

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

**Tuesday, 19<sup>th</sup> April, 2016**

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

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

### PRAYERS

### MESSAGE FROM THE NATIONAL ASSEMBLY

#### CONCURRENCE OF THE SENATE ON THE FOREST CONSERVATION AND MANAGEMENT BILL (NATIONAL ASSEMBLY NO.49 OF 2015)

**The Speaker** (Hon. Ethuro): Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40 (3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the passage by the Assembly of the Forest Conservation and Management Bill (National Assembly Bill No.49 of 2015).

Pursuant to Standing Order No.41 (1) and Standing Order No.142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly:-

“THAT, whereas the Forest Conservation and Management Bill (National Assembly Bill No.49 of 2015) was published by the Kenya Gazette Supplement N0.133 on 11<sup>th</sup> August, 2015 to give effect to the provisions of Article 69 of the Constitution, with regard to conservation and management of forest resources and to repeal the Forest Act 2005;

And whereas the National Assembly considered and passed the said Bill on Thursday, 17<sup>th</sup> March 2016 with amendments in the form attached hereto;

Now, therefore, in accordance with the provisions of Article 110 (4) of the Constitution and Standing Order No.142 of the National Assembly Standing Orders, I hereby refer the said Bill to the Senate for consideration.”

Hon. Senators, Standing Order No.148 requires that a Bill that originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading, in accordance with Standing Order No.129. I, therefore, direct that The Forest Conservation and Management Bill (National

Assembly Bill No.49 of 2015) be read a First Time tomorrow, Wednesday, 20<sup>th</sup> April 2016.

Hon. Senators, I also wish to bring to your attention that this Bill is one of the Bills required to be enacted within five years of the enactment of the Constitution of Kenya. This timeline lapsed on 27<sup>th</sup> August, 2015, but the National Assembly by resolution extended the timeline by one year.

I thank you.

## PETITION

### ALLEGED UNPROCEDURAL APPOINTMENT OF THE CHAIRPERSON OF THE BOARD OF KEMRI

**The Speaker** (Hon. Ethuro): Hon. Senators, pursuant to Standing Order Nos. 220 (1) (a) and Standing Order No. 225 (2) (b), I hereby report to the Senate that a Petition has been submitted through the Clerk by Mr. John Mwendwa regarding the alleged unprocedural appointment of the Chairperson of the Board of the Kenya Medical Research Institute (KEMRI).

In summary the petitioner states:-

(a) That the Mwongozo Code of Governance for State corporations sets out, among others, the qualifications that a person must meet to be considered for appointment as a chairperson of a board of a State corporation.

(b) That among these requirements are that such person-

(i) must not have served in the same entity/corporation as an employee in the five years preceding such appointments;

(ii) must have served in the position of senior management for a period of at least six years; and,

(iii) must not be in the service of the national Government or any of the county governments or any other statutory body.

(c) That on 11<sup>th</sup> July, 2014, Dr. Lillian A. Osamong was appointed and continues to serve as the Chairperson of the Board of Directors of KEMRI.

(d) That the said appointment was unprocedural and in contravention of the Mwongozo Code of Governance for State corporations for reasons that-

(i) the said Chairperson was an employee of KEMRI where she served as a research officer until March, 2014 when she resigned to be appointed three months later as the Board Chairperson;

(ii) the said Chairperson had not served in a position of senior management prior to her appointment as the Board Chairperson; and,

(iii) the said Chairperson is a fulltime lecturer and employee at Moi University, which is a State corporation.

The petitioner, therefore, prays that the Senate investigates this matter and makes appropriate recommendation on how the issue may be addressed.

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

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I stand to support that Petition, its request and demand because the Kenya Medical Research Institute (KEMRI) is a very important institution in this country and over the last two years, that institution has had a lot of problems. I know that KEMRI has an establishment in Kisumu County, both in the city and in the outskirts where they have operations together with the Centre for Disease Control (CDC).

Due to the problems in KEMRI, about 2000 people have been laid off and this has adversely affected the economy of Kisumu County particularly the City of Kisumu. Therefore, the mismanagement and mis-happenings in KEMRI should be properly investigated to find out why and where the management has not been effective.

What the petitioner prays for is to establish a proper process, transparent and accountable, of elevating persons to positions of responsibility so that when they have that position, they can rise to the occasion and not to use those positions and sinecures for political rewards.

I beg to support.

**Sen. Haji:** Mr. Speaker, Sir, I am of the view that the petitioner is not doing justice due to the fact that, in spite of the problem elaborated by my colleague, Professor--- I think being a chairman is not a permanent employment and therefore to deny somebody a chance simply because he or she is working somewhere else--- The fact that she has worked there and has the experience, I feel it is not fair to remove her from that job of chairperson.

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, whereas I sympathize and accept the Petition to the Senate, the reasons that were enumerated are going to be considered. Being a former employee of the institution is not a good reason to deny this individual the opportunity to work in this institution. In fact, it is an answer to this institution because the employee who has been there has insight on the working conditions of this institution. Being a full-time lecturer in Moi University is a plus and a big advantage for this individual.

It is like many other Kenyans who are in positions of chairperson but they are lecturers in various universities in this country. One important aspect is that this person is a lady, considering gender, we should consider and support this individual to run and clean up the mess in this institution. This is a case where both sides of the coin must be examined and this Kenyan be given an opportunity to serve.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I would like to thank the citizen who has raised this issue. There are some regulations that are supposed to be followed by Government agencies particularly in parastatals. If it is true that if someone resigns and is appointed after three months, is it solicited or a priori? I think it is good to look at this petition and its merits.

Mr. Speaker, Sir, almost two years ago, the Government passed a law whereby nobody is allowed to sit in a board if he or she is working with another Government agency. If you are moving from a university to a parastatal, there is a provision for that by science-based institutions and also in the Ministries of Education and Health. We need to look at the merits carefully so that we do not bring disgruntlement in the systems operating with parastatals.

**Sen. Okong'o:** Mr. Speaker, Sir, let me also take this opportunity to support the Petition. As long as it has complied with constitutional provisions, that is a matter which needs to be interrogated. We are aware that the KEMRI is facing many problems including misappropriation of funds and so on. The other day, we saw the Ministry of Interior and National Coordination purporting to take the military in that area. Through this kind of petition, we might have some opening to scrutinize matters going on at the KEMRI.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, it is very difficult for one to support the decision of Jubilee. Considering the name of this lady, Dr. Lilian Osamong, it sounds that it could be a competent professional born either in Pokot or Teso. For her to have been lucky enough to get a job through a Government that knows only two tribes, we must support her to stay on that job. She has no other way of getting it.

I, therefore, wish to reluctantly persuade the House that when the Committee takes up this matter, they should allow Dr. Lilian Osamong to take the job and the Government to regularize it because that is the only way people from minority communities can benefit in this country.

**Sen. Sang:** Mr. Speaker, Sir, while I support the constitutional right of that petitioner to petition, I want to confirm that the lady comes from Teso. This is one of the minority communities in this country. Considering the gender, I wish to say that this is an immensely qualified person. I am not sure whether these “*mwongozo*” regulations have gone through the proper scrutiny and adoption by the National Assembly and the Senate. We might be subjecting some of these public servants to regulations that have not been properly dealt with. Therefore, I support the Petition because the petitioner has the constitutional right but I hope the Committee will consider the constitutional requirement of minorities in the Government.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, this is an interesting issue but at the same time, it is a very simple and straightforward matter. It does not concern what Sen. (Dr.) Khalwale has raised. It is either in conformity with the law or not. As Sen. Sang says, the regulations are there to bar or allow somebody to hold a certain position. As lawmakers, we must make sure that the law is followed and obeyed.

This is an issue that will easily be laid before the relevant Committee. It is an interesting Petition because the petitioner has clearly set out the law for the relevant Committee to determine whether any law has been breached and whether the qualified lady should continue or should not continue holding that position.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I have a feeling that this Petition is incompetent to the extent that it is an assault on affirmative action on two respects. Although women are 51 per cent of the population, they suffer immense prejudices and discrimination at the hands of men. More importantly, this lady comes from a minority community. We must laud her for the success in academia to the level where she is. Like the distinguished Senator for Nandi has said, this Petition should trigger the Committee to investigate and scrutinize the legality and competence of the “*mwongozo*” code of governance for State corporations.

In many countries, persons who head institutions such as these must be persons in academia. This is a research-based institution. Talk of competence; how many people

have been appointed chairmen of parastatals and the only qualification they have is that they have been parliamentarians? Some of them do not have any qualifications because there are no qualifications for coming to Parliament. People who cannot even read and write have been appointed to various positions in this country. So, where you have a person like this---

The Petitioner should be lauding the very rare occasion where Jubilee has realised that there are other communities in this country. You may have noticed in the last three or four appointments; three weeks ago immediately after the Kericho by-election, seven parastatal heads were appointed and they were shared like this; four to the President's community and three to the Deputy President's community. A week later, another four were appointed, two from the President's community, one from the Deputy President's community and then they slotted one person from Sen. Yusuf Haji's community just to colour the appointment.

Therefore, where they go out of their way to appoint from the oppressed minority, we should stand here and laud it. I urge the Committee to investigate the regulations and not the appointment of this lady.

**The Speaker** (Hon. Ethuro): Order, Sen. Wetangula. You are asking the Committee to do a job not meant for it.

**Sen. Sang:** On a point of order, Mr. Speaker, Sir. Is the Minority Leader in order to subvert the intention of the Petition away from its particulars? He has moved completely to another issue.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, you can go to court with a charge and the court can substitute it and convict you of either an aggravated offence or a lesser one.

**The Speaker** (Hon. Ethuro): Is that the case? Anyway, for purposes of this Petition, the Senate Minority Leader was completely out of order. What the Committee is supposed to do is to investigate the allegations. They should not manufacture theirs.

**Sen. Billow:** Mr. Speaker, Sir, I think the Petition is straightforward. The petitioner wants us to look at the procedure and whether it was followed or not. I think it would be wrong for the Members of this House to argue in any other manner other than the Committee to determine the constitutionality of this appointment. Whether a person is a minority or not, the question is about whether the law was followed. With regard to gender, I do not necessarily agree with the Senator for Kakamega. The name can be that but the lady could be married into those communities you have mentioned.

**The Speaker** (Hon. Ethuro): Order, Sen. Billow! The purpose of these interventions is to help the Committee. Therefore, we should not be really at pains to correct each other because Sen. Sang has confirmed the matter to us. It is no longer a question of speculation. I would like us to conclude on this matter.

**Sen. Elachi:** Mr. Speaker, Sir, I would like to congratulate the lady who has been appointed because she is a woman of substance from a minority community which has been marginalized for the last 50 years. Very few women have been beneficiaries of such appointments in the past from that community. We all know that the Jubilee Government is serious on the issue of affirmative action. Therefore, it is so unfair for us to bring

petitions to question the integrity of women when they are appointed to key positions in the Government.

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Speaker, Sir. Is Sen. Elachi in order to input improper motive on any petition that may be brought here yet some may have some merit? She says any lady appointed to a key position in the Government should not be queried.

*(Sen. Elachi stood in her place)*

**The Speaker** (Hon. Ethuro): Order, Sen. Elachi! I have not given you an opportunity to respond.

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, I would like to laud this petition because it gives a chance for organizations to look at regulations and the security that goes therein. Most of the processes and regulations are held within the institutions. Therefore, when institutions flout those regulations, it is difficult for outsiders to get into the nitty gritty of that process. Petitions give a fantastic opportunity to tackle such issues. I hope that this process will be replicated in the counties. With regard to personnel issues, ethnicity and nepotism is rampant in the counties. Therefore, such petitions should be encouraged because they will help us to effectively do our oversight role.

**Sen. Cheruiyot:** Mr. Speaker, Sir, this is a very straight forward issue because it is a matter of law. We, as a House, are mandated to ensure that there is rule of law. We will be setting a bad precedence if we receive such a petition and then reduce our arguments to the level of asking ourselves whether an appointee is from a minority community, marginalized or a woman. The question that we should be asking is whether the law was followed in her appointment. We have a good Constitution, but the problem is that we do not want to follow it. The mandate of the relevant Committee should be to inquire whether the law was followed.

**Sen. Ndiema:** Mr. Speaker, Sir, unless this appointee had been involved in mismanagement of the institution, she deserves to the appointment by the mere fact that she comes from a minority community. It is sad that the petitioner thinks that the minority community should be suppressed further. It is a good move to consider people from minority communities. There are minority communities in this country, including mine; the Sabaots, who since Independence have never been appointed as Ministers, ambassadors, chairpersons of organizations, leave alone managing directors of any parastatal yet they are qualified.

An advertisement was made recently for the post of the Managing Director of the Kenya Seed Company and it appears that the Sabaots will be sidelined yet some have applied and are qualified. The Constitution says that---

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

**Sen. Sang:** On a point of order, Mr. Speaker, Sir. Is Sen. Ndiema in order to suggest that people from his community have never received any serious appointment like that of chairpersons to parastatals while, as a matter of fact, I know this Government has appointed three chairpersons and several directors from the Sabaot Community?

**Sen. Ndiema:** Mr. Speaker, Sir, as I said, the recent events are in the right direction. I thank the Government for these recent appointments of people from my community. However, we are still waiting for appointments to the Cabinet, ambassadorial positions or heads of parastatals. Although I am complaining, my community is not even a minority because we are more than 500,000 in population.

**Sen. Sijeny:** Mr. Speaker, Sir, I support the petition. When a lady is appointed to such a position, she should be scrutinized and given a clean bill of health. We do not want to see the kind of intimidation and harassment that many women in high positions have been subjected to in the past.

**The Speaker** (Hon. Ethuro): Order, Sen. Sijeny! Just because one is a woman does not mean that the outcome of scrutiny will always be a clean bill of health.

Hon Senators, pursuant to the Standing Order No.227(1), the Petition stands committed to the relevant Standing Committee, which in this case, is the Committee on Health. In terms of Standing Order No.227(2), the Committee will be required in not more than 60 days from the time of reading the prayer to respond to the petitioner by way of a report addressed to the petitioner and laid on the Table of the Senate.

Next Order!

### PAPERS LAID

#### REPORT OF THE THIRD GLOBAL OPEN GOVERNMENT PARTNERSHIP (OGP) SUMMIT

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Tuesday, 19<sup>th</sup> April 2016.

Report of the Third Global Open Government Partnership (OGP) summit held in Mexico City, from 25<sup>th</sup> October to 1<sup>st</sup> November, 2015.

*(Sen. (Dr.) Zani laid the document on the Table)*

**The Speaker** (Hon. Ethuro): Where is the Chairperson of the Committee on National Security and Foreign Relations?

#### REPORTS AND RESOLUTIONS OF THE EAST AFRICAN LEGISLATIVE ASSEMBLY

**Sen. Haji:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Tuesday, 19<sup>th</sup> April, 2016:-

Report of the Standing Committee on National Security and Foreign Relations on the Reports and Resolutions of the East Africa Legislative Assembly (EALA), pursuant to Standing Order No.235.

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

**The Speaker** (Hon. Ethuro): Next order!

### NOTICE OF MOTION

#### NOTING OF REPORT ON THE THIRD GLOBAL OPEN GOVERNMENT SUMMIT

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, the Senate notes the Report of the Third Global Open Government Partnership (OGP) Summit held in Mexico City from 25<sup>th</sup> October to 1<sup>st</sup> November, 2015, laid on the Table of the House today, Tuesday, 19<sup>th</sup> April, 2016.

