

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 16th March, 2016

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

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

PRAYERS

COMMUNICATIONS FROM THE CHAIR

CHANGE OF VENUE FOR WORKSHOP ON THE COUNTY MONITORING, EVALUATION AND IMPACT ASSESSMENT FUND

The Temporary Speaker (Sen. Ongoro): Hon. Senators, I would like to communicate the following:-

Further to my earlier Communication from the Chair on Thursday, 10th March, 2016 about the workshop on operationalization and implementation of the Senate County Monitoring and Evaluation Fund and my subsequent letter on the same dated 15th March, 2016, I am pleased to inform you that the Senators briefing is still on as scheduled on Thursday, 17th March, 2016 from 8.30 a.m.

However, please note that the venue has been changed from the earlier communicated venue to the Senate Chamber.

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

The Temporary Speaker (Sen. Ongoro): What is so out of order at this stage, Sen. Murungi?

Sen. Murungi: Madam Speaker, we are happy that you have made the communication for Members to come to the Chamber tomorrow for a briefing on the status and implementation of the County Monitoring and Evaluation Fund.

However, 8.30 a.m. will be inconvenient for many Senators. If I could plead with you to amend the time to 9.00 a.m. we will really appreciate.

An. hon. Senator: I support.

The Temporary Speaker (Sen. Ongoro): I have heard you, Sen. Murungi. However, for now, the Communication remains as such. Before end of business, in case of any further communication, we shall let you know.

Hon. Senators, before we move on to the next Order, I have another Communication.

VISITING DELEGATIONS OF MEMBERS AND STAFF FROM
KILIFI, NYAMIRA AND VIHIGA COUNTY ASSEMBLIES

Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting Members and staff from Kilifi, Nyamira and Vihiga county assemblies.

The county assembly Members and staff are here on attachment with their counterpart committees and departments at the Senate. I request each Member of the delegation to stand when called out so that they may be acknowledged in the Senate tradition. They are as follows:-

From Vihiga County Assembly, Finance Committee:-

- | | | |
|---------------------------|---|-------------------|
| 1. Hon. Zacharia Murefu | - | Chairperson |
| 2. Hon. Dorcas Anupi | - | Vice Chairperson |
| 3. Hon. Joshua Olao | - | Member |
| 4. Hon. Jennipher Ekhuya | - | Member |
| 5. Hon. Clyde Kweya | - | Member |
| 6. Hon. Vincent Atsiaya | - | Member |
| 7. Hon. Benedict Kiwanuka | - | Member |
| 8. Hon. Elizabeth Muhonja | - | Member |
| 9. Hon. Adalla Chogo | - | Member |
| 10. Mr. Nahashon Kusina | - | Deputy Clerk |
| 11. Ms. Peris Odari | - | Senior Accountant |
| 12. Mr. George Kibisu | - | Serjeant-At-Arms |
| 13. Mr. Ken Okanga | - | Senior Clerk. |

From Kilifi County Assembly Human Resource Department we have the following:-

- | | | |
|---------------------|---|---------------------------|
| 1. Samson Makazi | - | Human Resource Officer II |
| 2. Gabriel Charo | - | Office Assistant |
| 3. Faima Mohamed | - | Office Assistant |
| 4. Innocent Ngumbao | - | Office Assistant |
| 5. Hastings Mrisa | - | Office Assistant |
| 6. Esther Kadzo | - | Office Assistant |
| 7. Moses Karema | - | Office Assistant |

From Nyamira County Assembly Human Resource Department:-

- | | | |
|-------------------|---|--------------------------|
| 1. Joshua Kerandi | - | Administrative Assistant |
| 2. Linet Nyang'au | - | Librarian |

I hope that they have a fruitful programme. On behalf of the Senate and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

Hon. Senators, I do not see any requests on my screen. Please log-in.

Sen. Khaniri, what is your intervention?

Sen. Khaniri: Madam Speaker, allow me to join you in welcoming the delegation from the great County of Vihiga, the county that I represent in this Senate.

I would like to note that Vihiga County has taken full advantage of the Speaker's capacity building programme for counties. You will note that this is the fifth delegation that is visiting the Senate from that county. I wish to encourage them and tell them that as a nation, we rely fully on county assemblies to ensure that devolution benefits Kenyans. We struggle to send

money to the counties and, therefore, it is the responsibility of county assemblies to ensure that the monies sent there reach the desired recipients.

I wish the delegation well. I know I am scheduled to meet them tomorrow. We will have further discussions when you pay a courtesy call. I wish you a fruitful stay in Nairobi.

Sen. Madzayo: Asante Bi Spika wa Muda kwa nafasi hii. Nashukuru kwa wafanyakazi wa Bunge la Kaunti ya Kilifi kufika hapa ili kujifundisha jinsi kazi inavyo endelea katika Bunge hili la Seneti.

Bunge letu la Kaunti liko Malindi. Ningependa kuwashukuru watu wa Malindi kwa ushujaa wao waliouonyesha wakati wa uchaguzi mdogo wa juzi. Walionyesha msimamo wao na kwamba hawatakubali kununuliwa kwa pesa.

Mwisho, wafanyakazi hawa wataendelea kujifunza ili wakirudi nyumbani waendeleze shughuli za serikali zetu za ugatuzi.

Sen. Nabwala: Madam Temporary Speaker, I also would like to take this opportunity to welcome the county assemblies of Vihiga, Kilifi and Nyamira. It is a good idea for the county assemblies to benchmark with the Senate as opposed to travelling outside the country because that is expensive. One way of cutting down the costs is to benchmark with the Senate.

This morning, Members from the Vihiga County Assembly appeared before the Committee on Finance, Commerce and Budget. They were curious and wanted to learn how the Committee operates.

