

# PARLIAMEN<sup>T</sup>OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 17<sup>th</sup> July, 2014

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

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

### PRAYERS

### PAPERS LAID

#### REPORTS OF THE AUDITOR-GENERAL ON THE FINANCIAL OPERATIONS OF COUNTY GOVERNMENTS FOR THE PERIOD JANUARY TO JUNE 2013

**Sen. Khaniri:** Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the House, today, Thursday, 17<sup>th</sup> July, 2014:-

Report of the Auditor-General on the financial operations of the County Government of Bungoma and its defunct local authorities for the period 1<sup>st</sup> January, 2013 to 30<sup>th</sup> June, 2013.

Report of the Auditor-General on the financial operations of the County Government of West Pokot and its defunct local authorities for the period 1<sup>st</sup> January, 2013 to 30<sup>th</sup> June, 2013.

Report of the Auditor-General on the financial operations of the County Government of Elgeyo-Marakwet and its defunct local authorities for the period 1<sup>st</sup> January, 2013 to 30<sup>th</sup> June, 2013.

Report of the Auditor-General on the financial operations of the County Government of Vihiga and its defunct local authorities for the period 1<sup>st</sup> January, 2013 to 30<sup>th</sup> June, 2013.

Report of the Auditor-General on the financial operations of the County Government of Kisii and its defunct local authorities for the period 1<sup>st</sup> January, 2013 to 30<sup>th</sup> June, 2013.

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Report of the Auditor-General on the financial operations of the County Government of Kakamega and its defunct local authorities for the period 1<sup>st</sup> January, 2013 to 30<sup>th</sup> June, 2013.

Report of the Auditor-General on the financial operations of the County Government of Trans Nzoia and its defunct local authorities for the period 1<sup>st</sup> January, 2013 to 30<sup>th</sup> June, 2013.

Report of the Auditor-General on the financial operations of the County Government of Garissa and its defunct local authorities for the period 1<sup>st</sup> January, 2013 to 30<sup>th</sup> June, 2013.

Report of the Auditor-General on the financial operations of the County Government of Kirinyaga and its defunct local authorities for the period 1<sup>st</sup> January, 2013 to 30<sup>th</sup> June, 2013.

Report of the Auditor-General on the financial operations of the County Government of Nyandarua and its defunct local authorities for the period 1<sup>st</sup> January, 2013 to 30<sup>th</sup> June, 2013.

Report of the Auditor-General on the financial operations of the County Government of Wajir and its defunct local authorities for the period 1<sup>st</sup> January, 2013 to 30<sup>th</sup> June, 2013.

Report of the Auditor-General on the financial operations of the County Government of Isiolo and its defunct local authorities for the period 1<sup>st</sup> January, 2013 to 30<sup>th</sup> June, 2013.

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

REPORT OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK  
AND FISHERIES ON THE PETITION BY TEA FAMERS OF KISII COUNTY  
CONCERNING HIGH TAXATION AND LOW BONUS  
EARNINGS BY TEA FARMERS

**Sen. Murungi:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the House, today, Thursday, 17<sup>th</sup> July, 2014:-

Report of the Standing Committee on Agriculture, Livestock and Fisheries on the petition by tea famers of Kisii County concerning high taxation and low bonus earnings by tea farmers dated 17<sup>th</sup> July, 2014.

*(Sen. Murungi laid the document on the Table)*

**Sen. Sang:** Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the House, today, Thursday, 17<sup>th</sup> July, 2014:-

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REPORT OF THE INDUCTION RETREAT OF THE SESSIONAL COMMITTEE  
ON DELEGATED LEGISLATION

Report of the induction retreat of the Sessional Committee on Delegated Legislation.

REPORT OF THE RETREAT OF THE COMMITTEE ON  
DELEGATED LEGISLATION WITH ITS COUNTERPARTS  
IN COUNTY ASSEMBLIES

Report of the retreat on the Sessional Committee on Delegated Legislation with Chairpersons of its Counterpart committees in the county assemblies.

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

**MESSAGE FROM LAIKIPIA COUNTY ASSEMBLY**

ERRONEOUS DEDUCTIONS OF THE SALARIES  
OF STAFF DEVOLVED TO THE COUNTY  
GOVERNMENT OF LAIKIPIA

**The Speaker** (Hon. Ethuro): Hon. Senators, before we move to the next Order, I have a Message and Communication to make. Let me start with the Message to the Senate from Laikipia County Assembly.

As you are aware, Standing Order No.42 (1) of the Senate Standing Orders provides:-

“The Speaker of the Senate shall read to the Senate any message from a County Assembly to the Senate and such message shall be in writing and shall be signed by the Speaker of the County Assembly.”

Standing Order No.42 (4) further provides as follows:-

“If a message is received from a County Assembly, at a time when the Senate is in session, the Speaker shall report the message to the Senate at the first convenient opportunity after its receipt and in any event not later than the next sitting day.”

Hon. Senators, pursuant to Standing Order No.42(2) of the Senate Standing Orders, on 2<sup>nd</sup> July, 2014, the Clerk of the Senate received a message from the County Assembly of Laikipia regarding the erroneous deductions of the salaries for the staff devolved to the County Government of Laikipia. The message, which was forwarded by way of a letter dated 25<sup>th</sup> June, 2014 under the hand of the Speaker of the County Assembly of Laikipia makes reference to a report of the County Assembly’s Committee on Finance and Planning on the erroneous deductions on the salaries of the staff devolved

to the County Government of Laikipia which was adapted by the County Assembly of Laikipia on 25<sup>th</sup> June, 2014.

The Speaker of the County Assembly of Laikipia states that among the recommendations of the Committee that were adopted by the County Assembly was the recommendation that the matter be referred to the Senate for intervention pursuant to Standing Order No.42(2) of the County Assembly of Laikipia Standing Orders which provide as follows:-

“The Clerk of the Assembly shall transmit a message from the Assembly to the Clerk of the Senate and shall receive messages from the Senate.”

Hon. Senators, pursuant to Standing Order No.42(6) of the Senate Standing Orders, I hereby refer the message from the County Assembly of Laikipia on the erroneous deductions on the salaries of the staff devolved to the County Government of Laikipia to the Standing Committee on Finance, Commerce and Budget for consideration. The Committee should table its report to the Senate within three weeks of the date of this communication.

Hon. Senators, before I proceed, let me allow the Senators at the bar to come in.

*(Sen. Murungi and Sen. Billow entered the Chamber)*

*(Sen. Billow some took time before settling down)*

Order, Senators! Do not take in vain the generosity of the Speaker. If I take a break to allow you in, you do so quickly and settle!

### COMMUNICATION FROM THE CHAIR

#### VISIT TO THE SENATE OF KENYA BY THE PRESIDENT OF THE SENATE OF RWANDA

**The Speaker** (Hon. Ethuro): Hon. Senators, the Communication I have is on the visit to the Senate of Kenya by the President of the Senate of Rwanda.

I wish to inform you that the President of the Senate of the Republic of Rwanda, Hon. (Dr.) Jean Damascene Ntawukuliryayo will be visiting the Senate of the Republic of Kenya from 18<sup>th</sup> to 22<sup>nd</sup> July, 2014. This will be a reciprocal visit preceded by an official visit by a delegation from the Senate that I led to the Senate of the Republic of Rwanda from 20<sup>th</sup> to 24<sup>th</sup> June, 2013.

Hon. Senators, you will appreciate that Rwanda is a friendly country, a member of the East African Community and a member of the Commonwealth. Above all, Rwanda is a strategic and important partner to our great Republic. To this end, preparations for the

visit by the President of the Senate of the Republic of Rwanda have been going on. We are ready to receive the President, tomorrow, Friday, 18<sup>th</sup> July, 2014.

We have also laid an elaborate programme for him and his delegation during their stay in Kenya. The programme of the visit will include a meeting with the President of the Republic of Kenya, meeting with the Speaker and the leadership of the Senate, meeting with the Speaker of the National Assembly, meeting with the Senate Standing Committee on National Security and Foreign Relations and meeting with the Cabinet Secretary for Foreign Affairs and International Relations.

The key highlight of the visit by the President of the Senate of Rwanda will be an address to the plenary of the Senate on Tuesday, 22<sup>nd</sup> July, 2014 at 2.30 p.m. on the topic of: *“EAC Integration and a Bicameral Parliament”*. This will be the first address to the Senate by a visiting dignitary. As you are aware, Standing Order No.25 (1) provides as follows:-

“The Speaker may, after consultation with the Senate Majority Leader and the Senate Minority Leader, allow a visiting Head of State or other visiting dignitary, to address the Senate.”

I wish to confirm that, indeed, I have consulted the Senate political leadership as required by this Standing Order and they have all concurred.

In terms of the procedure which we shall apply, hon. Senators, I wish to draw your attention to the provisions of Standing Order No.25(3) which states as follows:-

“Standing Order 23 (*President entering or leaving the Chamber*) and 24 (*President’s Address to Parliament*) shall, with necessary modifications, apply to a visiting Head of State or such other dignitary.”

In particular, Standing Order No.24 (4) and (5) provide as follows and I quote:-

“When delivering an Address to Parliament, the President shall be heard in silence and the Address shall not be followed by any comment or question.

Whenever the President delivers an Address, a Senator may, as soon as practicable thereafter, lay the Presidential Address on the Table of the Senate following the reading of such Address.”

Hon. Senators, I will, therefore, give further guidance on the debate on the Presidential Address. I now, therefore, wish to request that all the Senators attend the Senate sitting on Tuesday, 22<sup>nd</sup> July, 2014 for the Address by Hon. (Dr.) Jean Damascene Ntawukulirayo, the President of the Senate of the Republic of Rwanda and that the provisions of Standing Order No.25 shall apply as the Presidential Address. Hon. Senators may also wish to note that the Senate will continue its business immediately after the address by the visiting dignitary.

Thank you.

## STATEMENTS

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 22<sup>ND</sup> JULY, 2014

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I rise to issue a statement on the business of the Senate for next week.

On Tuesday, 22<sup>nd</sup> July, 2014, as usual, at 12.00 p.m. there will be a meeting of the Rules and Business Committee to schedule the business for that week. Also, as the Speaker has already communicated to the Chamber, on that day we shall be hosting a visiting dignitary, namely; the President of the Senate of the Republic of Rwanda, who as we have been told, will be addressing us. The Senate will later continue with business that will not be concluded in today's Order Paper and debate the various Bills that are going for second reading.

Wednesday is normally a day for Motions. The business on Wednesday will be determined by the Rules and Business Committee meeting on Tuesday. Among the Motions which will be considered are:-

The Motion by Sen. Sammy Leshore on the establishment of National AIDS Control Council (NACC) offices at county levels. Another Motion will be by Sen. (Dr.) Khalwale concerning action to be taken on people who are perpetrating the crime of genocide in South Sudan. There will be resumption of debate on the Motion to adopt the Report of the *ad hoc* Committee on the Legislation and Royalties accruing from exploitation of natural resources in the counties.

On Thursday, 24<sup>th</sup> July, 2014, the Senate will continue with business that will not be concluded on Tuesday and Wednesday and will continue with any other business that will be scheduled by the Rules and Business Committee. I thank you and, hereby, lay the statement on the Table of the Senate.

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

THE DEPARTMENT RESPONSIBLE  
FOR KENYA'S IMAGE ABROAD

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. I rise to seek the following statements from the Chairman of the Standing Committee on National Security and Foreign Relations.

In the statement, the Chairman should state;

1. Who is responsible for Kenya's image overseas; is it the Ministry of Foreign Affairs or the Ministry of Information, Communication?
2. How many public relation officers do we have in the stations in foreign countries, and;

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3. How many of them are Kenyans and how many are nationals of the respective countries?

4. He should tell us how many lobby companies Kenya has in those embassies mentioned under part “3.”

**Sen. Haji:** There is a lot of movement here. I did not even get the request. I am sorry.

**The Senate Minority Leader** (Sen. Wetangula): You can get it from the HANSARD.

**The Speaker** (Hon. Ethuro): Who was obstructing you?

*(Sen. Haji pointed at Sen. Murungi and Sen. Wangari)*

**Sen. Haji:** This lady and this gentleman.

**The Speaker** (Hon. Ethuro): Sen. Mutula Kilonzo Jnr., you may need to repeat. Sen. Haji, I hope you will be attentive.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. The statement is addressed to the Chairman of the Standing Committee on National Security and Foreign Relations.

The Chairman should state who is responsible for Kenya’s image overseas, whether it is the Ministry of Foreign Affairs or the Ministry of Information, Communication. Two, how many public relations officers we have in those stated foreign countries; three, how many are Kenyans and how many are nationals of the respective countries; and, how many lobby companies Kenya has in our key embassies.

**Sen. Haji:** Thank you, Mr. Speaker, Sir. I will give the statement in one week’s time.

#### IMMINENT ATTACK IN TURKANA

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Speaker, Sir, for allowing me an opportunity. Yesterday, the distinguished Senator for Turkana raised an alarm to the effect that there was an impending attack in his county. You directed the Office of the Clerk to write an urgent message to the internal security organs and the Chairperson of the Committee to take up the matter urgently to see what pre-emptive measures could be taken. If you were watching the news at 1.00 pm, then you saw that, indeed, there was an attack in Turkana where one person was reportedly killed. Other casualties are unknown. Seven persons were kidnapped and close to 100,000 head of cattle stolen.

The distinguished Senator raised the alarm and you directed that this matter be brought to the urgent attention of security organs to find ways and means of protecting the people of Turkana County. In fact, in my intervention, I said that we did not wish to lose more lives in this country more so where we have prior information and warning.

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I want to know; one, whether the Office of the Clerk adhered to and your direction and proceeded to write to the Ministry of Interior and National Coordination and whether the Chairman of the Committee, in response to your direction, has taken any action to reach out to the security agencies and to find out what they have done and if he did, why this was not preventable.

**The Speaker** (Hon. Ethuro): Sen. Wetangula, even as the Chairman comes, the issue about the Clerk cannot be prosecuted on the Floor. So, let us take the one of the Chairperson.

**Sen. Haji:** Thank you, Mr. Speaker, Sir. Yesterday, when this statement was sought, I had just left the House. The matter was again brought to my attention this morning at about 11.30 a.m.

I personally took the initiative and walked to Harambee House. I went to see the Permanent Secretary. Unfortunately, she was not in. I went to the second person in command, Mr. Joseph Irungu, Deputy Principal, who was also attending a meeting at the Public Service Commission. I wrote down a message and attached the statement. This is what I wrote.

“Mr. Joseph Irungu, please, ensure proper security measures are put in place to avert the impending attack as per this statement.”

I left it with the Secretary. I did not stop there. I went again to another Deputy Secretary called Mr. Okemwa and gave him a copy of the statement. However, up to now, we have not received a statement from the Ministry. It is unfortunate that this has happened.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. Before I raise my point of order, I pass my condolences to the families of the people who have been affected. There were reports, during the incident of Westgate, that there was intelligence given to the security organs. Similarly, in Mpeketoni, there were reports that this intelligence was also available to the police.

