

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 28th April, 2016

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

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

PRAYERS

COMMUNICATION FROM THE CHAIR

APPEARANCE BY THE CS, TRANSPORT AND INFRASTRUCTURE
BEFORE THE STANDING COMMITTEE ON ROADS
AND TRANSPORTATION

The Speaker (Hon. Ethuro): Hon. Senators, as you are aware, on Tuesday 19th April, 2016, I directed that the Cabinet Secretary, Ministry of Transport and Infrastructure should appear before the Senate to respond to the Statement sought by Sen. (Prof.) Anyang'-Nyong'o on the operations of Kenya Airways Limited. The Cabinet Secretary has since confirmed his availability on Tuesday 3rd May, 2016.

This is, therefore, to invite you to the said meeting between the Standing Committee on Roads and Transportation and the Cabinet Secretary, Ministry of Transport and Infrastructure, which will be held on Tuesday 3rd May, 2016, at 10.30 a.m. in the Senate Chamber, on the Ground Floor, Main Parliament Buildings.

I thank you.

STATEMENTS

BUSINESS FOR THE WEEK COMMENCING
TUESDAY 3RD MAY, 2016

Sen. Murkomen: Mr. Speaker, Sir, pursuant to the provisions of Standing Order 45, this is to present to the Senate, Business for the coming week, Tuesday 3rd May, 2016. The Rules and Business Committee will meet on Tuesday 3rd May, 2016, at 12.30 p.m. to schedule business of the Senate for the week.

Subject to further directions by the Rules and Business Committee, the Senate will continue with business that will not be concluded in today's Order Paper and further consider the following business at the Committee of the Whole: The University (Amendment) Bill (Senate Bill No.31 of 2014, The County Assembly Services Bill (Senate Bill No.27 of 2014); The County Hall of Fame Bill (Senate Bill No.33 of 2014) and The County Disaster Management Bill (Senate Bill No.40 of 2014). The Order of Precedence and Titles Bill (National Assembly Bill No.11 of 2014) will also be scheduled for Second Reading.

On Wednesday 4th May, 2016 the Senate will continue with business not concluded during Tuesday's Sitting, especially Bills at the Committee of the Whole stage, and any other business scheduled by the Rules and Business Committee. On Thursday 5th May, 2016, the Senate will consider Bills at Second Reading, deliberate on Motions and any other business scheduled by the Rules and Business Committee.

I appeal to the hon. Senators to avail themselves to dispose of the pending business before the Senate, especially the Bills which have been pending at the Committee of the Whole stage.

I thank you and hereby lay the Statement on the Table.

(Sen. Murkomen laid the document on the Table)

The Speaker (Hon. Ethuro): Let us move to Statements being sought.
Sen. Mwakulegwa!

MANAGEMENT OF FORESTS IN TAITA-TAVETA COUNTY

Sen. Mwakulegwa: Mr. Speaker, Sir, pursuant to the provisions of Standing Order 45 (2) (b) I rise to seek a Statement from the Chairman of the Committee on Land and Natural Resources on the management of forests in Taita-Taveta County.

In the Statement the Chairperson should provide the following information:-

(1) What informed the parent Ministry of Environment and Natural Resources to recently transfer the management of forests to the County Government of Taita-Taveta?

(2) What capacity in terms of human resource and equipment does the county have to enable flawless management of these forests?

(3) Is the Ministry of Environment and Natural Resources aware of the ongoing destruction of forests in Mbale, Rong'e, Mwambirwa and Sagala Forests?

(4) There is a driver who was arrested yesterday. He was logging and ferrying trees using a county government vehicle. Who instructed this driver to undertake that destruction?

(5) Explain the protection measures put in place to protect sandalwood trees within the county, as the harvesting is ongoing unabated within Kasigau Hills and Mwakitau area.

(6) What are the measures put in place to control illegal charcoal burning within the forests and settlement areas in many parts of Taita-Taveta County?

The Speaker (Hon. Ethuro): Chairperson of the Committee on Land and Natural Resources.

Sen. Kivuti: Mr. Speaker, Sir, I request to be given two weeks to bring the answer.

TRANSFER OF VARIOUS CLASSES OF
ROADS TO THE COUNTY GOVERNMENTS

Sen. Mwakulegwa: Mr. Speaker, Sir, I have a second Statement to seek. Pursuant to Standing Order No.45 (2) (b) I rise to seek a Statement from the Chairman of the Committee on Roads and Transportation on the transfer of roads Class D, E, F and below.

In the Statement, the Chairperson should provide the following:-

(1) A list and the amount of money transferred to counties countrywide for the maintenance of these roads during the 2015/2016 financial Budget.

(2) The Taita-Taveta county capacity in terms of equipment and manpower for the maintenance of these roads.

(3) A list of roads maintained or constructed in Taita-Taveta County by distance, type of roads or what was constructed and the amount used in the 2015/2016 Financial Year, by either the county government or the Kenya Rural Roads Authority (KeRRA).

The Speaker (Hon. Ethuro): Vice-Chair, Committee on Roads and Transportation, Sen. Sijeny.

Sen. Sijeny: Mr. Speaker, Sir, we will provide the Statement within two weeks.

The Speaker (Hon. Ethuro): It is so ordered.

Sen. Karaba: On a point of order, Mr. Speaker, Sir. Since the Cabinet Secretary for Transport and Infrastructure will be coming here on 3rd May, 2016, is it possible for the request to be included among the issues he will tackle?

Sen. Sijeny: Mr. Speaker, Sir, I will convey the request, but I think the time is too short. The issues will be answered, if possible. But if they will not be addressed, I will seek for at least two weeks. The Cabinet Secretary could highlight some of the issues when he comes.

The Speaker (Hon. Ethuro): Order, Members, we have statements to be issued. Yesterday, we deferred two statements to today. Could we have Statement (a) issued?

THE CONTRIBUTION OF THE MANUFACTURING
INDUSTRY TO THE GDP

The Speaker (Hon. Ethuro): The Chairperson is not in. Let us move to Statement listed as (b)

CONSTRUCTION OF A CEMENT PLANT IN WEST POKOT

The Speaker (Hon. Ethuro): Let us hear from the Chairman of the Committee on Land and Natural Resources.

Sen. Kivuti: Mr. Speaker, Sir, I stand to give the Statement as requested by the Senator for Pokot.

The Speaker (Hon. Ethuro): Order, Chair. There is no county known as Pokot.

Sen. Kivuti: West Pokot County. I know there is no East or North Pokot. Sen. (Prof.) Lonyangapuo requested for this Statement concerning the construction of a cement plant in West Pokot County.

My Committee wrote to the Cabinet Secretary (CS) for Environment and Natural Resources and they said that this project is actually a private investor project but not a Government project. Nonetheless, the Government controls whatever private investors come to do in Kenya. The Ministry requested for the information that was sought for from the private company.

The response was as follows:-

The construction did not stall as such, but rather slowed down because of delays in issuance of requisite licenses, land title deed, approvals, consent letters, mining rights and no objection, among others, that were needed before the investors could move on with the project. Below is a list indicating that the majority of the documents were obtained after June, 2010, with the latest being EIA License dated 17th October, 2014, issued by the National Environment Management Authority (NEMA) for Cemtech's Staff Housing Estate.

Mr. Speaker, Sir, I should have clarified earlier that the Senate sought information on whether the Ministry is aware that in June, 2010, the then Prime Minister of Kenya launched the construction of Pokot Cement Plant in West Pokot County. This answer is in response to that. The list of licenses, consents, approvals, land title deed, mining rights *et cetera* granted to Cemtech Ltd., for its Pokot 1.2 Million Tons Per Annum/30Megawatts Power Plant Project are as listed.