I take this opportunity to welcome other county assemblies to come and benchmark with the Senate. With time, they will build capacity and improve operations and oversight in the counties.

The Temporary Speaker (Sen. Ongoro): Senator for Kwale County, Sen. Boy Juma Boy.

Sen. Boy Juma Boy: Asante sana, Bi. Spika wa Muda. Kwanza, nawapongeza maafisa wote kutoka kaunti za Nyamira, Kilifi na Vihiga kwa kutembelea Seneti. Ninauhakika watajifunza mengi kutoka kwetu na maafisa wetu. Seneti ni Bunge la viongozi wa wingi wa busara na wakuheshimika sana. Wao hujadili mambo kwa makini sana. Upeo wao ni wa mbali na mpana sana.

Ninawapongeza wakaaji wa Malindi. Imedhihirika kuwa wao si watu wa kununuliwa kwa Kshs1,000 na zaidi na hawawezi kamwe kutishwa na mabundiki; hata tukipokonywa bunduki na walinzi wetu wa kibinafsi.

Sen. (Prof.) Lonyangapuo: Madam Temporary Speaker, I join my colleagues who have recognized and appreciated the presence of the various staff of the three counties. We have always recognized those who come here. Although we are getting more delegations now than before, I wish the bench markings had begun earlier because we would not be hearing what we are now hearing about the poor performance of the counties.

In yesterday's newspapers, Nyamira, Homa Bay, Vihiga and West Pokot, among other counties were mentioned as involving themselves in misuse of public funds. One of our functions is to oversight.

These delegates are the custodians of resources in the counties. They should see to it that funds are spent prudently. Their main purpose is to work for Kenyans in those counties. Therefore, their money should not be misappropriated. We are told in one county they spent millions of shillings to put up a gate. This money would have been enough to feed many Kenyans. That was wrong.

I encourage the staff to be keen. They should always come here with their colleagues in the executive to understand how things are supposed to be done. There is no law preventing workers in the county executive from coming to benchmark and learn from us. Whenever they are generating some of the Bills to bring to the county assemblies, they can be well guided.

I wish them well as they go back to their counties to continue serving their MCAs. We will hold them personally responsible where money will be misappropriated. I am sure we will be visiting their counties to see how they conduct themselves. We mostly interact with them through the County Public Accounts and Investments Committee.

The Temporary Speaker (Sen. Ongoro): Sen. Kiraitu, I have considered your earlier request. The meeting will now start at 9.00 a.m., as opposed to 8.30 a.m.

Sen. Murungi: Madam Temporary Speaker, I thank you. However, I had sought the Floor to add my voice---

The Temporary Speaker (Sen. Ongoro): Your card is not reflecting on my screen, Senator. Kindly, login in so that I can give you the Floor. Right now, I will give the Floor to Sen. Sijeny.

Sen. Sijeny: Madam Temporary Speaker, I welcome the staff from Nyamira, Vihiga and Kilifi counties. This benchmarking is very important. As the saying goes, charity begins at home. Here you will have the complete knowledge of what goes on within your country and especially in the Senate, which is your mother. Here, you get the right information.

Senate is very rich with knowledge. We have a very good legal department with very experienced staff. It is one of the best in the country. We also have a very good team of researchers. If you make maximum use of them, when you go back to your respective counties, you will be able to come up with clear-cut systems on management, finance, or whichever way. That way, you will do your duties well.

With those remarks, I welcome you again.

Sen. Murungi: Madam Temporary Speaker, I join my colleagues in welcoming to the Senate the delegations from the county assemblies of Kilifi, Nyamira and Vihiga who have come to benchmark with the Senate. The county assemblies of this Republic are the primary institutions of accountability and oversight at the county level. We, as the Senate, depend on them as an apex institution of oversight and accountability.

I congratulate those MCAs who have done a sterling job in bringing to account the executive at the county level. However, there are many other MCAs who have become errand boys for governors. They are following governors the way flies follow a carcass. They want to benefit from the crumbs of what those who are plundering the counties are eating.

Time has come for us as Senate to encourage more visits from MCAs so that we can strengthen them and enhance their capacity to stop the theft, plunder and massive waste of public resources that we see in all the counties. We welcome these delegations. We send them back to their colleagues to encourage them to come here and enhance their capacity to stop that theft, plunder and looting that are going on massively in this country.

Sen. Sang: Madam Temporary Speaker, I join my colleagues in welcoming the delegations of staff of the county assemblies. The role played by county assemblies in ensuring that devolution works cannot be overemphasized. The role played by staff, even at the Senate, is critical. We are Members of various committees that are technical in nature. We may not have the necessary expertise. However, due to the well-qualified staff that we have, we are able to engage on those issues and contribute meaningfully to debates in this House.

I hope that the clerks and staff of the county assemblies will understand that they have a greater role of ensuring that the MCAs understand their job and mandate and execute it to the satisfaction of our citizens in the counties.

I encourage many other county assemblies to send their staff so that they can interact with our Senate staff, learn and take that experience back home. I, therefore, thank the three county assemblies for sending their staff. This should be emulated by other counties to ensure devolution works.

Sen. (Prof.) Lesan: Madam Temporary Speaker, I join my colleagues in welcoming the officials from the county assemblies. The Senate has much more to offer to these officials from county assemblies. The Senate has a school which they can learn from much more than what they observe in the Senate. There are also other institutions in Government where management courses are offered.

The visiting officials from county assemblies have a great role to play in making sure that the resources that have gone to counties are put to the best use, for the benefit of the citizens of this country. This can only happen if they have the knowledge to use those facilities. I welcome the members of staff and encourage the other counties to bring their staff to Parliament to learn the art of managing public affairs.