### STATEMENTS

#### FINANCING OF JARAMOGI OGINGA ODINGA TEACHING AND REFERRAL HOSPITAL

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I beg to request for a Statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget.

*(Loud consultations)*

**The Speaker** (Hon. Ethuro): Order! Sen. Sen. (Prof.) Anyang'-Nyong'o, proceed.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I request for a Statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget regarding the financing of Jaramogi Oginga Odinga Teaching and Referral Hospital in Kisumu County. In the Statement, the Chairperson should explain:-

(1) Why the Jaramogi Oginga Odinga teaching and Referral Hospital has not been receiving its full conditional grants since 2013.

(2) What the Government is doing to ensure that the hospital is properly financed to effectively deliver its services.

#### STATUS OF IMPLEMENTATION OF SENATE RECOMMENDATIONS ON KENYA AIRWAYS

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, if you allow me, I would like to seek a second Statement from the Chairperson of the Standing Committee on Roads and Transportation regarding Kenya Airways. The Chairperson should:-

(1) Inform the House the progress made to date by the board of Kenya Airways in implementing the recommendations of the Senate Select Committee of Inquiry into the Affairs of Kenya Airways that was adopted by this House in November last year.



(2) Specifically inform the House what the Board of Kenya Airways has done to recapitalize the airline, revamp revenues and ascertain long term financing to ensure the sustainable growth of the national carrier.

DELAYED PUBLIC WORKS AT THE JARAMOGI OGINGA  
ODINGA TEACHING AND REFERRAL HOSPITAL

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, finally, with your permission, I would also like to seek a Statement from the Chairperson of the Standing Committee on Roads and Transportation regarding delayed public works at the Jaramogi Oginga Odinga Teaching and Referral Hospital in Kisumu County. In that Statement, the Chairperson should explain:-

(1) Why there has been delay for over two years in implementing public works projects at the Jaramogi Oginga Odinga Teaching and Referral Hospital in Kisumu County.

(2) Why the officers of the Public Works Department in Kisumu consistently fail to supervise the projects at the institution.

KENYA'S PARTICIPATION IN OPEN  
GOVERNMENT PARTNERSHIP

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, I rise pursuant to Standing Order No.45(2) to seek a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding Kenya's participation in and commitment to the Open Government Partnership. In the Statement the Chairperson should: -

(1) State measures taken by the Government of Kenya to comply with and implement the Open Government Declaration.

(2) Explain whether Kenya has developed and adopted a country action plan on the Declaration.

(3) Clarify whether Kenyans were consulted in coming up with the action plan, if any, and indicate whether in accordance with Article 35 of the Constitution, the plan is easily accessible.

(4) State measures taken by the Government to ensure compliance and guarantee commitment to independent reporting mechanisms on the process towards realisation of the principles of the declaration.

(5) State measures taken by the Government to ensure sustainability and continuity of Kenya's membership to the Open Government Partnership, and, in the spirit of open governance, provide quantified data on information relating to spending by the two levels of Government, specifying what has been spent on essential public services and activities.

**The Speaker** (Hon. Ethuro): Where is the Chairperson of the Committee on National Security and Foreign Relations?

**Sen. Haji:** Mr. Speaker, Sir, I will endeavour to issue the Statement in two weeks' time.

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

Where is the Chairperson of the Committee on Finance, Commerce and Budget on the Statement by Sen. (Prof.) Anyang'-Nyong'o?

**Sen. Billow:** Mr. Speaker, Sir, this question seeks information regarding financing of a hospital which would come under the county government. The county leadership is busy with the conference on devolution this week. Therefore, I request for three weeks to get the response.

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

Where is the Chairperson of the Committee on Roads and Transportation?

Proceed, Sen. Sijeny.

**Sen. Sijeny:** Mr. Speaker, Sir, I endeavour to issue the Statement in two weeks' time in case Sen. (Prof.) Anyang'-Nyong'o is not satisfied with the Statement which I will issue in a short while in response to the request by Sen. Leshore on the same issue.

**The Speaker** (Hon. Ethuro): Where is the Chairperson of the Committee on Roads and Transportation? This is in regard to Statement (c).

**Sen. Sijeny:** Mr. Speaker, Sir, I request for three weeks to enable me get a proper statement responding to all the issues raised.

**The Speaker** (Hon. Ethuro): Why three weeks? The senator is not asking you to complete the project.

**Sen. Sijeny:** Mr. Speaker, Sir, I am sure there will be many issues to inquire about. If I get it before then, I will notify Sen. (Prof.) Anyang'-Nyong'o and the Rules and Business Committee (RBC).

**The Speaker** (Hon. Ethuro): Without any prior reason, let us attempt to issue it in two weeks' time.

What is it, Sen. Sang?

**Sen. Sang:** Mr. Speaker, Sir, Sen. (Prof.) Anyang'-Nyong'o raised a serious concern and a complaint with regard to what he termed as delay in the Speaker's Office to process his request for statements. Am I in order to request a confirmation that these were the statements that Sen. (Prof.) Anyang'-Nyong'o had sought and that the Speaker's Office purportedly delayed? Can Sen. (Prof.) Anyang'-Nyong'o confirm this?

**The Speaker** (Hon. Ethuro): Sen. (Prof.) Anyang'-Nyong'o, did you do so?

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, yes, these are the statements that I requested on 24<sup>th</sup> March, 2016, and I am happy that today, we have dispensed with them.

**Sen. Kembi-Gitura:** On a point of order, Mr. Speaker, Sir. In order to put Sen. Sang on the right track, I explained the issue to Sen. (Prof.) Anyang'-Nyong'o. The blame was not on the Speaker's Office. The requests had been approved immediately and promptly by the Speaker but they have been lying somewhere else. Although Sen. (Prof.) Anyang'-Nyong'o had said that the delay was in the Speaker's Office, I explained to him and I believe he accepted it. The stamp and the date of approval were clear that the Speaker had acted promptly in the approval of those statements.

**The Speaker** (Hon. Ethuro): It ends there, but I was equally appalled by the accusations because I was watching the proceedings. We take the statements requests seriously and we normally approve them the same day. Sometimes, we approve on the

corridors as we come to the House. Therefore, we need to be fair to the Office of the Speaker.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, my request was for your intervention. I was not apportioning blame. The Deputy Speaker assured me and gave me the information immediately that, in future, the office will ensure that such requests do not lie somewhere after the action by the Speaker. I accepted his explanation.

I hope that the offices that are letting your office down will stand up and run.  
Thank you.

*(Laughter)*

#### DENIAL OF VISA TO MR. JOSEPHAT KIMEMIA

**Sen. Omondi:** Mr. Speaker, Sir, pursuant to Standing Order No. 45 (2) (b), I seek a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding the denial of a visa to Mr. Josephat Kimemia who is a person living with disability to travel to China.

In the Statement, the Chairperson should state whether he is aware that Mr. Josephat Kimemia who is a person living with disability and a senior officer in Nakuru County Government, was denied a visa to travel to China. The Chairperson should explain if the reasons for Mr. Kimemia being denied a visa were connected to his disability status.

The Chairperson should enumerate the steps taken by the Ministry of Foreign Affairs and International Trade to address the matter in order to ensure that in matters of international travel, persons living with disabilities are accorded equal treatment like other Kenyans.

**Sen. Haji:** Mr. Speaker, Sir, I am officially aware because I read about it in the newspapers. The questions asked are important and valid. Therefore, I will answer them in the next two weeks.

**Sen. Omondi:** Mr. Speaker, Sir, it is noted.

#### SIGN LANGUAGE INTERPRETATION DURING RELEASE OF NATIONAL EXAMINATION RESULTS

**Sen. Omondi:** Mr. Speaker, Sir, pursuant to Standing Order 45 (2) (b), I seek a Statement from the Chairperson of the Standing Committee on Education regarding sign language interpretation during release of the national examinations results. In the Statement, the Chairperson should state:-

1. Why the Ministry of Education has failed to provide sign language interpreters during the release of the Kenya Certificate of Primary Education (KCPE) and Kenya Certificate of Secondary Education (KCSE) national examinations results.
2. What measures the Ministry has put in place to ensure sign language interpreters are available during the release of future KCPE and KCSE results.

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, the Chair is not present in the House but as a Committee, we undertake to work hard and bring the answer in two weeks' time.

DISBURSEMENT OF FREE PRIMARY AND SECONDARY  
EDUCATION FUNDS TO LEARNERS WITH DISABILITIES

**Sen. Omondi:** Mr. Speaker, Sir, pursuant to Standing Order 45 (2) (b), I seek a Statement from the Chairperson of the Standing Committee on Education regarding the disbursement of free primary and secondary education funds for learners with disabilities. In the Statement, the Chairperson should state:-

1. Why the Government has delayed to release free primary and secondary funds meant for learners with disabilities.
2. When funds for learners with disabilities will be released in full and on time.
3. What measures have been put in place to ensure that in future, the release of the said funds is not delayed.

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, the Committee will deliberate on this quickly and because it is an ongoing process, we can bring the result in two weeks' time.

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

DEATH OF BABY STELLA ADHIAMBO OWINO AT  
THE NAKURU LEVEL FIVE HOSPITAL

**Sen. Chelule:** Mr. Speaker, Sir, pursuant to Standing Order 45 (2) (b), I seek a Statement from the Chairperson of the Standing Committee on Health regarding the death of a newborn baby girl; Stella Adhiambo Owino, born to Mrs. Elizabeth Adhiambo at Nakuru Level Five Hospital. In the Statement, the Chairperson should:-

1. Give a comprehensive report on the circumstances surrounding the death of the infant at Nakuru Level Five Hospital.
2. State the circumstances that led to the disappearance and eventual death of the said baby in the hands of the hospital nurse.

Thank you.

**Sen. Kittony:** Mr. Speaker, Sir, I will attempt to give the answer within two weeks.

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

OPERATIONS OF KENYA AIRWAYS

**Sen. Sijeny:** Mr. Speaker, Sir, on 23<sup>rd</sup> March, 2016 Sen. Leshore requested for a Statement from the Chairperson of the Standing Committee on Roads and Transportation on the operations of the national carrier, Kenya Airways (KQ), seeking the following:-

- (1) The financial status of KQ.
- (2) The status of KQ grounded planes.

(3) Whether KQ has implemented the resolution of the Senate of 3<sup>rd</sup> December, 2015, arising from the Report of the *Ad hoc* Senate Committee that inquired into the affairs of Kenya Airways Limited and its subsidiaries.

(4) Why KQ has sold off its prime morning landing slot at London's Heathrow Airport.

Appendix 1 of this Report contains the financial report for the business for the half year up to September, 2015. Kenya Airways is quoted on the Nairobi Stock Exchange (NSE) and regulated through the Capital Markets Authority (CMA). The next release of financial results will be for the year ended 31<sup>st</sup> March, 2016 and will be ready in July, 2016.

As an overall commentary, there has been a significant improvement in the underlying business, with a reduction in the losses comparing the two years. This demonstrates that the underlying business is sound. The losses are increased by three significant impacts; additional borrowing by the company to finance working capital, deterioration of the Kenya Shilling against the dollar and huge losses on fuel as a result of the reduction in international oil prices.

On the status of the Kenya Airways grounded planes, two planes of the 777-220 series have been sold to Omni Air International (US). Two others are pending sale and have been actively marketed through the Kenya Airways sales agent, Cabot Aviation. An agreement for sub-lease of the 777-300 series has been reached with Turkish Air and is awaiting implementation. One 787 series aircraft has been transferred while a second aircraft will be transferred in May, 2016 to Oman Air for three years, as part of an agreement on slot sale. Two E170 aircraft have been returned to lessor, GECAS, as part of early return conditions agreed with them.

Regarding the status of implementation of the resolution of the *Ad hoc* Select Committee on Kenya Airways Limited and its subsidiaries, the Committee recommended that the shareholders inject new capital to facilitate the turnaround of the airline. The process towards recapitalization started in February 2016. Kenya Airways appointed PJT Partners as transaction advisers in the process. The Committee also recommended that the shareholders should provide financial bailout in form of equity under the following conditions:-

- (a) reconstitution of the board of management by the major shareholders;
- (b) restructuring and putting into place a management team with sufficient skills and experience in the aviation industry with the ability to turn around and build the company; and,
- (c) hire a new marketing director with proven international experience to turn around its ticketing system and ensure proper accounting of revenue from market sales.

The composition of the board is governed by the Articles of Association of the Company. The company has 11 directors, two representatives of Government of Kenya, two representatives of KLM and five independent directors voted at the Annual General Meeting (AGM) by shareholders. Out of the five, three are less than two years old in the Board, while the chairman and executive director were elected at the AGM in October, 2015. There are only two executive directors in the Board; the Group Managing Director and the Finance Director. The Board regularly evaluates the skills and capability of the

management team through its human resource committee. Currently, there is an international search process ongoing for the Finance Director and Commercial Director, responsible for selling, distribution and revenue management and network.

The Committee recommended the review and restructuring of the Board of Directors' composition since the management team is over-represented in its current composition and are undermining the Board's advisory role. The composition of the Board is governed by the Articles of Association of the company. The Board has 11 directors and only two are part of the management team; that is, the Group Managing Director and the Finance Director. The others do not sit on the Board, but are part of the management team, carrying out executive functions as mandated by the Board.

The Committee recommended that the new management team should explore arbitration alternatives with employees and their unions with an aim of ending longstanding litigation. It also recommended that the new management team should apply prudent outsourcing of services, without compromising the morale and efficiency of the existing employees and review the joint venture with KLM, especially on code sharing, revenue management and sales tracking to ensure equity. Arbitration alternatives have continued to be applied as part of the dispute resolution and continuous engagement of unions. No new outsourcing contracts have been entered into so far. The joint venture with KLM on the commercial side is undergoing review for the optimization, as part of the overall commercial focus.

There is an annexure on the sale of the landing slot in London, which I can read. Up to March, 2016, KQ operated a daily night schedule to London, Heathrow (LHR) with a ground time of---

**The Speaker** (Hon. Ethuro): Order, Vice-Chair. Please, summarize.

**Sen. Sijeny:** Mr. Speaker, Sir, regarding the annexure, I can summarize that the management of KQ reviewed the value, cost and implications, and after consultations with the various stakeholders, they all agreed to sell the morning landing slot. The sale proceeds were shared equally with KLM. That was the best that could be done in the circumstances; the expenses were many, including parking and staff. Therefore, it was not cost-effective to keep the slot.

Appendix 1 shows the summary of audited results for the period ended 30<sup>th</sup> September, 2015. We are a few months away from the end of the financial year when we will get the proper audited results. The results show losses and what KQ has done to improve the situation.

The rest of the annexure contains an explanation as to why the London landing slot was sold and why the Boeing 787 has been subleased to Oman Air.