To save time, I do not have to read all the licenses - they are 18 of them - because this information has already been communicated to the Senator for West Pokot.

The Speaker (Hon. Ethuro): Agreed.

Sen. Kivuti: Mr. Speaker, Sir, we also asked them to explain if the investors Cemtech and Sanghi Group are still interested in the project, and, if so, when the production of the cement will start. The response to this is that the investors Cemtech and Sanghi Group are not only interested in the project, but have invested and continued to invest heavily in the project. To date, factory designs and drawings have been finalised and the investors have indicated that the plant should be ready to start production of cement by June, 2017.

At the group's 650 acres project site, construction commenced from January this year and their project team has completed a 22-room accommodation building with all facilities for the entire project team to stay at the site. The perimeter wall covering the group's 650 acres is in progress. The factory layout plans and the clearance have been completed. The plant, machinery, equipment *et cetera* from the main contractors shall start to be installed at the site as and when it is ready for dispatch.

The whole project is expected to be completed by June next year. Sanghi Cement Group of India are the majority investors or shareholders in the project and are undertaking the said project. The project team is fully coordinated by the Director of

Sanghi Cement Group of India, Aditya Sanghi whose telephone number is +91-9099081000 and email address is adityasanghi@sanghiment.com. They are based at the Eldoret site.

The Director/Administration for projects is Joshua Aroni whose telephone number is 0722-836562 and email is joshua.aroni@cemtechsanghi.com and he is based at the CEMTECH offices at KMA Building, 7th floor, Upper Hill, Nairobi. The Cemtech's registered offices are at Laborex Building/Farm Auto on Mombasa Road opposite Standard Newspapers Ltd. Cemtech's Liaison Office is on General Mathenge Drive, Westlands behind Westgate.

All technical planning and coordination with contractors and suppliers of the plant is undertaken at Sanghi Cement Group's Plant at Bhuj Gujarat and its offices at Ahmedabad, Mumbai, India.

The project is monitored by the West Pokot County Committee headed by the West Pokot Governor, Simon Kachapin.

The investors further welcome anyone interested in observing the progress of the project to feel free and make a visit to the plant site.

Thank you.

(Sen. Kivuti laid the document on the Table)

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I thank the Chairman and the Committee for endeavoring to get the responses from the CS for the Ministry of Industry, Investment and Trade regarding the cement plant. As I appreciate, I also want to point out that we know that this is a private investor but the national and county governments have a right to safeguard communities in the rural areas from people who go there with big plans and ideas and eventually do not fulfil them.

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

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, indeed, I am seeking clarification. The Chairman has said that the delays were occasioned by designs and drawings. This is not true because the said factory was launched in June, 2010, by the then Prime Minister. You cannot launch a factory without drawings. So, that is not correct.

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

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, could the Chairman also tell this House whether it is true that the investor said that the machinery that was supposed to be taken to West Pokot Cement Plant is so huge that it cannot be transported on Kenyan roads and so they are waiting for roads to be expanded? He needs to tell us when that will happen.

I have heard the Chairperson talk about a list; that there exists a West Pokot County Committee. I am very interested to know from you, Chairperson, who the Committee members are. I am already seeing that you have cited the Governor of West Pokot County as a member. This is a private investment. Are you confirming that the Governor of West Pokot County is also a shareholder or a member of the Committee? What is the role of this Committee regarding this private investment?

Lastly, because I have seen the type and the way the answer has been presented, it looks like the investor is the one that supplied this. I request that the Chairperson undertakes to call the investor and the Cabinet Secretary (CS) to his Committee and interrogate them further, then, you can get more details than what is indicated here.

In a nutshell, we want to know when the factory will be rolled out. All the deadlines that were given before have passed. The first deadline was 2013 and now it is 2016. Confirm that you will call him and I to come so that we interrogate him in your Committee.

The Speaker (Hon. Ethuro): Sen. Obure, are you also seeking clarifications?

Sen. Obure: Mr. Speaker, Sir, yes and by way of an observation. The answer to this question has suggested that this particular plant was launched way back in June, 2010. The delay has been occasioned by the fact that the prospective investor had to seek licences and various approvals from various authorities. Eighteen such licences and approvals have taken a span of four years and that is largely the reason why this particular project was delayed.

My concern is that this has been cited as a major cause of frustration for prospective investors in this country. Is there any way the national Government or the authorities that be could try and reduce these number of licences, approvals and so on, with a view to making it easier for investors to put their money in this country?

The Speaker (Hon. Ethuro): Sen. Njoroge, do you have a clarification?

Sen. Njoroge: Mr. Speaker, Sir, I would like you to give me permission to go back and seek a Statement before ---

The Speaker (Hon. Ethuro): Order, Sen. Njoroge! I was afraid you were taking that route. I tried to anticipate by asking if you were seeking a clarification. The best that you should have said is “no” and then we proceed.

Sen. Karaba, is yours a clarification on the Statement?

Sen. Karaba: Mr. Temporary Speaker, Sir, yes. This is not the only private partnership participation that we have in this country. We have a number of others in counties and in my county, we have tea processing ---

The Speaker (Hon. Ethuro): Sen. Karaba, it is Statement Time.

Sen. Karaba: Mr. Speaker, Sir, is it possible for these private practitioners, participants or private developers to be given time limits by the Government, so that they do not take unnecessarily too long?

Sen. Kivuti: Mr. Speaker, Sir, although I did not read through all the licences that this investor sought, the whole process started in 2009. The first letter of approval dated 12th July, 2009 was for mining rights from the Commissioner of Mines and Geology. All the approvals and licences which are listed here come from different Government sources. This means that whereas they had to look for change of user, get the title, get approvals for the National Environmental Management Authority (NEMA) and mining and all the other corners. I would like to support what has been put forward by my colleague, Sen. Obure, that the problem is actually within the Kenya Government.

The red tape seems to have taken from December, 2009 up to 17th October, 2014 when the last NEMA licence was issued. From 2014, this investor had already put up accommodation for 200 people, a perimeter fence and done all the design drawings

within one year. At the end of the letter, they are welcoming anybody who may want to visit and see what they are doing to go there. They have given the contacts of all their offices. I do not know what value we may add to even call them.

They will come and say: "Okay, we were called. We found that these licences took from 2009 to 2014. After we found that, we have started work." I would request my colleague, Sen. (Prof.) Lonyangapuo, to first of all, go with this answer and visit whatever is going on on the ground. If it becomes necessary, I would like to assure that my Committee will be ready to take up any issues that may come out of such interrogations after his visit.

Having said that, I would like to note that this kind of delay for this kind of investment occurs not only in West Pokot County but also in other counties. I would like to support what my other colleagues have talked about, not only the Ministry of Environment and natural Resources, but the entire investment environment in Kenya needs to be improved. Just to mention, before I came to Parliament, I was the Director of the Kenya Investment Authority (KIA). One of the things that we tried to do then, was to establish a one stop shop like what happens in Rwanda and a few other countries where investors do not have to come, start running up and down establishing many offices and spending four years to get approvals to start a project. I believe that this is something that we need to clean in-house.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, just being given the list of hurdles that they purportedly made them unable to fulfill their pledge beats all logic. This is because by 2010, they were supposed to have started the factory. At the same time, I am aware two licences were given and one was to do a factory in Athi River ---

The Speaker (Hon. Ethuro): Order, Senator! It is clarification time and do not be repetitive.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, yes, I am seeking a clarification. He said it has taken long. What happened to the one that was built in Athi River, the Devki Group? At the same time, they have now done three factories in Kenya when the other one has done zero. So, are you saying that we have different ways of dealing with different investors in Kenya?