Sen. Bule: Madam Temporary Speaker, let me welcome and congratulate the members of staff and the three county assemblies who came here to learn from the Senate. The Senate is the “Upper House”. The Senate has the same role as the county assemblies. Actually, they are twins. They have to work hand-in-hand.

Those who recognize the “Upper House” and learn more from the Senate are encouraged to keep it up. All other counties should join us as we work to save Kenyans whose resources are being looted by county executives who are greedy for money.

Sen. Wako: Madam Temporary Speaker, I warmly welcome the members of staff from the three counties. They should know that they have come on a programme which our own Speaker began of capacity building of county assemblies. The Speaker began that programme so as to strengthen them. We are together, at the county level and the national level on matters of oversight.

This Senate has not failed to take any opportunity to strengthen the county assemblies. Hitherto, county assemblies’ accounts were managed by the county governments. That was frustrating many county assemblies in the performance of their duties. However, under the leadership of the Senate, in particular, the Standing Committee on Finance, Commerce and Budget we were able to get them to manage their own accounts.

Madam Temporary Speaker, I will continue to do whatever it takes to ensure that they can play their role effectively because this is a role that has been assigned to them under our Constitution. In particular, since I am a Member of the Sessional Committee on County Public Accounts and Investments, we will ensure that they play their role effectively on the ground. They should not leave it to the Senate to come in and do the oversight for them on matters which the county assembly ought to have done.

They should have a very keen eye on the issue of oversight, particularly as we come towards the end of the term. This is the period which, historically, has been known as a time in which many things can be done by the county executive to get money for elections. County assemblies should have a keen eye and ensure that the bad habit does not come into play, as far as Vihiga and Kilifi counties are concerned. I must commend Vihiga County Assembly because

they have made us proud. I keep on quoting them when I talk to my own county assembly of Busia.

Their committee on justice petitioned us to find out why there were problems in the issuance of national identity cards (IDs). The Senate has set up a committee which is looking into ways of expediting and ensuring that any person who requires an ID gets it and actually has a voter's card. The county assembly drew our attention to that and we have taken it seriously.

Madam Temporary Speaker, I also thank the County Government of Kilifi for hosting my Committee on Legal Affairs and Human Rights sometime ago. I am the one who taught your Senator the law that he proudly and effectively practices in Kilifi. He was my Pupil in the Attorney-General's Chambers, when I became the Attorney-General of Kenya. Therefore, we are proud of both the Senator for Kilifi and the Senator for Vihiga counties. They are good Senators in this House and contribute effectively on the various matters under debate. I am quite sure that if you worked with them and consulted more when they come to the ground, you will perform your duties well. They will give you the guidance and the necessary support that you require to perform your duties effectively.

With those few remarks, I thank you.

Sen. Karaba: Madam Temporary Speaker, first of all, I want to inform the former Attorney-General that it is not only Kilifi and Vihiga counties that are here; we also have Nyamira County. So, in his contribution, he should have included the three counties; Nyamira, Vihiga and Kilifi counties.

The Temporary Speaker (Sen. Ongoro): Senator, proceed with your contribution.

Sen. Karaba: Madam Temporary Speaker, I want to congratulate the three counties for finding time to come and see how we do our business. I believe that when they go back home they will carry what they see as good in this Senate and not what they imagine is not good. When they go back to their assemblies they will have better debates because they will have learnt from us. I, therefore, urge them to observe what we do.

Secondly, I remind them that as the Chairman of the Committee on Education, I have visited the three counties. I was impressed by the way they have initiated particularly the projects of the model classroom in Early Childhood Development Education (ECDE). I note with a lot of satisfaction that Kilifi County has the best classroom model so far. We are yet to find out whether there are other counties which can beat Kilifi County in that project.

I wish you the best of luck. I am happy that you have always received us well when we come to visit. We will continue to come and please visit us again.

The Temporary Speaker (Sen. Ongoro): Thank you, Senator. Sen. Mositet will have the last intervention on this matter.

Sen. Mositet: Madam Temporary Speaker, I join my colleagues in congratulating the committees and members of staff from the counties for the visit. This morning we interacted with the Committee on Finance and Budget from Vihiga County. We could see how eager they were to learn from us. We really encouraged them and stated that we will always be with them any time they want.

We also encourage the rest of the counties to emulate Vihiga, Nyamira and Kilifi counties. If we were to compute how much the same committees would have spent if they had gone to benchmark outside, each delegation would have spent about Kshs5 million, which could be used to drill a borehole.

I congratulate the delegations and urge speakers of the other assemblies to take cue from them.

The Temporary Speaker (Sen. Ongoro): Thank you Senators for those wonderful contributions.

Let us now move to the next Order.

NOTICE OF MOTION

APPOINTMENT OF SENATORS TO THE SELECT COMMITTEE
TO SPEARHEAD THE PROCESSING OF THE GENERAL SUGGESTION
FOR THE DRAFT CONSTITUTION OF KENYA (AMENDMENT) BILL, 2015

The Senate Majority Leader (Sen. (Prof) Kindiki): Madam Temporary Speaker, I beg to give notice of the following Motion:-

AWARE that pursuant to Article 124 (1) of the Constitution and the Standing Orders of the Senate, at a Special Sitting of the Senate held on Monday 15th June, 2015, the Senate resolved to establish a Select Committee on Constitutional and Legal Review to inquire into legal issues arising following the re-allocation by the National Assembly of monies intended for key constitutional organs and institutions, including the Judiciary, the Salaries and Remuneration Commission and the Senate;

FURTHER AWARE that on 23rd June, 2015, the Senate approved the names of Senators to serve in the said Select Committee whose terms of reference were as follows-

(a) inquire into the design of the Legislature and in particular, the institutions set out in the Constitution with a view to protecting the interests of the counties and their governments and securing and safeguarding the system of devolved government established in the Constitution;