**Sen. Leshore:** Mr. Speaker, Sir, I would like to thank the Vice-Chair for the long Statement that she has presented to this House. I have been a shareholder of Kenya Airways for the last 15 or so years. It is demoralizing to the shareholders that the so-called 'Pride of Africa' has been limping; shame on the management. For the last five or six years, we have not received any dividends. The morale of the employees is very low. I would like the Vice-Chair to tell us why Kenya Airways has sold the landing slot in Heathrow that they had for the last 20 or so years. Whereas they have sold the slot, they have leased another from KLM. Why did Kenya Airways purchase aircraft in the last

seven or so years, when they knew very well that there were no profitable routes to put them? Every Kenyan would love to go to London using Kenya Airways, but when you go to the airport, you are advised to go via Dubai, Amsterdam or Paris. Could the Vice-Chair tell us how the management will make the shareholders have confidence in the future of Kenya Airways?

**Sen. Billow:** Mr. Speaker, Sir, the response given by the Vice-Chair is very disappointing. This company in six months – to September last year – has reported a loss of nearly Kshs12 billion. This company is still borrowing, even after the Kshs25 billion loss last year. Their total debt last year, when it had serious problems, was Kshs104 billion. By September, it had gone to Kshs115 billion. Where on earth do you find directors keeping on ‘drilling’ a company that is already sinking, by borrowing further? What action is the Government taking, because it is the main shareholder?

From the Statement that the Vice-Chair has given, there is not a single action recommended by this House that has been implemented, including even simple ones like giving a timeline when the shareholders will inject capital into the airline. The Vice-Chair has not even indicated why KQ is unable to change or restructure the directors. Apart from the chairman who was appointed in October, none of the other directors has been moved. Is the Government satisfied that the same management should continue in office despite the public losing their investment in this airline?

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, without prejudicing the response to the questions which I have asked, which I think will come later because they are very specific and they are not answered in this particular response, let me also join my Chairman of the Committee on Finance, Commerce and Budget in saying that this is a rather disappointing Statement. By the way, it is out of date. If you have been following what has been going on in the Press, particularly, *Business Daily*, you will realise that some of the statements made here are out of date with regard to the leasing and sale of planes. I do not think the facts put here are correct.

Again, the Vice-Chairperson has referred to the process of recapitalization. The story is told that the process started last year but there is no evidence that any recapitalization has been done. If you googled Paul J. Taubman (PJT) Partners, you will not in your right mind hire them as a transaction advisor. One of the key partners in the PJT Partners is under investigation in the judicial process in the United States of America (USA) for high corruption. I would not like that company with a one-handed yardstick to come near the Kenya Airways which is dealing with very serious problems.

Mr. Speaker, Sir,---

**The Speaker** (Hon. Ethuro): Order, Sen. (Prof.) Anyang'-Nyong'o. This is not an opportunity for a rebuttal but an opportunity for seeking clarifications.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, the first clarification I would like to seek is why has management not responded to the request that Sen. Leshore made with regard to the specific responses in detail of the resolution of this House?

Finally, with regard to outsourcing, why is it that the answer they are giving is that no new outsourcing contracts have been entered to so far? I thought the Senate recommended that the whole issue of outsourcing should be reviewed and the current

outsourced services should, as much as possible, be returned to the Kenya Airways because they were superfluous.

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, last time, the Senate appointed a Committee that dwelt on this issue of the Kenya Airways extensively. I was fortunate to be in that Committee and we interviewed literally everybody to do with the Kenya Airways. Why is it that no action has been taken in the very wide-ranging recommendations that were made by that Committee that affected the operations of the Kenya Airways?

Secondly, one of the recommendations and suggestions that were made was that funds will have to be injected by shareholders and the Government of Kenya is one of them. I know that it requires budgetary approvals to allocate funds to the Kenya Airways. How much has the Government set aside to inject into the Kenya Airways? What is the relationship between the Kenya Airways and other bodies that affect its operations, such as Jambojet?

Mr. Speaker, Sir, we know that Jambojet works very closely with the Kenya Airways.

**The Speaker** (Hon. Ethuro): Order, Senator! That is enough.

Order, Members, you must realise that there is a bit of interest in this matter. Therefore, just restrict yourselves to one key issue.

**Sen. Madzayo:** Mr. Speaker, Sir, it is in the public domain or common knowledge that the Kenya Airways has been making losses for a long time. What particular action has been taken against the former management that actually led to these losses before the new management came in? What kind of prosecution or action has been taken by the Government in making sure that the management is held to account and, moreso, people like Mr. Titus Naikuni, who was the Chief Executive Officer (CEO) at that time?

**Sen. Kagwe:** Mr. Speaker, Sir, I wanted to ask the question regarding shareholding. However, I want to propose this because, clearly, there are serious issues about this matter that we should interrogate as a House. Am I in order to propose that the Cabinet Secretary (CS) responsible be invited to the Senate for the whole House hearing, to explain the happenings at the Kenya Airways?

**Sen. Sang:** Mr. Speaker, Sir, I hope that the Vice-Chairperson is listening. Could she confirm that, indeed, the Kenya Airways is the official sponsor of the Kenya Rugby Sevens Team that won the other day? If so, could she also explain how possible it is that they could allow the same team that won to fly using Qatar Airways and lose the opportunity to brand themselves with the heroes that have made this country proud? It is completely unfortunate to sponsor a team and only end up selling the same brand to another airline.

**Sen. Cheruiyot:** Thank you, Mr. Speaker, Sir, for giving me this chance. I want to address the issue of our partnership with the KLM. We have been told that the management said it is being reviewed. When will this review be done? This is a statement that has been mentioned for so long yet we know that one of the main reasons why the Kenya Airways continue to lose money is because of the skewed partnership that it has with the KLM.



Mr. Speaker, Sir, you are aware that domestically, the KLM can sell their own air tickets and collect revenue. However, you cannot buy a Kenya Airways ticket in Europe. You have to buy through the KLM which will then remit that revenue to the Kenya Airways after a period of their own discretion. You are also aware that in part of the agreement between the KLM and the Kenya Airways, the KLM has a veto power on the Board. If there is anything during the deliberations of the Board that they are not in agreement with, they have a very strong veto. So, it is not fair for the---

**The Speaker** (Hon. Ethuro): Order, Sen. Cheruiyot. You have done very well.

*(Laughter)*

The last two interventions will be from Sen. Nabwala and then Sen. Wetangula.

**Sen. Nabwala:** Mr. Speaker, Sir, I am also concerned about the composition of the directors of the Kenya Airways and the decision they make. Recently, they terminated a contract to expand the Airport yet the contractor had already mobilised all the resources and machinery which were on site. This will lead to a very huge loss.

**Sen. Kembi-Gitura:** On a point of order, Mr. Speaker, Sir. Is the hon. Senator in order to confuse the Kenya Airways with the Kenya Airports Authority (KAA)?

*(Laughter)*

**Sen. Nabwala:** Mr. Speaker, Sir, I am not confusing. I am talking about the Kenya Airways which is part of the KAA. That is why I am concerned.

**The Speaker** (Hon. Ethuro): Order, Sen. Nabwala. Sen. Kembi-Gitura did not actually say that you have confused. He said that you are confusing the Kenya Airways with the KAA, which you have confirmed that you are confusing because they are two different entities. I think you have made your point.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, the case of the Kenya Airways is very serious. This House spent a long period of time investigating this matter. As we speak, if there is any brand that has marketed this country far and wide, it is the Kenya Airways. Any acts or omissions that led to the collapse of this airline are actually economic sabotage to this country.

Could the Chairperson of the Committee and through you, agree to the proposition by the distinguished Senator for Nyeri County; that matters surrounding Kenya Airways and issues to be resolved may not be adequately dealt with by the Chairperson of the Committee. We should summon the Cabinet Secretary (CS) here and interrogate him thoroughly on what the Government is doing about all matters surrounding Kenya Airways, including the implementation of the outcome of the Sen. (Prof.) Anyang-Nyong'o's committee that made very far reaching recommendations on how to save this airline from imminent collapse that we are staring at.

**The Speaker** (Hon. Ethuro): On that note, Chairperson, I am directing the Committee to invite the Cabinet Secretary (CS) in person to give adequate notice so that Members can interrogate this matter directly.

(Applause)

**An hon. Member:** Sawa! Sawa!

**The Speaker** (Hon. Ethuro): The House cannot act in vain. This matter is so grave and important to the nation. We have already done our bit and we want to get the assurance from the Executive that they are also doing their bit.

Sen. (Prof.) Anyang'-Nyong'o, do you have a Statement for the Senator of Murang'a County?

REPORT OF SPECIAL COMMITTEE ON PROPOSED  
REMOVAL FROM OFFICE BY IMPEACHMENT OF  
HON. MWANGI WA IRIA GOVERNOR OF MURANG'A COUNTY

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, yes, I have a Statement for the Senator for Murang'a County, Sen. Kembi-Gitura. It is a response regarding the issues that he raised.

At a sitting of this House held on 1<sup>st</sup> March, 2016, the Senator for Murang'a County sought a Statement from the Chairman of the Sessional Committee on County Public Accounts and Investments, regarding the Report of the Special Committee on the proposed removal from office by impeachment of Hon. Mwangi Wa Iria, the Governor of Murang'a County.

In particular, the Senator requested the Chairperson of the Committee to address the following issues:-

- (a) Allegation 2, Paragraph 212 of the Report.
- (b) Allegation 10, Paragraph 219 of the Report.
- (c) Allegation 11, Paragraph 220 of the Report.

The Statement sought by the Senator relates to the impeachment of Hon. Mwangi Wa Iria, Governor, Murang'a County. The proposed impeachment was based on charges forwarded to the Senate by the Murang'a County Assembly in terms of Standing Order No.68 (1).

The Senate by resolution made on 28<sup>th</sup> October, 2015, established a Special Committee which was required under Standing Order 68(1)(b), to investigate the matter. The Special Committee, after investigating that matter, found in respect of all charges that the charges had not been proved or substantiated.

The Senate was, therefore, guided by Standing Order 68(4)(a) which provides that:-

“If a special committee reports that the particulars of any allegations against the governor-

(a) Have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation.”

In the event that the issue of the removal of the governor based on the same charges arises, then section 33(8) of the County Governments Act, 2012 will apply.

The section provides that a Motion by the county assembly for the removal of the governor on the same charge may only be re-introduced to the Senate on the expiry of

three months from the date of such a vote in the Senate that failed to result in the removal of the governor.

Whereas Section 33(6)(a) of the County Governments Act provides that further proceedings shall not be undertaken if particulars have not be substantiated, the Senator's Statement relates to allegations 2, 3, and 11, in relation to all the charges against the Governor.

We, as a Committee, therefore, observe as follows:-

Allegation 2 Relating to Charge No.1

Paragraph 201 in relation to Allegation 2 reads as follows:-

“Violations of Articles 201(a) and (b) of the Constitution that stipulates principles of public finance and Section 5 and 130(1)(b)(i) of the Public Finance Management Act 2012: The County Governor allowed misappropriation of county funds in spending public funds in private commercial entities.

The Report of the Auditor-General on the financial operations of Murang'a County Executives for the Period 1<sup>st</sup> July, 2013 to 30<sup>th</sup> June, 2014 shows that the County Executive contributed a total of Kshs28,489,800 to Murang'a Investment Co-operative Society (*Shilingi-Kwa-shilingi*).

The Society is registered under the Co-operatives Society Act, Cap 490 Section 6(3) of the laws of Kenya. The Society is an autonomous body independent of the County Executive. According to the Auditor-General's Report, it was not clear, therefore, the circumstances under which the County Executive was funding it. This was in contravention of Section 5(1) of the PFM Act, 2012 as the Society was not a declared county corporation.

On this charge, the Committee unanimously found that the allegation was not proved and was not substantiated.”

Whereas Section 33(6)(a) of the County Governments Act, 2012 prohibits further proceedings in relation to any allegation that has not been substantiated, it is, however, important to note that the Senator's request does not relate to impeachment. Therefore, it does not fall under the category of further proceedings. The request relates to recovery of public funds.

The issue raised by Sen. Kembi-Gitura with regard to Allegation 2 does not seek to re-open the question of impeachment. The Statement merely seeks guidance for the Committee on Public Accounts and Investments on how Kshs28,489,800 is to be recovered, the Special Committee on Impeachment having found that there was a violation of the law in this regard.

Under the Senate Standing Order No. 212(3), the mandate of the Committee on County Public Accounts and Investments is as follows:-

(a) pursuant to Article 96(3) of the Constitution, to exercise oversight over national revenue allocated to county government;

(b) pursuant to Article 228(6) of the Constitution, to examine the Report of the Controller of Budget on the implementation of the budgets of county governments;

(c) pursuant to Article 229(7) and (8) of the Constitution,---

**The Speaker** (Hon. Ethuro): Chairperson, you will help the House. Just refer to some of those things that have been written. You do not have to cite each and every one of them.

**Sen. (Prof.) Anyang'-Nyong'o**: Mr. Speaker, Sir, fine. This means that the House is familiar with the responsibility of our Committee.

**The Speaker** (Hon. Ethuro): That is correct.

**Sen. (Prof.) Anyang'-Nyong'o**: Mr. Speaker, Sir, from the mandate above, it is clear that the Committee on County Public Accounts and Investments has the power to examine the audited accounts of Murang'a County Government, accordingly. Since the Committee on County Public Accounts and Investments is, pursuant to Article 229(7) and (8) of the Constitution and Standing Order No.212 (3)(c), mandated to examine audit reports of Murang'a County, the Committee will examine the audit reports of the period 2013/2014.

The issues raised under Allegation 2 are, therefore, issues that the Committee would consider in the examination of the Report. The Committee may deliberate and assign a timeline within which they are to consider the Report for purposes of satisfying the House when delivering the Statement.

Paragraph 219 Relating to Allegation 10 reads as follows:

“Violation of Article 227(1) of the Constitution of Kenya and Section 30 of the Public Procurement and Disposal Act, 2005, through splitting of tenders with different LPO numbers for the same contractor. For instance, proposed opening of Kahuruko-Ngatho Junction under the Department of Transport and Infrastructure was split 11 times with different LPO numbers according to the debt owing report form the CEC Finance, IT and Planning as at 14<sup>th</sup> August, 2015.

The Committee unanimously found that the allegation was not proved and not substantiated. In the event that the issue of the removal of the governor was made on the same charges arises, a motion by the county assembly for the removal of the governor on the same charge may only be introduced, as I said earlier, after expiry of three months.

All procurement issues as they exist under the Auditor-General's 2013/2014 reports will also be examined and subsequently addressed as they exist in the report.

Mr. Speaker, Sir, let me go to allegation 11 relating to charge 1, paragraph 220, relating to allegation 10 which reads as follows:-

Contravention of Article 201(a) (e), the Constitution of Kenya on principles of public finance in regard to accountability, responsible finance management and clear fiscal reporting, Section 155 (5) of the Public Finance Management Act 2013, by failing to ensure that an Internal Audit Committee is established. This has exposed the county executive operations to lack of checks and balances on financial controls especially in the county treasury and lack of decentralized payment systems particularly at the departmental level.

This is evidenced by irregular practices such as opening of unauthorized bank accounts contrary to the guidelines of the Transition Authority (TA), lack of maintaining cash books for some accounts and unsurrendered imprests, lack of adherence to the budget implementation, among other irregularities also highlighted in the Auditor-General 2013/2014 and the Controller of Budget Third Quarter Report, 2013/2014. This

heightened impunity on the part of the county governor has resulted to continued loss of public funds.