Given that the Chair of the Committee has made that report to the House and given that the transmissions of this House are carried out live, it is, therefore, clear that the Government was aware that this problem was there. Could the Chairperson clarify whether there is a deliberate effort within the circles of Government to ensure that the state of insecurity in Kenya is perpetual?

**Sen. Munyes:** Mr. Speaker, Sir, I am perturbed with what has happened given that this message came straight from the Chairperson of the Committee on National Security and Foreign Relations. This did not happen in my own constituency only. What was reported by *Citizen* happened in Loima Constituency. Turkana South and Turkana East were also affected. This is happening at a time when the Government has taken all the troops to guard Ngamia I, the oil discovery in Turkana.

I am getting messages from Turkana that we may have to stop these operations. If the Government is only interested in ensuring that Kenya gets oil at the expense of Turkanas dying in the hands of the Pokots, then we will stop these operations. That is my



plea. Very many lives have been lost. Villages are being attacked and crops are being destroyed; people are being raped while at their farms and we cannot take this.

As a community, the message I am also getting from the Turkana public is that those operations must stop. We will go ahead to do that. The Government is interested in getting oil for the sake of all Kenyans. However, nobody is interested in ensuring that the Turkana public is safe. Livestock is lost every day. We have 100,000 cows going through Kacheliba and ending up in Uganda.

The Uganda People's Defence Forces (UPDF) is trying on its side but the Kenya Defence Forces (KDF) is just sitting in the barracks waiting to go to Somalia and cannot help Turkana people, the Lamu people or any other Kenyans who are suffering out there.

**Sen. Billow:** Mr. Speaker, Sir, this is a very serious matter. A couple of weeks ago, we were in Turkana with hon. Senators and other hon. Members of Parliament. The Members of Parliament in Turkana expressed serious concerns about security. The concerns were so serious that you may wonder what is going on particularly with regard to mobilization of resources.

I met the County Commissioner of Turkana who is supposed to be the Chairman of security. He told us he did not even have a car. We met the OCPD, I think in Loima and he told us that he did not have a car. The Government bought a number of vehicles recently and counties where insecurity is not as pronounced as Turkana were given up to 35 vehicles. In areas where security is a challenge, there is no vehicle at all. Forget about even the other fellows. In a whole constituency, he does not even have a vehicle and that is the area where people were being attacked.

I think there is a lot that needs to be done on this issue of Turkana. I think in every meeting we went, the main message from the public was about security and nothing else. It is not insecurity from across the border; it is insecurity from within the country. I think the Chairman of this Committee needs to crack the whip on the heads of security in this country with regard to that particular county because definitely, it will have an economic impact in that county. If the people in that county now say that you cannot come to exploit resources at the expense of people dying, then it has a serious impact on the economy of the country. I think it is time the Government took that matter seriously.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, this is a very serious matter and I am glad that it was brought to the Senate. There are only two possible explanations as to why there are spots of insecurity in the country which does not receive effective Government response. One explanation is that the security apparatus in this country are either demoralized or has broken down so that the people that my dear friend goes to see at Harambee House actually do not know what they are talking about because they are disconnected from the areas where these things are occurring. The flow of information has broken down, the morale is down and people who should keep order at the grassroots think that the people up there are just eating especially in the war in Somalia where a lot of evidence has been shown. It is not a simple issue and that is one possible explanation.

The other possible explanation is from history. If you remember well, those who have read the history of West Africa, South Africa and East Africa, the colonialists had one way of depriving Africans of their resources. You cause two or three communities to fight one another and then the community that conquers the other one takes others as slaves and surrenders them to you and you take those slaves to America. When they are scattered you come and take the gold, copper and everything else and then, of course, to some, it is too late to safeguard their resources. It even happened here in Kenya when the colonialists were tried to get the White Highlands. They caused havoc among the Kambas and Maasais who fled and then they took the land.

In this particular case in Turkana, I am not surprised that the State is behaving this way. I am also not surprised that Sen. Munyes is saying that they are going to stop the operations of mining oil because, really, what is happening is to cause chaos so that that Turkanas do not have control of their land and people who have this land who then sell it to oil companies will make a kill and go away and then they do not care what happens after that. It is a very serious matter of conflict between natural resources and the needs of citizens and secondly human rights of people who should control their natural resources and the forces of capital. There is always a contradiction and I think this contradiction should be laid out barely. We should not just speak as if we do not know how governments behave under such circumstances and how primitive accumulation takes place under such conditions.

Thank you.

**Sen. Musila:** Thank you, Mr. Speaker, Sir. Our hearts go to the people of Turkana County and indeed to those of other areas that have been subjected to attacks regrettably without Government response. For how long are we going to go through this kind of thing where every day we are receiving reports of communities being attacked by people known or unknown, and the sad thing is that we never hear of arrests or situations we are told, they killed so many and we killed so many.

Two years ago, I accompanied the former Prime Minister to a place in Turkana called Todonyang where the Merilles from Ethiopia just move across and kill our people at will and no action is ever taken. When we visited that police station, there was only one lorry that was sitting on stones and the poor policemen who were there, even the houses in which they lived in were not secure. Therefore, they were forced to befriend the enemy so that they do not kill them when they come to attack. These are issues that have gone on for years and years, and I think we can never have development in this country when we have people being killed here and there. Even the oil that Sen. Munyes is talking about cannot be mined---

**The Speaker** (Hon. Ethuro): Order Sen. Musila. It is Statement time.

**Sen. Musila:** Mr. Speaker, Sir, I am seeking for further clarification from the Ministry whether they are satisfied that the security of the people of Turkana and indeed the security of other people including those in Lamu is being taken care of by the Government as it should be.

Thank you.

**Sen. Kagwe:** Mr. Speaker, Sir, I also condole the families of those who were affected and raise a fundamental issue; that it is getting to the point where we grow to accept circumstances such as this one as normal. Circumstances where people can attack each other, kill each other and to all intents and purposes, it looks normal. That is a very serious and vicious issue. I would like the Chair to clarify who is going to take responsibility for this action. Who is going to resign from Government as a result of this action? Honestly, this culture where nobody takes responsibility for even a big thing like this is what is destroying us. In Brazil, the Minister for Sports resigned when their football team performed dismally. So, we must take these issues seriously and the Senate must demand a bit more serious action than just a sing song.

**Sen. (Dr.) Khalwale:** Now you have talked!

**The Senate Minority Leader** (Sen. Wetangula): Well done!

**Sen. Hargura:** Mr. Speaker, Sir, I would like to pass my condolences to those who have lost their loved ones. When these incidents usually happen, we normally have prior information, especially in the so-called marginalized and arid areas. These people come on foot and it takes them weeks to even prepare and even herdsmen see them and report to the village elders. Now it has come all the way to Nairobi where the Senator has even reported on the Floor of the House of this impending attack against his people. I support what Sen. Munyes is saying that the oil exploration should stop because the only interest the Government has in those areas are the resources whereas the people there have no use to the Government. It is said that when we go around killing each other, that is normal and that is why when it happens in Lamu, there is a lot of Government intervention but in our areas, people have been killing one another but the Government thinks it is normal. It is like we are used to killing ourselves.

We are in a country which has a Government. So, what is the Government machinery doing? Why is it letting us butcher each other? Even the few Government officers who are said to be stationed in Turkana are actually guarding the oil exploration sites.

**Sen. Ong'era:** Mr. Speaker, Sir, these are very grave matters. For the last five months, we have had issues of poor defenseless Kenyans being massacred at large. We have heard of very serious incidents in Lamu, Wajir and Mandera. What is going on in Turkana is unacceptable in this country. Very soon, if our security forces are not able to take meaningful action, Kenyans are going to take arms and defend themselves. It will be too late even for us, leaders, because we shall be overtaken by events. I urge the Chairman of the Committee on National Security and Foreign Relations to look for the highest office that deals with security issues to give us immediate answers. We cannot sit on a situation as volatile as it is right now in Turkana when we know that the real motive is to take our defenseless people's land. It is really sad to see the kind of degradation that women and children are undergoing and yet we claim to have security forces in this

country. I want to support the Senator for Nyeri when he posed: When will these men and women do the most honourable thing and resign?

Thank you.

**Sen. Murungi:** Mr. Speaker, Sir, this is a very serious matter but I do not think that the resignation of one person called ole Lenku is going to stop the killings in Pokot and Turkana because the problem is much deeper than that. I think we need to address the whole issue. If you look at the way we have established the military bases in this country; we have a barrack in Kahawa, Lang'ata, Gilgil, Nanyuki and Eldoret. These were established by the colonialists because wherever the "White" men were, that is where the military barracks were established. Time has come for security to be devolved so that we have a military barrack established in Turkana. Time has come for us to establish military barracks in northern Kenya and north eastern Kenya so that we decolonize the security system of this country.

Mr. Speaker, Sir, although we have left security to be a function of the national Government, I think it is time for us to share this responsibility with the county governments as well. It is time for us to provide some local armed security to protect the Turkana people and to protect the people in Marsabit in some arrangement in connection with the national Government. I think if we just leave it to float at the national Government level, it is not sufficient. I think we need more practical solutions than merely saying, sack so-and-so.

**Sen. Obure:** Mr. Speaker, Sir, I join my colleagues in sending condolences to the bereaved families. This is indeed a worrying situation. My worry in particular is how long we are going to sit here lamenting and feeling helpless. All we can do is send messages of condolences after the event. In this particular instance, the Senator for Turkana had information. He came here and expressed his fears and we all agreed that we could not wait one more day. In fact, from the Chair, you rightly directed that this matter be brought to the attention of all those responsible for security so that the situation could be pre-empted.

It is worrying. How long are we going to sit here and lament? I want to know from the Chair and perhaps those responsible for security. In fact, many a time, I feel very sorry for the Chair because I know the amount of efforts he is making to get some of this information. Is the Chair satisfied that this is now the direction we are going to be taking where the lives of Kenyans are lost on senseless causes? For how long are we going to continue to accept that?

**The Senate Minority Leader (Sen. Wetangula):** Mr. Speaker, Sir, may I laud the distinguished Senators for showing their concern and love for the people of Turkana and their plight.

Mr. Speaker, Sir, our hearts bleed for Turkana County. When Turkana County is not under attack from Ethiopia by the Meriles, it is under attack by the Toposas from South Sudan. When it is not Toposas from South Sudan, it is under attack by the Karamojong from Uganda. When it is not under attack from Karamojong, there is an

internal attack. This has been going on and on. I want to request the Chairman to go back and check with the security agencies. In the last Cabinet, we passed a very clear resolution that the Government establishes security facilities and specially, the General Service Unit (GSU) and Administration Police along the Kenya-Uganda-South Sudan-Ethiopia border, around Turkana, at 50 kilometre intervals. The minutes of the Cabinet can be brought and my brother, Sen. Haji and Sen. Kiraitu were with me in the Cabinet and know this. We sat in that committee with Sen. Orengo and Sen. Munyes himself. I do not know if this has been done.

Mr. Speaker, Sir, secondly, given what we have been told by the distinguished Senator for Mandera and others, that the irreducible minimum that the security agencies in Turkana, Marsabit and those vast counties should have is, at least, a helicopter to assist them in tracking criminals; could the Chairman ensure that they are given an helicopter to assist them fight crime? We have lost too many lives and really do not want to lose anymore lives. We have seen it all over the country. What do we see? We see the Governor of Lamu being arrested and driven on a pick-up from Lamu to Mombasa. He was taken to court yesterday and after three weeks, the Director of Public Prosecutions (DPP) goes to court and says: "I need two months because the investigations are complex." Why did you arrest him in the first place?

Mr. Speaker, Sir, I want to thank the Chairman for going to the Office of the President to check. But under normal circumstances when a Committee of the Senate calls the Executive, it does not have to take the Chairman to walk from office to office. We expected in our Committee this morning to interrogate the Minister for Interior and Coordination of National Government. Instead, we were told that he has accompanied the Head of State to Kwale for *Iftar*, when people are dying. Recently, you may recall that in Korea when a ferry capsized killing 300 people, the Minister did not wait to be sacked. He promptly resigned and left office. When are these levels of moral responsibility going to get into our system? It is not culpability, but the question of responsibility. You do not even need a Motion of Parliament to leave office when there is culpability.

Mr. Speaker, Sir, I want to urge that, perhaps, the way to go is for you to call a Kamukunji and call the men and women who are in charge of our security to come to this Senate, so that it is not a question of the Committee on National Security and Foreign Relations, but this whole Senate expressing outrage and concern on the plight of Kenyans.

Thank you, Mr. Speaker, Sir.

**Sen. Wangari:** Asante, Bw. Spika. Ningependa pia kutoa rambirambi zangu kwa watu wa Turkana na hasa Wakenya wote ambao wameathiriwa na ukosefu wa usalama.

Bw. Spika, ni jambo la kusikitisha sana kwa sababu hii sio mara ya kwanza tunaongea kuhusu mambo ya usalama katika Bunge hili la Seneti. Hasa hata tumefanya mkutano ama kikao kisicho rasmi ili kuwasikiza wale wanaohusika na mambo ya usalama. Kila mara kukiwa na mambo kama haya Turkana, Lamu au sehemu yoyote,

wanaoathirika zaidi ni akina mama ambao wanawapoteza watoto wao. Watoto pia wanawapoteza baba zao ambao wanawapa riziki za kila siku.

Bw. Spika, hatuwezi kuendelea hivi. Kama vile nilisema hapo awali katika Seneti hii, hata wanyama katika nchi hii hawako salama tena. Najua kwamba mambo ya kujiuzulu sio desturi yetu kama Wakenya, lakini kila siku watu wanakufa. Tumemsikia hata Waziri ambaye amepewa jukumu la usalama akisema kwamba uvamizi haukutekelezwa na kikundi cha *Al Shabaab* bali ni wanasiasa. Kisha akasema tena kuwa sio wanasiasa waliohusika bali ni mauaji ya kawaida. Tumechoka na mambo haya. Nasikitika kwamba hata Mwenyekiti wa Kamati ya Usalama katika Seneti amesema kwamba amefika mwisho. Ameomba watu wamjibu lakini hapati majibu hayo. Tunajua kwamba amefanya kazi katika Wizara ya Usalama kama Waziri. Sijui akina mama ambao wako kule Turkana, Lamu na kwingine watafanya nini.