Lastly, I invite the Committee to go and visit those sites so that they can understand the frustration that my people go through in waiting for this huge thing that does not come.

Sen. Kivuti: Mr. Speaker, Sir, whereas I have no objection to my Committee visiting the site, I welcome the Senator for West Pokot to join us or even visit the site before the Committee goes there.

Sen. (Prof) Lonyangapuo: I live there.

Sen. Kivuti: If that is the case, we should visit there so that we can fast-track some of the concerns he has. On the other hand, I believe it is also possible for us to voice the concerns of the Senator directly to this investor if there is some information regarding what happened that we do not know so that we can get full clarification.

(Sen. Obure spoke off the microphone)

The Speaker (Hon. Ethuro): Order Sen. Obure! There was time for clarifications and it ended. I only allowed the one who sought the Statement for obvious interest.

Sen. Obure, you are not the Chair responsible, so you can share the positive things with the chairman and the Committee and you are a Member of the Committee. You cannot purport to be assisting the Chair on the Floor. That assistance should be given elsewhere. In the meantime Chair, we are called upon as a House to respond to the needs of Kenyans.

I think Sen. (Prof.) Lonyangapuo has put a case, given the county we are talking about and the need for accelerated development which is why we are here. I direct that your Committee actually visits the site so that you give this a bit of urgency and importance which it deserves.

Sen. Kivuti: Mr. Speaker, Sir, I take the advice.

The Speaker (Hon. Ethuro): Thank you. We are now moving to Statement No. 2 (c). Where is the Chairperson of the Committee on National Security and Foreign Relations Committee?

PRESENCE OF KDF IN SOMALIA SERVING UNDER AMISOM

Sen. Adan: Mr. Speaker, Sir, I do not have this Statement at the moment and I would request Sen. (Dr.) Khalwale to give us one more week to respond to his Statement.

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, one more week which will be next Wednesday. Let us move to Statement 2 (d).

CLOSURE OF MASINDE MULIRO UNIVERSITY IN KAKAMEGA COUNTY

Sen. Karaba: Mr. Speaker, Sir, I have not received an answer to this Statement from the Minister and I suppose that by next week, I will be having it.

The Speaker (Hon. Ethuro): When?

Sen. Karaba: Next week on Thursday.

The Speaker (Hon. Ethuro): Since the Statement has already appeared, let us bring the Statement on Tuesday next week. This is about closure of a university.

Sen. Karaba: Mr. Speaker, Sir, it is a public holiday on Monday.

The Speaker (Hon. Ethuro): What does that have to do with Tuesday?

Sen. Karaba: Mr. Speaker, Sir, we have only tomorrow to work on. So, I requested for two more days.

The Speaker (Hon. Ethuro): Order! We are not seeking the Statement from today. This is a matter that has been pending. So, you are only asking for more time to pursue. Tomorrow is 24 hours not to mention the other days because if they delay, they could eat into the weekend. The responsibility is on their part. So, do not try to defend them here. Bring it on Tuesday.

Sen. Karaba: Obligated, Mr. Speaker, Sir.

Sen. (Prof) Lonyangapuo: On a point of order Mr. Speaker, Sir. The Chairman of the Standing Committee on Finance, Budget and Commerce is here to give the response to Statement 2 (a).

THE CONTRIBUTION OF THE MANUFACTURING
INDUSTRY TO THE GDP

The Speaker (Hon. Ethuro): Sen. Billow, Chairman of the Committee on Finance, Budget and Commerce.

Sen. Billow: Mr. Speaker, Sir, I apologize for coming late. The Statement sought by the Senator for West Pokot, who is my good neighbour is not ready and we seek his indulgence for another week. I will deliver by Thursday next week.

Sen. (Prof) Lonyangapuo: Mr. Speaker, Sir, this Statement was due yesterday and you directed that it be given today. He is now defying your directive.

Sen. Obure: Mr. Speaker, Sir, in any case, this is the kind of information that is readily available at the National Treasury or at the Kenya National Bureau of Statistics. I do not know why we should be asked to wait for one week.

Sen. Billow: Mr. Speaker, Sir, we have consulted and we will try and get it by Tuesday because there is a long holiday coming. That is why we were pushing it to Thursday but if he insists, we will try our best to answer it on Tuesday.

The Speaker (Hon. Ethuro): What about the issue of defying the directive?

Sen. Billow: Mr. Speaker, Sir, I was not in the House yesterday and I have not been advised on the directive but I apologize if there was a directive given to the Committee. Our Committee met this morning but there was no communication to that effect. I apologize.

The Speaker (Hon. Ethuro): Bring it on Tuesday next week. Sen. Njoroge, you may now seek your statement.

INCLUSION OF RELEVANT OFFICES IN POLICE
RECRUITMENT EXERCISE

Sen. Njoroge: Mr. Speaker, Sir. I am seeking a statement pursuant to Standing Order No. 45 (2) (b) from the Chairperson of the Standing Committee on National Security and Foreign Relations concerning the just concluded police recruitment exercise.

In the Statement, I want the Chair to address the following:-

(1) Were the following relevant departments of the National Police Service involved in the exercise;

(a) The National Police Service Commission.

(b) The Department of Administration in the office of the Deputy Inspector General of Police.

(c) Office of the Director Criminal Investigations.

(d) The committee in charge of police recruitment.

Mr. Speaker, Sir, could the Chairperson confirm whether or not the Director of Personnel, Office of the Inspector General of Police conducted the recruitment analysis without involving the functions listed in one above?

1. Since there are some allegations that some qualified recruits were dropped, could the Chairperson clarify and explain the circumstances that led to the alleged dropping of the said recruits?

2. Why were the names of the successful recruits not published in the local newspapers as is normally the case, given that they will be reporting tomorrow 29th April, 2016, hence the public will not have a way of knowing who was recruited, which is their constitutional right of access to information?

Thank you.

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

Sen. Adan: Mr. Speaker, Sir, I request Sen. Njoroge to give me two weeks to respond to his request.

Sen. Njoroge: On a point of order, Mr. Speaker, Sir. The issues that I have raised in my request for a statement are obvious. Two weeks is too long because the recruits are supposed to report to their institutions from tomorrow.

The Speaker (Hon. Ethuro): Sen. Adan, let us have the Statement in one week's time, because this is a matter that is already done with; it is just information.

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

The Speaker (Hon. Ethuro): Order, Members. We will go back to Papers Laid, but before we do so, allow me to read two Communications from the Chair.

COMMUNICATIONS FROM THE CHAIR

SENATORS' *KAMUKUNJI* TO BE HELD ON
THURSDAY, 5TH MAY, 2016

The Speaker (Hon. Ethuro): Following the request by Members yesterday regarding issues canvassed by Sen. Kagwe, we have convened a *kamukunji* next week on Thursday, 5th May, at 11.00 a.m. I urge all Senators to be present.