The special committee on impeachment unanimously found that although there was violation of the law, the violation did not rise to the level of gross violation and was, therefore, not substantiated. Due to the complex nature of this land purchase transaction, the committee recommends that the Public Procurement Oversight Authority (PPOA) and the Ethics and Anti Corruption Commission (EACC) investigate this matter and report to the Senate the outcome of the investigation. That was the recommendation of the committee that looked into the impeachment issue.

Mr. Speaker, Sir, it should, therefore, be noted that the committee conclusively dealt with this matter and it was to be handled by the PPOA and the EACC.

The Committee on County Public Accounts and Investments (CPAIC) has prioritized a meeting with the Murang'a County Executive on the 27<sup>th</sup> and 28<sup>th</sup> April, 2016 to commence proceedings on the Murang'a County audit reports by the Auditor-General for the period 2013/2014 which will conclusively envelop all the issues raised in the statement.

Thank you.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, I wish to start by thanking the Chairman and his Committee for the expeditious manner in which they have dealt with this issue which was of grave concern to me and the people of Murang'a County.

Mr. Speaker, Sir, this statement raises several important issues. I will start from where the Chairman ended because on the issue of the purchase of 34 acres of land for Kshs340 million, meaning that each acre was bought for Kshs10 million, whereas valuation was less than Kshs2 million per acre, on that specific issue alone, the Committee, chaired by Sen. Musila, found that due to the complex nature of this land purchase transaction, the Committee recommends that the PPOA and EACC investigate this matter and report to the Senate on the outcome of the investigations. That is the importance of this matter.

The Committee dealt with and finalized the issue once and for all like Sen. (Prof.) Anyang'-Nyong'o's Committee has found. So, this is not an issue that is going to be reopened. What I wanted to know from this committee is this: Is this Committee going to refer the issue to the relevant institutions of this country; the EACC and PPOA, to decide on whether to charge or whether or not the Kshs340 million expropriated from the people of Murang'a County will be refunded?

Mr. Speaker, Sir, in the Ninth Parliament with Sen. (Dr.) Khalwale and others, I sat in the Public Accounts Committee (PAC) and these are the most powerful watchdog committees of Parliament. I do recall that PAC did on several occasions, or at least had the power to order that the person affected be found not to be fit and proper person to hold public office. That is where we have strong public accounts committees.

I really appreciate that the Committee is going to call the Governor of Murang'a County and that it is going to be an open forum and we are going to raise these issues with him including "Shilingi kwa shilingi", the splitting of tenders so that they do not extend beyond Kshs4 million in which case, there will be a public tender because there are many ways of skinning a cat and even avoiding the law.

Mr. Speaker, Sir, we have the Vihiga County Petition in front of us and it is before the same committee. I believe that the committee has the power even without going through impeachment to make strong recommendations. So, the point I am making here is that although this Committee is going to summon the governor of Murang'a County in its way forward to look at the audited report which I appreciate, I believe that the Committee must in the first instance, deal with the issues that are clear and direct like the ones that need to be referred to the EACC---

**The Speaker** (Hon. Ethuro): Order Sen. Kembi-Gitura! What clarification are you seeking?

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, the clarification I am seeking is whether the Committee is going to follow the recommendation of Sen. Musila's Committee and refer this issue to the relevant committee so that we, the people of Murang'a County, either get restitutive justice where this money is returned to us or what is going to happen because this is not personal money. It is money that is coming from the sweat of people and it is taxpayers' money. The Musila Committee had made almost final findings on the way forward on this issue.

**Sen. Billow:** Mr. Speaker, Sir, the conclusion by the Chair of the Committee is something that I find very unacceptable. I think it is unnecessary for the Committee to again invite the same governor to discuss the audit. The issue before this House is to invite those institutions like the EACC and others and to demand action to be taken on the recommendations that have already been made by the select committee and not to go through a whole process of trying to speak to the same Governor where the select committee of this House has already determined a wrong doing.

Mr. Speaker, Sir, why would we want to repeat the same exercise by inviting the Governor to go through the same motions again in clarifying issues that have already been clarified?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, the Musila Committee found that the governor paid for the land at the rate of Kshs10 million per acre on the strength of the valuation report. Could the Chairman, for purposes of clarity, also confirm that the valuers who gave those fake valuation reports will also be invited so that they are busted and exposed for their connivance in theft of public funds?

**Sen. Elachi:** Mr. Speaker, Sir, this House had a clear recommendation that after the Report was tabled we would relook at the issues that were raised in three months. We debated this issue and even condemned some of the Committee's recommendations. It would be proper if we finalize so that the House keeps its word. People will appreciate if we finalize the Report of the County of Murang'a.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I want to thank Members who have raised important issues regarding this important matter. Maybe I was reading it very fast, but before I came to the way forward, I said that it should be noted that the impeachment Committee conclusively dealt with the matter and it was to be handled by the Public Procurement Oversight Authority (PPOA) and the Ethics and Anti-Corruption Commission (EACC).

In that regard, Sen. Billow is right. If, indeed, we are the Committee to ensure that the PPOA and EACC do their work, we will definitely accept the responsibility by the Senate and summon those particular institutions to give us a progress report.

The Statement that Sen. Kembi-Gitura wanted was related to Kshs28 million and whether it was to be paid back. Indeed, when I gave my Statement, I said that the Committee has the responsibility to ensure that this is done. It is good that we sit at a conjuncture where this issue is raised in the Auditor-General's Report on the County Government of Murang'a. Rather than do two things separately, we decided to summon the Auditor-General to give that Report and at the same time summon the Governor of Murang'a to respond to the audit queries, as we usually do. As we do that, we also pursue the matter that was raised by the Impeachment Committee, which we have said does not amount to the Senator reopening the issues, because that would not be constitutional and legal. Therefore, we shall pursue the refunding of the money and ensure that the two institutions that were given the charge by the impeachment Committee do their work.

Finally, with regard to whether or not the Governor of Murang'a can be declared unsuitable to hold office, after he appears before our Committee, I am not a lawyer and would not like to pre-judge the Governor before he appears in our Committee. Even the impeachment Committee that looked into this matter did not impeach him. My Committee has no *locus standi* whatsoever to re-open that issue.

Regarding the valuers and their connivance, obviously, I think that this is part of the Auditor-General's Report. When we hear the governor, his team and the Auditor-General, these issues will arise and we will be in a position to call the valuers to answer for their sins of conniving to steal public property.

**Sen. Billow:** On a point of order, Mr. Speaker, Sir. You have heard the Chairperson say that his Committee has no powers to declare the governor unfit to hold public office. It is the practice in Parliament that where a select Committee has determined that a particular public officer has been involved in misappropriation or irregular procurement, it recommends that, that person is not fit to hold public office.

Therefore, his Committee has the *locus standi*. It is, therefore, misleading to say that the Committee has no *locus standi* on that matter.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. The point of order raised by Sen. Billow is extremely important. It will help the Chairperson of my Committee if he remembers that in the last Parliament, the Public Accounts Committee (PAC) in its Report found the then Governor of Central Bank of Kenya, Prof. Njuguna Ndung'u, and hon. Kimunya not fit to hold public office.

The Cocker Commission that was subsequently appointed by President Kibaki to look into the sale of Grand Regency Hotel agreed and recommended that the two gentlemen were not fit to hold public office. Therefore, nothing will preclude us, as a Committee, from finding that Governor Mwangi wa Iria is unfit to hold public office.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I wish my colleagues could listen to me carefully. I said that, as of now, before the governor appears before the Committee, it will be wrong for me to say that we shall find him unfit to hold public office. How can you make judgment before you hear the accused? We have the responsibility and---

**The Speaker** (Hon. Ethuro): Order, Sen. (Prof.) Anyang'-Nyong'o.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, it is clear that I was the Chairperson of the Public Investment Committee (PIC) for three years and I declared people unfit to hold public office. But I cannot declare people unfit to hold public office before I listen to them. It is the rule of natural justice that they come; we listen to them and make a decision.

**The Speaker** (Hon. Ethuro): Order, Sen. (Prof.) Anyang'-Nyong'o. I want to agree with the Chairperson because he was clear. Sen. Billow, you cannot take us back for failing to listen or not listening carefully, seconded by Sen. (Dr.) Khalwale who was not listening as well.

*(Laughter)*

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I am a Member of the Committee and agree with my Chairman---

**The Speaker** (Hon. Ethuro): Sen. (Prof.) Lonyangapuo, proceed to your Statement. That matter is finished.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I have a small and simple Statement to seek---

**The Speaker** (Hon. Ethuro): What is it Sen. Kembi-Gitura?

**Sen. Kembi-Gitura:** Sen. Kembi-Gitura): Mr. Speaker, Sir, I did not know that we had finished with the Statement by Sen. (Prof.) Anyang'-Nyong'o. I thought that you would give me a right of reply. I thought Sen. (Prof.) Anyang'-Nyong'o was still on his feet and Sen. (Prof.) Lonyangapuo was raising a point of order on what---

**The Speaker** (Hon. Ethuro): Order, Senator. Let me make it abundantly clear that we have been on this Statement for a long time. Sen. (Prof.) Anyang'-Nyong'o responded and he is the one with the last word. The response is that this is work-in-progress. They will use the opportunity of the Report of the Auditor-General to interrogate these matters that are still pending. They will also follow the recommendations of the Committee in terms of summoning the relevant authorities - the EACC and PPOA - in order to find out. That was the initial intervention by Sen. Billow, which I thought was useful and the Chairperson took it on board. So, let this matter rest there for now.

Sen. (Prof.) Lonyangapuo, proceed with your request for a statement.

#### AFFIRMATIVE ACTION ASSISTANCE TO PASTORALIST COMMUNITIES

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, this is a request for a Statement on the affirmative action assistance to pastoralist communities.

I rise pursuant to Standing Order No.45 2 (b) to seek a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding affirmative action assistance to pastoralist communities.

In the Statement, the Chairperson should:-



(a) State if he is aware that many people in pastoralist counties, especially in West Pokot, Turkana, Baringo, Elgeyo-Marakwet and Samburu counties were affected by cattle rustling for many years, but for the last one year, calm and peace has been restored.

(b) Explain if the national Government and county governments have put in place any measures to assist the communities that were affected by the cattle rustling menace the same way that the Internally Displaced Persons (IDPs) in other areas were assisted;

(c) Explain if any form of assistance has been given to the reformed warriors to help rebuild their lives; and

(d) State when affirmative action related to activities such as irrigation projects and schools, among others, will be initiated in the affected areas.

**The Speaker** (Hon. Ethuro): Sen. Dullo, please, respond to that.

**Sen. Adan:** Mr. Speaker, Sir, we will respond to that Statement in two weeks' time if that is okay with the Senator.

**The Speaker** (Hon. Ethuro): So ordered.

Hon. Senators, we have Statement No. (b) on the Order Paper to be issued.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. Last week, the Chairperson of the Committee on Finance, Commerce and Budget wanted to issue a Statement on Thursday in response to a requisition from me concerning the funding of the Council of Governors (CoG). However, it is not on the list. The Chairperson is here and ready with the answer. He has even given me a copy of his response. Could you kindly allow us to hear the response if time allows?

**The Speaker** (Hon. Ethuro): Hon. Senators, I have time and again advised that we can canvass such things without bringing them to the Plenary. We already have more than enough statements to be issued. I do not know whether the Members are around. I can see that Sen. Leshore is not here. Sen. (Prof.) Lonyangapuo who requested Statement (b) is here. Does the Chairperson of the Committee on National Security and Foreign Relations have the answer to Statement (c)? However, before we respond to those statements, what is Sen. Billow's response to Statement (b)?

#### FAILURE BY COUNTY GOVERNMENTS TO PAY SUPPLIERS AND CONTRACTORS

**Sen. Billow:** Mr. Speaker, Sir, the statement that was requested by Sen. (Prof.) Lonyangapuo is not ready. It has just been delivered to the Clerk of the Senate this afternoon. We will deliver it tomorrow if it will be ready. However, I am ready with the Statement that Sen. (Dr.) Khalwale requested that was scheduled for this week.

**The Speaker** (Hon. Ethuro): Let us deal with the other Statements the Order Paper before we come back to that Statement that was requested by Sen. (Dr.) Khalwale.

#### PARTICIPATION OF CID OFFICERS IN VETTING COMMITTEE SITTINGS FOR ID CARD APPLICATIONS IN TRANS NZOIA COUNTY

**Sen. Adan:** Mr. Speaker, Sir, I wish to respond to this Statement that was requested by Sen. Ndiema regarding the officers drawn from---

**The Speaker** (Hon. Ethuro): Order, Sen. Adan. Let me have a feel of it first. You may resume your seat, Sen. Adan. I will give you time later. Let us move on to the next statement.

I see that the Chairperson of the Committee on Lands and Natural Resources is here to respond to Sen. Mositet's request, Statement (d). Is the Chairperson of the standing Committee on Education here to respond to the Statement (e) that was requested by Sen. (Dr.) Khalwale?

CLOSURE OF MASINDE MULIRO UNIVERSITY  
IN KAKAMEGA COUNTY

**Sen. (Dr.) Khalwale:** On appoint of order, Mr. Speaker, Sir. You directed that because of the nature of Statement (e), the answer should come today. The Chairperson requested to bring it on Thursday this week, but you directed that he brings the response today.

**The Speaker** (Hon. Ethuro): That is true. Is the Chairperson or any Member of the Committee on Education around to respond to this matter because it is an urgent matter? Could the Senate Deputy Majority Leader respond to that question? The last time I checked, they had just appointed a new one.

(Laughter)

Please proceed, Sen. Murkomen.

**Sen. Murkomen:** Mr. Speaker, Sir, I just came in. I am, therefore, not sure about the details. Allow me to, first consult Sen. (Prof.) Lonyangapuo to find out the details.

**The Speaker** (Hon. Ethuro): It is a simple thing. Just get your Order Paper and look at the last page. The Chairperson of the Committee on Education is not around to respond to Statement (e).

**Sen. Murkomen:** Mr. Speaker, Sir, it is unfortunate that no Member of the Committee on Education is around. However, I undertake that the response will come at the earliest opportunity possible. If this House adjourns at the end of the day as agreed, they will respond to the statement by Tuesday, next week.

**The Speaker** (Hon. Ethuro): Order, the Senate Deputy Majority Leader! You are not supposed to anticipate debate. I order that the Statement be availed to the House on Thursday, this week.

Given the urgency of the Statement that was sought by Sen. (Dr.) Khalwale and the Chairperson of the Committee on Finance, Commerce and Budget, Sen. Billow is ready, he may proceed on the statement concerning funding the CoG.

FUNDING OF COUNCIL OF GOVERNORS' ACTIVITIES

**Sen. Billow:** Mr. Speaker, Sir, a statement was sought by the Senator for Kakamega County, Sen. (Dr.) Khalwale, regarding the funding of the CoG activities. In

reference to that, this is the response. I will not go to the background. I will just go straight to the specific interventions that were sought by the Senator.

The first question was to explain how the CoG is funded. The CoG is funded through the National Treasury, contributions from the county governments and development partners. Pursuant to Section 37 of the Intergovernmental Relations Act, the operational expenses of the CoG shall be provided for in the annual estimates of revenue and expenditure of the national Government and that is budgeted for by the Ministry of Devolution and Planning

The second question that was sought in the Statement was to explain whether the CoG has a fund into which the county governments make a monetary contribution annually. The CoG has a contributory account to support the CoG operations, but it is not a fund. I will give the amounts as we go along.