Bw. Spika, sisi kama Seneti ni lazima tufuate zile kanuni ambazo zilikuwa zimependekezwa na Waziri wa Usalama za kuhusisha Magavana katika maswala ya usalama. Ni lazima tujue jambo hili limefika wapi. Kama Seneti, tunafaa kujua kwamba tunahitaji kushirikiana katika---

**The Speaker** (Hon. Ethuro): Seneta, maliza sasa kwa sababu umechukua muda mrefu sana.

**Sen. Wangari:** Asante, Bw. Spika. Namuunga mkono Sen. Wetangula kwamba ni lazima tuwe na kikao kama Seneti na tuwaite wale ambao wanasimamia mambo ya usalama, ili tuweze kujua ni nini haswa tutakachofanya kuhakikisha kwamba hatutawapoteza watu wengine kwa sababu ya uhalifu.

Asante, Bw. Spika.

**The Speaker** (Hon. Ethuro): Bw. Mwenyekiti, ni wakati wa kujibu.

**Sen. Haji:** Mr. Speaker, Sir, I do not have an explanation that can really satisfy this House as well as Kenyans regarding the prevailing insecurity in the country. To expect the Chairman to crack the whip is like expecting him to revive a dead person. I am saying this because I do not have the ability to do that.

Mr. Speaker, Sir, secondly, the issue of insecurity is being felt at the heart of the Government. Last night after coming from the mosque at 9.00 p.m., I watched the President addressing the County Commissioners. He was telling them: "If I cannot sleep at night, I will not let you sleep also." So, if the Head of State can say that, who is Sen. Haji, as the Chairman of a Committee of the Senate to do anything other than trying to get the answers from the horse's mouth?

Mr. Speaker, Sir, my heart is very heavy; that in spite of this matter being brought to the attention of the Government yesterday, no action was taken. That is why I did something which is not normal. When this matter came to my attention, I walked on foot from here to Harambee House. Since the Principal Secretary was not available, I went to see the other people in charge.

Mr. Speaker, Sir, on the issue of Turkana, I want to appeal to my brother that two wrongs do not make a right. It is not right to go and stop the exploration of oil, because

this exploration will benefit the Turkanas as well as other Kenyans. Let us do everything possible to address the situation which is in our hands. I would request the Clerk to make sure that the deliberations of the House are also sent to the Ministry, so that we can get a full report come next week.

Mr. Speaker, Sir, the gracious lady said that I should go and see the highest office. I do not know whether that will help. But my Committee will do everything possible to bring the issue to the attention of the authority, so that these things do not continue happening.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): I think it is important that you explore the suggestion made on the Floor; that you summon all the persons in charge of security - and we can work together - and invite all the Senators, so that they can express themselves. In the meantime, I think that it is time that the Senate pronounces itself and also makes certain personal choices on the people responsible. We cannot say that this problem is serious and then we are defending the officers responsible. Somebody must take responsibility; there are no two ways about this. The job is not being done. We are assured everytime that it is being done. Even when they are present on the same ground-- - You know what happened in Lamu. We should also speak with one voice and agree that somebody has failed to perform. Whether by sins of omission or commission, they must take responsibility. So, let us work on that.

**Sen. Haji:** Mr. Speaker, Sir, we will summon the security officials on Wednesday. I think that a full Statement should be given latest on Thursday.

**The Speaker** (Hon. Ethuro): We have spent a bit of time on this. Let us stop there.

Let us take the next Statement by the Chair of the Committee on Education.

#### GOVERNMENT POLICY ON DEVELOPMENT AND USE OF INDIGENOUS LANGUAGES

**Sen. Karaba:** Mr. Speaker, Sir, I have a Statement to make as requested by the Senator for---

**The Speaker** (Hon. Ethuro): Order, Chairman! First, make sure that the Senator has a copy of the Statement. Secondly, the response should not be more than five minutes but find a way of addressing all the issues that were requested. I can see that you have a lengthy statement.

**Sen. Karaba:** Mr. Speaker, Sir, I beg to make the following Statement as regards the national language policy. Of course, there is a policy that vernacular or mother tongue should be used in all schools in Kenya as a medium of instruction, especially from Class One to Class Three. This policy started as early as 1954 with the Ominde Commission and the Gachathi Report of 1976. It has also been developed by the Kenya Institute of

Education (KIE), which has come up with a lot of instructions, including even publishing quite a number of books, including in the Meru Language.

Besides the Meru Language, they have come up with more than 20 mediums of instructions and captured in various books. I need not read them, but the answer contains all the other languages that are covered in the schools. In addition to even writing and related numerals, the medium of instruction, that is, the environmental language, is given priority, so that the pupils in Class One to Class Three will understand. It is also a policy that from Class Four to Eight, the schools are encouraged to use English and Kiswahili as languages of instructions. We have given a copy to Sen. Murungi and he is comfortable. What you would wish to ask is whether there is anybody else who might be having some interjections to which I will answer.

**Sen. Murungi:** Mr. Speaker, Sir, first, I want to correct the impression erroneously created by the Chairman that I am comfortable. That answer, to say the least, is insufficient. I do not want to add adjectives which may be offensive. I think it is Sen. (Prof.) Anyang'-Nyong'o who said that the colonialists took many of our resources. One of the resources they took is our indigenous language. Our process of decolonization will not be complete until Kenyans can express themselves in their mother tongue and perpetuate their cultures in that language. This is what we are trying to preserve through the Constitution.

You have heard the Chairman quote some policy documents of 1954 and 1976. I did not ask about what happened before the new Constitution, I asked him what the Government is doing to implement the policy stated in Article 7 of the Constitution to promote indigenous languages. He has not answered that. We know old policy documents are there---

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

**Sen. Murungi:** I want to ask, what action the Government is taking to develop indigenous languages? I come from a county---

**The Speaker** (Hon. Ethuro): Order, Senator. Proceed along the line of "what action." All of us know you represent one county here.

**Sen. Murungi:** I am saying that in my county there is nothing happening in conducting any teaching in ECDs or primary schools up to Standard Three in Kimeru Language. What action has the current Government taken to implement the Constitution by introducing Kimeru Language up to Standard Three in primary schools in Meru? I also asked how much money the Government has put in the current Budget for the purposes of implementing this policy. I have not heard him say anything about that. So, could he answer those two first?

**The Speaker** (Hon. Ethuro): I thought that the second one is where he said you are very comfortable with the answer.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, this is a very important question and Sen. Murungi has correctly quoted Article 7 of the Constitution which is very clear in its terms, that the State shall promote and protect the diversity of languages of the people of



Kenya and also promote the development and use of indigenous languages, Kenya Sign Language, brail and other communication formats.

When you go to rural schools, the medium of instruction is not the indigenous language as contemplated in the 1976 regulations. I do not believe that there is any curriculum. Even if children have to be instructed in their mother tongues in schools where they are homogeneous, they will not be instructed per the whims of the teacher. There has to be a curriculum to be followed to instruct them in their local language as they transit to Class Four.

I do not believe that there is that curriculum at all in the Ministry of Education. I know for sure that the children from Murang'a where I come from are not instructed in mother tongue from Standard One to Three and that indeed there is resistance from teachers because they want them to learn in English. I believe this is wrong because Article 7 must be followed. Is the Chairman satisfied that assuming there are the 1976 regulations; Article 7 of the Constitution is being adhered to by the Ministry of Education? Is there a curriculum which states that pupils from Standard One to Three will be using their mother tongue?

**Sen. Muthama:** Mr. Speaker, Sir, I stand for a united country; I stand for a country that communicates with clear understanding. The issue of tribalism we are talking about in this country---

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

**Sen. Muthama:** I am building my clarification.

**The Speaker** (Hon. Ethuro): You are not responding to the Statement, are you? Seek clarification.

**Sen. Muthama:** I am heading there.

**The Speaker** (Hon. Ethuro): Can you reach there faster?

**Sen. Muthama:** Let me reach there faster. By being taught in mother tongue---

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

If it is by mistake, it is okay.

**Sen. Murungi:** I just have one final clarification.

**Sen. Muthama:** The clarification I am seeking from the Chairman, which will be forwarded to the authorities that will deal with this issue is; what is being done by the Ministry to make sure that at least two languages spoken in this country; that is, Kiswahili and English, are taught in schools rather than teaching Kikamba here, Kikuyu there, Turkana there and so on? As we attend these gatherings, we have witnessed this.

**The Speaker** (Hon. Ethuro): Order. You have made your point, Senator.

**Sen. Muthama:** Mr. Speaker, Sir, can I just---

**The Speaker** (Hon. Ethuro): Order! Can we now have "the last small point" by Sen. Murungi?

**Sen. Murungi:** Mr. Speaker, Sir, there is a very important development which has taken place in the country. We now have indigenous radio stations for almost all the communities in Kenya. Could the Ministry consider introducing programmes through

those vernacular radio stations as a medium of instruction or as a medium of teaching indigenous languages in those areas where it is appropriate to do so?

**Sen. Karaba:** Mr. Speaker, Sir, I am surprised that I am getting mixed reactions from the House. What I can tell you is that the Statement says that in Meru, the curriculum developers, whom I had the pleasure to meet this morning, have come up with various titles of books. They have come up with a book titled “*Mbugua Na Ntai*” and “*Nkono Cia Twana*”. These are books which have been developed by curriculum developers from the Meru Community. That tells you that there is a lot being done. They told me that it is not easy to teach in the lingua franca of the region. There is a language that can be used as a medium of instruction. For example, in Kisii, they can use that as a medium of instruction but not as language. To have that language taught in all the 17 public colleges, we will need to train teachers and this is not easy. When you get those teachers posted, they must be posted to areas where they come from so that they can continue teaching, which is also not possible in the country.

Mr. Speaker, Sir, budgetary allocation has also become very difficult because they require more than Kshs2 billion to have this scheme and the money is not forthcoming. The little they have, they are using it to develop vernacular books not as a medium of instruction but for reference. Otherwise, it is a very difficult exercise but it can still be implemented at the cost of another department. The Ministry is trying to abide by the Constitution but times are hard.

#### SLOW ONGOING CONSTRUCTION OF THE KISUMU-KAKAMEGA ROAD

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. I see on the Order Paper today, it is listed that I would be requesting for a Statement from the Chairperson, Standing Committee on Roads and Transport. I made this request two weeks ago and the Chair who was in the House promised that the answer would be coming today. I think it should be correct that what we are expecting today is the Statement from the Chair and not a request from me.

**The Speaker** (Hon. Ethuro): Where is the Chair of that Committee?

Sen. Obure.

**Sen. Obure:** Mr. Speaker, Sir, on behalf of the Chairman of the Committee, I wish to report that on 15<sup>th</sup> July, 2014, the Committee held a long session with the Principal Secretary, the Director-Generals of the roads Authorities and other senior officers from the Ministry of Roads---

**The Speaker** (Hon. Ethuro): Chairman, again like I assigned the Chairman for Education, I am giving you five minutes.

**Sen. Obure:** Mr. Speaker, Sir, the objective of that meeting was to discuss the various issues raised by hon. Senators in this House last week regarding the progress and the status of various infrastructure projects around the country. In particular, we

discussed the issue of the Isiolo Airport improvement project. We discussed the issue of Mikinduri-Maua Road, Kisumu-Kakamega Road, Homa Bay-Mbita Road, Sagana-Kutus-Kerugoya Road, Molo-Olengurueni and several other road projects.

Proposals were also discussed regarding the issues which were raised on the Floor last week regarding the safety of pedestrians along the Nairobi-Thika superhighway. The Ministry requested to be given time up to next week on Thursday to come up with a comprehensive policy statement regarding the status of all these projects around the country.

Subject to your approval, I wish to request that this Statement be presented here not on Thursday next week but the Tuesday following. I want to assure you that it will be a comprehensive Statement responding to all these issues including the one raised by the Senator for Vihiga.

**The Speaker** (Hon. Ethuro): It is so directed.

Next Statement; Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, the Statement has already been requested.

**The Speaker** (Hon. Ethuro): Sen. Orengo. He is not here.

That is the end of Statement time.

Next Order!

## BILL

### *Second Reading*

#### THE PUBLIC PROCUREMENT AND DISPOSAL (AMENDMENT) BILL) (NATIONAL ASSEMBLY BILL NO.31 OF 2013)

*(Sen. (Prof.) Kindiki on 15.7.2014)*

*(Resumption of Debate interrupted on 15.7.2014)*

**The Speaker** (Hon. Ethuro): Who was on the Floor?

What is it Sen. Hassan?

**Sen. Hassan:** On a point of order, Mr. Speaker, Sir. I just wanted to seek clarification from the Chair because this is probably the most ideal time to ask; we approved a Bill on the County Development Boards and it was to be submitted within a week. I heard some anxiety from our colleagues in the National Assembly saying that we have not transmitted the Bill within the stipulated time. I want to confirm from the Chair whether that was met as per the provisions of the Constitution and whether ---

**The Speaker** (Hon. Ethuro): Order, Senator! You cannot use the Floor to be the conveyor of half-truths and completely out of the blues.

We are on Order No.8. Sen. Godliver Omondi had a balance of nine minutes.

Sen. Omondi, do you wish to proceed or can we allow another Senator to contribute?

**Sen. Omondi:** Mr. Speaker, Sir, I wish to proceed.

**The Speaker** (Hon. Ethuro): Proceed then.

**Sen. Omondi:** Mr. Deputy Speaker, Sir, on the issue of public procurement, I support this Bill. I still say that the 30 per cent that is supposed to go to women, youth and persons living with disabilities should not be lumped together. Why? In most cases, all the percentage is taken up by women and youth and very little is left for the persons with disabilities. Therefore, we must have a certain percentage specifically meant for people living with disabilities, so that their interests can be taken care of and what belongs to them goes to them. Many a times we are lumped together and the portion for those persons living with disabilities is not visible. When we are not visible, we cannot gain or partake of whatever is given out to the three groups.

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

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

Mr. Deputy Speaker, Sir, I also support the Bill by saying that we need to have in place some structures and specific programmes to benefit persons with disabilities. When it comes to procurement, they should be given requirements which are regulated in a manner that are friendly to them. This is especially on the issue of the money required to register companies, which should be waived to allow many groups of persons with disabilities to register companies that will enable them to participate in the procurement process.

Mr. Deputy Speaker, Sir, when we empower people living with disabilities through procurement and enabling them to participate, we will build them economically. This will help reduce the dependency syndrome that most people living with disabilities have where they depend on other people to give them handouts for their upkeep. There is an outcry about procurement throughout the country. I, as a Senator representing people living with disabilities, without a budgetary allocation, I am facing a rough time. Many groups of people living with disabilities from the 47 counties are writing to me, asking me to facilitate their registration. So, without a budgetary allocation to Senators to support such initiatives, the people we are representing, especially me, I am having a rough time. They think I have budgetary allocation to support their initiatives. I am not supporting their initiatives because I do not have a budget allocation for that purpose. If they waive the registration fees, then it will reduce the burden that these people are shouldering by a big margin.

Mr. Deputy Speaker, Sir, I have an example of Nairobi City County where a youth with disability managed to register a company. However, because of the

requirement from the banks, he is not able to render services to the County Government of Nairobi although he won the tender. He has now requested me to go to the bank and commit myself so that he is given a loan to help deliver goods and services to County Government of Nairobi. How can I commit myself? If I commit myself for him, what about the other people living with disabilities?