(b) inquire into the role of the Senate as set out under the Constitution and make recommendations on the appropriate role to be played by the Senate in-

(i) the budget making process and revenue allocation;

(ii) the legislative process;

(iii) oversight over the National Government; and

(iv) oversight over the County Governments;

(c) examine and make recommendations on the appropriate role to be played by the Senate in the approval of nominees for appointment to State office;

(d) examine and make recommendations on the appropriate inter-linkage and interplay between-

(i) the Senate and the National Government;

(ii) the Senate and the National Assembly;

(iii) the Senate and the County Governments; and,

(iv) the Senate and other constitutional offices and Commissions;

(e) recommend to the Senate such constitutional and legislative interventions as may be necessary to secure and safeguard the system of devolved government in the Constitution, including measures necessary to ensure the effective discharge by the Senate, of its legislative and oversight role under the Constitution; and,

(f) examine and make recommendations on any other matter connected with or incidental to the foregoing;

COGNIZANT OF THE FACT that the Committee tabled its report on 23rd September, 2015, which report was adopted by the Senate on 21st October, 2015;

NOTING that one of the recommendations in the report was that-

The Senate approves the appointment of a Select Committee to spearhead the processing of the General Suggestion for the Draft Constitution of Kenya (Amendment) Bill, 2015 through popular initiative in terms of Article 257 of the Constitution;

NOW, THEREFORE, pursuant to the resolution of the Senate during the sitting held on 21st October, 2015, the Senate approves the appointment of the following Senators to the Select Committee to spearhead the processing of the general suggestion on the Draft Constitution of Kenya (Amendment) Bill, 2015 through popular initiative in terms of Article 257 of the Constitution:-

1. Sen. Murkomen Kipchumba,
2. Sen. (Prof.) John Lonyangapuo,
3. Sen. Chiaba Abu Mohamed,
4. Sen. Wangari Martha,
5. Sen. Kiraitu Murungi,
6. Sen. James Orengo,
7. Sen. (Dr.) Boni Khalwale,
8. Sen. Hassan Omar; and,
9. Sen. Halima Abdille

And that the Committee reports back to the Senate within six months.

The Temporary Speaker (Sen. Ongoro): Thank you, Senate Majority Leader.

Next Order!

STATEMENTS

STATUS OF POSSESSION OF LAND TITLE DEEDS BY PUBLIC SCHOOLS IN KENYA

The Temporary Speaker (Sen. Ongoro): Chairperson for Standing Committee on Land and Natural Resources. Is the Chairperson in the House to issue this Statement sought by Sen. Khaniri? Is the Vice-Chair of the Committee here? Any Member of the Committee in the House?

Sen. Khaniri, do you have something to say to that?

Sen. Khaniri: Madam Temporary Speaker, as you have rightly observed, this matter has been outstanding for quite some time. The Statement was supposed to be issued about a month ago. The Senator for Kisii, who is a Member of that Committee came with a letter from the Cabinet Secretary, giving an undertaking that the Statement will be issued in two weeks' time. I do not think this Committee is taking this matter seriously. I want to call upon the Chair to issue sanctions against this Committee for inefficiency.

The Temporary Speaker (Sen. Ongoro): Where is the House leadership? I think this is a very serious matter. Has the Senate Majority Leader left? This Chairman must be prevailed upon because this matter has been quite outstanding. We want you to give an undertaking as to when we are going to get this Statement sought by Sen. Khaniri.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I want to give an undertaking on two things; first, is to convey the sentiments of the House and the Chair on this matter.

Secondly, I would like to assure you that I will support the Chairman to deliver the Statement within a week.

The Temporary Speaker (Sen. Ongoro): Senator, are you okay with that? This time, let it be a week because this has been outstanding for quite a long time.

The next Statement was sought by Sen. (Dr.) Zani and I can see that she is not in the House. Therefore, we will defer Statement (b) and (c).

THE ROLE OF THE SENATE AND ITS ENGAGEMENT
WITH COUNTY GOVERNMENTS

(Statement deferred)

DEVELOPMENT AND REVIEW OF CURRICULUM MATERIAL
MATERIALS FOR ECD, PRIMARY AND SECONDARY SCHOOLS

(Statement deferred)

We will, therefore, move to Statement (d).

DELAY BY THE NATIONAL TREASURY IN DISBURSEMENT
OF FUNDS TO COUNTY GOVERNMENTS

Where is the Chairperson for the Standing Committee on Finance, Commerce and Budget? Sen. Obure is not in the House though, so I do not know whether we should proceed. The Senator who sought the Statement happens not to be in the House. I think it is only proper that we defer it.

Sen. Billow: Madam Temporary Speaker, it was also listed last week but I think I will oblige.

The Temporary Speaker (Sen. Ongoro): It is not your fault but this also goes to the Senators who seek statements. When the Chair is ready with the statement, the person who sought it should ensure he or she is in the House.

(Statement deferred)

STATUS OF THE YOUTH ENTERPRISE DEVELOPMENT FUND

Let us now move to Statement (e). Where is the Chairperson of the Standing Committee on Labour and Social Welfare? This Statement was sought by Sen. Catherine Mukiite Nabwala. Are you ready with the answer? Proceed.

Sen. Madzayo: Madam Temporary Speaker, the distinguished Senator who sought that Statement is not in.

The Temporary Speaker (Sen. Ongoro): Sen. Nabwala is in the House. Unless you are not seeing well, but let me confirm to you that she is in the House.

Sen. Madzayo: I am sorry, Madam Temporary Speaker, I was looking at a different copy.