The third question was whether the fund was established. The contributory account was established on 5<sup>th</sup> June 2014 vide the CoG resolution at a meeting held on 8<sup>th</sup> May 2014. The minutes are attached.

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

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

Mr. Deputy Speaker, Sir, the fourth question was how much each county government has paid into the contributory account of the CoG from the day it was established. The amount is indicated in the table below which states how much each of the counties had contributed to the CoG in the last three Financial Years 2013/2014, 2014/2015 and 2015/2016.

The total in the 2013/2014 Financial Year was Kshs197 million while in 2014/2015, the total amount was Kshs588 million. In the few months of this financial year, a contribution of Kshs212 million has been made. The total is Kshs998.5 million that has been paid through contributions by the county governments. It is almost Kshs1 billion.

Mr. Deputy Speaker, Sir, the fifth question was whether the fund has received any donations over and above the contributions from the county governments and if so, how much. The Council has received grants from the National Treasury and development partners. From the National Treasury, in respect of each of the two financial years, in 2013/2014, Kshs112 million; in 2014/2015, Kshs122 million and in this financial year so far it has received Kshs30.5 million. The total is Kshs265 million.

On the grants from development partners, they have received a total of Kshs59.8 million from the United Nations Development Programme (UNDP), Kshs7.4 million from Ahadi Kenya and Kshs5.8 million from the International Development Law Organization (IDLO). This brings the total to Kshs73 million. Therefore, in total they have received well over Kshs1.3 billion.

The second last point sought was clarification on what items the money has been spent on. There is a detailed schedule providing the expenditure items in respect of each

of the three years, including, salaries, allowances, office rent, travel, legal fees, humanitarian aid, purchase of equipment and so forth. The list is provided.

Lastly, the hon. Senator wanted to know whether the funds have been audited and by which audit firm. The funds have been audited by the Kenya National Audit Office (KENAO). Copies of the audit reports for the financial years 2013/2014 and 2014/2015 are attached. The minutes of the governors approving the transfers of the money to the council from the contributions of the county governments dated 8<sup>th</sup> May, 2014 are also attached.

Thank you.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, was that your statement?

Sen. Murkomen, are you on a point of order or do you want to seek a clarification?

*(Sen. Murkomen nodded)*

Then wait, that is not a point of order.

Proceed, Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, allow me to thank the Chairman. This is a very professional answer. On the face of it, it is acceptable. However, as the lawyers say, the devil is in the detail. To this extent, when you scrutinize the contribution by the Council of Governors (CoG) and what the donors have given, I do not think it was in the thinking of the drafters of the Constitution that we create an account like this; that, all of a sudden, you would find Kshs1.3 billion banked into it. When you dissect it, you find the Kshs1.3 billion is being used on all manner of things. However, I would like the Chairman to clarify just two things on those expenses:-

(1) What are these legal matters that lawyers were hired for, that led to them being paid Kshs219,523,000? Could you tell us what these cases were?

(2) Regarding the Kshs12.5 million that is being spent on humanitarian aid; what specific humanitarian aid did the CoG give?

(3) So that the people of Kakamega County might not crucify me, why is it that in the contributions, Kakamega County is the one which appears to be most generous? Kakamega has contributed Kshs42 million. Compare this to Machakos County, where at least, the Level Five Hospital is working. Over the same period, it has contributed only Kshs340,000.

Mr. Deputy Speaker, Sir, so that you also do not just sit pretty, the County Government of Murang'a has contributed Kshs8.3 million. Could the Chairman confirm that these contributions are arbitrary? If so, what is it that provoked Governor Oparanya to be the main contributor to this fund? Is it because of the cases that he has been having in court, where he has been dodging to appear before the County Public Accounts and Investments Committee (CPAIC), pursued for inciting mourners to set a homestead on fire and pursued for taking Kshs200 million and paying it to Mumias Sugar Company in the name of paying farmers' debts yet no farmer was paid? Is he so generous because he has the highest number of transgressions?

**The Deputy Speaker** (Sen. Kembi-Gitura): Proceed, Sen. Elachi.

Sen. Billow, there are very many interventions. So, take note of them.

**Sen. Elachi:** Mr. Deputy Speaker, Sir, it is very important to understand the expenditures. We need to interrogate office rent, for instance. In 2013/2014 they spent Kshs41 million. What happened in 2014/2015? They went overboard to spend a whopping Kshs134 million. They spent this on office rent in Nairobi yet we passed a Motion the other day that we have county governments that do not have offices in their counties. We are looking for money to build those offices. This is double expenditure considering that they also have offices in Nairobi. We need to curb this.

In addition, there is expenditure on fuel and lubricants. Is this for the staff or do governors spend money for fuel in the counties then, again when they come to their Nairobi offices, they claim mileage allowances? We need to look into this.

Lastly, concerning capacity building; the Committee on Finance, Commerce and Budget has questioned it and asked the National Treasury to take action. It is time we stopped this.

Regarding consultancy fees; despite having staff and the so called public economic officers and advisors, they have spent Kshs8 million on consultancy fees. We need to interrogate whether this office was created to use the backdoor to have a county government office in Nairobi rather than having them in the 47 counties.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I am glad that this question has been answered. We have sought for it since 2013. However, on the Schedule on legal fees, this report shows that the CoG representing our counties spent Kshs48 million in 2013/2014, Kshs87 million in 2014/2015 and Kshs83 million in 2015/2016.

Mr. Deputy Speaker, these funds have been used ostensibly in some cases to sue this House. The Intergovernmental Relations Act requires that this CoG makes a report to this Senate. That report has not been delivered since 2013.

Mr. Deputy Speaker, Sir, we now know why. Obviously, nobody wants to disclose this. My county has spent a total of Kshs 9.375million in 2015/2016. A total Kshs 14, 280, 000 in 2014/2015 and Kshs 400, 000 in 2013/2014 was spent. What is strange is that in the budgets prepared in counties, these figures are never mentioned. So, there is an ambiguous amount that is lumped together by the governors in their offices which ends up in the Council of Governors office, and no resolution is passed in their assemblies for purposes of accounting.

Mr. Deputy Speaker, Sir, is this necessary expenditure? We have criticized Cheserem and his committee for being the 48<sup>th</sup> governor and this is the reason. While we are busy stifling our county assemblies, these governors are spending Kshs 83million on legal fees. While the assemblies have no funds and HANSARD reports, the governors are spending monies that are not accounted for.

Am I in order to suggest that a proper audit should be carried out? I am not convinced that Makueni County has not contributed more. A special audit under the Constitution and the PFM Act on this should be done so that we can challenge the former Chairperson of the Council of Governors and everybody else.

Mr. Deputy Speaker, Sir, while Senators have no offices where they work in Nairobi, governors have plush offices in the counties and air conditioned offices in

Nairobi which they do not use. For how long will this Senate approve budgets for governors for what I call “opulence”? They are massaging their egos with big carpeted offices, toilets, among others. We must say this.

*(Loud consultations)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order Senators! This is an important debate taking place. I would like us to hear each other.

May I remind the Members that you are seeking clarifications? Do not enter into new debate.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, this Statement has revealed the fears of the Senators on how the governors have been living large and how they have been evading responsibilities.

As the other Members have said, this is what we need to interrogate clearly. When I look at the table on the expenditure - before I mention what my county has contributed for this Council of Governors - in the first year, they said they did not purchase any vehicle. However, there was an expenditure of Kshs 25million on fuel. The question is whose vehicle was fueled.

Mr. Deputy Speaker, Sir, they talk of personnel salaries and allowances. The expenditure for that vote alone is huge. We need to be told how many officers have been employed. Does it mean a staff from every county government giving a total of about 47? We need to know if there are officers seconded by every county to work in the Council of Governor’s office.

I read in the second page where they sated that the Council plays a coordinating and facilitating role amongst the 47 county governments on matters of policy, legislation and administrative functions among others. I thought the Senate is tasked with legislation.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order Senator. I must remind you that you are seeking a clarification.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, when I find governors talking about legislative work, I wonder if they have created another Senate or assembly. They should submit their issues to the Senate through their respective Senators. The Senator represents the county and protects the interests of a county.

Lastly, I am surprised that the Governor for West Pokot County which is one of the counties that was referred to as a “closed county” - not even marginalised - could afford to contribute Kshs 19million. When I look at the money and compare with the problems we have in the county, I get worried. I did not know this until today when I saw the Statement. We should know why the Auditor-General has not been able to pick an expenditure that has been misused? If this can be discovered here and now, how much more money has disappeared to other conduits that we do not know?

Mr. Deputy Speaker, Sir, these are key things that we want to hear so that we know where we are heading to.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, can the Chairman confirm to this House whether all these payments have been budgeted for

and approved by the relevant county assemblies in each case? If so, could he also clarify to the House the criteria for these contributions?

When you look at Nairobi County, the largest county with the largest revenue base has contributed Kshs 11million. Lamu County the smallest county that receives the least allocation of resources has contributed Kshs 15million. How do you explain enormous contributions from impoverished counties like Turkana County that contributed Kshs 58million?

Mr. Deputy Speaker, Sir, Meru County has contributed a whopping Kshs 44million. It is the second highest after Turkana County. How do you explain Bungoma County that sent Kshs 17million and I am sure it has not been approved by the county assembly? Others like Laikipia County contributed Kshs 4million and Machakos with all its challenges contributed only Kshs 340, 000. Is the participation of Machakos County in the activities of Council of governors equal to Turkana and Meru County?

Bomet and Embu counties have contributed Kshs 28 million and Kshs29 million respectively. When you look at this, you cannot help to conclude that this could be a conduit for siphoning funds from counties. The counties that have had challenges of a legal nature have put in more money. Is this a process of paying legal fees to lawyers through the Council of Governors?

May I request the Chair that after the Chairperson has given an answer; you direct that a forensic audit on how these funds left the counties to the Council of Governors be carried out. Under what budget items are they accounted for?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Murkomen, you may seek your clarification.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, I rise to seek clarifications, very well aware of the Intergovernmental Relations Act which makes it very clear that funds for funding the Council of Governors (CoG) and the Summit shall be contributed by the Treasury.

What legal framework informed county governments to make the contributions we are talking about here? I am asking this question knowing very well that the amount of money contributed by the 47 counties purposely for meetings, exchanging ideas and consulting is about Kshs1 billion. It is only Kshs2 million less to make it Kshs1 billion. We all know what Kshs1 billion can do. We know to what extent it could change lives.

Elgeyo-Marakwet, for example, contributed Kshs6.8 million. At least it was Kshs6 million in the first instance. I think they gave up somewhere in the middle and contributed Kshs100,000 only in the subsequent year.

However, Kshs6 million could have been used to construct a road from a place called Kipsaos to somewhere near Fluorspar. I have just come from home and I can assure you that there is neither a road from a place called Sisiya to Aror nor Wiwo to Sambalat, which are marginalised locations yet officials of my county complain that they have very little allocation to the county. Where do they get the excuse to spend Kshs6 million for that kind of expenditure?

Mr. Deputy Speaker, Sir, we were here and debated day and night about giving money to Tharaka-Nithi and Tana River counties to build offices. Where does Tharaka-Nithi get the excuse to use Kshs22 million? Tana River has given out Kshs39 million for

meetings yet they say that they do not have offices. Is this not a contradiction of the highest order?

We need to ask very clear questions. As Senate, for the past three years, we have been saying that there is no need for spending nearly Kshs300 million for legal fees. I am sorry because most of us here are lawyers. You and the Senate Minority Leader are senior lawyers. Sen. Mutula Kilonzo Jnr., is about to be a senior lawyer among all of us who are here. Is it not possible that the legal profession and the small coterie of lawyers are the CoGs' lawyers?

I have seen some of them bragging about how much money they have made in the short time in their lives. Is it not possible that the money they are making is a conduit for stealing public money so that there are kickbacks going back to counties? Is there a correlation that the current CoG Chairman has the highest contribution while the former Chairman of the CoG, who is the Governor for Bomet County spent Kshs28 million through the CoG's Forum? Is it possible that the choppers they have been hiring and parking in their homesteads are being funded through these resources?

Mr. Deputy Speaker, Sir, we want to be given a clear breakdown. If, indeed, these are the kind of expenditures to be incurred without any support of the law, people must be charged in court. They must be charged and I second what the Senate Minority Leader said. We must be shown that Elgeyo-Marakwet County Assembly allocated Kshs6 million for the Governor of Elgeyo-Marakwet to spend, or Bomet County Assembly approved Kshs28 million to be spent. From there, we can follow up the issues to find out why the Controller of Budget allowed defraying of resources through items that are not devolved functions. It is only the devolved functions which are stated in Part 4 of the Fifth Schedule that can be financed.

Lastly, I want to ask one question: When a governor is impeached or there is an attempted impeachment like that of your governor or the Governor of Embu,---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order! You should just say the Governor of Murang'a.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, the Governor of Murang'a who, unfortunately, is your Governor and you must accept that part. There was also the attempt of impeaching the Governor of Kericho, the Governor of Makueni and the Deputy Governor of Machakos. Is it a devolved function for some counties to spend money in paying lawyers to defend public officers facing impeachment charges?

My understanding of the law is that when you are facing a criminal charge such as an impeachment or an impropriety like impeachment, it is personal. You cannot use devolved money to defend yourself.

Mr. Deputy Speaker, Sir, unfortunately, having been the Deputy Senate Majority Leader in this Senate, it is the very reason that I want to conclude that going to Meru to celebrate stealing of public funds will be the most unfortunate thing if any Senator does that.

(Applause)



Mr. Deputy Speaker, Sir, we will not go to Meru to rubberstamp stealing of public funds until such time that this House will be respected in the manner in which it overlooks county governments and that we can account for counties' resources. Any Senator who will go to loiter in Meru will just be going there to confirm the worst of our fears.

Thank you.

*(Applause)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Murkomen, I know I that I am not supposed to contribute on my own Motion as the Chair. However, it is not in order to talk about Senators loitering. It is good that you should get a better word to use than that.

**Sen. Muthama:** On a point of order, Mr. Deputy Speaker, Sir. When someone makes a trip to Meru and the person does not get any opportunity to challenge the organizers of that meeting but he or she is made to sit, listen and told how the men qualify to steal public funds, is that not loitering?

*(Laughter)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Murkomen.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, maybe, the word "loitering" is too strong. I would like to replace it with traveling to Meru "with intent to do nothing".

*(Laughter)*

**Sen. Hassan:** Mr. Deputy Speaker, Sir, as further clarification to this Statement, I would like to know the procedure for recruitment of people who sit in liaison offices where some officers also loiter with the governors all over the country and the world. I would like to know the procedure and terms of reference for officers who sit in county liaison offices at Delta House.

Secondly, like the Senate Majority Leader said, I would like to know the criteria used because there is no proportionate formula in terms of how the money was contributed. In that regard, more specifically, I would like to know why the county that I come from will pay Kshs30 million. For what purpose is that and under what particular formula is that arrived at?