Mr. Deputy Speaker, Sir, this is a good initiative if we support the three groups, especially the most vulnerable, who are people with disabilities. We will help in reducing all the struggles that they go through when registering companies. The requirements for registration of a company are so tedious and unfriendly. We should also be giving them information on time. The last time when I was contributing to this Bill, I said that the issue of assuming that everybody will get information through newspapers and radios denies a certain group of people, especially people with disabilities, the chance to get the information on time. This is locking them out from participating in important economic development activities that are going to empower them economically. These people have a right to information as provided for in the Constitution.

Mr. Deputy Speaker, Sir, I am not happy with the way the issue of mainstreaming representation of people with disabilities at all levels is taking direction in this country. In fact, we have three counties that do not have representation of people with disabilities in the county assemblies. They are running the issues of county governments illegally because they are not constitutionally constituted. People with disabilities are discriminated when it comes to employment and tendering process in those county governments. We do not even have them in committees of county assemblies. Are those county governments not in violation of the Constitution? This Senate must stand and be strong enough to protect the interest of Kenyans by protecting the Constitution. Violation of the Constitution should not be allowed in this country. This is a House of power where we have people who are ready to protect the Constitution. The Constitution is about peoples' lives.

*(Applause)*

I want to support the Bill because it is touching on the lives of people who are vulnerable, the women who are marginalized and the youth who are leaders of this country. The youth need to be developed economically so that, in future, they are stable and they can run the affairs of this country when some of us shall have grown old, retired or whatever way we would have gone. We will make sure that we enable the young people of this country to participate and take this country to another level.

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

*(Applause)*

**Sen. Wangari:** Thank you, Mr. Deputy Speaker, Sir. I rise to support this very commendable Bill, knowing that the problem of unemployment, especially to the youth in this country cannot even be exhausted yet. The numbers we are talking about are very scary; they are in their millions and we know that even statistics and demographics show clearly that we are actually a youthful country with more than 60 per cent of our population aged less than 35 years.

Mr. Deputy Speaker, Sir, I have several issues that I want to note in this Bill. First, as a young person myself, I know the hurdles that the young people go through trying to access these procurement opportunities. The history of this amendment started with the former Government when it reserved 10 per cent of tenders to the youth, women and persons living with disabilities. I want to commend the Government by taking very active measures in dealing with this issue. Now putting it in law, it will definitely make it more accessible and easier for these vulnerable groups to access Government tenders.

Mr. Deputy Speaker, Sir, there are several changes that have actually taken place over the last few months in the Government through the Ministry of Devolution, where young people, women and persons living with disabilities are dealt with. We know that the 30 per cent was actually reserved for three groups of people. At the Committee Stage, I will be looking forward to a situation where we can make these amendments to include these three groups in the very specific amendment.

Secondly, Mr. Deputy Speaker, Sir, the problems that people are facing in this country when they try to access these opportunities are many. However, I will touch on just a few of them. First of all, the scope that is being reserved by Ministries and Government institutions to this group are basically a very lean scope of work. It is restricted to providing stationery, airtime and mineral water. If you go to construction, it is restricted to bush clearing. I hope that with time, we can expand this scope to get the mainstream and the meaningful jobs.

Mr. Deputy Speaker, Sir, another issue that this group is facing is the issue of prequalification. We know that in the decree where this was pronounced, it was noted that when you have that certificate of Access to Government Procurement Opportunities (AGPO) from the Treasury, you should be exempt from prequalification. However, not so many people know about that allowance. I was personally trying it in some counties, but I was turned away. I had taken a few people with me and I told them that they should know that with that certificate, they should be exempt from prequalification. I am hoping that this information can also be included in the amendments that we will come up with. I will be moving that amendment at the Committee Stage, so that it is put in law that they be exempted from the prequalification process. This is the only way they can access those opportunities.

Mr. Deputy Speaker, Sir, the other issue is that of bid bonds. When we give this 30 per cent and we still put bid bonds at a very high level where these Kenyan youth, women and persons with disabilities cannot afford, we still leave them at the mercies of the financiers. I am hoping that we can interrogate this law to see whether we can explore

the idea of putting a flat rate for a bid bond. Because when you tender for a job and you are asked for a Kshs50,000 or a Kshs70,000 bid bond, these people cannot afford this money. At the end of it, it will remain on paper. It will remain on the paper that they were given, but they did not seek the opportunities. We can retain the performance bonds because with those ones, you have already been guaranteed the job and you can actually be funded by financial institutions easily without having to struggle when you are doing a bid bond. The young people of this country do not have the title deeds and logbooks that people and banks are looking for.

Mr. Deputy Speaker, Sir, I also want to commend the Government for the steps it has taken. First of all, it is the fact that you can register for getting the AGPO certificate from the Treasury online. My only plea to the same Ministry would be to make sure that this information goes to the ground so that people can know that whenever I click on a computer, I can print my certificate within a day and use it to tender for a job.

Mr. Deputy Speaker, Sir, the other issue would be on funding Local Purchase Orders (LPOs). I would hate to be in a situation where we will only have this 30 per cent reserved yet we cannot tender and the time given elapses when you have not supplied. Then it would mean that these young people will be told that they were not able to do the job they had been given. I know, as Kenya Young Parliamentarians (KYP) outside this House and the National Assembly, we had petitioned that even the Youth Enterprise Development Fund (YEDF) and the Women Enterprise Development Fund (WEDF) can cater for some of this such that when a young person, a woman or a person with disability has an LPO, they can finance or cover their bid bonds. These are the proposals that we need to explore.

Mr. Deputy Speaker, Sir, the other bottleneck is the audited accounts. When you look at the tenders as they are advertised every day, you will see that one of the very mandatory requirements is audited accounts, say for three or five years. For many people who are registering companies and who are taking advantage of this 30 per cent, they do not have that kind of experience. We should be lenient with this special group so that it also catches up.

Mr. Deputy Speaker, Sir, the other issue is about the list of other clients which is what job seekers face every time that they apply for a job. Job seekers are asked for five to seven year experience. This is similar to asking someone who is seeking a tender to show a list of their former clients and yet theirs is a new company. This may be a company that you want to build and a company that you have just registered to take advantage of this allowance.

Mr. Deputy Speaker, Sir, the other issue is about the transparency and how Government institutions are carrying out procurement. We know that some institutions are already putting this up in the newspapers and indicating the categories for special groups. They are also showing the jobs that are qualified for this group. That should also be accompanied by some consequences.

Mr. Deputy Speaker, Sir, as a Ministry or as a Government parastatal, if you do not offer the 30 per cent for the special category, then what will happen to you. These are the issues that we should raise so that we do not create something that is just good on paper and yet implementing it would be a problem.

Mr. Deputy Speaker, Sir, the other issue is that we should compel every Government institution, after they have done their prequalifications and given out the tenders, to tell us who they have given the tenders to. They should tell us whether they have adhered to the 30 per cent rule and whether this list can be made public, if it is online.

I support.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, thank you for this opportunity. I rise to support the proposed amendment to the Public Procurement and Disposal Act, in particular, to provide a formula where disadvantaged groups such as the youth, women and the disabled persons are given an opportunity to participate in procurement.

Mr. Deputy Speaker, Sir, while I support the amendment itself, I have serious concerns. The concerns are as follows.

In my own county, women form more than 50 per cent of the population. The youth also form more than 50 per cent of the total population. When we say that we should give advantage and preference to 30 per cent women, youth and the disabled persons, the question we must address is; does this mean that the rest which is 70 per cent should go to men? I think we need to bring some amendments. Which women are being considered? As I said, in my own county, women are more than men.

Mr. Deputy Speaker, Sir, therefore, for this to make sense, I am proposing that we come up with criteria that is not opaque, ambiguous and which seeks to have clarity. More importantly, we all know what happens when you allow procurement entities or persons in this country to do procurement. They will do what Goldenberg scam architects did. They incorporated many companies where the directors were cooks and houseboys, among other people. There is nothing in this proposed amendments that would ensure that the sanctions that are provided for under Article 227 - where serious sanctions are contemplated by the law - are incorporated so that we can then check to see if the 30 per cent women, the youth, the disabled are clearly disadvantaged groups for purposes of this law.

Mr. Deputy Speaker, Sir, while I support the Motion, I propose that we make some changes to it. It is quite clear that, once the procurement entity which includes the county do not comply, serious financial sanctions, which include surcharge of the person who is in charge of that tender committee or the tendering process, so that we ensure compliance---. I want to agree with Sen. Wangari that, in fact, one of the methods of ensuring compliance is what they have done in other countries in Europe.

Mr. Deputy Speaker, Sir, my Committee on Information and Technology is considering drafting a Bill that is now currently operational in a county called Hamburg



in Germany. In this Bill, the procurement failures and the failures of the persons who have procured are put on a website or a notice board for everybody to read. That is the only way that will ensure that the people we are trying to give preferential treatment under the Constitution are protected. If we do not ring fence the 30 per cent that we have contemplated, then that amount will end up with people who do not deserve it.

I support and say that the positive discrimination that we have included in this law should now follow what we refer to in legal terms as *intelligible differentia* so that in counties where women are more than men, we get to know that the women who end up in this category have been given this advantage. What about the disabled persons? How do we categorise the disabled persons? Sen. Godliver has spoken about this. How do we differentiate and say that in the 30 per cent, you have a portion for women, the youth and you also have a portion for the disabled persons? So, serious considerations need to be put into this.

Mr. Deputy Speaker, Sir, in some of the public hearings that we conducted with my Committee, one of the things that we found out was that there was serious non-compliance to some provisions of the law because there are no sanctions, no follow up and there is no reporting system.

Mr. Deputy Speaker, Sir, I support both amendments to Section 2 and Section 39. The reason I do so is what I said before. The purpose of ensuring that we are doing a good job is confirming that, in fact, there will be a reporting system. I have now learnt a new word that a foolish law is like a rope of sand. We do not want to come up with a foolish law and neither do we want to come up with a law that cannot be enforced.

In the last financial year, out of the sharable revenue, we, as a country, cannot tell that Articles 227 and 55 and Sections 26 and 27 of the previous law as it were, had been complied with before this amendment. We should be taking an audit of the last financial year and asking counties to produce a list to show that, in fact, prior to this amendment, we have proposed, they had complied with the law.

Clause 39 which is in tandem with the sanctions provided is a tragedy. Other than what we are proposing here, 30 per cent of these persons, who are contemplated under this law, should access employment. Counties are known to have violated the law in terms of the 30 per cent of hiring persons outside their respective counties. As we do so, we must tell counties that they must comply with the law. The law says that 30 per cent of persons employed in every county must be from outside that county.

As we amend this law, I am suggesting that, in fact, we must go back to those counties and say that other than procurement, employment must also follow the law so that the youth of this country who have been waiting for eternity to get positions of employment and empowerment can access employment. We should not have the manifestos like the one for Jubilee Government guiding us on how many people will be hired at the end of a certain period. Employment of people, persons or youth or the disadvantaged persons should not be and cannot be a preserve of a particular coalition or Government. This is a constitutional issue.

Sen. Kipchumba Murkomen was on the Floor to say that these amendments are in tandem with the manifesto of the Jubilee Government. This should not be the case. If this was being carried out by CORD, I am sure we would comply with law and the Constitution in terms of access to employment and to procurement for persons who are disadvantaged. This should not be a preserve of a party or persons. We should follow the Constitution. In fact, I expected Sen. Murkomen to say that the Jubilee Government is complying with the Constitution and not just a manifesto.

Lastly, I suggest that we make some amendments to this Bill. That amendment is on the publication of these criteria so that we do not leave this to Governors who are known to be having so much discretion. Where there is discretion, there is bound to be arbitrariness. We do not want arbitrariness when it comes to criteria that we have set out in the Constitution and in the law. We should be proud to say that we have helped 30 per cent of the population of Kenya who are truly disadvantaged. We have women, the youth and the disabled persons who are, in fact, capable and do not fall under this criterion. I suggest that we go further and make more changes in terms of persons we call disabled.

The criterion is quite big. I suggest that we remove some of the ambiguities and opaqueness in this criterion, so that we do not use discretion. The amendment of 30 per cent appears to be a little discretionary while we say that it could be higher, the possibility of it being lower is also there.

The sanctions proposed are also not discretionary. There should not be a proviso for violating this law. It should be clear, like Article 227 of the Constitution says that anybody who violates this law would be culpable of serious financial sanctions and not just disciplinary sanctions.

With those remarks, I beg to support.

**Sen. Karaba:** Thank you, Mr. Deputy Speaker, Sir, for allowing me to contribute to this Bill. Many a times, you will hear of tenders being floated in newspapers. We read about them in the media. The kind of description they display is ignorant of leaders. They do not capture any age bracket. These are left to none other the same people who are practicing and experienced in tendering and procurement.

Mr. Deputy Speaker, Sir, you will note that even here in Nairobi, there are people who have formed themselves into companies. They move from one office to another looking for tenders. They know who to get and where to get them. To the dismay of the majority, some people do not get to know how a certain company or group secured a tender because information may go out too late or it may never come. They end up seeing goods being supplied. That is why we have this amendment. We must support it because it is important to a country like ours which is growing at the rate we know.

The procurement process is also very cumbersome, particularly to people who are not used to it. The process is also very sweet and smooth to those who know how to oil hands and approach those concerned. That is what they are used to. So, at the end of the day, you find that the tenders have been awarded to the wrong company. The conditions are sometimes too stiff for newcomers. This is a process that does not attract any

newcomer into the business. You hear that you are supposed to have a capital investment of so much money and sometimes you might even not know how to get to it. It is not a process that can encourage newcomers into the industry. It is limited by the amount of money you are supposed to have in order to have the bank bids. So, in other words, this is a process which should be reviewed. This is the right time for us to do it in this House.

Mr. Deputy Speaker, Sir, you also realize that the youth, women, disabled and even the poor are left behind. What happens is that those people who are used to the process will continue being the suppliers. They will end up even supplying counterfeit goods which are not required by the company. They are used to the process. This Bill is trying to seek ways of correcting some of these anomalies. These are the anomalies that we are trying to address so that we get the right people encouraged to do what is right. In any case, it is even stated in our various manifestos and it is also important that it should be used as one way of encouraging the youth out there so that they can feel that they are taking part in the economic development of our country. Some of these conditions should be made simpler. The language should be simplified, so that it can be understood by a majority of those candidates who, otherwise, would be left out in acquiring the tenders for supply in the various companies.