CONSULTATIVE FORUM WITH THE CS, DEVOLUTION AND PLANNING ON COMPENSATION OF IDPS

Hon. Senators, as you may recall, the Cabinet Secretary for Devolution and Planning was scheduled to meet with the hon. Senators this morning, 28th April, 2016, to respond to a request for a Statement and issues that were being clarified thereon regarding the status of compensation of Internally Displaced Persons (IDPs), including the integrated IDPs across the country. The Cabinet Secretary was unable to attend the said meeting due to a Cabinet engagement and has sent his apologies. The meeting with the Cabinet Secretary has now been re-scheduled to next week on Wednesday, 4th May, 2016, at 11.30 a.m. in the Senate Chambers. I urge all of you to plan to attend the consultative meeting to deliberate on this important matter.

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I thank you.
Next Order!

PAPERS LAID

REPORTS OF THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET ON VARIOUS PETITIONS

Sen. Billow: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Thursday, 28th April, 2016:-

Report of the Standing Committee on Finance, Commerce and Budget on the examination of a Petition by residents of Bomet County on embezzlement of funds, financial impropriety and skewed employment by the Bomet County Government.

Report of the Standing Committee on Finance, Commerce and Budget on examination of a Petition by residents of Wajir County on alleged misappropriation of funds by the Governor and County Government of Wajir.

Report of the Committee on Finance, Commerce and Budget on examination of a Petition by hon. Teddy Mwambire, regarding timelines for disbursement of funds by the National Treasury to county governments.

Report of the Standing Committee on Finance, Commerce and Budget on examination of a Petition by Mr. David Gesicho, regarding a proposed formula for division and allocation of revenue towards realization of Sustainable Development Goals (SDGs).

Report of the Standing Committee on Finance, Commerce and Budget on the examination of a Petition by residents of Bomet County on the need for a quick resolution to the budget crisis in the county.

Report of the Standing Committee on Finance, Commerce and Budget on the examination of a Petition by Abdul Salaam M. Dakane and Abdulahi Hassan on alleged misappropriation of funds by the Mandera County Government.

(Sen. Billow laid the documents on the Table)

REPORT ON PETITION: IMPLEMENTATION OF URBAN AREAS AND CITIES ACT 2011 BY COUNTIES

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday, 28th April, 2016:-

Report of the Sessional Committee on Devolved Government on the Petition on the implementation of Urban Areas and Cities Act 2011 by counties.

(Sen. (Prof.) Lesan laid the document on the Table)

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Thursday, 28th April, 2016:-

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REPORT ON THE FINANCIAL STATEMENTS OF
MACHAKO MUNICIPAL COUNCIL

Report of the Auditor-General on the financial statements of the Municipal Council of Machakos for the eight months period ended 28th February, 2013.

REPORT ON COUNTY GOVERNMENTS' BUDGET
IMPLEMENTATION REVIEW REPORT

Report of the Controller of Budget on county governments' budget implementation review report for the first quarter of the Financial Year 2015/2016.

*(Sen. (Prof.) Anyang'-Nyong'o
laid the documents on the Table)*

The Speaker (Hon. Ethuro): Next Order.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE DIVISION OF REVENUE BILL
(NATIONAL ASSEMBLY BILL NO.4 OF 2016)

The Temporary Chairperson (Sen. (Dr.) Machage): Hon. Senators, we are now in the Committee of the Whole, but let me put this information to you; that Order Nos. 8, 9 and 10 can be executed today, because they only involve voting. We will vote on Order No. 8, resume plenary and vote on Order Nos. 9 and 10. I beg for your patience so that we can pass these three Orders and remain relevant.

We are now on Order No.8. Ring the Division Bell for 30 seconds.

(The Division Bell was rung)

DIVISION

ELECTRONIC VOTING

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(Question, that Clauses 3, 4, 5, 6, Schedule, Clause 2, Title and Clause 1 be part of the Bill, put and the Senate proceeded to vote by County delegation)

AYES: Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'- Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Kagwe, Nyeri County; Sen. M. Kajwang, Homa Bay County; Sen. Khaniri, Vihiga County; Sen. Kiraitu, Meru County; Sen. Kisasa, Kilifi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mohamud, Wajir County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Nabwala, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Omondi, Kakamega County; and Sen. Wamatangi, Kiambu County.

NOES: Nil.

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, I wish to announce the results as follows:-

AYES: 26

NOES: 0

ABSTENTIONS: 0

(Question carried by 26 votes to nil)

(Clauses 3, 4, 5 and 6 agreed to)

(Schedule agreed to)

(Clause 2 agreed to)

(Title agreed to)

(Clause 1 agreed to)

Sen. Murkomen: Mr. Temporary Chairperson, Sir, I beg to move that the Committee do report to the Senate its consideration of the Division of Revenue Bill (National Assembly Bill No.4 of 2016) and its approval thereof without amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT AND THIRD READING

THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILL NO.4 OF 2016)

Sen. Elachi: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the Division of Revenue Bill (National Assembly Bill No.4 of 2016) and its approval thereof without amendments.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said report.

(Question proposed)

(Question put and agreed to)

Sen. Murkomen: Mr. Temporary Speaker, Sir, I beg to move that the Division of Revenue Bill (National Assembly Bill No.4 of 2016) be now read a Third Time.

Sen. Khaniri seconded

(Question proposed)

(Question put and agreed to)

DIVISION

ELECTRONIC VOTING

(Question, that the Division of Revenue Bill (National Assembly Bill No. 4 of 2016) be read a Third Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'- Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Kagwe, Nyeri County; Sen. M. Kajwang, Homa Bay County; Sen. Khaniri, Vihiga County; Sen. Kiraitu, Meru County; Sen. Kisasa, Kilifi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mohamud, Wajir County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Nabwala, Trans Nzoia County; Sen. Ntutu,

Narok County; Sen. Obure, Kisii County; Sen. Omondi, Kakamega County; and Sen. Wamatangi, Kiambu County.

NOES: Nil

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, the results of the Division are as follows:-

AYES: 26

NOES: Nil

ABSTENTIONS: Nil

The “Ayes” have it.

(Question carried by 26 votes to 0)

(The Division Bill was accordingly read the Third Time and passed)

Second Reading

THE COUNTY GOVERNMENTS (AMENDMENT) (No.4) BILL (SENATE BILL NO.18 OF 2014)

(Sen. Murkomen on 23.3.2016)

(Resumption of Debate interrupted on 26.4.2016)

DIVISION

ELECTRONIC VOTING

*(Question, that the County Governments (Amendment) (No.4) Bill
(Senate Bill No.18 of 2014) be now read a Second Time,
put and the Senate proceeded to vote by County Delegations)*

AYES: Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'- Nyong'o, Kisumu County; Sen. Billoo, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Kagwe, Nyeri County; Sen. M. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. Khaniri, Vihiga County; Sen. Kiraitu, Meru County; Sen. Kisasa, Kilifi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mohamud, Wajir County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Nabwala, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; and Sen. Omondi, Kakamega County.

NOES: Nil.

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, I wish to announce the results as follows:-

AYES: 26

NOES: 0

ABSTENTIONS: 0

The "Ayes" have it.

(Question carried by 26 votes to 0)

(The Bill was a read a Second Time and committed to a Committee of the Whole tomorrow)

MOTION

THAT, this House adopts the Report of the Mediation Committee on the Political Parties (Amendment) Bill (Senate Bill No.3 of 2014) laid on the Table of the Senate on Tuesday, 26th April, 2016.