Finally, I was about to tell most Senators who will run for governorship to suffocate their bids. However, after seeing this, Sen. (Dr.) Khalwale needs to be in that Council. This is because the kind of embezzlement that the CoG is purported to have had is something that we as a Senate must speak to. Ultimately, I would like clarification from the Chairman of the Committee on Finance, Commerce and Budget on whether the Senate, by a resolution - we know that this money has not gone to fund functions that it was supposed to fund - can compel reimbursement of all these monies back to the counties. This is because if this money has not funded functions of counties, then that money has been improperly allocated. Further to Sen. Murkomen's proposal that these

governors be prosecuted individually and collectively, then there must be a process of reimbursement of this money back to the counties.

Thirdly and lastly, I want clarity on why the CRA and the Controller of Budget have not made the necessary interventions to avert this diversion of public resources away from functions of county governments. I think we need a clarification from those two on why this money was transferred from county accounts to something called “wet contribution account” without the proper mechanisms and their approval thereof.

**The Deputy Speaker** (Sen. Kembi-Gitura): Senators, I have to reduce the time a little because there is a lot of interest in this. I want you to, please, just seek clarification on a specific issue. I also request you to be kind as not to seek a clarification that has already been sought by your colleague.

**Sen. Sang:** Mr. Deputy Speaker, Sir, a number of clarifications have been sought by my colleagues. However, we need the Chairperson to clarify the criteria that was used in terms of allocating the various counties, the amounts of contributions that they have to make. That is important. Was it captured in the county budget and were those withdrawals made pursuant to the law where the Controller of Budget’s office is involved?

Could the Chairperson also clarify whether there is a co-relation between the arrogance of various individual governors and the contributions of their counties? This is because if you look at the contributions, the more arrogant a governor is, the more the amount they contribute to the Council of Governor’s (CoG) kitty.

*(Laughter)*

Could he also clarify whether the amount allocated or contributed by Kakamega County could have been used to buy the tear gas canisters that were used to assault the Senate Minority Leader and Sen. (Dr.) Khalwale?

*(Laughter)*

Could the Chairperson also clarify whether the Kshs10 million contributed by the Nandi County Government could have been used to sort out the mess that we have found ourselves in? Two weeks down the line, all the health facilities have been closed.

Mr. Deputy Speaker, Sir, not to go in the direction that Sen. Murkomen suggested, looking at this document, can we really talk about celebrating the success of devolution, drive all the way to Meru County to go and celebrate this kind of nonsense? Can the Chairperson confirm officially that the Committee on Commerce, Finance and Budget will advise this House that we do not find our way to Meru and that we focus on ensuring that we gain accountability of county resources that have been allocated to CoG?

**Sen. (Dr.) Zani:** Mr. Deputy Speaker, Sir, I will be brief because I think much has been mentioned. I would like to just get a clarification on where the budgets for this money came from. There was an agreement that this money is being put into the kitty but

we need to know exactly where the money was obtained from because budgets were very clear.

The budgets were through participatory processes within counties and so they have a mandate, even to the citizens of those counties in terms of how the money has been spent. This is why it is important for us to continually want to know where the money has gone to. It seems to have been diverted and gone to different places. When these budgets are given, they are given for specific socio-economic activities that need to be conducted within counties.

Secondly, Kwale County contributed Kshs27 million and I would like to know, where there was a shortfall. Can that shortfall be indicated? What suffered as a result of that money going into this kitty? Was it somebody somewhere who missed a bursary or a particular allocation? We need to know that.

Thirdly, what is the role of the county assemblies as oversight agents within counties? Could we have more clarification as to how so much money has disappeared in counties, without county assemblies even raising a finger, mentioning or talking about it?

Last is the amount that has been collected *vis-à-vis* what has been spent. There seems to be almost a whole proportion of 80 per cent that continuously remains in the kitty. Obviously, this county is collecting far more than it really needs to collect. What is the reason for that?

Is it probable that there might be some money that is being used specifically to gain interest for the particular counties? I think we need to tell this to the governors on their faces. No puncture will happen to the cars that will go to Meru County. We need to speak from the same forum and say it as it is so that as they say something, we tell them the alternative point of view. I think we owe it to the counties.

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, I think the reason why we need to seek more clarity on this matter is that it will unravel one of the mysteries which has baffled Senators for quite a long time. The mystery is, how governors manage to find a “bypass”. We all understand that a county treasury is organised in such a way that before any funds are drawn, they are committed through a budgeting process. Any time there is expenditure, it is from a particular vote.

For a long time, we have been wondering how governors manage to get through this, likely on paper, very stringent process and ensure that they get some money off the county treasury, which we see them distributing in various harambees over the weekends. I think if we pursue this matter properly and know how they were able to draw, for example, this Kshs20 million from Kericho County, then it will lead us to a position where we can get answers. We may even get to know the other places that money has been drawn from, yet there was no budgetary allocation. It will be very important to get that clarification.

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, I will be brief. The disparity of the amounts that have been deposited in this account by the various counties raises a lot of suspicion. We need clarification on whether there was an agreed uniform amount.

Secondly, is it possible that each governor is deciding on his own how much to deposit in this account? For that matter, it would be important that we are told how much was spent from each county, for example, whether I would want Trans-Nzoia County to

deposit almost Kshs20 million on this account. The people of Trans Nzoia County would want to know how this money has been used because it could have gone to better use. Our roads are not so good, it would have put a few students to school through bursaries and so forth.

On the issue of legal fees, I believe when each county has a legal issue, it should handle it from the county level and not the CoG level. Why is it that this money is being hidden here? Or is it for a rainy day? Is it for purposes of campaigns, come 2017? This is because there is quite a substantial balance that is yet to be used.

**Sen. Murungi:** Mr. Deputy Speaker, Sir, I do not want to repeat what my colleagues have said.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Murungi you have put your microphone far from you.

**Sen. Murungi:** Mr. Deputy Speaker, Sir, the clarification that I want to seek regards the erratic contributions that my county has made. If you look at Meru County which is region No.26 on the Report, we have contributed Kshs9.375 million in one year, Kshs27 million in 2014, Kshs6,140,000 in another year, Kshs7,820,623 in another year, making a total of approximately Kshs44 million. We are the second highest contributors to this fund.

Mr. Deputy Speaker, Sir, we would like to know the criteria; why we, as Meru County, are among the number one contributors to this fund in the Republic. Is it because of the personality of the governor, the size of the county or which criteria? Is it part of the campaign funds for him to be the Chairman of the Council of Governors (CoG)?

Secondly, what is the legal basis for the establishment of this fund? They say the fund was established on 5<sup>th</sup> June, 2014 by the CoG resolution at a meeting held on 8<sup>th</sup> May, 2014.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Adan, do you have a point of order?

**Sen. Adan:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Use your microphone, I cannot hear you. Please, move to the Dispatch Box.

*(Sen. (Dr.) Khalwale asked Sen. Adan to go to the dispatch box)*

**Sen. Adan:** Mr. Deputy Speaker, Sir, let me tell Sen. (Dr.) Khalwale that despite my first term in this House, I am not that illiterate.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order!

**Sen. Adan:** Mr. Deputy Speaker, Sir, having said that, I want to contribute, but unfortunately, I do not know whether you are reading me on your screen.

**The Deputy Speaker** (Sen. Kembi-Gitura): I am not reading you, but I have now heard you. May be your system is not working.

Sen. Murungi, go on.

**Sen. Murungi:** Thank you, Mr. Deputy Speaker, Sir. Maybe you should recognize Sen. Adan so that she can stop interrupting me.

*(Laughter)*

Mr. Deputy Speaker, Sir, it has taken us more than one year trying to establish a small fund for this Senate. We had to do regulations, laws and a lot of consultations with the Treasury. However, for governors, it was just a mere resolution in a meeting. Is there sufficient legal procedure for governors to establish this massive fund?

Mr. Deputy Speaker, Sir, I am sure Meru County Assembly has not, through its budget, authorized withdrawal of a total amount of Kshs44 million as contribution to this CoG fund. The law is clear. Those who withdraw money without approval of the county assembly should be surcharged and it be taken back to the public where it belongs.

Lastly, I know how some of this money has been spent because we have a helicopter which is now permanently based in Meru. To move from one village to another, the governor no longer drives, but he flies. Is that prudent use of public resources, to hop from one village to another while roads are not that bad in some areas?

I also know that part of this money was used to defeat Sen. Sang's Bill which was meant to enhance accountability from planning to implementation of projects in the counties. Is that a proper way to spend public money without accountability? I am one of those Senators - although coming from Meru County - who has decided not to attend the show in Meru.

*(Applause)*

Mr. Deputy Speaker, Sir, I cannot be part of a team which is going to self-congratulate itself for the plunder and theft of the resources of the people of this Republic. For those brothers who have decided to go, when they get there, let them ask the issues that have been raised in this report. I know Sen. (Prof.) Lesan said he had to go because of one reason or another. Therefore, we are sending him to go with this report and ask the governors where they got the authority to take money from the county governments all over the Republic and spent it in their own self-aggrandizement projects.

**Sen. Orendo:** Mr. Deputy Speaker, Sir, sorry because what I may say is a bit of repetition for I came in late. Please, bear with me. First of all, in terms of what I have seen here as money paid as legal fees, I am a little bit surprised that so much of this money could be paid as legal fees. I think the courts, even in elections petitions and a lot of legal fees that were expended by the governors were in regard to election petitions---

Mr. Deputy Speaker, Sir, you know that the High Court and other superior courts generally after the end of a hearing of an election petition, they cap the cost so that you are not allowed to demand costs of more than Kshs2 million. I have done one or two petitions where it was capped at Kshs2 million. So, I definitely agree with the preposition that the money being shown here as payment to lawyers should be audited because it is just a conduit. The lawyers just share this money with governors or their agents. If you look at the total money going to lawyers in those three years, it is almost Kshs200 million. This is about a quarter of the entire amount of the collections which the Government has submitted to the CoG.

Mr. Deputy Speaker, Sir, through this Senate, it is a matter which we can do a report to the Law Society of Kenya (LSK) to ensure that lawyers and LSK will not be used as a conduit of things of this nature.

Mr. Deputy Speaker, Sir, now I know why governors have so much money to spend. If a governor can give to the CoG Kshs60 million without approval of the county assembly, then this is a scandal. This is a decision that he just makes in the comfort of his office. He looks at the clouds and says the CoG deserves Kshs60 million even if there is a road which has not been done in the last three years. Looking at Lamu County which gets less than Kshs100 million for development, they contributed over Kshs15 million to the CoG. This is very sad.

Mr. Deputy Speaker, Sir, I am very happy that I am not in Meru. I am happy for the moment that I am not a governor although I know with this, there is a good case for all the governors to go home. I cannot find any exception. Even in instances where I find there is a reasonable contribution in relation to the others like Nairobi County which has a bigger budget, but the total amount is Kshs11 million. My problem is not about the figure or the contribution; in the first place, why the contribution was made and whether there was legal authority to make that contribution.

Mr. Speaker, Sir, at the end of the day, looking at the reaction to the requests, there is a case to ensure that the oversight of county funds is strengthened. As a Senator, I am just learning now that my county has contributed so much money. I know they have contributed to other things in a similar fraction, even for little celebrations like when there are new tractors going to the counties. There is also a contribution towards feeding people, for example, when President Obama plans to visit the county and he is unable to. At the end of the day, the Senate should be sufficiently strengthened to do oversight without fear or favour or thinking of the CORD or Jubilee. This is because the role of oversight is beyond our alliances or compliance with our political parties. This in itself shows that there is a level of impunity.

The Republic of Kenya, in its contribution to the African Union (AU) or to international organisations, has to be authorized by Parliament. The Senate Minority Leader, who is a former Cabinet Secretary for the Ministry of Foreign Affairs and the Speaker have experience in these areas. Contributions are determined on some basis. Kenya makes contributions on a basis which is pre-determined.

**The Senate Minority Leader** (Sen. Wetangula): In fact, an assessment is made.

**Sen. Orendo:** Precisely. The amount of money that the counties we believe are marginalized are paying to the CoG, does not meet their description. I, therefore, commend Members who are here and are not going to Meru. I am happy with the king of Meru for taking a stand. I am in solidarity with him for not going to Meru.

**Sen. Adan:** Mr. Deputy Speaker, Sir, a lot has been said, but I have one or two points to contribute. My question goes to the donors because they are really particular about the usage of their money. Why are development partners acting as conduits of money siphoning by the governors? The donors should go back to the drawing board and inquire how the money is used.

The second point that has already been raised is in regard to the person who approved the allocations. We, as Senators, sit here and ask for money to be allocated to

the counties, but we do not know how the money ends up with the CoG. That is very unfortunate for the Senate.

How is each and every county benefiting from this allocation or contribution? Does it mean that the more a county contributes, the more it benefits or the less the contribution the more the benefit? It is important for us to know. Why do we have double allocation both from the county and the CoG?

**Sen. Hargura:** Mr. Deputy Speaker, Sir, I will not go back to what my colleagues have asked on the issue of how these contributions are determined. However much has been contributed, these are public funds and we have expenditure items. I would like to know whether the expenditures are submitted to the public procurement requirements or the money is just spent by the CoG without following the public procurement requirements, yet these are public funds.

**Sen. Bule:** Mr. Deputy Speaker, Sir, this is a very important day for the people of Kenya, especially those from my county. It is sad for my county which only gets about Kshs4 billion. Part of this money ends up in the pockets of the governor and contractors. Most governors have at least ten contractors whom they use as “fishing baskets.” Tana River County is one of the counties which have problems in terms of accountability. The pending bills were presented in this House recently and Tana River County was not included. The Auditor-General has also clearly stated that Tana River County has not presented its report. However, I recently read in the newspapers that Tana River County is clean and free from corruption and does not have any pending bills.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Bule, you are supposed to seek a clarification on the Statement issued by the Chairman of the Committee on Finance, Commerce and Budget and not debate.

**Sen. Bule:** Mr. Deputy Speaker, Sir, governors have grown horns and the Senate should stand firm. We should ensure that we dehorn these fellows. My appeal goes to the---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Bule, however angry you may feel, they are still governors and not “fellows.” Please, refer to them properly.

**Sen. Bule:** Mr. Deputy Speaker, Sir, we thought that governors would govern the counties well. They are Chief Executive Officers (CEOs) who are accountable to us. Tana River County contributed Kshs40 million to the CoG when our people are dying of hunger. Ours is one of the poorest counties in the country. We will not recover from poverty if we continue doing what we are doing now.

I appeal to the Chairperson of the Committee on Finance, Commerce and Budget to ensure that we do something because we should not encourage corruption. The other day, I said that this Senate is supporting corruption because we have never taken action to dehorn these people. Hon. Senators and governors are elected. In fact, I got more votes than my governor. Therefore, we must ensure that no single shilling goes to the counties before it is accounted for.

I am mourning today. There is nothing more that I can say. We have to accept that we are the ones failing, not the governors, because we have given them these privileges.

**Sen. (Prof.) Anyang'- Nyong'o:** Mr. Deputy Speaker, Sir, as I was watching this debate from the Senator's Lounge, I was extremely excited to see the constructive

proposals and contributions that fellow Senators were making. I would like to seek two clarifications. If there could have been some regulations with regards to how the money was contributed, could the Chairperson seek from the CoG what assessment formula was used to assign the amount of money that was to be contributed by each county? From what we have heard, it has neither rhyme nor reason, given what we know from the counties on population, GDP or level of poverty.