Mr. Deputy Speaker, Sir, you will also get to know that the requirements which are supposed to be met like the physical address of the company may be prohibitive. You may have a company stationed in Mombasa and yet, they want a physical address in Nairobi and so you might not qualify for the tender. In some cases, there are people whose physical address may not even be in this country, but they may still be awarded the tender. This is applying double standards. In some cases, there is favoritism. Some of those conditions are tailored to favour a certain lot of people who are the same ones who have been supplying these items over a long time and any introduction of newcomers is discouraged by those conditions. These amendments are necessary so that we go by what is required in the Bill. That is the reason I am supporting this Bill.

Thank you.

**Sen. Muthama:** Thank you, Mr. Deputy Speaker, Sir. I want to raise my concerns on this Amendment Bill in terms of its form and the way it has been structured. I do not think it will help the groups that it intends to help. Among these group are the youth, the women and the people with disabilities, but there is no structured form which gives directions on how those groups will benefit. This is the one thing that needs serious consideration is this. We have tycoons in this country who will go out to take advantage of the allocation that has been given, more so, to the youth. When a company is formed by a group of youth and is registered, one thing that raises questions is whether the same group of youth truly have the capital to participate in the tendering that is advertised. That is a very serious issue.

Who are the youth? This Amendment Bill describes the youth as people who are between 18 years and not more than 35 years. Where will a young person who has just left secondary school or university at the age of 25 get the capital to compete for a tender

that has been advertised and win it? What we are creating here now is exploiting our young people more than helping them. That is where the tycoons come in and sponsor the registration of companies.

Mr. Deputy Speaker, Sir, anything is possible in this country. They will sponsor certain groups to form companies and participate in the tendering process using them as proxies. At the end of the day, it is now the same tycoon who will win the tender. By doing so, we are actually discriminating against the young people. The playing ground in business must be open and people must be allowed to stretch and build their minds by facing the challenges and knowing how to face them. The youth will be kept out of this and there is no way they will do business in this country. We should create avenues to avail loans to the youth to enable them to tender. You must not make money out of a Government tendering system. This country has about 40 million people in which 70 per cent are youth. In fact, what you are creating are misunderstandings. Let us allow our youth access to loans. Let them be trained on how to engage in trade. They could start selling chicken, eggs, goats, *mboga* and so forth.

Mr. Deputy Speaker, Sir, we must stretch the minds of the young people. For example, if the Government sets aside Kshs16 billion on printing materials and you spread that in the 47 counties, it is a message of hope that helps nobody unless they get that information. I believe in every county less than 0.5 per cent will benefit. So, I challenge the Amendment Bill the way it is. For example, what is the description of women groups who need to be given these tenders when it comes to this Amendment Bill? Is Sen. Chelule or Sen. Nabwala prohibited from participating in the tender and actually being given the first chance? What are the women groups that this Bill is targeting? If it is left in general the way it is, frankly speaking, it will not help those who deserve to be helped. When we talk about women, we talk about women who are drawing water from the rivers in the villages. Those are the women who should be uplifted. We are talking about the women who are selling vegetables and *mitumba* in Gikomba and all over the country. What will stop the Cabinet Secretary in a certain Ministry, being a woman, from participating in this tendering process?

The beneficiaries of this Amendment Bill are those who have the political muscle, the capacity and the will to drive things the way they want to. For us to assist the dear women we are targeting in Murang'a, Machakos and Elgeyo-Marakwet counties, we need to allocate them funds. We should give them money, for example, to participate in zero grazing. We could even buy grade cows for them to produce milk so that they can sell it. That is the way forward. But when you advertise a tender in a newspaper, it is a complete joke. To purchase a newspaper in order to know that a tender has been advertised takes money. The cost of a newspaper is Kshs60 which is close to US\$1. Statistics in this country shows very clear that about 60 per cent of Kenyans live below US\$1. How can the same people be told that a tender has been advertised and they need to purchase those newspapers to know the details? How do you expect them to buy forms at Kshs2,000 in order to tender? For a group of women to be able to present a complete

tendering document, they will need about US\$1. We know how difficult it is for ten to 15 women from where you and I come from to raise US\$1 and spend it on tender documents. This also applies to the people with disabilities.

Mr. Deputy Speaker, Sir, I listened to the President saying in public that 30 per cent of tenders in this country should be given to these groups. I am very candid as a businessman to say that this will not assist them. Today, dear Kenyans who have got the ability, the capacity and the courage to engage in productive activities in this country, have been eliminated from the lucrative tenders. We used to see construction companies being owned by Kenyans building roads in this country. Frankly speaking, those who won the tenders were companies like Kirinyaga Construction Company, Kimemia Construction Company *et cetera*. We are still driving on those roads which were done by the local constructors. But now we are witnessing foreigners coming in this country to grab those lucrative road construction tenders which are supposed to go to Kenyans.

If, for example, you drove to Ruiru, you will find the Chinese selling maize and other commodities in Ruiru Town. They are coming here in big numbers. Some of them are investing nothing in the country. Here in Kenya, they live in containers and are taking up jobs which are supposed to be done by Kenyans. If we cannot protect those who are hiring Kenyans to work, how can we guarantee Kenyans that with this Amendment Bill they will be considered? It is next to impossible for them to have a chance to survive in this country. So, the Government should not just look at the incentives. If you go to Botswana, you will find that the best teachers and doctors are from this country. The best nurses, managers and supervisors are Kenyans. The late President Nyerere once said: “*Nchi ya Kenya ni nchi ya mtu kula mtu.*” We do not want to remain like that. The time has come to face and deal with issues the way they are.

Mr. Deputy Speaker, Sir, I will abstain from supporting this Bill, unless it is structured in such a way that it takes care of the interests of Kenyans.

**Sen. Chelule:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to support this amendment Bill. I support it because it targets the three key groups, who are the majority in our society.

Mr. Deputy Speaker, Sir, this is a very good initiative. For anything to be done, it must start from somewhere. If the Government is setting aside 30 per cent of the tenders for the youths, women and people with disabilities, it is a very good initiative. I believe that with time it will be improved.

Mr. Deputy Speaker, Sir, I have only two concerns about this Bill. One concern is about sensitization. People should be sensitized and I believe that this is one of our obligations as leaders. We need to sensitize people on what the Government is doing about them. If 30 per cent is set aside for the youth, for example, they need to be sensitized on the process of registration and handling of tenders. It is another process to even win and fund a tender. I would recommend that once a youth group or women group gets a tender and is given a Local Purchase Order (LPO) these youth or women should be linked to the Kenyan financial institutions like the Kenya Commercial Bank (KCB) or

Post Bank, so that they can get money. Right now, we have the Uwezo Fund which has been initiated by this Government. The youth can as well get money from the Uwezo Fund.

This is a good Bill because it will ensure that we put into law that a certain percentage of tenders in this country should be set aside for this group. I would want to request the youth and women to come up and apply for these funds. We all know that the vulnerable women, especially in the grassroots level do not have the means to even educate their children because of poverty. However, if they are given a chance to get tenders, definitely, they will afford even to pay school fees for their children. The same applies to people with disabilities. People will improve their livelihood through this process.

Mr. Deputy Speaker, Sir, with those few remarks, I beg to support and really thank the originator of this amendment and the National Assembly for bringing it to the Senate.

**Sen. Ongoro:** Thank you, Mr. Deputy Speaker, Sir. I also rise to support the amendment Bill.

Mr. Deputy Speaker, Sir, I took my time to read the main Act, which I also supported. I took note of a few gaps that were not really connecting. This amendment Bill has addressed some of the very pertinent issues that I was raising in my head, even as I supported the main Act. Though not exhaustively addressed, it is a very good starting point for the three categories of people in our society who really need to be supported.

Mr. Deputy Speaker, Sir, we all know that women, youth and people living with disability have been disadvantaged for a long time. For the Government to have, at least, a policy framework through which to engage with them and facilitate them, even if it is not watertight, we are starting from somewhere. Therefore, it is worth supporting.

Mr. Deputy Speaker, Sir, my own input would be that even as we support this, we should encourage closing the information gaps that are still existing, especially at the local level, by way of encouraging a lot of civic education. Maybe we could take it down to the constituency level or even the ward level, so that the target groups are adequately informed on exactly who is targeted, the process that they need to follow and the requirements that are needed. It is only when and if we have conducted intensive and extensive civic education that we can gladly relax and hope that the target groups will benefit from this.

Mr. Deputy Speaker, Sir, I also support that we should have a structured format of strengthening the capacity of these target groups, so that even at the point of them winning these tenders, they have the minimum capacity. I am thinking of the local women who---

*(Sen. (Dr.) Khalwale and Sen. Muthama consulted loudly)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Khalwale and Sen. Muthama! I am sure that you are distracting Sen. Ongoro while she is contributing. If you want to consult, please, find a corner and do so quietly.

**Sen. Ongoro:** Thank you, Mr. Deputy Speaker, Sir, for saving me.

As I was stating, we need to strengthen the capacity of these target groups, so that they can draw maximum benefits from this very good initiative. Once they get a contract, we would then see them up-scaling towards applying for bigger tenders or something like that, when their capacity is strengthened.

Mr. Deputy Speaker, Sir, fourthly, I think that we need to create incentives for those target groups which will fully exhaust and make use of this opportunity, by listing per ward, constituency and county the groups that have fully taken advantage, which tenders they bid for, what they have done with their income and so on, as an incentive. By giving them incentives, I am even thinking that we could possibly tie this initiative to Uwezo Fund, YEDF and the WEDF, so that, that minimum requirement of some deposit, bid bond or whatever little amount they need for chasing the contract documents, as was stated by the Minority Chief Whip, could be sorted out. This is because this is also yet another fund that has been created by the Government.

Mr. Deputy Speaker, Sir, I am specifically very impressed with the amendment to Section 39 of the main Act, which is presented under Clause 5(b)(10) and (11). This is going to address what was really disturbing my mind when I read the main Act. This is not meant for just any other women or youth. In my mind, I am creating a scenario where if a few of us Senators, for example, came together and decided to be competing for certain contracts with women who are completely vulnerable in the rural areas, we already have an advantage. This amendment here addresses this fear. If you allow me to read it states under (11):-

“The procuring entities at the national and county level shall make a quarterly report to the authority.”

That means that quarterly we will be having access to the information on the calibre and category of women who have accessed this facility. We will be able to know of the youth whether it is my daughter or son or your son or daughter or which kind of youth we are talking about. We will know whether we are talking about the real vulnerable ones. So, this addresses my fear and I am really impressed. This will ensure that even though women qualify, there are some who qualify more than the others. Those are the ones who are really disadvantaged, as opposed to those who already have something in their hands.

Mr. Deputy Speaker, Sir, with those remarks, having studied the amendment which strengthens the main Act and addresses most of the issues that were raised when we discussed the main Act, I fully support this Bill.

**Sen. Billow:** Thank you, Mr. Deputy Speaker, Sir. I rise to support the Bill.

Mr. Deputy Speaker, Sir, the Committee on Finance, Commerce and Budget, which I chair, did submit its report that extensively examined this Bill. I think that copies

of the report are available. There is need to overhaul the Public Procurement and Disposal Act in its entirety because of the challenges that the national Government and the county governments have experienced in dealing with procurement issues.

Mr. Deputy Speaker, Sir, a very comprehensive review is already being undertaken by the Government and, in due course, those amendments will come. However, this particular Bill seeks to address specifically the issue of affirmative action in respect of disadvantaged groups. As I speak, there are regulations that already exist, which require procuring entities to provide for 30 per cent of all the procurements. However, this Bill will anchor those provisions in law.

Mr. Deputy Speaker, Sir, I just want to highlight a few issues that deal with affirmative action for the disadvantaged groups, including three groups; women, youth and persons with disabilities. That is very significant because it is these three groups that are identified as marginalized in the Constitution and addressed in terms of giving them opportunities through affirmative action in this Bill.

Mr. Deputy Speaker, Sir, the other thing that comes up in this Bill, which is important, again, is the clear provision that all procuring entities will be required to set aside 30 per cent of all the procurement value of that entity. For some of the institutions that is a substantial amount of money. There are institutions in the Government that are involved in huge programmes and projects. It may not be practical for some. For example, institutions like KenGen or Kenya Railways have huge projects that require engineering and so forth. That may make it difficult to meet the 30 per cent rule because of the values.

The value of the contract of the Standard Gauge Railways (SGR) runs into hundreds of billions. However the requirement provision in the Bill is very clear that the entity is required to submit a report that will explain if there is any deviation or failure to meet that requirement. They must give justification. The report from that entity will be tabled in Parliament, so that it can be subjected to scrutiny. Section 39 is very clear on the 30 per cent. It provides for a reporting and implementation mechanism for that policy. It is also very clear in several sections how that will be implemented.

Mr. Deputy Speaker, Sir, we, as a Committee, will be coming up with a number of amendments and I will go into that very briefly. I want to mention here that even within the 30 per cent, there are disparities that need to be addressed. Perhaps, we might need to look at it. For example, if you look at the category and I think Sen. Njoroge from People with Disabilities (PWD) will agree with me, that it is open to all women. If you look at the three categories, the category that has the capacity to undertake or to participate more effectively in this arrangement even from practice if you check with Treasury, it is women. It is open to all women, including our Senators and other women from all walks of life. The question is: Is there a need to limit if you tell the procurement entity that 30 per cent must go to these three groups, do we need to say a particular group should not take more than 50 per cent? Otherwise, there is a risk that in practice today,



what is happening is that nearly 80 per cent of these contracts are going to one group, particularly the women.

Part of the reason for this is because PWDs have a number of limitations in terms of applying, but for the youth the issue of financial constraints that Sen. Muthama had mentioned is one of them. Although some of the programmes like YEDF announced last month that they would allow financing of LPOs. If you have an LPO or a contract to supply any institution of the Government or any public institution, they will be in a position to finance youth groups in that regard. Even then the kind of facilities that the funds are giving will be inadequate to support some of the contracts that these disadvantaged groups in this affirmative action will be getting. Some of the contracts can be up to Kshs20 million, Kshs30 million and Kshs50 million. What those institutions are providing to the youth is about Kshs2 million or even Kshs100,000.

I agree with Sen. Muthama that the provisions should be there, but the youth who have difficulties in startup may have difficulties in taking advantage of this. However, that is not to say that youth are just those who are struggling to start up. There are youths who are in this House who have resources and who are very enterprising and are in significant business. We are talking of people who are 35 years age. There are those who are in big businesses who can actually take advantage of this affirmative action to go for large value contracts. That is the advantage of this. The youth should not always look at small things worth Kshs2 million or Kshs3 million. If the youth have resources, they can go for the big contracts on the basis of affirmative action.

Mr. Deputy Speaker, Sir, things that we need to go into, when we come to the Committee of the Whole, is to introduce amendments that are useful. One of the things we need to be very cautious about in particular is to discourage these procuring entities to give an excuse that they have not met the requirement for one reason or another. Although the reporting mechanism is there, I still think that we have to look at ways of tightening that loophole. That is an avenue that they can use to escape or fail to meet the requirement of 30 per cent. Some of the amendments which are in the report, I am sure hon. Senators have seen them, is to expand the definition of public entity in Clause 3. The definition has been expanded significantly to include all kinds of public institutions, including those at the county level, independent offices and commissions. Therefore, all public institutions are covered.

