous country. I had expected to see issues about the Eurobond and the National Youth Service (NYS) where money was spent recklessly and cannot be accounted for yet we are seeing the people who are supposed to be responsible are now being acquitted. They are being left to go scot-free without the benefit of being given due diligence by going to the court system yet we know that these are Government funds which are missing and we do not know how we will be able to explain this to the exchequer.

These are issues I feel that these committees particularly the Committee on Delegated Legislation and Implementation should be able to look at because this House has passed very wise decisions in the past which have not been effected by the respective governments whether at the county level or at the national level.

Mr. Temporary Speaker, Sir, for example, instead of devolving functions to the county government particularly in the field of health, we find that these are now being brought to the national Government. I wonder why the national Government should be buying health equipment for county governments instead of leaving them to deal with the issue of health services because we know they have been devolved. There are many issues that these committees should be looking at in this Session, particularly the transfer of assets. It worries that three years down the line, we have not yet managed. The Transition Authority has not managed to come up with an effective inventory of assets in all counties in order to have these assets transferred.

Mr. Temporary Speaker, Sir, we know that there are billions of shillings in the Pension Fund particularly for our people who worked in the former defunct county councils whose money has not yet been released. I wonder whose account this money is in and when it will ever be released. Therefore, there are many issues which we need to look at in this Session and I hope that these committees will be able to look at them. The Senators who have been nominated here by the RBC are very experienced Senators, they have institutional memory and many of them have served in these committees and it is only befitting that they should be given an opportunity to complete the tasks that I have highlighted.

Without much ado, I want to support this Motion and I hope that the issues that I have mentioned can be achieved in this Session.

I thank you.

**Sen. Sijeny:** Thank you Mr. Temporary Speaker, Sir, for giving me the opportunity to contribute to this Motion. The Senate is the mother of the county and should deal with all issues related to the counties. That oversight role is done adequately through these committees. I am aware that the committees have done a very good job. They have done a good job at the national level, traversed the counties, chatted with county governments, “*Wanjiku*” in the village and they are able to know how to intervene, to cater and support for the resources and the job that they were given through the Constitution.

Mr. Temporary Speaker, Sir, the constitution of these Committees - the County Public Accounts and Investments Committee - we have seen that it is a watchdog. We have seen the list of people who are working tirelessly, they burn the mid-night oil, their in-tray is always full but they have never gotten tired. They have always said they are ready, willing and able to work.

However, Mr. Temporary Speaker, Sir, in this list, I would have been happy if there were more ladies, but be that as it may, when you look at the Committee on Devolved Government, this Committee again has a lot of work to do. This Senate is really the pioneer after having not had a Senate or an upper chamber for a long time. We are keeping a close system not only at the Senate but to ensure that within the devolved government, there are air-tight systems which will ensure that from generation to generation, as long as Kenyans are still satisfied with devolution which I am and I believe that they are, then they will continue looking through the challenges and the difficulties so that we take Kenya back to the map of the most peaceful country and the most developed, education-wise, and even in the health sector.

We remember those days Tanzanians and Ugandans used to come to Kenya for medical treatment. This issue of Kenyans travelling to India for treatment is because we still have a lot of work to do together with our devolved governments.

Mr. Temporary Speaker, Sir, once we put in place all these systems, then life will be good. We are aware that not all the functions have been transferred. Even if they have, the resources have not been allocated to complete them. This is why even the Transition Authority is still asking for more time to enable them to put their things in order and to tidy up everything so that they will leave the new government after the 2017 elections. Then, the county governments and the national Government will be well placed knowing

where the assets are, what ought to be done, how things were done before, how they are now and the lessons learnt so that we have a smooth transition.

Having said that Mr. Temporary Speaker, Sir, we have seen the national government is still interested in capturing some of the devolved functions. Like on roads, class “D” is still classified as “C”. So, what is the county government being left with? This is the Committee that will be able to intervene and ensure that people reach consensus because once you agree with these things without those tedious litigations or friction, then our country will move forward.

Mr. Temporary Speaker, Sir, with the help of these committees, we are sure that our country will develop fully and we shall benefit from the fruits of justice and the hard sweat of Kenyans for passing the Constitution and working with the devolved government which both the national and county governments are working with. They are very grateful that they have this Senate to be there as an arbiter and to ensure that the county governments are protected.

Even this Committee on Implementation ensures that all those laws are put into place without a lot of friction. We can see very serious people here. All these Senators are hard-working. We can see the Senior Counsel, Sen. Orendo and the young lady Sen. Kanainza who are ready and willing to work. Sen. Kanainza has the backing of the youth who are able to communicate with them in the language they understand. I am sure all of them are ready and willing to work tirelessly.

Mr. Temporary Speaker, Sir, even the Committee on Delegated Legislation where I sit, I know the amount of work we have done, and we have trained all our counterparts, who belong to these committees within the counties. Even now we have been calling them one by one, to sensitize and explain to them what their role is. We have even been able to share with them on some of the legislative statutory instruments and how to harmonize them. This is also good because there is continuity. It took us time to master and talk to our counterpart chairs within the counties but we have now reached a point where we call not only the chairs but also the other Members. We are able to bring at least five Members from each county. We are able to sensitize them and we have learnt that things are moving and we shall get results.

*(A senator interjected)*

Mr. Temporary Speaker, Sir, I am sure there will be an explanation as to why he was not there because he was a Member.

I support.