Secondly, I would like to raise two questions with regard to the funds that have been utilized. I notice that in office rent, they used over Kshs41 million in the 2013/2014 Financial Year which then shot up to over Kshs134 million in 2014/2015, then it went down to Kshs62 million in 2015/2016 Financial Year. This could mean that the governors suddenly shrunk the office facilities and decided to use fewer offices in terms of rent. Was that the case?

On the issue of office maintenance and partitioning, there is shrinkage and ballooning similar to the office rent. I would like to get clear clarification from the auditor to know whether this is creative accounting or this kind of accounting reflects reality.

Mr. Deputy Speaker, Sir, the Senators have made an extremely important point that whereas we have been struggling as a Senate to increase the money that goes to the counties so that critical services like health and Early Childhood Development Education (ECDE) are financed and whereas the governors have always been chiding the national Government for not sending them money in time for them to use, when it comes to the contributions of money to this fund; they seem to have been done that rather promptly. This puts our pressure to take money to county in jeopardy at this point in time. We are not convinced by this kind of presentation that we have governors who can use money responsibly.

I would like to give an example of my county, Kisumu County, which to date has contributed Kshs27 million to this fund. I know for certain that in terms of implementing the ECDE facilities, we are behind. Therefore, the priority given to financing essential services at the county level and given the scarcity of funds that the Government has been talking about, is not evidenced or supported by this kind of expenditure. Therefore, in our communication to the Auditor-General, the Ministry of Devolution and the CoG themselves, it should be made clear that the Senate, in our oversight capacity, have made this object observation.

As Sen. Orendo said earlier, this is evidence that it is high time the governors bowed out and created room for much more responsible people to look after public funds. This is in national interest as well as in the interest of preserving devolution by the community of devolution, which includes the Senators, the county executives and the county assemblies.

That is why the devolution conference that is to start tomorrow in Meru County was misplaced in its conception. This because although we are talking about devolution to be discussed by the devolution community, only one member of that community, the governors have allocated themselves the responsibility of reviewing devolution. It is incumbent upon us, as Senators, that sometime later this year or early next year, do a comprehensive and sensible evaluation of devolution and give the nation a way forward.



**The Deputy Speaker** (Sen. Kembi-Gitura): What is your point of order, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. You can see the level of interest and the seriousness of the issues being raised. We have established a tradition in this House where when matters are weighty as these are, we normally request the Chairperson of the Committee to invite the Cabinet Secretary in charge of the line Ministry to come to the Committee of the Whole. Will I be in order to request that you consider asking the Chairperson to invite the Cabinet Secretary in charge of Devolution and National Planning as well as the Chairman of the CoG, so that they could shed light on these important matters that need clarifications?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, I still have two more requests from the Floor. Let me listen to what they have to say so that we give everybody an equal chance before we give the Chairperson of the Committee an opportunity to respond. After that, we shall see whether what you are asking is a matter that can be accommodated.

**Sen. Wamatangi:** Mr. Deputy Speaker, Sir, I would like to seek clarification on quite a number of issues with regards to this Statement. First, I congratulate my colleagues who have raised pertinent issues. I would also like to recognize that my county, Kiambu County, has suffered this injustice by contributing Kshs12 million to this kitty. The media and other reports may bear me out that as late as last week, children were dying in Kiambu County hospitals due to lack of oxygen machines and yet the governor had the audacity to contribute Kshs12 million to a kitty that is not only ambiguous, but largely, in my conviction, has undertaken illegal activities. As far as the Constitution is concerned, what are the defined roles and functions of the CoG? Secondly, is it justifiable that a total of Kshs1.3 billion could have been spent to facilitate the functions of the CoG?

Other specific areas that I would like the Chairperson of the Committee to clarify to this House is a follow up on what Sen. (Prof.) Anyang'-Nyong'o said so that the Chairperson of the Committee on Finance, Commerce and Budget can apply some actual arithmetic to give us conclusive answers. I would also like to seek a clarification on what Sen. (Prof.) Anyang'-Nyong'o said. For instance, in the 2014/2015 Financial Year, office rent for the governors was Kshs134 million, and then another Kshs102 million was added for purposes of maintenance of the same offices. That means that if every governor out of the 47 governors had an office in Nairobi, the amount spent on each office for that one year was Kshs5 million. What kind of office would be rented at Kshs5 million for one year? If you divided that by 12 months, it gives you figures that are unbelievable indicated as the cost of renting those offices for one year.

Mr. Deputy Speaker, Sir, also, on page 2 of the Statement, it is indicated that there are grants that are given to the CoG. Under these grants, there is a grant of Kshs265 million from the National Treasury. The question we would like clarified is: what assessment has been done by the national Government to determine that the CoG is worthy of Kshs265 million of taxpayers money to finance their activities? Besides that, you realise that, for example, in this one year, the CoG has spent Kshs265 million for the three years, they have further spent another Kshs1 billion. So, even if the Kshs265

million was allocated on the basis that there was an assessment, then they have gone further ahead to spent an extra Kshs1 billion, way above what should have been the expenditure.

In addition, you may also be keen to note the kind of money that has been spent on an item called photocopying and printing. It is unbelievable that they would have the audacity to spent Kshs76 million on printing and advertising. It is indicated in the audited accounts. Owing to the fact that my colleagues have spoken about other issues; the legal fees and so on, in summary, this must be the easiest conduit that is used to fund other activities of governors, including possible siphoning of public funds.

Furthermore, for goodness sake, if you look at some of the committees the governors have formed; they have more than 19 committees with several governors sitting in them. What sitting allowances does a governor earn to sit in more than six committees? Some of them are in more than six committees as per the list that they have provided. You may remember that there was a time it was claimed that one county government had gone to the extent of opening a foreign office in a foreign country. One of the committees is on foreign affairs. So, who said that foreign affairs is a devolved function? What would the CoG be up to having a committee on foreign affairs?

Mr. Deputy Speaker, Sir, finally, we also need to get clarification from the Auditor-General. Is he under specific instructions from the CoG, that the way and format of reporting on their audit should be special from any other government institution? I say so, because deep down in the report, in one of the pages, at the beginning of it, there are two pages of the photographs of governors and some office holders. I have not seen this in any other audited report. Who told the Auditor-General that the CoG is such a special unit that he should include photographs of governors?

Many of us have said that the Auditor-General's office is moribund. You may remember the debacle we were treated to in Kisumu when these guys painted the town literally red with their photographs, from the airport to the bedrooms of the hotel where they stayed. If this infection has gone down to the Auditor-General, then he needs to answer to this Senate why he finds it befitting to have the photographs.

Lastly, I would like to ask the Chairperson of the Committee if it is possible that the Committee on Finance, Commerce and Budget could initiate the process of coming up with a Bill to regulate the expenditure and contributions by counties to the CoG. If we had that kind of law – this is the Senate – our role pursuant to Article 96 of the Constitution is to cast oversight over funds allocated to county governments. These are such funds. So, it is very much in order for us to pass such a law to ensure that funds which are allocated to counties are used in a proper way by way of legislation which would have been passed by this House.

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

We will have two more interventions only. I hope they will be brief so that we can finish.

Proceed, Sen. Okong'o.

**Sen. Okong'o:** Mr. Deputy Speaker, Sir, I will be brief because most of the issues have been captured by my colleagues. First, I would like to know from the Chairperson

of the Committee if these matters were addressed in the county assemblies which are supposed to perform the primary role of oversight at the counties.

Secondly, I have seen items regarding development partners; monies given by donors to the tune of over Kshs7 million. I would like to get clarification why these monies were given in cash. My understanding of the civil society and development partners is that if a donor wants to assist, they capacitate whatever they want to. For instance, if it is human resource or civic education, they hold the function on your behalf. If cash was given, we need to know the criteria which were used for such money to be given to the counties.

I also agree that there is no need for us to go to Meru to face the same debacle which our colleagues faced last time.

**Sen. Mositet:** Mr. Deputy Speaker, Sir, mine will be brief. I would like to get a clarification on how the money is incorporated in the budget of the counties. Budget making in the counties begins by public participation where people present their views on what needs to be done. After that, the executive sits down and comes up with a budget which is later interrogated by the county assembly. So, at what point do these contributions come in?

I am also wondering whether this kitty has been set aside by the governors to get funds to facilitate the next elections. This is a lot of money. In Kajiado County, for example, for the last three years, almost Kshs19 million has been spent. They have spent this money yet there is a ward called Mosiro which is in need of water. It is just the other day that we got a single borehole in a ward with almost 10,000 people. It is a very dry area. I believe that with the Kshs19 million, we could have sunk another six boreholes to solve the water problem.

Mr. Deputy Speaker, Sir, it would also be good to know how the Controller of Budget allowed the withdrawal of that money. I believe that before they are allowed to have that money, they make a request through the Controller of Budget. Therefore, how does she allow that to happen?

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Senators. It has been a long session of clarifications. Sen. Billow, are you able to do all that now? If “yes,” bear in mind the point of order that was raised by Sen. (Dr.) Khalwale. Let us find the way forward.

**Sen. Billow:** Mr. Deputy Speaker, Sir, I thank all the Members who sought clarifications. In fact, there is no Member who did not seek a clarification. This is an important matter because it is about accountability and how public funds have been used. Before I go on to specific questions - from the mood of the House and what the Members have asked - I propose that we organise a *Kamukunji* for all the Senators and invite the Controller of Budget, the Auditor-General, the Chairman of the CoG and the Cabinet Secretary of the National Treasury. Although these are county functions, the Cabinet Secretary for National Treasury may be invited nonetheless.

They will explain issues relating to these funds. The reasons are very clear. They are as follows: The mandate of the CoG is clearly set out in law. The basis for their funding is also provided for in legislation. In fact, the Transition to Devolved Governments Act is clear that the CoG is a national Government entity. That is why it is

funded by the National Treasury. The only legitimate funding of the CoG is from the approved annual estimates by the National Treasury. It is Kshs265 million. Therefore, it is important to convene the meeting. I will liaise with the Speaker's Office and that of the Clerk to organise for a meeting at the earliest opportunity.

Secondly, Mr. Deputy Speaker, Sir, I agree with the proposals that have been made. We get the Auditor-General to do forensic audit, particularly in regard to the payments of over Kshs200million for legal fees, among others. It is interesting to note that the Auditor-General in the reports of 2013/2014 and the 2014/2015 gave a clean bill. The Auditor-General said that he is satisfied with the financial report and the state of affairs of the institution. Therefore, it is essential that we demand a forensic audit on the legal fees and other payments that we think represent some sort of slush fund.

Thirdly, there is possibility of surcharging officers in the county governments. It is apparent that the county governments' allocations to the CoG are not legal. The functions for which the county government funds are to be spent are provided for under Schedule Four of the Constitution. It does not include funding a national government entity for which the National Treasury is mandated in law to finance.

Mr. Deputy Speaker, Sir, this is why the allocation varies from one county to another. It is discretionary and one county agrees to pay, but the other refuses. This year one county may pay and declines the following year. Therefore, it is arbitrary. There is no provision in law. If it were lawful, every county would be mandated to pay the amounts. The amounts have been set through the minutes of the CoG. In the first year, they decided on Kshs15 million. In the second year, it was over Kshs20 million. Although they did not attach the minutes, I know others will pay and some will decline.

Since there is no legal provision that the county governments provide funding to an entity for which there is funding from the national Government, it is an illegality. Therefore, there is room for surcharging some of the officers.

Mr. Deputy Speaker, Sir, fourthly, it is appropriate to warn the county assemblies. I know that these monies have been provided for in the county budgets. The county assemblies have approved those budgets. When we visited the County Assembly of Embu, we were told that there was a time they delayed the approval of the budget because they wanted the amount to be removed from the budget. Therefore, the county assemblies need to know that approving such a fund within their budgets to be paid to the CoG is an illegality. They must decline to approve any funds to the CoG. The institution is funded by the national Government and is provided for in law.

Lastly, I suggest that the Senate writes to the Ethics and Anti-Corruption Commission (EACC) to investigate some of the payments and transactions relating to these. They have been claiming they hired aircrafts and may have used these monies for other illegalities. We know there is a possibility of irregular transactions that have been conducted by the Council.

Mr. Deputy Speaker, Sir, those are the five general points that I propose. It is also surprising that donors and, in particular, the United Nations Development Programme (UNDP) can give nearly Kshs60 million to an entity that is funded. The UNDP understands the challenges of poverty, water and health in our communities in this country. It is surprising that many other institutions are funding.

The Kenya Power gave a grant of Kshs26million, LapTrust gave Kshs6.7million and the World Vision gave Kshs5 million. It is surprising that some of these institutions can go ahead and do this before checking that the institution is getting a lot of funding. The Kshs 1.3 billion in three years is about Kshs40 million a month. Therefore, for an institution whose role is simply to provide coordination and facilitative role for the counties, to spend Kshs40 million monthly is waste of money.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Billow, you have made a good proposal which is acceptable and can be expanded to summoning all the relevant persons to appear before the committee and the Senators in a *Kamukunji* to answer the raised questions. Do you want to deal with them individually or you want it to be dealt in a *Kamukunji*? However, you have given a good preamble and a proposal.

**Sen. Billow:** Mr. Deputy Speaker, Sir, it is not exactly that way. I have no intention of going through each of them, but I just need any item that may not have been captured in the five points that I have mentioned.

**The Deputy Speaker** (Sen. Kembi-Gitura): There are many issues that were raised. The Senators wanted an in-depth clarification from the persons that you have mentioned. Since you have come up with the proposal yourself - which Sen. (Dr.) Khalwale had raised in a point of order - that will be the correct way forward.

**Sen. Billow:** Mr. Deputy Speaker, Sir, that will be the right way to go. We will get all those specific sets of questions from the HANSARD and our committee will prepare that. First, we will then invite the Auditor-General and then the Controller of Budget, the Cabinet Secretary for the national Treasury and the CoG. After that, we will then take necessary actions.

In the meantime, we need to also invite the EACC to examine that account as a matter of urgency because there are claims that the money could have been used as a slush fund to finance some of the governors. At the same time, we could act on other issues that I have mentioned. We could suggest that they conduct special forensic audit in that meeting. Therefore, I agree on the way forward.

**The Deputy Speaker** (Sen. Kembi-Gitura): Very well, Sen. Billow. The issue has been very well articulated and ventilated. It is my view that it is a matter that we must pursue so that we get the answers because my take from the Senators' contribution is that they are acting pursuant to the powers under Article 96 of the Constitution; to protect the interests of the counties and county governments. So, this is very important and it is good that it has gone that way.

Sen. Billow, it will depend very much on you on how fast you can move the process to have the relevant persons or officers and the CoG come before the Senate to answer all those very pertinent questions that have been raised. I will order that the HANSARD be made available to your committee as soon as possible because you will need it to summon or invite all these persons to come before us. They must be made aware of the several issues and questions that have been raised. They must also deal with them to the satisfaction of your committee and this Senate. That is so ordered.

Next Order!

**Sen. Obure:** On a point of order, Mr. Deputy Speaker, Sir. You intent that we move on to the next Order, but the Speaker, before he left, had agreed that Statement (d) will be issued.

**The Deputy Speaker** (Sen. Kembi-Gitura): Could I have a copy of the Order Paper?

*(The Clerk-at-the-Table handed a copy of the Order Paper to the Deputy Speaker(Sen. Kembi-Gitura))*

Are you the one to issue the statement?