Mr. Deputy Speaker, Sir, the other amendment that we will propose is that in terms of preferences provided for, there are specific areas that procuring entities need to look at. These are the specific procurements that are reserved specifically for the disadvantaged groups. In terms of determining the preferences, the Bill proposes that the Cabinet Secretary shall prescribe the preferences. We are suggesting that it must be with approval of Parliament. The idea of having preference is to help us to attain the goal of the 30 per cent. As much as possible, we should set aside specific procurements. In the current regulations, it is mainly in printing, stationery, cleaning and those kinds of things. There is need to expand so that we can target the 30 per cent.

Mr. Deputy Speaker, Sir, the other amendment we will be bringing to the House will be in the area of providing explanation for failure to comply with the provisions. The Act clearly provides for penalties so what we are saying is that if there is failure to explain why a particular entity has not been able to comply then the penalties provided for in the Act should kick in immediately. Institutions should know that they have to comply or they risk being penalized.

This is a very useful Bill specifically dealing with affirmative action for the disadvantaged groups and I would urge the Senate to adopt it with the amendments that we will be bringing at a later stage.

I support.

**Sen. Kanainza:** Mr. Deputy Speaker, Sir, thank you for giving me this chance to also add my voice to this amendment Bill. Steps have been set to ensure that young people of this country get involved in the development of this nation. This 30 per cent procurement is one step set aside to give an opportunity for this special group to participate in business. At the same time, we need to understand that youths have different issues from women and people living with disability. If you listened to contributions from Senators, all of them are talking about the youth. That means people out there understand that this 30 per cent is meant for the youth alone. The same applies to that Kshs6 billion campaign promise made by Jubilee Government. The young people of this country believe that the Kshs6 billion was meant for them alone. As you might realize the youth consist of both female and male. At the same time, we have youth who are married, both men and women. That means we constitute a bigger percentage and that is why this 30 per cent was just meant for the youth, then the women and people living with disabilities can get their own allocation.

**The Deputy Speaker** (Sen. Kembi-Gitura): How do you draw the line because there are women who are disabled, there are those who are young and so on.

**Sen. Kanainza:** Yes, Mr. Deputy Speaker, Sir. I know that and that is why I said that this is just a starting point. I know that, in future, the allocation is supposed to be increased. That is why the Government needs to take action to ensure that it is implemented.

Mr. Deputy Speaker, Sir, Article 55 of the Constitution gives the right to the young people of this country to access employment. Now that employment has been a challenge to us, I know with this facilitation of 30 per cent young people will do business through tenders thus improving their livelihoods. It is important that we use our learning institutions like the polytechnics, technical institutions and so on. These institutions can be used to provide basic entrepreneurial skills for this group to enable them utilize those funds effectively. Many a times, Kenya is good in making policies which are then kept in the drawers or shelves somewhere, but never implemented. I also urge that these Public Procurement and Disposal Act should be implemented to assist our young people.

Mr. Deputy Speaker, Sir, this special group has some challenges, especially in accessing funds. We talk of Uwezo Fund or YEDF, but unfortunately, accessing this

money is not easy. If the YEDF has given you funds, Uwezo Fund cannot give you another fund because they will say your quota is exhausted. At the same time, the challenge faced by young people is that when they go to get the loans from the bank, the interest rates are too high. I know we are working towards reducing it. Therefore, we really need to consider the interest percentage given to the citizens of this country.

Mr. Deputy Speaker, Sir, some counties are trying by giving specific tenders and allocations to the youth groups, women groups and people living with disabilities. I also urge other institutions to consider these groups. There are other opportunities like in the universities where we have computer services, cleaning services, supply of stationery and so on. These jobs should be given to the young people or the special groups. This will give them an opportunity to grow and compete with other people.

Mr. Deputy Speaker, Sir, if this amendment Bill is approved, it will enable the Public Procurement Authority to have a data base to help them monitor compliance in accordance with Article 227 of the Constitution to ensure implementation of the 30 per cent meant for special groups.

Today I will also talk about youth, women and persons living with disabilities. These groups of people play a very big role in this country. From statistics we know youth form about 60 per cent of our population. Therefore, it is important that this Bill is implemented. When we talk about women, they constitute 50 per cent of our country. This means that we carry the 100 per cent of our population. That is why I support this Public Procurement and Disposal (Amendment) Bill once enacted be fully implemented. By doing so, the youth will create jobs for themselves and others. At the moment, we are facing a high level of unemployment in this country.

Mr. Deputy Speaker, Sir, I beg to support.

**Sen. Njoroge:** Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to contribute in supporting this Bill. I support the amendment. This is the best amendment which is meant to raise the living standards of the three marginalized groups.

Mr. Deputy Speaker, Sir, this is a noble initiative. The only hope to persons living with disabilities, who have been marginalized for years, without benefitting at all through such programmes. However, they will end up becoming beneficiaries of our procurement programmes. You will remember that this is a group which needs to be sensitized as there is an issue of inexperience, accessibility, stereotypes and apathy. I would like to urge the institutions which are involved to create awareness and enforce the whole process to make sure that tendering and registration are well connected for persons with disabilities.

Mr. Deputy Speaker, Sir, all said and done, I think the youth and women of this Republic must also be left to enjoy their share. But, again, there will come a time when there will be a control mechanism, because 30 per cent has a limit. We might end up just empowering people who are already empowered, leaving behind people who really need to get this kind of assistance by benefitting from the programme. There is a situation where you get even individuals and groups who are not able to raise the funds in terms of supplying according to the LPO, which they actually get from the institutions they are

supposed to supply. At one time, we will need to have some regulation between the banks and the beneficiaries, so that by the time the banks are giving loans, they do not exploit the situation by getting a big margin which will end up leaving the beneficiaries with nothing to enjoy in terms of profit.

Mr. Deputy Speaker, Sir, this Bill is for the well being of the marginalized groups. It is an idea which anybody would stand to support. We should be at the forefront to make sure that the programme works well. I want to rest my case by saying I commend the Mover of this Bill. I also commend the Chairperson of the Committee on Finance, Commerce and Budget, who has been tirelessly working on this Bill to make sure that it is amended just to benefit the marginalized groups.

Mr. Deputy Speaker, Sir, I beg to support.

**Sen. Mohamud:** Thank you, Mr. Deputy Speaker, Sir, for giving me this chance to contribute to this important Bill. From the outset, I want to support this Bill. As we are aware, the youth of this country form more than 60 per cent of our population and the women of this country form more than half of our population. As you know, this is not a privilege that we are being given; it is our constitutional right as quoted in Article 55 of the Constitution.

Mr. Deputy Speaker, Sir, the passage of this amendment will not be beneficial to these three groups of people if we fail to address the challenges that they face in getting all these benefits, as it was already highlighted by my colleagues who spoke before me. One of these challenges is the issue of bid bond, which is very serious. Sometimes when youth want to get some contracts, they need to pay a certain amount of money, which might be expensive for them; it is high time that we addressed this issue. The other challenge is the issue of prequalification and corruption that we are experiencing in this country.

Mr. Deputy Speaker, Sir, because 30 per cent is reserved for these three categories of people, the disparities amongst them must be addressed. For example, all women are not the same because some of them are in leadership positions. Some of them are weaker than the others. So, the disparities amongst these groups must be distinct and clear in this Bill. It is my recommendation that in future, the 30 per cent be increased to either 40 per cent or 50 per cent, because these three groups make up more than 50 per cent of our population.

Mr. Deputy Speaker, Sir, thank you very much.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Sen. Halima.

Senate Majority Leader, you may now reply because I do not have any more indications of interest.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I thank you for this opportunity to reply to this Bill of the Second Reading of the Public Procurement and Disposal (Amendment) Bill of 2013. Let me take this opportunity, from the outset, to thank all the Senators who have contributed during the debate of this Second Reading of this Bill.

Mr. Deputy Speaker, Sir, what has come out clearly is that every senator who has spoken has supported this Bill. What this means is that this is a Bill which is important; which is timely and which helps the country to correct some of the challenges that we have created as a country because of our legislative framework.

Mr. Deputy Speaker, Sir, there is no need to over emphasize that for a long time, young people have only been living under the hope that tomorrow will be a better day. For us, who are leaders, we have been telling young people that tomorrow will be a better day and what this Bill is doing is, for the first time, to tell young people of Kenya, both men and women, that, actually, they have as much a right as the older people in our society to make it in business, to get empowered, to have a livelihood so that they can also start playing an important role in the development of our nation.

Mr. Deputy Speaker, Sir, the same case applies to women. More than half of the population of this country is women but, for a long time, the control of resources and other economic levers has unfortunately been in the control of men. This does not help our country to be a just, fair and equitable society that our Constitution now demands under Article 10, which sets out our national values. One of the values there, amongst other things, is the value of equity, including equity in the way we share the proceeds and wealth of our nation.

Mr. Deputy Speaker, Sir, persons with disabilities have, for a long time, been reduced to objects of pity. The best that they can get from society has been pity and tokenism.

*(Applause)*

This Bill is clearly saying, for the first time, that a person who for one reason or another is disabled is a citizen of Kenya just like any other person; they do not require pity. They require the law to recognize their rights, to state those rights clearly and, over and above that, to make sure that those rights are respected by the rest of the society.

Mr. Deputy Speaker, Sir, some of the comments which have been made here around amendments of this Bill are very welcome. For example, given the disparities even among the three disadvantaged groups; that is, the women, the youth and the persons living with disabilities, we need to disaggregate even within these groups and find out even how that 30 per cent will apply to the different categories. So, if we say that women are part of this 30 per cent preference, we do not want whatever women will get out of this 30 per cent to go to only 1 per cent of the women of Kenya. We want to ensure what one will call “intra group equity” so that as many categories and groups of women, including social and economic groups, are impacted and transformed through the operationalisation of this Bill.

Mr. Deputy Speaker, Sir, another area which has been suggested by the colleagues who spoke to require amendments and improvements is the area of making sure that there is transparency. What has hindered the implementation of laws, even good

intentioned laws, is the transparency within which certain programmes have been rolled out. I hope that when the relevant Committee and even the Committee of the Whole look at this Bill, they will incorporate some of these amendments.

Mr. Deputy Speaker, Sir, the role of financial institutions has also come under sharp focus during debate of this Bill. I have had the advantage of listening to some of the colleagues who have spoken and I want to support them that, yes, we know we have a very vibrant financial sector. Yes, the financial and Information, Communication and Technology (ICT) sectors are two sectors that have grown exponentially maybe in the last decade in our country.

Mr. Deputy Speaker, Sir, we must also realise that the growth in our financial sector has only helped a very small segment of our population to prosper. These are the shareholders in those banks and the customers who are able to interact with banks at the league level. What have been missing in our country are banks that empower the masses.

We hope, therefore, through the operationalisation of this law, there will be a programme, either crafted under the provision that empowers the Cabinet Secretary, in consultation with industry players, to develop regulations or even a separate programme to make sure that Government owned banks such as Post Bank, or others which aim at empowering people at the grassroots level can offer tailor-made financial support and services to people with disabilities, women and young people, so that they benefit from this quota.

It is one thing to say that the quota is available. It is another for that quota to transform the targeted groups at all levels. So, we hope that we will have this kind of programme, so that we do not just have a few elites in this group as the beneficiaries. This Bill says that every three months, every Government agency at the national level and county level must tell us how many tenders they have advertised for the supply of goods and services and how many of those have gone to the preferential groups. If they do not comply with the law, there must be some punitive measures so that one does not get cited for not meeting the threshold of the preference of the quota, but are also “punished” in a way.

Mr. Deputy Speaker, Sir, on the same breath, this Bill is talking about every quarter and is saying that the aggregation of those Bills must come to both Houses for scrutiny. This will unmask the secrecy that has been associated with the tendering process. We will also question whether the beneficiary companies are really companies that empower young people and women and persons with disabilities or whether they have been hijacked by the same elite or the same privileged group that has benefited from the milk and the cream of our country for so long.

Mr. Deputy Speaker, Sir, without much ado, I am very happy. I have listened, as much as possible to the very rich contributions that have been made to improve this Bill. I hope that by the time it goes to the Third Reading, it will be better. Let me end by saying that this is one of the Bills that makes me a proud Kenyan.

If there is one area where the Jubilee Government has responded to the promises they made to Kenyans, it is in this area of procurement. We wait to see the realization of the implementation of this Bill. We wait to see many more Bills coming, not necessarily from the Government, but also from the Opposition. We have said and want to repeat it here again. If a good Bill comes from the minority, we in the majority will rally together and support it because it makes our country better and prosperous.

Mr. Deputy Speaker, Sir, with those many remarks, I beg to move that the Public Procurement and Disposal (Amendment) Bill, 2013 be read a Second Time.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, hon. Senators. That brings us to the end of this Bill. Should we now go into voting?

*(Sen. Obure consulted with Sen. (Prof.) Kindiki)*

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I rise under Standing Order No.54(3) to request the Chair to defer the Division on this matter to the following day in accordance with the Standing Order. Given the numbers we have here and the critical nature of this Bill, I request that you defer the putting of the question of on this matter to an appropriate time.

**The Deputy Speaker** (Sen. Kembi-Gitura): You should thank Sen. Obure for prompting you. There is no provision for an appropriate time. This one talks about the following day. Tomorrow is a Friday and not a sitting day. I propose that since the trend is more inclined towards voting on Wednesdays, that we have this Division on Wednesday, 23<sup>rd</sup> July, 2014 at 2.30 p.m. Is that okay? It is so ordered.

*(Voting on Bill deferred)*

*Second Reading*

THE INTER-GOVERNMENTAL RELATIONS (AMENDMENT)  
BILL, SENATE BILL NO.8 OF 2014

**The Deputy Speaker** (Sen. Kembi-Gitura): Where is Sen. Murkomen? Is he not here? This is his Bill. So, shall we go to the next order?

*(Bill deferred)*

*Second Reading*

THE GOVERNMENT PROCEEDINGS (AMENDMENT) BILL,  
SENATE BILL NO. 9 OF 2014

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**The Deputy Speaker** (Sen. Kembi-Gitura): Where is Sen. Mutula Kilonzo Jnr.? Is he not here? Let us move on to the next order.

*(Bill deferred)*

*Second Reading*

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL  
SENATE BILL NO. 10 OF 2014

**The Deputy Speaker** (Sen. Kembi-Gitura): This is a Bill by Sen. (Prof.) Kindiki, Sen. Elachi, Sen. Murkomen and Sen. Sang. Senate Majority Leader, are you ready to move the Bill?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Yes, Mr. Deputy Speaker, I am ready, thank you.

I beg to move that the Public Finance Management (Amendment) Bill be read a Second Time.