We had a discussion with the Senator who sought this Statement and I told her I am not comfortable with the response that I had received from the Ministry, in view of the fact that the figures that were given, and given the fact that the Youth Enterprise Fund management board had been suspended, we are not sure whether the figures given are correct. I had told her that I had contacted the Ministry responsible to confirm whether the figures stated are the same ones that caused the board to be dissolved. Therefore, I need a week to be in a position to respond. I believe my sister did not have any objection to that.

The Temporary Speaker (Sen. Ongoro): Sen. Nabwala, is that the true position of things?

Sen. Nabwala: Madam Temporary Speaker, that is the true position. They were giving a history of the monies already disbursed to counties. It was not talking about the current theft of funds. However, we agreed that he goes to the Ministry to seek for more information because this is a thorny issue. It is public knowledge that money is being stolen and we are yet to be given that information so that the Senators can also have an input on what is happening.

The Temporary Speaker (Sen. Ongoro): Senator, in a week's time you will get your comprehensive answer. Let us proceed to Statement (f). Where is the Chairperson of the Standing Committee on Finance, Commerce and Budget? This was sought by Sen. Khaniri, who is also in the House.

EXPENDITURE OF KSHS15 BILLION SET ASIDE FOR *EL NINO*

Sen. Billow: Madam Temporary Speaker, this is a request for a statement about the expenditure of the money set aside to mitigate the effects of *El Nino* rains across the country. It was sought by Sen. Khaniri, Senator for Vihiga.

Sen. Khaniri: On a point of order, Madam Temporary Speaker. You and I are aware that the usual practice of this House or Parliament is that when you seek for a statement before it is issued on the Floor, they should furnish me with a copy so that I can familiarize myself with it so that I can be competent enough to interrogate it. I want to confirm to you that I have not received a copy of the response that the Chairman wants to read. Therefore, it is going to be very difficult for me to interrogate the response yet this is a very sensitive issue.

The Temporary Speaker (Sen. Ongoro): Honestly, if that be the case, and you know you have been voted for in this House as one of the best performing chairpersons, I am surprised that you proceeded to issue this Statement before availing a copy to Sen. Khaniri. That is a very crucial oversight. Therefore, it would be in order if we gave him time to get a copy.

Sen. Khaniri: I have just received a copy.

The Temporary Speaker (Sen. Ongoro): Are you okay to proceed.

Sen. Billow: Madam Temporary Speaker, the procedure in the House nowadays is that before a Statement is responded to here, all the people who sought it and those who are supposed to respond are sent a message by the Clerk's office so that we know we have a statement.

Secondly, the response is available in the Clerk's office and the journals office. It is not the Chairman who distributes the copies. I want the hon. Member to appreciate that he could

have gone to the Clerk's office or the journals office to get a copy. Let us not create unnecessary procedures.

The Temporary Speaker (Sen. Ongoro): Chairman, I think we cannot contest this issue. Whether it is the Clerk's office or the journals office, we are all in agreement that it is not his mistake that he did not have a copy by the time he came to the House. It is just in order to give him that benefit to have time to interrogate what is contained in your answer. We can skip that for now so that we have time to interrogate it.

Sen. Orengo: On a point of order, Madam Temporary Speaker. I am quite satisfied with the ruling from the Chair but Statements when sought are not property between the Chair of the Committee and the person who requested the Statement. It becomes the property of the House.

There are sub-statements which are very important in which the entire House has an interest. Whereas the person who requested the statement may be given a copy of the response to interrogate it, for the purposes of the rest of the House, for us to have an intervention that is effective, it is important that the response is circulated to Members. I know you have already made your ruling but this is a matter that touches on all the counties. For that matter, it is important that the Clerk's office should circulate it to the rest of the Members.

The Temporary Speaker (Sen. Ongoro): Sen. Orengo has made a very important observation. Actually that is the true fact. I took it for granted that if the Senator who sought the statement has not had the benefit of having a copy then I do not think any other Senator has it. I used that as a point to assume that all the other Senators do not have a copy.

Therefore, for the last time, now that you have that copy and the Chairperson has been good enough to provide it and he is also in the House to respond to the Statement, we are going to give you that benefit and that would be sorted out tomorrow.

Let us proceed to the next statement.

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Madam Temporary Speaker. Arising from what Sen. Orengo has just said, I think it is important to draw the attention of the management of Parliament that things would be much easier if we went digital. If every Senator in this House had a tablet on the table, all these papers we are wasting money on would not be there.

It would be very easy to circulate those statements to everybody so that we do not depend on this archaic method of circulation. This should be taken up seriously by the management of Parliament that for now and posterity, they should go digital where every Member of the House will have everything being discussed in front of them on a laptop or tablet.

The Temporary Speaker (Sen. Ongoro): That is a good intervention from the Senator for Kisumu. I hope the Clerks have taken note of that.

Sen. Khaniri, the Chairperson of the Committee on Lands and Natural Resources has just walked into the Chamber. We can now proceed.

STATUS OF POSSESSION OF LAND TITLE DEEDS BY PUBLIC SCHOOLS IN KENYA

Sen. Kivuti: Madam Temporary Speaker, we have two statements to make today. We have Statement (a) on the Order Paper that was requested by Sen. Khaniri which has been pending for a while. Even before Sen. Khaniri left our Committee, we were pursuing this matter. We wrote a letter to the Cabinet Secretary for Lands and Natural Resources. I was told the

statement would have been ready by the end of last week. As late as yesterday morning, we had a Committee meeting and we had not yet received the signed letter. Although I have a copy of the letter, it would be very wrong to table it in this House when it is not signed.

I have information that the CS, Prof. Kaimenyi, left for the United States of America (USA) last week to attend a United Nations (UN) conference which will be concluded at the end of the week. I, therefore, seek your indulgence because I do not think it is proper to table an unsigned report.