**Sen. Obure:** Yes.

**The Deputy Speaker** (Sen. Kembi-Gitura): I can see Sen. Mositet is here. Are you ready to give the statement?

**Sen. Obure:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Okay, that will be the last statement.

**Sen. Obure:** Mr. Deputy Speaker, Sir, I will try to be very brief.

THE KILLING OF TWO PEOPLE IN KAJIADO  
COUNTY BY MARAUDING ELEPHANTS

**Sen. Obure:** Mr. Deputy Speaker, Sir, on 17<sup>th</sup> March this year, the Senator for Kajiado, requested for a statement from the Chairperson of the Committee on Land and Natural Resources on the killing of two people in Kajiado County. He specifically requested that an explanation be given on the circumstances that led to the death of Mr. Saitoti Santamu Oleku and three year old Ntompoto Ntoipo Nchaiyo within Kajiado East Constituency on 2<sup>nd</sup> February, 2016, and 6<sup>th</sup> March, 2016, respectively.

Secondly, he wanted an explanation on the status of compensation claims for the two victims. Lastly, he sought an explanation on the measures taken by the Kenya Wildlife Service (KWS) to keep watch over wildlife and ensure that they do not pose danger to people living around wildlife conservancies, game reserves and national parks.

In response, I want to say the following. The late Saitoti Santamu Oleku was killed by an elephant on 1<sup>st</sup> February, 2016 at around 6.30 p.m. The incidence occurred while he was guarding his water pan to restrict wild animals from watering from it. An injured elephant attacked him and he was rushed to Merrueshi Health Centre where he died while undergoing treatment.

The second case involved the child. On 6<sup>th</sup> March, 2016, at around 3.00 p.m., the KWS Rapid Response Team based at Kiboko area received information that a three year old child by the name John Ntompoto Ntoipo Nchaiyo was accidentally trampled on by an elephant while coming from church in the company of his mother at MCK Village of Kajiado East Constituency, Kajiado County. The child was rushed to Masimba Dispensary where he was referred to Makindu General Hospital. He passed on while undergoing treatment at Makindu General Hospital.

The area where the incident occurred is generally bushy and the mother could have been caught unawares. The KWS suspects that the elephants could have been in a

herd of five. Efforts by the service to get factual details around the attack were hindered by the community who turned hostile after the incident and went on a rampage spearing one elephant and injuring others.

Mr. Deputy Speaker, Sir, regarding the status of compensation, the two cases have been confirmed by the KWS staff. In accordance with Section 25(1) of the Wildlife Act of 2013, the next of kin for the two cases were facilitated with compensation forms which they filled and submitted to Kajiado County Wildlife Conservation and Compensation Committee. The Committee sat on 24<sup>th</sup> February, 2016, and recommended payment of Kshs5 million for Mr. Saitoti Santamo Oleku as required by law. The Committee will hopefully sit at its next meeting to consider compensation for young John Ntompoto Ntoipo Nchaiyo.

Regarding measures taken by the KWS, I want to confirm that the KWS has taken a number of measures to deal with the danger posed by wildlife to people in that particular area. Both aerial and ground elephant drives have been conducted. The ground patrols are conducted both in the morning and evening. The KWS also set up a temporary camp at Masimba and Merrueshi areas in February this year to ensure swift action in service delivery.

There is also the intention to undertake translocation of problematic species of animals believed to be causing many conflicts. Further, the procurement and fixing of carnivore and elephant collars to aid in the animal surveillance and monitoring is also being undertaken. Furthermore, there has been strengthening of the ranger force in the area in order to undertake early morning and night patrols within the areas as most conflicts are experienced during that time.

Kajiado County is now headed by a senior KWS officer, whose job description includes handling human-wildlife conflicts and participating in community *barazas* to create awareness among the communities on what should be done or not pertaining to wildlife.

Lastly, in addition, KWS has developed and is maintaining a database of conflicts. This has enabled the Service to map out areas with high conflict rates which allows for strategic decision making like translocating problematic animals from an ecosystem whose carrying capacity is exceeded, to suitable ones with less of such species.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you very much, Senator. Sen. Mositet, do you want to seek a clarification?

**Sen. Mositet:** Mr. Deputy Speaker, Sir, I also thank the Chairperson for trying to answer the few questions that I had asked. First of all, you heard the representative of the Chairperson say that the three year old child was trampled on by elephants on 6<sup>th</sup> March, 2016 and Mr. Oleku was also killed on 1<sup>st</sup> February, 2016. He then stated that the Committee which is mandated to look at the compensation sat on 24<sup>th</sup> February, 2016. I really doubt whether by 24<sup>th</sup> February, 2016, the child was still alive. So, I do not know how the child's compensation had been picked up by the Committee. That is something that I want the representative of the Chairperson to clarify.

You heard that Mr. Saitoti Santamu Oleku was killed while guarding his water pan. That is very sad. That is the pan that his family, the neighbourhood and their animals depend on. While guarding the water pan, the elephants came, trampled on Mr. Saitoti

and killed him. In 2014 and 2015, within the same area called Mugo, an elephant killed another person who was also guarding a water pan. After that, KWS staff and the Ministry of Environment, Water and Natural Resources staff committed themselves and said that they would make sure that even though there was the issue of compensation, one of the things that they would do, was to make sure that they come up with a policy whereby within that area or any conservation areas, they will maintain the water pans, make more water pans for the people and make sure that they drive their animals so that they do not go to where people live.

Mr. Deputy Speaker, Sir, going per the statement which has been issued, already we are told that one of the measures that have been taken by KWS is to make sure that they have aerial and ground elephant drives conducted in the mornings and maybe in the evenings. That is not true. If we were to call the people of that area this evening, we do not have KWS patrolling. Neither do they patrol in the mornings. So, it is good that when statements are issued, they are issued with facts from the ground.

On the issue of a temporary camp at Masimba/Merueshi, we have always had one within the same area. In fact, we should be talking of whether they have increased the number of rangers so that we have enough of them.

On the issue of translocation of problematic animal species, we have never at any time had KWS going round telling people that they are trying to locate the animals that they feel could be dangerous to humans. Unless maybe somebody has been killed, that is the only time they come and say: "Okay. Could you show us the elephant which did this so that we kill it?" At no other time do they go round trying to identify animals that could be dangerous to human beings.

On the issue of procurement and fixing of carnivore and elephant collars so that surveillance can be done on the same animals, this is a very big joke. Even here in Nairobi County, we are normally warned that there are lions in the estates and so, it is upon the people to call KWS and inform them where they have spotted the lions. They cannot be spotted because they do not have those collars. In fact, that issue needs to be pursued, particularly with the animals in Nairobi National Park and also the elephants within the conservational areas where we have human beings.

On the issue of night patrols, I can tell you, Chairperson, that those people definitely do not do any. That is one area that I believe you need to ask the Ministry so that they stop cheating us and tell us what they intend to do.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Mositet, you are seeking a clarification and you cannot possibly be giving a complete new statement.

**Sen. Mositet:** Mr. Deputy Speaker, Sir, let me just propose one thing or give a suggestion. Could KWS try to come up with either a strategic environmental impact assessment on the animals that we have or a social impact assessment on animal versus human beings. That way, we can see how we can mitigate in case of the problems that we are already experiencing.

Mr. Deputy Speaker, Sir, we know that the Nairobi National Park which is supposed to ---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Mositet, please, wind up because you are seeking a clarification.



**Sen. Mositet:** Mr. Deputy Speaker, Sir, yes I am seeking a clarification.

**The Deputy Speaker** (Sen. Kembi-Gitura): It has taken too long because you had the statement.

**Sen. Mositet:** Mr. Deputy Speaker, Sir, not really a statement. I also wanted to give some input which can help or guide the Chairperson as he goes to seek further clarification.

Currently, we are having a serious problem with animals within Kajiado County, particularly those which come from Nairobi National Park. Could I request the Chairperson that when he brings further clarification, let him also find out what the Ministry and KWS are doing to mitigate so that we do not have conflicts between animals and people within Kitengela all the way to Amboseli? We want to seek for finances to make sure that we have a corridor linking Amboseli and Nairobi National Park.

**Sen. (Dr.) Zani:** Mr. Deputy Speaker, Sir, I would like to seek clarification on two matters very quickly. How many such cases have occurred? We are just seized of these two cases because Sen. Mositet brought them out. However, it would be useful to understand the level of human being-animal conflict in this region.

Secondly, obviously the measures do not seem to be working. Could we get more clarification on more dynamic measures that they intend to put in place to ensure that such cases do not happen again? We do not need to have even a single person losing their life. It is not about compensation here, but the loss of life. Could we have clear measures, whether it is clear demarcation, use of electric fences or something definite so that we can be assured that such incidents do not recur?

**Sen. Obure:** Mr. Deputy Speaker, Sir, I want to clarify that we are aware that the accident involving the child took place on the 6<sup>th</sup> March, 2016. So, on the 24<sup>th</sup> February, 2016, when this Compensation Committee met, the child was alive. What I said in response was that both the relatives and the guardian of this child have been identified. They have been given claim forms to fill and they have done that. What I said is that we hope that at the next meeting of this Compensation Committee, the case of the child will be discussed and the recommendations made. However, in the case of the adult, Mr. Saitoti, recommendation has already been made to pay compensation to the tune of Kshs5 million, in accordance with the law.

Mr. Deputy Speaker, Sir, I want to admit that the Senator for Kajiado has raised a number of issues challenging the---

**The Deputy Speaker** (Sen. Kembi-Gitura): How have you dealt with the issue of the accident of 6<sup>th</sup> March, 2016, and you are talking about the 24<sup>th</sup> February, 2016, Sen. Obure? It is not quite clear.

**Sen. Obure:** Mr. Deputy Speaker, Sir, what I said is that after the first incident involving Mr. Saitoti Santam, the committee went on to meet and discuss his compensation claim. They made a recommendation that he be paid an amount to the tune of Kshs5 million. Subsequently, there was the case of the child on the 6<sup>th</sup> March, 2016. The relatives of the child has been given the forms to fill, which they have done and the committee at its next meeting will consider the issue of compensation for the child.

Mr. Deputy Speaker, Sir, on the issue of the commitment which had been made by the KWS, for example, to organize separate water pans for the people and separate ones for the animals, these are commitments which were made and various answers have been given in this statement which the Senators challenged. What we intend to do is to request the KWS Director and his staff to come to our meeting. We will raise the various concerns which the Senator has raised and deal with the statement you have talked about, including aerial and ground elephant drives. We have been told from the ground that they are not undertaking any such drives. What is the actual position on the ground?

In fact, information given to us has been challenged by the Senator. That is why it is important to get the people, tell them what the Senators said, tell them what the feelings on the ground are and tell them about the procurement of collars, for example, which the Senator has challenged and let us understand what is going on in the ground. Is what they say in the statement they have given us what exists on the ground? That is what we intend to do.

Mr. Deputy Speaker, Sir, the issue of human-wildlife conflict has arisen and the Sen. (Dr.) Zani has raised that issue as well. We know that this is something occurring all over the country where we have conservancies or reserves. We had discussions with the KWS on this matter and they have given undertakings of the various measures they intend to put in place in conjunction with the local communities in those areas. Whether that will work to the satisfaction of everybody is one question, but I know that arrangements have been made to reduce the conflicts between humans and wild animals.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you very much, Sen. Obure. That is the end of statements.

Next order! Hon. Senators, I request you to stay in so that we can finish the business of the day for the few minutes.

## BILLS

### *First Readings*

THE MEDICAL PRACTITIONERS AND DENTISTS  
(AMENDMENT) BILL (SENATE BILL NO. 2 OF 2016)

THE POLITICAL PARTIES (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO. 5 OF 2015)

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

**MOTION****ADOPTION OF REPORT ON THE SECOND BASIS FOR EQUITABLE  
SHARING OF REVENUE AMONG COUNTY GOVERNMENTS**

THAT, the Senate adopts the Report of the Standing Committee on Finance, Commerce and Budget on the Second Basis for equitable sharing of Revenue among the County Governments laid on the Table of the House on Wednesday, 30<sup>th</sup> March, 2016.

*(Sen. Billow on 14.04.2016)*

*(Resumption of Debate interrupted on 14.04.2016)*

**Sen. Murungi:** Mr. Deputy Speaker, Sir, I rise to support this Motion that the Senate adopts the report of the Standing Committee on Finance, Commerce and Budget on the second basis for equitable sharing of revenue among the county governments which was laid on the Table of the House on Wednesday, 30<sup>th</sup> March, 2016.

Mr. Deputy Speaker, Sir, this matter has been thoroughly discussed in various fora and recommendations made by the Commission of Revenue Allocation (CRA) which has been accepted by the Committee on Finance, Commerce and Budget. To me, this is a very good formula for us to use in the next three years. Population had been given recognition of 25 per cent. All the counties will equally share 26 per cent. Poverty in terms of affirmative action which should also be read together with the development factor is going to uplift the areas which have been previously considered as marginalized and it takes care of them. Also, expansive areas like Marsabit land area at 8 per cent, is also a very good consideration.

Mr. Deputy Speaker, Sir, the most important is fiscal responsibility. Many counties are not able to make sufficient budgetary arrangements and are not able to put in place proper accounting mechanisms. Giving them 2 per cent for capacity building is a wise consideration.

Without wasting much time, I would like to support the report of the Committee on Finance, Commerce and Budget on the second basis for equitable sharing of revenue among county governments.

Thank you.

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

Sen. (Dr.) Zani, you wanted to contribute to this debate?

**Sen. (Dr.) Zani:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Oaky. You only have one minute.

**Sen. (Dr.) Zani:** Thank you, Mr. Deputy Speaker, Sir. I also stand to support this report. As we have discussed, the allocations are quite clear. There are very few changes for equitable sharing that has increased. That is good because it means more equitability within the counties. Poverty has reduced which should be as a result of counties having improved from equitable share last time.

Mr. Deputy Speaker, Sir, the process has been involving in terms of ensuring that members from various stakeholder communities have been incorporated in the discussion. Over time, they have been able to impact into the formula and we have been able to look into the experiences from other communities and bring this on board to ensure that county optimization takes place. This will lead to stable and predictable allocation of revenue within the counties and that development, both economic and social, is possible within these counties.

Mr. Deputy Speaker, Sir, moving forward, other factors such as infrastructure and urbanization might need to be put into consideration so that we make this formula more robust.

Thank you and I beg to support.

**The Deputy Speaker** (Sen. Kembi-Gitura): There is no more interest.

**Sen. (Dr.) Zani:** There being no more interests, could I request that we defer the voting on this particular Motion to a later time when we have quorum in the House?

**The Deputy Speaker** (Sen. Kembi-Gitura): We defer voting or the putting of the question?

**Sen. (Dr.) Zani:** Mr. Deputy Speaker, Sir, we defer putting of the question and subsequent voting to when we have requisite number in the House.

Thank you.

**The Deputy Speaker** (Sen. Kembi-Gitura): Very well, the putting of the question is deferred to tomorrow, Wednesday, 20<sup>th</sup> April, 2016 at 2.30 p.m. so that we can be done with the business.

*(Putting of the Question on the Motion deferred)*

## ADJOURNMENT

Hon. Senators, it is now 6.30 p.m. It is now time to adjourn the Senate. The Senate, therefore, stands adjourned until tomorrow, Wednesday, 20<sup>th</sup> April, 2016, at 2.30 p.m.

The Senate rose at 6.30 p.m.