(Sen. Wako on 27.4.2016)

(Resumption of Debate interrupted on 27.4.2016)

DIVISION

ELECTRONIC VOTING

(Question, that this House adopts the Report of the Mediation Committee on the Political Parties (Amendment) Bill (Senate Bill No.3 of 2014) laid on the Table of the Senate on Tuesday, 26th April, 2016, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'- Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Kagwe, Nyeri County; Sen. M. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. Khaniri, Vihiga County; Sen. Kisasa, Kilifi County; Sen. Kivuti, Embu County; Sen. Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mohamud, Wajir County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Kiraitu, Meru County; Sen. Musila, Kitui County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Nabwala, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Omondi, Kakamega County; and Sen. Wamatangi, Kiambu

NOES: Sen. Lesuuda, Samburu County.

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, the results of the Division are as follows:-

AYES: 26

NOES: 1

ABSTENTIONS: 0

The “Ayes” have it.

(Question carried by 26 votes to 1)

The Temporary Speaker (Sen. (Dr.) Machage): Withdraw the bar and open the doors.

(The Bar was drawn and doors opened)

Hon. Senators, we will defer Order No.11 because the Mover is not around.

MOTION

ADOPTION OF REPORT ON THE SECURITY SITUATION IN MANDERA, LAIKIPIA AND KAPEDO

THAT, this House adopts the Report of the Standing Committee on National Security and Foreign Relations on the assessment of the security situation in Mandera County, Laikipia county and Kapedo (Border town of Turkana and Baringo Counties) conducted between 19th January and 5th February, 2015 and laid on the Table of the House on Wednesday, 29th July, 2015.

(Motion deferred)

Next Order.

MOTION

ADOPTION OF REPORT ON FINANCIAL OPERATIONS OF HOMA-BAY COUNTY EXECUTIVE FOR THE FINANCIAL YEAR 2013/2014

Sen. (Prof.) Anyang'- Nyong'o: Mr. Temporary Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts the Report of the Sessional Committee on County Public Accounts and Investments on the Inquiry

into the Financial Operations of Homa-Bay County Executive for the Financial Year 2013/2014 laid on the Table of the House on Wednesday, 4th November, 2015.

The County Public Accounts and Investments Committee (CPAIC) comprising of the following Members: -

Sen. (Dr.) Khalwale; Sen. Hassan Omar Hassan; Sen. Kipchumba Murkomen then; Sen. Wamatangi Kimani; Sen. (Eng.) Karue Muriuki; Sen. (Prof.) Lonyangapuo; Sen. Wangari Martha; Sen. George Khaniri; Sen. Sitswila Amos Wako; Sen. Okong'o Mong'are and I reviewed the audited accounts of Homa Bay County Executive for the Financial Year stated.

Mr. Temporary Speaker, Sir, the Committee having been first constituted on 27th March, 2014 pursuant to Senate Standing Order No.181 following a resolution of the House on Thursday, 27th February, 2014 to amend the Senate Standing Orders.

The Committee was subsequently constituted on 17th February, 2015 pursuant to Senate Standing Order No.210(1) which requires Sessional Committees to be reconstituted at the commencement of every Session. In that regard, the Office of the Auditor-General on various dates after the constitution of the Committee from June 2015, forwarded reports on the financial operations of the County Governments for the Financial Year 2013/2014 to the Senate pursuant to the provisions of Article 229(7).

As such, the Report on the Financial Operations of Homa Bay County Executive for the period 1st July, 2013 to 30th June, 2015 was tabled on 30th June, 2015 and stood committed to the Sessional Committee on Public Accounts and Investments.

The Committee held several meetings with Homa Bay County Executive on various dates including, 14th, 15th and 29th July, 2015 where it considered the report of the Auditor-General under review.

The Committee further visited the County Government of Homa Bay on 6th August, 2015 to follow up on particular issues that required verification. The sittings were primarily investigatory. The Committee received evidence from the Governor as the Chief Executive Officer (CEO) and policy maker of the County Government of Homa Bay.

The main issue for determination and investigation was the audit queries contained in the Report of the Auditor-General on the Financial Operations of Homa Bay County Executive for the Financial Year 2013/2014, which we are discussing today.

Mr. Temporary Speaker, Sir, the Committee in arriving at particular recommendations in this Report of the Auditor-General on the Financial Operations of Homa Bay County Executive took into account the challenges faced by counties at their nascent days. The Committee was further guided by the mandate of the Senate pursuant to the provisions of Article 96(1) of the Constitution, particularly the need to strike a balance between protection and oversight in accordance with the provisions of Article 96(1) and (3) of the Constitution.

The Committee structured its deliberations and decisions in the following manner:-

(1) Unlawful expenditure.

In this category, the expenditure in question could not be justified under any circumstance. In instances like this, the Committee recommended immediate recovery or surcharge of the individuals who received the funds. This seems to be a frequent recurrence in many other counties.

(2) Instances where procurement rules were not followed but goods and services were supplied as per the details of the requisition.

Instances where the county government used restricted tender method instead of open tender method, goods were delivered as per the details of the Local Purchase Order (LPO), the Committee depending on the oral and written submissions recommended that the respective accounting officer be reprimanded for not following the public procurement rules and regulations and be required to submit a report to the Senate on administrative actions and austerity measures taken to mitigate against committal of similar offences in the subsequent financial years.

(3) Instances where procurement rules were not followed and the Committee could not ascertain that the public funds appropriated were used diligently:-

The Committee recommended that the Office of the Auditor-General undertakes the value for money audit on that specific project and submit a report to the Senate within a period of one year.

(4) Instances where procurement rules were not followed and goods and services delivered did not match those goods requested for by the procuring entity.

The Committee took the view that this was a fraudulent transaction and recommended that the officer who authorised payment should be surcharged and held personally liable for the loss of public funds in question.

(5) Instances where an irregularity occurred and the county government detected it and took disciplinary action against the officers involved.

The Committee was lenient in such cases. Depending on each case cleared the audit query and no further action was recommended.

(6) Instances where procurement rules were not followed but the Committee ascertained that no public funds were lost in the transaction.

The Committee recommended that the audit query be cleared and no further actions were recommended.

(7) Instances where the county government failed to submit the required documents during the time of audit but subsequently submitted the documents to the auditor-General and the documents were examined and the Auditor-General was satisfied with the evidence submitted.

The Committee cleared the audit query but recommended that the county government should submit the documents to the Auditor-General at the time of audit.

Mr. Temporary Speaker, Sir, having done that, the Committee made the following general observations:-

(1) The executive arm of the county government regularly used the restricted tendering in the procurement of goods and services. This was in contravention of the existing public procurement rules and regulations.

(2) Apart from regular use of restricted tendering, the county government in many instances did not follow the public procurement rules and regulations governing the procurement of goods and services in the public sector.

Mr. Temporary Speaker, Sir, again, this is another very frequent offence in many county governments. Although the goods and services may have been supplied, lack of competitive bidding may have denied deserving business entities the opportunity to supply the said goods and services. Similarly, the county government lost the opportunity to get the lowest bidders.

(Sen. Murkomen and Sen. Sang consulted loudly)

The Senate Deputy Majority Leader and the young incoming governor for Nandi County needs to listen to this because their counties are frequently---

The Temporary Speaker (Sen. (Dr.) Machage): You are protected. The Senate Deputy Majority Leader, can you keep your peace?

Sen. (Prof.) Anyang'-Nyong': Mr. Temporary Speaker, Sir, I will proceed.

3. The county government spent considerable amount of funds at the tail end of the financial year. This was attributed to the late disbursement by the National Treasury and the challenges that came with the closure of a financial year. This trend was uncalled for and may have resulted in unnecessary delays in the implementation of projects.

4. The establishment of offices in the county government was not driven by proper needs assessment and necessity for service delivery but on convenience and the urge to employ people.