This, as the title suggests, is a Bill to amend the Public Finance Management (PFMA) Act of 2012 which is one of the most important and life changing statutes ever enacted in our financial sector since Independence. The PFMA Act, 2012, contains elaborate provisions on how public resources in our country are to be managed at the level of the national Government and at the level of the county governments.

The PFMA Act provides for controls and management procedures to ensure that public resources are used for the improvement of the living standards of the people of Kenya, something that we have not had for long time. This creates the office of the Controller of Budget and provides a process through which public entities receive, utilise and account for public finances.

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

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

Madam Temporary Speaker, in the one year or so that our country has had an experience with the county governments, one of the things that has come to the fore, especially looking at the reports that are coming from the independent offices established by the PFMA notably, the Office of the Controller of Budget, the Reports of the Auditor-General, one of the things that have become very clear is that unless the legislature in this country and especially the Senate works very hard, in terms of creating necessary legal framework, county governments will fall into the trap that has befallen the national Government through its 50 years of its existence. Why do I say so?



Madam Temporary Speaker, over the last 50 years or so, the national Government has been associated with wastage. Over the last 50 years or so, the national Government has been unable to tame Recurrent Expenditure. Over the last 50 years or so, the national Government has spent so little on Development Expenditure. In fact, I dare say that 95 per cent of the political and economic problems that this country is going through are caused by the spending habits of the national Government that has encouraged a bloated workforce, consumerism, recurrent expenditure at the expense of development or capital expenditure.

It is in this connection that we have looked at the existing law; the PMFA Act of 2012. We have realized that there are two provisions that relate to the ratio of recurrent expenditure *vis-à-vis* the development expenditure. At the moment, one of those provisions is Section 15 of the PMFA Act which says that for both national and county governments; at least 30 per cent of expenditure must go to development.

As I speak, the national Government as usual is still struggling to meet that threshold because of the challenges I have already identified. As I speak, even our new and fresh county governments which we thought will learn from the mistakes of the experiences we have had with the bureaucracy of the central Government would do better. Sadly, some county governments today are even doing worse than the national Government in terms of the ratio of development expenditure compared to what they spend under the recurrent expenditure portfolio.

Madam Temporary Speaker, I have heard people say that, perhaps, this Bill is too harsh on the county governments. I have heard sentiments to the effect that, why are we increasing the percentage of money that should be spend on development for counties and leaving out the national Government? First of all, I want to say that the other sponsors of this Bill and, I have no problem even if, for example, an amendment was brought to include the national Government in order to create similar parameters. We have no objection at all. The only caveat is that we know for sure that it has been practically impossible for the national Government because of 50 years of accumulated bureaucracy and accumulated careless extravagant establishment of useless institutions and systems, it was almost impossible to achieve the targets that we are creating. I hope I am also speaking for my colleagues who sponsored this Bill, we will not oppose that kind of proposal, but the reality is that it is almost impossible. Even to meet the 30 per cent threshold which is in the law now, it is a tall order for the national Government.

Just this week, we heard the Ministry of Devolution, the Public Service Commission (PSC), the Council of Governors and the relevant committee held a press conference and agreed that this idea of too many public servants will make this country grind to a halt economically. They are working on some restructuring of either sacking some people, encouraging some people to take early retirement and redefining their roles. It is a painful job, but I think this is a job that our country must take if we are to correct the mistakes that we have made whereby we use most of our wealth to finance people's salaries. We have used most of our wealth to finance peoples' allowances, trips, buying

of newspapers and tea for senior civil servants and buying cars. Time has come for us to say that we need fewer people and we can even pay them much better, but put performance must be the basis of retention and longevity in the Public Service both at national and county governments.

Madam Temporary Speaker, some of the extravagances include some officers riding in a motorcade of ten to 20 cars, both at the national Government and the county governments. We must end this culture of consumerism. I do not see why people should be bought for daily newspapers by tax payers. If you want to read a newspaper, it does not matter who you are, buy it from the street like other Kenyans do. The report of the Auditor-General, both on national Government and county governments actually demonstrated huge sums of obscene amounts of money that are used for superfluous and useless things like newspapers, tea and putting flowers on the tables and side tables of senior civil servants. This has to come to a halt. I hope that beyond this Bill, the next level should be a level where we have a Bill that limits, synchronizes and harmonizes allowances and how much wastage we incur on civil servants. Truth be told, not all civil servants, just a small cadre as the majority of the public servants who work so hard, long hours are underpaid.

Madam Temporary Speaker, there are teachers who spend numerous hours, beyond the call of duty, to take care of our children in public schools and nurses who are out there in rural outposts, some of which are very insecure, trying to save lives without enough facilities and transport, for meagre amounts of money. There are men and women in uniform who are risking their lives to make sure that the rest of our people in this country are safe and secure, but for only a pittance in form of pay. So, this monster called recurrent expenditure is big, hungry and ferocious. It has even been complicated by the new Constitution which has created even other layers of Government and numerous institutions. Unless we say “no” to spending our wealth on salaries, emoluments and unnecessary things like buying newspapers, flowers and teas, our country will grind to a halt.

Madam Temporary Speaker, taxes that Kenyans pay are only going to service a small cadre of highly paid public servants in the Executive, Legislature and Judiciary. It is a big shame that this is one of the few countries where it is lucrative to be in the public service. The salaries and emoluments that now the public sector in this country is attracting at the higher echelons of the Executive, Judiciary and Legislature are giving private multinational companies nightmares, because they are poaching Chief Executive Officers (CEOs) from multinationals all over the world. Truth be told, we can even start from where we are; the salaries that we get as Members of Parliament. We know the pressure on Parliamentarians. I have always argued that even if you pay a Member of the National Assembly or Senator Kshs5 million per month, that money will not be enough. That money will be over within a week, because of the pressure that we go through. The Member of the National Assembly and the Senator are walking automatic teller machines. We finance marriage, death, birthdays and maternity costs of our constituents.

We literally run their lives. The issue of pressure on us will not be resolved by more money. It will be resolved by interventions, like what this Bill is trying to do.

It we build more roads, so that people can have their goods access markets faster and improve our agriculture and modernize it, so that even peasant farmers can make a living out of what they do, the pressure on politicians to finance funerals, weddings and birthdays and build schools, hospitals and mortuaries will cease. In Canada and the United Kingdom (UK), for example, it is very easy to meet your Member of Parliament. It is not like here where we are firewalled. Some of our constituents even never get an opportunity to see us, not because we do not want to see them, but because the structures here are so rigorous that it is almost impossible for an ordinary person to walk from Tharaka-Nithi and come here to see their Senator. This is because, first and foremost, if you do not do that, the entire Tharaka-Nithi will have to come here to see their Senator, not that he will ask for more money for the county for roads, agriculture and other things, but they either have a funeral, harambee, wedding, birthday, medical bill, *et cetera*.

I am not a fun of giving Western countries as an example. However, the reality is that in the developed world, it is very easy to see your Member of Parliament, Senator or Governor. In fact, you call them to your house. If you are a voter you say: "Mr. M.P. I would like to see you. Can you come over to my house this evening?" He will come running with a notebook. The reason as a voter you want to see your leader is because you want to tell him about a bridge that is not working, a road that needs repair or a Bill that you think can improve the economy. The only thing that you cannot do to your leader in this country is to ask for even one pound, or one dollar of their personal resources. That is why even that leader will come running. You will never ask them for money.

Madam Temporary Speaker, we are gobbling up a lot of public finances thinking that we are solving the problem. I have argued and will continue arguing that even if we pay political leaders Kshs5 million, it will never be enough. What the Judges are earning is merely what the Judges of international courts and tribunals are earning. In a poor country like Kenya, what the Executive is earning is a lot of money. A certain cadre of civil servants, from a certain job group is earning obscene amounts of money. We must say no to recurrent expenditure; it does not matter how politically risky it is. If we want this country to prosper, the only people who need their terms improved are the low-ranking civil servants who are the backbone of our economy. They spend a lot of time and energy supporting the economy, but for very little. That is why they are demoralized. We need to pay a bit more to our policemen, nurses, extension officers and those kinds of people.

Madam Temporary Speaker, county assemblies and county governments are asking; "why are you being so hard on us?" Our argument is simple. The fact that for over 50 years we have created a monster of untrammelled and uncontrolled appetite for recurrent expenditure is not a justification for county governments to copy, adopt and pursue the bad financial habits of the national Government. As fresh and new entities of

our governance structure, counties have a spectacular opportunity to demonstrate the efficiency, economy and prudence of a lean and mean Government that is thrifty and based on performance and not opulence and extravagance. They need few people with reasonable pay and to do away with numerous allowances. In fact, it worries me that people have a salary and allowances. Just consolidate everything. They should just be paid a salary.

I know this is unpopular but I keep asking myself why I should be paid Kshs5,000 for sitting in the Senate this afternoon. Honestly, why? I am a Senator for Tharaka-Nithi and Majority Leader, I have a salary. Why should I again when I appear in the Chamber be paid Kshs5,000? I am talking about my situation as a Senator because it does not raise conflict of interest issues in the sense that I am talking with a view to see how we can be in the forefront of managing recurrent costs.

Suffice it to say, the wastage that is happening in our Government today is mind boggling. This is evidenced by the reports from the Auditor-General and the Controller of Budget. A county gets Kshs4 billion in a year and spends Kshs2.5 billion paying salaries and the remaining Kshs1.5 billion, half of it, that is, Kshs750 million on allowances, trips and “benchmarking”. This is the new vogue. They say that they have gone to see where Jesus Christ was born. I am a Christian and I would like to go for a pilgrimage in Jerusalem and Nazareth or Galilee. But if I want to go there, I must look for my personal money, save my salary or other income and go for a pilgrimage at my expense and not the taxpayers.

The newest threat and intimidation is coming from Members of County Assemblies (MCAs), and I have already received some comments from some of them who are saying that I should stop being too hard on MCAs. I want to be on record by saying that MCAs must stop squandering public finances. There is no connection between where Jesus Christ was born and devolution. In today’s age of internet and digitization of information, you do not have to go to South Africa to understand how their parliamentary system works. You do not have to travel. Just log into the internet; [www.co.go.za](http://www.co.go.za), then look for Parliament of South Africa, whether it is the national or provincial parliaments. All that information is available. That is why some of us are opposed to trips. Even for us, we are spending a lot of money on trips. Why should I go to the United States of America (USA) to see how the Leader of Majority works? I will just google. We are worried that the only hope that Kenyans have of devolution is under threat. This is the only card that Kenya has. All the other cards that Kenya had to equalize our country and create a prosperous nation have been exhausted.

The legal and policy framework has been at the centre of the scattering of the Kenyan dream. How? When the much heralded Sessional Paper No.10 of 1965 was crafted by brilliant men, including Mwai Kibaki and Tom Mboya, they told us that we needed to concentrate on high potential areas. The high potential areas are defined as those areas which receive over 800 millilitres of rainfall so they grow some kind of cash crop like coffee. This means that you ignore over three-quarters of the country simply

because it is “marginal”. That is why today if you draw an imaginary line on the map of Kenya from north of Lamu above Tana River to Meru Town, you leave Isiolo on the other side, all the way to Mt. Elgon, southwards of that imaginary line, the size of our country is a quarter of what is left beyond that line. The railway line, all the best roads, best infrastructure like water and power is concentrated below that line. When you reach Isiolo, you will think you are in another country. Then you are imagining somehow you will have a prosperous and united country. You cannot. Devolution came in to correct that so that today the people of Turkana can receive their fair share of development projects and they sit down and decide what they want, be it water, electricity or roads.

Madam Temporary Speaker, devolution is the last card which this country is left with to save ourselves from self-destruction arising out of inequity and marginalization of certain segments of our country. What devolution has done is to destroy the arrangement that existed whereby a few elites and chief public servants sitting in Nairobi assisted by a small group of the political elite who are in power would decide where water will be given, where electricity will go and sometimes to the district where the Minister comes from and so on. This is perfectly illegal. Devolution is supposed to correct that but what are we seeing in the counties? Counties are getting these resources and instead of now correcting the injustices caused over the years like building roads, water dams, providing electricity, they are now benchmarking. They go to Italy to see how spaghetti is grown. I saw something like that on the internet. These days, the most travelled person is not even the Senator or the Member of the National Assembly but the MCA. You meet them and they will ask you whether you have seen the new building in Abu Dhabi near some tower. Some of them ask us whether we have been to Philippines, Venezuela or Caracas. I want to tell them to stop squandering the Kenyan dream. We need an embargo.

This Bill is saying that every year, counties must use 60 per cent of whatever they receive to do development. If they cannot pay their staff or cannot travel, we shall deal with that but 60 per cent must go to achieve the functions of county governments. I have said this and I want to repeat it; money for devolution is aimed at achieving the functions spelt out in the Fourth Schedule of the Constitution. Those functions include, crop husbandry, animal husbandry, county roads, county health facilities and so on. That money is not for travelling because travelling, training and capacity building is not a function of county governments.

Madam Temporary Speaker, if there is anything we can do to save this country from self inflicted strife, disillusionment and despair, it is to make sure that this Bill passes and it is implemented. Sixty per cent of the resources to counties must go to development; that includes county executive and county assembly branches of government. Why should a county send 87 MCAs in one aircraft to study devolution in South Africa? First of all, it is a huge, huge risk; it should not even happen! God forbid, but supposing that aircraft disappears like Flight MH370, what happens to that county? Number two, can you not just send two people to look at devolution and come and help others? It is a shame! It is a shame! It is a shame!

Madam Temporary Speaker, the other issue is on cars, with Governors trying to intimidate us here by telling us, “Oh, Senators are envious; why are you talking about motorcades?” They should be ashamed! Any Governor who is spending public money to buy four or five cars for his entourage should be ashamed; he should go to sleep tonight under the cloud of shame and embarrassment.

(Applause)

If a Governor wanted to be a hero in the eyes of the people of Kenya, just buy a small car. You are in the village; some pick-up can do so long as you have some clearance; use that car to go around and see how the peasant farmers are doing; visit health centres and the people will appreciate. But to come here and tell us that you are a symbol of authority; to tell us that you have to be seen as being in authority and in charge, therefore, you must have five Toyota Prado's, some in front, others behind with a siren in a rural town!

I am not ashamed to say as a leader in this country that we will fight recurrent expenditure in the county governments as well as in the National Government at whatever cost. The only sirens we want to hear in our counties are the sirens of ambulances going to rescue a patient; not the siren of some functionary here simply because he wants to attract attention. If they think we will be intimidated, let them be aware that we are in this thing for the long haul, for better or for worse. We must rescue our country from predatory attributes and behaviour where people see the public sector as an opportunity to make money. If you want to make money, go and become the Chief Executive Officer of Coca Cola; go and join the City Group; do not come to be a Senator, a Governor or an MCA! In fact, the word that the Constitution uses is that you are a “public servant.” Some people want to threaten us here and they are saying “O, we will go to court because you have removed our flag! “Shame on you! Shame on you!”