**Sen. Ndiema:** Thank you, Mr. Temporary Speaker, Sir. I support this Motion on the approval of the Members to the Sessional Committees. These Committees play an important role in as far as the functions of the Senate are concerned and in particular the performance in our counties. As we stand today, we know that although many functions were supposed to be devolved, there is still a lot of work to be done by the Transitional Authority, the National Government and the county governments. The issues of assets and liabilities are yet to be looked into yet they have taken a long time. It is time that the Committees look into the issues to ensure that they are sorted out. The Constitution

required that devolution should be implemented in full effect as soon as possible but we are almost in 2017 and we are foreseeing a situation where we might have implemented less.

As we implement devolution, the manner in which counties are run leaves a lot to be desired and this puts pressure on the relevant Committees like the Public Accounts Committee and the Committee on Devolution to ensure that counties start on the right note. So far, from the reports that we are getting from the Auditor-General, it is clear that all the counties have some issues. Some of these issues are structural and others are because of negligence on the part of the government officials. There is also need to ensure that the county assemblies are better placed and capacitated to allow them play their oversight role.

As at now, the Senate is playing its oversight role but the Senators were inhibited greatly because there is no system of interaction between the Senate, the individual Senators and their respective counties. Whereas the Constitution places on us the responsibility of representation of counties, there are no fora that provide linkage between the Senate and the counties.

Mr. Temporary Speaker, Sir, we tried to enact a legislation to ensure that there is a forum between ourselves and the county elected representatives in the spirit of public participation and sharing of information as enshrined in the Constitution. Unfortunately, the governors challenged it in court and the court agreed with them. This is a matter that that should not be left unconsidered. If possible, an appeal against it should be filed or a reinvention should be made in accordance with the Constitution. Our cause may have been misunderstood.

I had an opportunity recently to inspect some projects in some wards and to check if the funds that were allocated to them went to good use. While good work is being done in Trans Nzoia County, there are areas that had glaring issues of inefficiency and sometimes, outright theft. I was in Matimbeyu Ward last Monday and we were informed by the public that Kshs3 million was used in the ward in the year 2013 to construct roads. The tender was issued but not even a single road was done yet the contractor was paid. We were also told that the Auditor-General has a report to that effect but unfortunately, no action has been taken against the culprits. There is need, therefore, for the Public Accounts Committee to work fast on these accounts to ensure these culprits are arrested.

Mr. Temporary Speaker, Sir, the issue of staffing in the counties is an area that needs attention. There are many government officers who were offloaded to the counties and they do not know what to do with them. The government must take action to ensure that there is rationalization in the number and the quality of staff. If you go to our health services in Trans Nzoia, for instance, we do not have adequate doctors. Some have left and there is no replacement. These are areas that we need to look at.

The other is the quality of work in the counties. This leaves a lot to be desired. The architects and the engineers do not seem to be doing their work. A lot of money is being spent on projects which will never benefit the people. In my county as I move to the wards, I saw water projects where the county has actually budgeted money, contracts have been awarded and pipes laid but those pipes do not deliver any water because of

water pressure which should have been foreseen by the engineers. The pressure breaks the pipes and also, there is a problem with project administration. Nobody is maintaining or rationing the systems after completion. The public is not involved in any way. There should be user associations or committees to ensure that rationing of water is done in a manner that benefits the public.

The issue of pension of the county staff and particularly those who were recruited and others who were transferred to the counties, is an area that has not been determined. I am sorry to say that as at now, there are county staffs who do not know what Pension Fund is taking care of their benefits. Under the labour laws, locally and internationally, each person is entitled to a pension right from their employment. There are officers who are working and do not have letters of appointment to show their nature of work.

Mr. Temporary Speaker, Sir, do I still have time?

**The Temporary Speaker** (Sen. (Dr.) Machage): I have not stopped you. Kindly go on.

**Sen. Ndiema:** Thank you Mr. Temporary Speaker, Sir. On the issue of implementation, this House has passed many Motions. However, we have not seen any implementation. I recall there is one on fertilizers and animal foodstuffs which was assented to and there was a body which ought to have been created to ensure that the fertilizer that ends up to our farmers and the animal foodstuffs are of good quality. It is almost a year now and no such body has been created. We have passed very many Motions here; we have talked about the need to have a university in every county and so many other things, but implementation has not been done. It is high time that as we create committees, they should also give us annual reports stating the progress being made to ensure that they are implemented. I think the Executive needs to be pushed in this direction. There is no need of passing laws and Motions here which do not see the light of day.

Mr. Temporary Speaker, Sir, with those few remarks, I support the appointment of Members to these committees.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. Could the Mover now reply?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to reply.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. Since this is not a county Motion, we will all vote. I will, therefore, put the question.

*(Question put and agreed to)*

For important reasons, I will defer Order Nos. 14, 15, 16, 17 and 18.

**BILLS***Second Readings*

THE CANCER PREVENTION AND CONTROL  
(AMENDMENT) BILL (SENATE BILL NO. 3 OF 2015)

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

THE COUNTY OUTDOOR ADVERTISING  
CONTROL BILL (SENATE BILL NO. 11 OF 2015)

THE KENYA NATIONAL EXAMINATIONS COUNCIL  
(AMENDMENT) (No.2) BILL (SENATE BILL NO. 14 OF 2015)

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

*(Bills deferred)*

**ADJOURNMENT**

**The Temporary Speaker** (Sen. (Dr.) Machage): Hon. Senators, there being no other business for today, the House stands adjourned until Tuesday, 16<sup>th</sup> February, 2016 at 2.30 p.m.

The Senate rose at 5.25 p.m.