At the same time, we know that the CS is out of the country. Give us until next week when he will be in the country to respond. My Committee will make sure that we get the letter signed. Yesterday, we, as a Committee, made a resolution to write what we termed as a final reminder to the CS and I have a copy of it with me.

Sen. Abdirahman: Madam Temporary Speaker, listening to the Chairperson, I suspect that there is negligence on the part of the Committee or the Ministry. I do not think that we are getting what we needed. This is not right. You ruled on a similar matter earlier on. Ministries are not about individuals. These are government institutions. There is always a Principal Secretary in the Ministry. Although the CS signs letters in most cases, I do not think this is right because work is piling up on the Committee of Lands and Natural Resources. It would be better if he came out and said this will be done at a specific time. As it is now, it is not very clear to us.

The Temporary Speaker (Sen. Ongoro): Sen. Khaniri, what is your response to the situation?

Sen. Khaniri: Madam Temporary Speaker, you made your ruling on this matter and I stand by it. However, I want to bring to the attention of the Chairperson of the Committee on Lands and Natural Resources that there are provisions in the Constitution, particularly Article 125(1) which gives him the powers to get information and summon Cabinet Secretaries.

I, therefore, encourage him to invoke the provisions of this particular Article in the Constitution and ensure that he responds to Statements as you directed on Tuesday next week. Otherwise, we will take sanctions on the Committee for failing to perform their duties.

The Temporary Speaker (Sen. Ongoro): Thank you, Senator. It is not in order for us to have anything in the Senate that is not authentic because it is not signed by the authority. However, on Tuesday next week, the Chairperson must ensure that all the documents are signed by the authority in that line Ministry.

Lets us proceed to the next Statement.

CREDIBILITY OF WEATHER FORECASTS ISSUED BY KENYA METEOROLOGICAL DEPARTMENT

Sen. Kivuti: Madam Temporary Speaker, this Statement also goes to the same Cabinet Secretary who is away. We wrote a letter to him as a reminder yesterday notwithstanding the fact that he is away. Since his office is not away, I am sure that they will tell him immediately he arrives on Sunday that he must give us the two answers by Monday. The Statement by Sen. Khaniri is the oldest because it was filed in February.

However, the Statement we are dealing with right now, I can see that we wrote to him on 2nd March 2016. Therefore, we can deal with both matters on Tuesday.

Sen. Okong'o: Madam Temporary Speaker, I wonder whether this Chairperson is in order to mislead this House and the whole nation. In their manifesto, the Jubilee Government

promised to digitize everything in Government; that was a key component in their governance. Is the Chairperson in order to tell us that the Government is still working analogue? If it is a statement that needs to be signed, a signature can be generated digitally.

Is he in order to mislead us that the Government has not fully digitized their operations? Are documents manually signed?

The Temporary Speaker (Sen. Ongoro): Chairperson of the Committee on Lands and Natural Resources, you will have to bring both statements on Tuesday, next week. To take the Senate through this kind of situation is not fair even if the CS is away. Telling us the activities of the entire Ministry are at a standstill and nobody else can append his or her signature on an official document is quite shocking.

Let us move on to the next Statement.

PENDING BILLS BY COUNTY GOVERNMENTS

Sen. Billow: Madam Temporary Speaker, I would like to issue a Statement that was sought by the Senator for Kakamega County who sought a statement from the National Treasury on the delays of disbursement of funds to county governments.

The Statement is very long and hon. Senator has a copy, so I will just go through some of the key areas briefly. The first aspect of the Statement is the status of disbursements to counties as at 31st January 2016. As you are aware, the response was sent before the end of February that is why the figures reflect up to 31st January only. As you are aware, the disbursements to counties are based on County Allocation of Revenue Act 2015---

Sen. Khaniri: On a point of order, Madam Temporary Speaker. I am not sure that we are on the same page. Statement (h) which was sought by Sen. (Dr.) Khalwale is on pending Bills not disbursement to counties.

Sen. Billow: Madam Temporary Speaker, Sen. Khaniri is right. I am sorry. The response came from the office of Controller of Budget. As at 30th June 2015, the counties had accumulated pending Bills amounting to Kshs37.46 billion. This amount consisted of Kshs9.25 billion for Recurrent Expenditure and Kshs28.21 billion for Development Expenditure. The details per county are provided. The hon. Senator has a copy; it gives the breakdown for each of the 47 counties with the highest amount being Bungoma County with Kshs2.5 billion. Of course, there are a number of counties with over Kshs1 billion. The aggregate pending bills of Kshs37.46 billion are based on the financial reports by the county treasuries. One county, namely, Tana River, did not provide information on its outstanding bills as of 30th June, 2015.

The financial reports from the counties are based on Section 166 of the Public Finance Management (PFM) Act, 2012 and did not explain how the counties incurred the pending bills or how they will be settled. So, in the report that the Controller of Budget has access to, those reports only provides the bills. It does not state how they were incurred or when they will be settled.

In conclusion, this report provides a summary of the pending bills submitted by county treasuries for the year 2014/2015. These figures are included in the Annual County Government Budget Implementation Review Report of 2014/2015 published by the Controller of Budget in August, 2015. A copy of that report has been tabled in this House. It is available.

Madam Temporary Speaker, that is the response to the Statement.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, before we interrogate this Statement, it must occur to the House that the Chairman has decided to give us an abridged version of the Report of the Controller of Budget. The intention of this question on pending bills was for us to extract answers from respective governors. The Chairman has failed to do that.

Madam Temporary Speaker, allow me to remind the Chairman that we wanted each governor to tell us how those bills were incurred in view of the fact that before any tenders are approved, money is usually made available and with the approval of the Controller of Budget, the governor is then able to receive the money because he will pay out to the respective tenders.

They were also supposed to tell us how they intend to settle those pending bills because they run into billions.