**An hon. Senator:** Let them go!

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): I should be seeing Governors going to court to say that assemblies or some other functionaries have misused money that was meant to bring services to the people---

**Sen. Sang:** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): Yes, Sen. Sang, what is your intervention?

**Sen. Sang:** Madam Temporary Speaker, I did not want to interrupt the Senate Majority Leader when he is moving this very important Motion that I am ready to second. But is he in order to mislead this House that the law on flying of flags by Governors was passed by the National Assembly, yet it was taken to the President for assent before it came to this House and, therefore, it is an unconstitutional law? Is he in order to suggest that Governors should follow an unconstitutional law? What would be the fate if we passed this Bill in the proper way and Governors ignored this law? Is he in order?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I appreciate the point of order by the Senator for Nandi, Sen. Sang. But when a Bill is signed by the President, it becomes law. The only way that law can be challenged is through a court process; so, I am speaking from that perspective. But for the avoidance of doubt, it is on record that I have been a firm defender of the integrity and dignity of this Senate, but within the law. So, I am conscious, for example, that the Bill in question perhaps should not have been passed into law, if you asked me. But, technically, it is law until when a court of law says the opposite.

**The Temporary Speaker** (Sen. Ongoro): Which Bill are you making reference to?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Actually, it is the National Flags, Emblems and Names Act.

**The Temporary Speaker** (Sen. Ongoro): But you---

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): So, Madam Temporary Speaker, they should comply with it because it is law, unless it is invalidated.

**The Temporary Speaker** (Sen. Ongoro): You contributed to that Bill; did you support it?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Sorry?

**The Temporary Speaker** (Sen. Ongoro): You contributed to this Bill, did you support it?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I supported it vehemently.

**The Temporary Speaker** (Sen. Ongoro): Then you are contradicting yourself---

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): I am not contradicting myself, Madam Temporary Speaker, because what I am saying is this. Somehow, there is a Bill with a similar name which had been signed, assented to and it is operational. So, unless there is a court process that nullifies that Act, you cannot pretend it is not law. I do not think this Senate operates outside the law; otherwise we would have taken the same---

**The Temporary Speaker** (Sen. Ongoro): Order, Senator! That Bill was first introduced in the Senate by Sen. (Dr.) Khalwale and then overtaken by proceedings in the Lower Chamber. So, it is true that we should have issue with the manner in which it proceeded.

**Sen. Murkomen:** On a point of information, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): What is your point of information, Sen. Murkomen? Do you wish to be informed, Senator?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Yes, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): Proceed.

**Sen. Murkomen:** Madam Temporary Speaker, the point that the Senate Majority Leader and the Senator for Tharaka Nithi is saying is very important because this House and the Members of this House, including myself, have always argued that there are laws

out there. On the face of it, there are laws; but on the substratum of it, we think there are no laws. The process of invalidating a law is by the courts. The point of information here is that already, the amendments to the Media Council Act are being challenged in the courts for lack of or for failure to follow the procedure of Article 110, which is the consultation of the Speakers of both Houses. Therefore, I wanted to inform the Senate Majority Leader that the earlier the two Speakers work together, the better because there is a danger that critical legislations – about 20 of them – might be nullified by the courts if the direction of the Media Council Act is the way to go. That may put the country in a very serious situation.

Madam Temporary Speaker, just in passing, I want to state that part of the people who have advised the President against the signing of those Bills is the Senate Majority Leader himself.

**The Temporary Speaker** (Sen. Ongoro): Proceed, Senate Majority Leader.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, Madam Temporary Speaker. I think we are getting somewhere on this issue of Bills, but we can do better. Recently, we were able to mediate and get the “Sang” Bill out of that long list of Bills that had problems and now it is in the process of being assented to.

*(Sen. Sang crossed the Floor without bowing to the Chair)*

**Sen. Murkomen:** On a point of order, Madam Temporary Speaker. Did you see what Sen. Sang did? He followed the corridor and crossed from here to the other side. This is the Senate, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): That is completely out of order. You are completely out of order. Could you retract your steps and be orderly?

Senator, proceed.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I was saying that we are doing well although not so well especially in the County Government (Amendment) Bill which was sponsored by Sen. Sang. We retrieved it from the cupboards and it is now in the process of being assented to. We hope that it will be assented to. We have advised that it be assented to.

With regard to the Division of Revenue Bill - I am briefed by Senators who have been representing us in the Mediation Team - that we are getting it finalised in the way that respects the authority and legislative space of this Senate. However, with regard to other Bills that do not fall under the emerging development, the only way is through a court process. There is no other way of dealing with this including the contentious Bill on The National Flags Emblems and Names Act.

Let me wind up my submission by saying that for a long time, we have “scape-goated” and given excuses on why certain things cannot be done. I am willing to bet my life and my political future on making sure that we say “no” to the appetite for public funds. One way of doing this is to say that county governments should not give us



excuses. They should not tell us what is happening in the national Government. They are fresh entities and should show the way. They should be the trailblazers. Let the national Government learn good governance from the county governments because they are new and fresh. They should not hire unnecessary staff and complicate things by having salaries and numerous allowances to pay.

In fact, today, counties have become very attractive. People are resigning in Nairobi from very senior positions and going to work in rural areas. This is because the terms are great. They have five cars at their disposal and the cost of living there is very low. They have huge salaries and there is pure wastage in some cases. I have seen this in some reports that are emerging. In a rural town, a Deputy Governor is renting out a house worth Kshs400,000 a month. Where would that be? That is impossible. It is theft and actually fraud. We will be very firm on this one.

I hope that my colleagues in the Senate will support this Bill. This is the starting point of a long journey. I have listened to stakeholders like the Council of Governors and they are in support of this Bill. I have heard them talk about the route that counties are willing to go for prudence and probity in accordance with Chapter 12 of our Constitution which is the Chapter on Public Finances. They are saying that we could have met and said they can achieve the 60 per cent in the medium term; meaning through a three year phased period. That is in order but we have to get here.

So, we are sending a warning that the Senate will not tolerate wastage of public funds and opulence in the name of protecting devolution. People are spending money and pretending that if you allow people in the counties; whether in the Executive or in the County Assemblies to waste public money, then you are protecting devolution. When you attack unnecessary wastage, then you are told that you are anti-devolution. We will not be cowed, we will not relent. With those many remarks, I beg that the Public Finance Management (Amendment) Bill of 2014 be read a Second Time.

I request my brother and my friend, the Senator for Kakamega County, Sen. (Dr.) Khalwale, to second this Bill.

**Sen. (Dr.) Khalwale:** Thank you, Madam Temporary Speaker. This is a very rare afternoon when I think the two sides of the House will close ranks and see the wisdom of this Bill. I rise to second this Bill and start by remembering what preceded devolution.

In the earlier parliaments where I was, we came up in 2003 with a model of CDF. As a Member of Parliament once said in this House, it was like John the Baptist and Jesus Christ. After John the Baptist had succeeded, when Jesus Christ came, John the Baptist paved way to Jesus Christ. It is appalling that CDF which has been very successful in this country, a mere 5 per cent of the CDF is spent on administering that successful Fund. It is, therefore, completely unacceptable that we should spend the kind of money we are spending as Recurrent Expenditure simply because we want development from devolved funds to be realized. There was a report from the Controller of Budget which indicated that over 70 per cent of the counties in this country have not realized or have not spent a single cent on development. I, therefore, vehemently support this Bill so that we squeeze

these guys to learn from the success of CDF. How come CDF succeeded by spending only 5 per cent of Recurrent Expenditure and a whole 95 per cent on Development Expenditure?

Madam Temporary Speaker, I have been approached by some very strong county governments and other national institutions which do not want to see this. I have been asked to oppose this Bill so that it does not have the force of law. I have had lunch with them but I want to tell them today that their lunch counted for nothing, their tea counted for nothing, even after cajoling me, I will not listen. We must introduce discipline in the way we run our counties. In fact, 60 per cent is way too much. We should be spending far much little on Recurrent Expenditure. For those who come from some of the commissions and those who come from the county governments that thought that this is a wrong Bill, I can assure you that once we make this law operational, you will see the county governments adjust and very quickly, some of the monies that are being seen to be mandatory for Recurrent Expenditure will now by force of law be available for Development Expenditure.

**Sen. Murkomen:** On a point of information, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): Sen. (Dr.) Khalwale, do you want to be informed?

**Sen. (Dr.) Khalwale:** Sure enough. He is my younger brother.

**Sen. Murkomen:** Madam Temporary Speaker, I want to inform Sen. (Dr.) Khalwale that in the Bill, it is actually 60 per cent that is going to development and not even 40 per cent.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, that was a slip of the tongue. Thank you for the correction.

Indeed I am convinced that as soon as this law is effective, you will even see downsizing in the number of employees in the county governments. You cannot believe it; I know of a Governor whose name I do not wish to reveal on the Floor of this House because I will be reducing the seriousness of the debate this afternoon, who has four grade cows and the boy who looks after these cows is paid a salary from the county government and yet he takes care of his cows in his home.

**Sen. Murkomen:** Shame!

**Sen. (Dr.) Khalwale:** I know of a Governor whose workers in the rural village are paid a salary from the taxpayers. Even the boys who take care of my two bulls, I do not pass over that bill to the taxpayers. I have a salary and pay them myself. I also pay the house girls who take care of my children. We must be very forceful. The success of this Senate will neither be measured by the nice English that we shall speak in public fora when we are in the company of Governors nor on the Floor of this House. It will be measured by how jealously we shall guard devolution, so that when the Senator for Elgeyo-Marakwet, who is a young dashing politician, will after five years have reason to tell people: "I fought so hard to bring money to Elgeyo-Marakwet and we built this

modern stadium, where our youth run.” But if he has nothing to point to, then why was he ever elected as a Senator?

Madam Temporary Speaker, it was Dr. Martin Luther King who talked about wealth. He said that worldly wealth is not a measure of success. The measure of success is worldly service. So, as I see people scramble around with choppers and even wanting to teach some of my kid brothers, who are upcoming politicians, to like choppers so that they look big, I laugh and ask: What is this?

Madam Temporary Speaker, protect me from Sen. Murkomen because he is about to hit me.

*(Laughter)*

**The Temporary Speaker** (Sen. Ongoro): Order, Senators! This is a very serious debate on the Floor of the House. Please, treat it with the seriousness that it deserves.

What is it, Sen. Murkomen, and stick to the point of order because we are running out of time?

**Sen. Murkomen:** On a point of order, Madam Temporary Speaker. Is it in order for Sen. Khalwale to disparage a means of transport, which is available in our country? Some use donkeys while others use *boda bodas*, motor bikes, *matatus* and so on. There was even a time that when you had a mobile phone you were extremely luxurious. I think that choppers are just a means of transport that expedite your attendance of meetings, like I saw Sen. Khalwale using one the other day. I know that it was borrowed, but it is otherwise a means of transport.

**The Temporary Speaker** (Sen. Ongoro): What is out of order?

**Sen. Murkomen:** Is he in order to disparage a means of transport?

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I would like the young Senator, who has been using helicopters, to forgive me, but allow me to inform him that over 2,000 years ago, none other than Jesus Christ of Nazareth used a donkey and he is more remembered than all the moguls of the United States put together with those ones of Britain, who have used means beyond even the helicopter that we are talking about. But anyway, that was with a light touch.

Madam Temporary Speaker, as the country watches us fight this particular issue of putting a ceiling, it should ask itself: “What is the money under Recurrent Expenditure spent on?” You will find Governors just living a life of opulence and privilege. Some of them have unashamedly even bought for themselves residences at the Coast worth over Kshs150 million. When I read the history of some of these Governors who are doing this, I am informed that these are children who enjoyed support because they came from challenged backgrounds and their school fees was being paid for by well-wishers. How people change because of politics! No wonder they say that power corrupts and absolute power corrupts absolutely.

I would like to speak to the issue of efficiency. If we tighten the noose, our county governments will become very efficient in collection of revenue at source. Today, as we speak, there is an authentic report penned by the Controller of Budget who is saying that the defunct local authorities were more efficient in collecting revenue than these county governments. County governments have so much money at their disposal and have even forgotten the need to tighten the loopholes of revenue at source with the kind of success that the defunct local authorities were doing.

Madam Temporary Speaker, I am, therefore, of the opinion that this is the time for this Senate to exert itself so that whatever it will cost, even if it is retrenchment, let us feel that pain knowing that some of these workers who will be retrenched, once you create development the projects that will emerge from that will create more jobs than the few people who are going to be retrenched.

I want to speak on this issue of retrenchment and I want to agree with the Leader of Majority that the governments we have had for the last 50 years had been so wasteful and inefficient that today the Government of President Uhuru is now being faced with the painful decision of having to retrench people. It is very painful indeed. I want to go on record as “*mtetezi wa wanyonge*” that before a single civil servant is retrenched, the President should order an audit to get rid of all ghost workers first. Once you have the genuine non-ghost workers, you can retrench.

As he retrenches, I will be the first person after he has got rid of ghost workers, to support the Government in retrenching people who are deadwoods. There are many people who sit in offices from morning to evening and if you ask them what they have done the whole day, they have no idea. This even applies to some Members of Parliament. Some Members of Parliament have no idea what they do in the National Assembly. I am impressed in this Senate that everybody comes and we pull together. I look at what is going on in the National Assembly and some of the pronouncements we hear, I wonder whether they ask themselves what they have done to earn the big salary.

Madam Temporary Speaker, when I was running my medical practice, I was charging a very small consultation fee of Kshs500 per person. It used to take me long donkey hours to make money. Now that I am here, I strive to ensure that I do something. I want those people who are not doing anything to be sent away. If those positions require that they attract people who can work, you bring young graduates from universities to work for us.

On the issue of retrenchment, if the Government will proceed, I will be persuading them to reconsider the Kshs480,000 they want to pay the retrenched civil servant. They used to call it a golden handshake. This is not enough. You are killing that family. The Government will have to spend slightly more money since they are prepared to pay things like Anglo Leasing and so on, it means---

**The Temporary Speaker** (Sen. Ongoro): Order, Sen. (Dr.) Khalwale. I would just give you the benefit of five seconds to say whether you support or not. You were only remaining with one minute anyway, which is now 30 seconds to support.

**Sen. (Dr.) Khalwale:** I am seeing the Speaker on her feet and that is why I am afraid to talk.

With those many words, I strongly second this very important amendment Bill.

*(Question proposed)*

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, this is a Bill and as you are aware, Bills and Committee reports are not timed. They have unlimited contribution time, so all Senators wishing to contribute will have enough time to do so.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, we have come to the end of today's sitting. Therefore, the House stands adjourned until Tuesday, 22<sup>nd</sup> July, 2014 at 2.30 p.m.

The Senate rose at 6.30 p.m.