5. There were unsubstantiated claims of malpractices in the recruitment of staff. Anonymous members of the public had alleged that some county government officials had employed their relatives in the same departments they supervise. The county government refuted the allegations.

However, it was observed too that the rule in the Constitution and the County Governments Act that at least 30 per cent of employees in a county government should be from outside the county is not frequently observed in many counties. This injures the provision in the Constitution that requires that in any Government institution, the diversity of the people of Kenya must be represented. This is good for national integration and cohesion.

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

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

6. The future unsustainability of flagship projects initiated by the county government including the hatcheries was uncertain because the projects were initiated without proper feasibility studies and the necessary framework for sustaining the projects. Some of the hatcheries were found not to be in use one year after their issue. Some are congested in one room with no security at all and others in private homes. It was a good project but badly implemented.

7. The county government recruited well qualified and equitably distributed personnel at the level of the county executive committee members and the chief officers.

8. The Transition Authority (TA) had not concluded the verification and authentication of assets and liabilities registers in the county. The absence of assets registers in counties is an extremely important matter. Although the TA in counties did not complete the making up of asset registers, the Committee has advised all counties to ensure that they have proper asset registers for all assets in the counties. The assets need to be properly identified with the insignia of the county government.

9. The county government in many instances was reluctant to avail the necessary documents to the Auditor-General at the time of audit.

10. The county government failed to maintain an up to date cash book. Equally important is the omission in many other counties. We advised them the importance of maintaining proper cash books.

Mr. Temporary Speaker, Sir, the Committee's general recommendations are as follows:-

1. The county government should apply the use of restricted tendering sparingly in order to foster transparency, fairness and equal distribution of opportunities and mitigate against the possible abuse of the restricted tendering to award tenders to only those favoured by the county government officials. It is a frequent occurrence in many counties.

2. The county government should endeavour to have 'the must have offices' that will assist the county government in efficient service delivery and prudent financial management. In this regard, the county government should recruit personnel based on the existing gaps and needs in the staffing and not on any other criteria that may lead the county government to have excessive staff that weigh heavily on the wage bill.

3. The county government should adhere to the public procurement rules and regulations in the procurement of goods and services. It should also in the subsequent financial years adhere to the rules and regulations governing the procurement of goods and services in the public sector.

4. The Transition Authority should expedite the verification and authentication of assets and liabilities registers and submit a report to the Senate by 31st December, 2015. At the time of debating this Report in the Senate, the TA is no more but we hope that it did before it went out of office. The Clerk's office can verify that as having been done.

5. The county government should always provide all the documents to the Auditor-General at the time of audit and not thereafter. The county government should always take advantage of the management letter to respond to the audit questions raised. This recommendation recurs in many counties. The Committee has problems with inadequate provision of documents to the Auditor-General and hence slows movement in clearing audit queries.

6. The county government should ensure equitable distribution of jobs and opportunities to all Kenyans during the recruitment of staff. The 30 per cent rule will be strictly looked into by our Committee.

7. The county government should maintain a comprehensive and up to date cashbook and further ensure that bank reconciliation is carried out regularly and at least on a monthly basis.

8. The county government should institutionalise feasibility studies as a key instrument for gauging the viability and sustainability of all projects financed by the county government. All the key stakeholders should participate in the identification of projects to ensure that projects sponsored by public funds have wide acceptance at the county level and are based on real participation of the public.

Many counties have been going around the world benchmarking and finding out what kind of projects they should do. Quite often, projects are imported, lock, stock and barrel, without much thinking as to whether they are viable to socio-economic circumstances. This blind replication of projects that look good but do not have much economic value or reproducibility should be discouraged.

There should be proper feasibility studies done before public money is put in known viable projects.

9. The Office of the Auditor-General should regularly undertake the value for money audit in order to provide feedback on how best public funds have been utilised.

10. The county government should utilise the interactive nature of the audit process, including the entry and exit meetings, the management letter among others to respond satisfactorily to the audit queries and internal control weaknesses pointed out by the Auditor-General at the time of audit.

11. The county government should at all times provide all the necessary documents to the Auditor-General at the time of audit. The Committee will in the subsequent audit reports treat this as an offence that attracts severe consequences.

Mr. Temporary Speaker, Sir, having gone through those recommendations - Sen. (Dr.) Khalwale was to second this Motion but he seems not in the House - I request Sen. M. Kajwang to Second the Motion.

I beg to move.

The Temporary Speaker (Sen. Sang): Sen. M. Kajwang, you may proceed to second as you declare your interest in the report beyond just seconding.

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, as the Senator for Homa Bay and this Report touches on Homa Bay, I take up the duty to second, because the hon. Senator who was meant to second it has taken a short break. I, therefore, second this Motion. I will also make some comments because having seconded this Motion, I do not think I will be allowed to speak to the same issue again at a later time.

Mr. Temporary Speaker, Sir, I am aware that in 2013/2014, the period which this Report covers, county governments were still newborns and they were faced with numerous challenges. Indeed, the first governors had a tough challenge of putting in place systems, procedures and processes often without any precedence to refer to.

If Kenyans understood the job of a governor, they would have selected individuals who are experts in institution building because the first term for county governments required people who were good in institution building rather than people who were good at politics and showbiz. So, many counties, including Homa Bay, had a

tough first year, in terms of putting in place the necessary structures and enforcing the new laws. Some of these laws were being tested for the first time.

The audit findings and the reports of the County Public Accounts and Investments Committee (CPAIC) also confirmed this state. In Homa Bay, the Auditor-General has come up with some findings around human resource, payroll, not adhering to some of the laws that had just been enacted and also not adhering to procurement procedures. Because of the learning nature of the first year of devolution, it is fair to give the governors some little amount of latitude such that even if they killed during that period, we would consider it manslaughter rather than looking at it as murder, considering the difficulties they had at that point in time. However, there are certain acts of omission or commission that cannot go unchallenged and they have been brought up very clearly in this Report.

Mr. Temporary Speaker, Sir, there are certain acts that make me feel that I should look at them as murder rather than manslaughter for a county like Homa Bay that suffers the huge brunt of HIV/AIDS. We have the highest HIV/AIDS infection rates in the country and, probably, globally. When you start seeing avenues through which people are using to syphon funds from public coffers, you start feeling like they are committing murder because they deny thousands of people access to medical care. I will give you an example from the Report by the CPAIC that is based on the Auditor-General's Report.

The county procured 306 hatcheries. These were supposed to be given to 227 groups. The total cost of this venture was Kshs123 million. Quick mathematics will tell you that each of the 306 hatcheries was purchased at an average cost of Kshs404,000. Many of us in this House have been in politics for a long period of time. From time to time, chances are you have bought hatcheries and donated them to women and youth groups and other stakeholders. I have done a market survey and I have sought proforma invoices from providers and suppliers of hatcheries. None of those suppliers has quoted to me anything close to Kshs400,000. The average cost of a hatchery starts from Kshs150,000 going all the way to Kshs200,000. You will find that a county has procured 300 hatcheries at a cost of Kshs400,000 each.

Mr. Temporary Speaker, Sir, the tragedy is that the CPAIC did not really interrogate that particular matter. The CPAIC and the Auditor-General confined themselves to finding out whether restricted tendering was used or the provisions of the Public Procurement and Disposal of Assets Act were used. They did not do a deep dive to ask what kind of a hatchery is sold for Kshs400,000. Is it a hatchery that can fry an egg or manufacture feed? This is an avenue that has been used to syphon funds from public coffers.