In addition, they were supposed to tell us on what projects these pending bills were incurred. So, you would want to guide the Chairman whether we want to give him time to go and extract those answers to inform this House or we proceed. As you make that decision, may I also bring it to the attention of the Chairman that he has deliberately left out Nairobi City County from his list and yet it is the worst culprit. It has got pending bills running into excess of Kshs64 billion. At the time Governor Kidero went into office, he found pending bills of Kshs11.3 billion only. It is important that he tells the country what this money was spent on.

Madam Temporary Speaker, before you guide us, allow me to laud Busia County. It is the only county that does not have pending bills.

(Applause)

Also, allow me to single out Vihiga County. It has pending bills in excess of Kshs2 billion, and because I come from that part of the world, an officer who was in charge of roads has become a village millionaire. He is walking scot free at home. He is campaigning to be the Member of Parliament (MP) for Vihiga yet he is supposed to be arrested. So, unless we answer these questions, people like Mr. Tom Kisia will continue walking in Vihiga telling people that they are material for leadership of this country yet they are just ordinary village thieves.

Finally, Madam Temporary Speaker, Bungoma County where wheelbarrows cost hundreds of thousands have pending bills of Kshs2 billion. We need to push every governor to tell us what these bills are for. Otherwise, Sen. Murungi will become the governor and he will run out of office because people of Meru will come to his office and every morning they will be standing there; they want him to settle pending bills of Kshs263 million. It is a shame. We need to defer this matter for the Chairman to come and give us the right answer.

The Temporary Speaker (Sen. Ongoro): Senator for Bomet County, Sen. (Prof.) Lesan, do you want to contribute?

Sen. (Prof.) Lesan: No, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): Then you have to remove your name.

Proceed, Senator for Vihiga County, Sen. Khaniri. Please give Sen. Khaniri the microphone.

Sen. Khaniri: Madam Temporary Speaker, I have clarifications to seek but this will await your ruling on the Motion that has just been moved by Sen. (Dr.) Khalwale. We do not think that the Chairman has fully responded to the issues that were raised in the initial request by Sen. (Dr.) Khalwale. They were very specific issues. So, if you rule that we proceed, then I will

ask my supplementary question. However, in my opinion, the Chairman should be sent back with this answer so that he comes back with a full report of what we requested.

Sen. Murkomen: Madam Temporary Speaker, there are many reasons why there are pending bills. Some are positive while others are negative. Some could mean that if it is development related projects, maybe the certificates have not been completed and so on.

Unless there is a breakdown as to which pending bills are for what reason, then it would be very difficult for us to interrogate the report. Of course, I sympathize a little bit with the Committee because if you have to do all the 47 counties, you have to segregate. However, the Office of the Controller of Budget is there for that reason because it has representation across the 47 counties. So, the Committee can go back to the same office and ask for detailed information on the same.

Finally, as part of a supplementary question in the direction you will give, as a lawyer, I am more interested on the issue of legal fees. It is one of the areas that a lot of stealing of county money takes place. I talk with a lot of respect to our legal profession; many county governments engage in unnecessary litigation, over-price the cost of legal services with the hope - we are told and that needs to be confirmed - that it becomes a conduit for taking away county resources. So, I am interested personally as a supplementary question that every pending bill that is related to expenditure of county government resources in paying legal services be presented.

Secondly, I am interested in the money that is donated by counties to the Council of Governors (CoG). There is a lot of money, we are told that it is up to Kshs23 million per county. The CoG has about Kshs1 billion in their kitty. They can use it the way they want. This money is used to politic, hire goons and all manner of things. I heard that if any governor in this country wanted the political support of another governor, he just walks to the Kshs1 billion kitty. It is not accounted for or properly audited. I am more worried if we go to the next election and you have a group of governors who have Kshs1 billion or they might have accumulated it to Kshs3 billion or Kshs4 billion; they can use it the way they wish. We are going to an election year; some of them may not be re-elected and accountability mechanism may not be clear. The Committee needs to think through this issue. We are going to a dangerous period where in most cases things get lost.

Sen. Abdirahman: Madam Temporary Speaker, I share the sentiments aired by my colleagues on pending bills. Many a times a number of us have the information that many projects that are being implemented were conceived without proper planning. Therefore, it is important for us to have a detailed statement on every county regarding the pending bills that exist.

The 2016/2017 being the last financial year, it will be very important for the relevant Committee to get adequate information from the Controller of Budget, so that we can establish how far the counties are overburdened by what may become bad debts in the future. It is important that the Chair brings us detailed information on every county.

Sen. (Prof.) Lonyangapuo: Madam Temporary Speaker, I agree with my colleagues that the Chairman needs to bring a detailed response. The statement says that these pending bills are based on the annual financial reports prepared by the county treasuries. This is not a true reflection in some counties. The people we suspect to have misappropriated county funds are the ones submitting the reports. I expected the Office of the Controller of Budget to prepare this report, rather than relying on the reports written by the county executive committee members and governors.

Secondly, we would like to know whether these pending bills are on development projects approved by the county assemblies or those initiated by the executives on their own. In my county, most projects that have been implemented were not approved by the county assembly. It is important that we also interrogate the revenues the counties collect, because some of them are never declared. My county brags of surpassing the revenue collection targets, but not all money is declared. Sand harvesting alone generates Kshs108 million per year. This is something that we need to interrogate. As Sen. Murkomen said, some governors - mine included - are chest-thumping that they have enough money. My governor now claims that I will compete with him in next year's general elections, even when I have not declared my intentions. Which money are these governors talking about?

Some contractors who came to my office are bankrupt. One of them is Mr. Said who has sold all his property because he is unable to pay debts. Therefore, the figure of Kshs200 million declared in this report with regard to my county is not the correct figure. The contractors are claiming over Kshs1 billion. I would like the Chairman to bring more details, so that we can rescue the people who are suffering.