If you take an average cost of a hatchery to be Kshs200,000 and you spend Kshs400,000, you are looking at a potential loss of close to Kshs60 million just like that. I said that we could call it manslaughter in the first year, but I am beginning to be convinced that this is murder of the people of Homa Bay. Indeed, if there was padding of the invoices, Kshs60 million could have helped a lot of mothers and many people suffering from HIV/AIDS.

Mr. Temporary Speaker, Sir, the CPAIC reports indicate that when they went to the ground, they found that some of the hatcheries were deployed in areas without

electricity. There are electrical hatcheries that were given to youth groups in places where there is no electricity. In some areas, the things were kept and they were not being used. In some areas, the hatcheries were still sitting in the offices of MCAs.

I know that the CPAIC has just been reorganised and Sen. (Prof.) Anyang'-Nyong'o has taken the mantle. The nation looks at this Senate as the last saviour of devolution. These are issues that sometimes county assemblies are unable to deal with because there are some local interests and governors are very good at taking care of those interests. It is this Senate that remains impartial. It is this Senate that the nation and people of Homa Bay are looking at today to ensure that we do not allow these kind of avenues for syphoning of funds.

There was no feasibility study that was done. You spent Kshs120 million, but with no feasibility studies being conducted. You even use restricted tendering. You broke all the laws of procurement and all commonsense when it comes to implementation of projects. How I wish the CPAIC would have come out much more strongly rather than recommending a value for money audit to be completed within one year.

Mr. Temporary Speaker, Sir, I will give you a second example of a solar lighting project. In the report, it is called *Okonyo Welo*. That is a Luo term meaning, "the visitors have been assisted." This was a noble initiative to put up solar lamps in 248 markets. The county government procured 800 solar-powered lamps to be deployed to 248 markets at a total cost of Kshs143 million. Interestingly, they set up the cost without including Value Added Tax (VAT). Again, this is another issue because later when payments are being made, VAT gets factored in. This gives you an average cost of Kshs207,000 for each solar floodlight.

Mr. Temporary Speaker, Sir, as an aspiring governor, you must also have gone to the market to find out how much it would cost you to do some of these things for the benefit of your people. This amount is above the market price. That is a similar trend that we have seen with the hatcheries. The interesting thing is that the county went into a joint venture with a private company. Both the county and the private were supposed to contribute 50 per cent each. The county went ahead and paid Kshs80 million and the private player did not contribute a cent.

This is a clear game where the county is providing money to finance a private individual, so that some loot can be shared out at the end of the day. Again, restricted tendering was used in this particular case yet the CPAIC recommends that we reprimand some people and that the Auditor-General conducts a value for money audit within a period of one year.

Mr. Temporary Speaker, Sir, the CPAIC needs to be much more firm in its recommendations. This thing of being polite and at the end of the day, we are the last frontier when it comes to oversight and safeguarding public funds that have been sent to counties.

The third example is that; the county government undertook various renovations and repairs totaling to about Kshs72 million. If you look at some of these repairs, you can clearly see a pattern of duplication. Just allow me to refer to some of them. The county spent Kshs10 million to purchase furniture and Kshs4.3 million to renovate the

governor's office through restricted tendering. It also spent Kshs16 million to set up ablutions and a sentry wall.

My understanding of an ablution block is a place where we go to relieve ourselves. I am yet to see an ablution block that could be valued at Kshs16 million. On alterations and extension of the governor's office, Kshs19 million was spent. Remember another Kshs4.3 million had already been used on the governor's office through restricted tendering. To partition the education hall, Kshs1.3 million was used.

To make matters worse, to renovate the governor's residence, the county government spent Kshs11.6 million. A governor's residence in that part of the country at Kshs11.7 million is enough to build a new house from scratch. Here, we were picking houses that were formally used by the District Commissioner (DC), putting a few renovations here and there and spending Kshs11.6 million. To make matters worse, the deputy governor's house cost Kshs10.275 million.

These are not my words, but those of the Auditor-General in his report. At the time of the audit, neither the governor nor his deputy had used any of those houses. What kind of mockery is this? What kind of wastage or pilfering is this? This is not manslaughter, but murder because this looks like a pattern where people sat down and came up with a plan to take away money from taxpayers.

Unfortunately, CPAIC has focused on the aspects of tendering that the crime there is the use of restricted tendering. Yet, it is so obvious that the total of Kshs72 million of those projects that I have talked about seems to be a plan to use money through whatever means necessary.

Let me bring to the attention of the House an amount of money, I think it is about Kshs61.5 million, which the Transition Authority (TA) gave to county governments as start up fund to enable them set up infrastructure and renovate offices, residences and *et cetera*. We need to know whether that Kshs61.5 million has been audited. Whenever we raised issues on these projects that I am talking about, we were told that these projects were funded by the Kshs61.5 million that came from TA. Therefore, an audit of TA's proceeds would be undertaken by the National Assembly and not the Senate.

That is something that we need to be very clear about. Even when the county government officials came, they said that they had to spend the money quickly and in the manner that they did because it had come from TA. If they did not spend it, it would go back. We cannot have a situation where people rush to spend money simply because it would go back to the exchequer. The money must be spent on the right thing.

The fourth example is that this report talks about improvements to Sero Youth Polytechnic. If you look at the Auditor-General's report that precedes the report of CPAIC, something very interesting comes up. On 21st November, 2013 with respect to Sero Youth Polytechnic, the county government issued a Local Purchase Order (LPO) of Kshs2.49 million. On the same day, an invoice was raised and then payment was made still on the same day. I have never seen that kind of efficiency. Not even in the private sector where an LPO, invoice and payment is done on the same day. That was the finding by the Auditor-General.

The CPAIC did not even interrogate that peculiarity. If Homa Bay County was this efficient, then we would not be having this problem of pending bills. It means we

would be giving you the LPO today, you deliver and we pay you immediately. Yet, that is in the Auditor-General's report, our Committee did not interrogate it and did not recommend sanctions on the officials who were involved in this---

The Temporary Speaker (Sen. Sang): Sen. Kajwang, you know you are seconding the Motion. Though you made a disclaimer that you are doing so because the intended Secunder was unavailable at the time, since you will not have another opportunity to contribute, you are also making your comments and contributions as the Senator for Homa Bay County. I will give you a little more time for that.

As you second the Motion and raise your concerns, know that you are seconding the Motion. So, you need to have some balance, knowing that you are the seconder and raising some of the concerns so that it does not appear that you are not seconding the Motion, but tearing the report apart. Just do some balancing. I will add you some time because of your position as the Senator for Homa Bay County.

Proceed.

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, I appreciate your generosity and your words of advice. It is difficult to walk both path, but I will attempt. I started by saying that it may not be murder, but we will reduce some of these malpractices to manslaughter. However, there are some that are so painful that you can clearly see a deliberate chain of deception.

I have talked about Sero Youth Polytechnic whose details are on page 31. I want it is to be on record that the Auditor-General indicated that the LPO, invoice and payments were all done on the same day. The procedure of audit is such that once the Auditor-General goes to the field, conducts his audit and makes public its report that then becomes the audit report. If the management had mitigating explanations, ideally, they should be done in the course of the audit. This habit where counties wait until reports come to the Senate and that is when they rush with huge documentation--- Sometimes they just manufacture records. I believe that a record that is unavailable at the time of audit, but is available four months or weeks later, could be a manufactured record.

Another example which I really would think is just an issue of operations and the challenges of the first year, but which we need to talk about, is the failure to maintain a revenue cash book. What that means is that the county does not know what it gets from locally generated revenue. That County collects a lot of money every day. Drive around Homa Bay County and from the 2013/2014 Financial Year, it is not that easy. You will meet barricades improvised using ropes. Boys have been given ropes to man them and collect a levy from every *boda boda*, Pick-ups, and Probox that passes there. Where does that ---

(There was a temporary power blackout)

(Loud consultations)

The Temporary Speaker (Sen. Sang): Proceed, Senator.

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, in my one-and-a-half years in the Senate, this is the first time that I have seen a situation like this.

The Temporary Speaker (Sen. Sang): Hon.Senator, it appears that we might need some of those solar powered panels to support the Senate with power.

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, we will call them *Okonyo* Senate. It means that the Senate has been helped.

Just to wind up, if you do not maintain a revenue cash book, it means you do not know how much you are collecting. We send money to counties from national collections and they collect money from the market women; people who have already paid Value Added Tax (VAT) on whatever products that they are paying, yet we cannot account for it.

The Committee has made certain recommendations and given the county some timelines to put some of these things in place. However, I wish that this House notes and takes it very seriously that on the project of hatcheries and solar lamps in Homa Bay County, this House must get a report from the Auditor-General. The Committee has recommended that the Auditor-General conducts a value for money audit. I had reservations about the timeframe that has been given because they informed the Committee that it be done within one year. In my view, one year is too long.

In my view, one year is too long, but when the committee explained to me the constraints that the Auditor-General is operating within, I grudgingly accepted and I will not be moving an amendment. I would have wished to amend that these matters be looked at within a span of three months so that we do not go into the next elections without knowing whether these projects were properly done.

Mr. Temporary Speaker, Sir, I would also request your guidance and your interpretation. If you look at this report, the notice of Motion was issued earlier in November, 2015. Some of the recommendations here are in the past. There are recommendations for 31st December, 2015.

I beg your guidance on this because my understanding is that despite these dates being in the past, the Committee on Implementation will start tracking from the date on which this report was adopted. Therefore, it will not be necessary for us to go through the report and amend the effective dates because it is easy for the county government to say that the dates have passed and we forget.

Secondly Mr. Temporary Speaker, Sir, I want to call upon this House to impress upon the CPAIC to quickly consider the reports that come before it. We are looking at accounts of 2013/2014 Financial Year and we are already in 2016. By the time we go for elections, most likely we will have only looked at accounts for two years yet we know it is in the third and fourth years that some of these corruption scandals will come up. We will go into elections without having subjected the current executives to the test that PAIC and this Senate is supposed to subject it to.

In fact, Mr. Temporary Speaker, Sir, I want to recommend something radical that we come up with some standards of service for some of our critical committees and we give them timelines by which reports that come to them must have been considered. I say so because there is already a clear failure by the county assemblies. Ideally, the law says that this report of the Auditor-General shall go to the Senate and a copy shall also go to the county assembly. From my own county assembly, there is no information or update to know whether the county assembly has considered this Report. That means Senate is on

its own as far as looking at these Reports are concerned. I wish that we could come up with strict timelines within which CPAIC is required to look at this.

Mr. Temporary Speaker, Sir, I want to call upon the newly constituted CPAIC to be bold in the recommendations. Let us not be polite nor please the governors. For the record, I support my governor, but I do not support a situation where the governor buys a hatchery at Kshs400,000 when you can get a similar hatchery at Kshs150,000. That is the point at which we put aside our friendship, our membership of a political party. It is a point at which we start talking of criminality. If we are going to procure at twice the price, there is no difference between you and those people in Bungoma County who bought wheelbarrows at extra ordinary prices.

There is no difference between you and those people in the Ministry of Devolution and Planning who bought pens and condom dispensers and other toys at extra ordinary prices. We cannot be shouting that some people at the Central Government are corrupt yet there are certain Acts at the county governments that indicate that we are equally as bad as the people in the Central Government if not worse.

Mr. Temporary Speaker, Sir, Members of CPAIC must set aside their political party loyalties, must get rid of what one time Sen. (Dr.) Khalwale called “the mother hen” instinct. The Mother hen instinct is when you are Chairperson of CPAIC and you go to a county that is run by people who are friendly to you and your party, you are tempted to protect them so that your party is not seen in a bad light. At the end of the day, this Senate does not exist to defend political parties or to defend coalitions, but to defend the livelihoods of the people in the counties.

Finally Mr. Temporary Speaker, Sir, about the issue of value of money audits, I do hope that as we have said, they will be done within one year and we are going to get those Reports which are going to be reports that are fair and truly representative of some of the project that are happening in the counties.

With the reluctance that I had expressed at the beginning, I second this Motion, but I do hope that some of the issues that I have raised will be looked into so that we do not devolve corruption. I must repeat this again that as much as I defend and protect devolution, I am the defender and protector of the county government of Homa Bay, and in as much as I have a good relationship with my governor and his Executive, in the issue of hatcheries and solar street lamps, that is the point where we will stop being friends so that we resolve these things and make sure the people of Homa Bay County get value for money. Once those issues have been addressed, then we continue with our friendship and we can go on to 2017 and get re-elected if these things are addressed satisfactorily.

Thank you.

The Temporary Speaker (Sen. Sang): So, you beg to second?

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, without bringing in the word “reluctant,” I beg to second.

(Question Proposed)

Sen. Sijeny: Thank you, Mr. Temporary Speaker, Sir for giving me the opportunity to contribute to this report. I wish to commend the PAIC for the serious

work. There were a lot of man hours put into this report. Looking at the report, there are some mistakes which have been done when it comes to the management or the leadership of Homa Bay. I have been to this and it is a beautiful county. I have seen a lot of improvements since devolution came in place, but having looked at this report, I can see that a lot better could have been done and the people of Homa Bay County would have enjoyed more and better fruits of devolution which they passed through the Constitution.

Mr. Temporary Speaker, Sir, the problem with most counties is that the leadership believes in this maxim of “me, myself and I.” This issue of teamwork is not fully embraced. There are some people like the deputy governors, in fact, the reason Sen. Murkomen found it fit to bring the Bill that we passed a while ago to give the deputy governors more teeth. When we looked at the Petition from the people of Embu County, we could see that disconnect. That disconnect is what leads to such mistakes which have been pointed out by these Committee Members.

I know that in some counties like Machakos, some revenue was collected and it is utilized. There was a time that it was done according to the information that we were given. Those are the kind of mistakes that we make and you are not able to account for the money when the right time for accounting comes. The people of your area who contribute do not see where the sweat they go through is taking them.

Mr. Temporary Speaker, Sir, this money belongs to the people and it should serve them wisely. It should be looked into and protected and guarded. If you do not protect the interests of the people, this is how you get such reports.

This is how to get such reports. I agree with the Committee that the county governments should use restricted-tendering sparingly, if it is not giving the results that they want.

The recruitment of personnel is not done on need-basis, but on ‘scratch my back’ basis. Opportunities are given to chief campaigners, people from a particular clan and so on. Such incidents make people not to adhere to the strict rules of employment. If the rules and regulations governing the procurement of goods and services in the public sector are not obeyed or adhered to the letter, there will not be any uniformity or way forward. We shall continue going round and round without any progress. By now, at least, all counties should have laid firm foundations, so that within no time---

(There was a power blackout)

(There was a technical hitch)

ADJOURNMENT

The Temporary Speaker (Sen. Sang): Hon. Senators, due to a technical hitch, the Senate stands adjourned until Tuesday, 3rd May, 2016, at 2.30 p.m.

The Senate rose at 4.50 p.m.