Sen. Orendo: Madam Temporary Speaker, I am interested in the issues that were raised by Sen. Murkomen, because the truth shall make us free. It is true that lawyers - I belong to that profession - have been used as conduits to collect money by making sure that the 'proper fees' are scaled up. In some cases, the taxman has come in and the lawyers have lived to regret.

Before the NARC Government, the issue of pending bills was established as a big industry. Many people made a lot of money by simply being brokers between public servants and contractors in trying to get them paid. If you did not offer some money to public officials, then your dues would not be paid. Similarly, I have realized that this practice has come back in many counties. Governors would only pay those who are able to pay the brokers.

Could the Chairman try to find out if this practice has come back again? It looks like in all the counties the industry of brokers is growing very fast and they operate from the county headquarters. This is something that we thought would die. Could the Chairman also find out whether we have pending bills due to lack of money or because the brokers have channeled money to county officials?

Sen. Bule: Madam Temporary Speaker, I am very sad because Tana River County has not submitted its report. The counties that have reported to the Office of the Auditor-General are better than those which have not submitted any reports. Tana River County is ranked as one of the poorest counties, yet it has many resources. Despite having productive land and plenty of water, the people of Tana River still die of hunger. A lot of money has been allocated to Tana River to facilitate development, but the same has gone to the pockets of greedy men.

The Temporary Speaker (Sen. Orendo): Senator, please, conclude your intervention.

Sen. Bule: Madam Temporary Speaker, could the Chairman tell this House why the report from Tana River is not included, yet the county is not exempted from audit?

Sen. Okong'o: Madam Temporary Speaker, I am worried when the Chairman, who is a renowned financial expert tells his House that the Controller of Budget cannot tell us what the money was budgeted for. I, therefore, concur with the sentiments of my colleagues that he needs to go back and bring a comprehensive report, because this is a matter of national importance.

Sen. Hargura: Madam Temporary Speaker, Kshs34 billion is about 14 per cent of what we allocated to the counties in that financial year. Could the Chairman clearly indicate whether this Kshs37 billion was not actually remitted to the counties or they just went out of their way

and generated pending bills of Kshs34 billion over and above what we are allocated from this House?

Sen. (Prof.) Anyang'-Nyong'o: Madam Temporary Speaker, the more I listen to the issues being raised on this very important Statement sought by Sen. (Dr.) Khalwale, the more I realize that my Chairman has an extremely important task to fulfill. I was a Member of the Pending Bills Committee during the tenure of the NARC Government and it was a very huge task to undertake.

Under our circumstances and notwithstanding the fact that the Chairman will respond to the various issues raised, I would like to propose that we think of establishing a pending bills Committee that will look into these counties' affairs exhaustively. One of the institutions to be included, apart from the Auditor General and Controller of Budget, should be the Criminal Investigations Department (CID) and the National Intelligence Service (NIS).

The reason we changed from the Special Branch to the NIS is because we realized is that the issue of intelligence is more than just hunting down politicians who the regime regarded as opposed to it. Intelligence is in national interest and should cover economic intelligence as well. At the moment, the governors are going around dishing money left, right and centre; beyond what they earn in a month. That money comes from the county treasury and other kickbacks being given to governors. The NIS in every county should be keeping a record of governors' expenditures on a daily basis, because it is known by the people. Therefore, the Pending Bills Committee will handle this problem and stop the bleeding of county monies by governors preparing themselves to run in the coming elections on ill-gotten money.

Sen. Sang: Madam Temporary Speaker, I associate myself with the comments shared by many of colleagues. We have had situations where the county governments give an indication of the amounts they owe contractors and the same are disputed by the contractors. We, therefore, need to know the source of the information that the Chairman is sharing.

Secondly, we need to ascertain whether some of these pending bills are reflected in the budgets of the subsequent years within the counties. If they are not reflected within the budgets of the subsequent years, then we cannot determine how these debts will be covered.

Finally, having looked at the pending bills and knowing that this reflects the 2014/2015 Financial Year, could the Chair also ascertain how much money the national Government did not remit to the counties, so that we can determine whether that mirrors exactly what the pending bills reflect.

Sen. M. Kajwang': Madam Temporary Speaker, the House has requested the Chairperson of the Committee to make confirmations on pending bills. Could we also get pending bills owed to the youth, women and persons with disability because there is a 30 per cent that is supposed to be allocated to them? If the total pending bill is Kshs37 billion, one could simply do 30 per cent of that and say women, the youth and persons with disability, are owed Kshs1 billion. This would not be very difficult for the Committee to do because, currently, there is a reporting requirement that counties and all Government entities should do a schedule of all contracts that have been issued to the youth, women and persons with disability. All the Committee will need to do is to get the pending bills that fall within that category, so that we do not have a situation where our youth, women and persons with disability have their property auctioned simply because Government is not paying.

Finally, Madam Temporary Speaker, we must also remember that when we made amendments to the Public Procurement and Disposal Act, we made it clear that for these reserve

groups, payment shall be done expeditiously and with recommendation that it be done within 30 days. It will also be interesting to see an “aging” of this debt, so that we can tell whether it is a debt of 365 days or 90 days. Therefore, two things to consider are aging and specificity on the debt owed to the youth, women and persons with disability.

Sen. Mwakulegwa: Madam Temporary Speaker, I want to add my voice to what my colleagues have stated. We also have issues with deductions from statutory bodies like the National Social Security Fund (NSSF) and the rest that are not being remitted by county governments. As we look at pending bills to the contractors, we also have issues with statutory bodies that do not remit deductions. In addition, as it has been suggested, we need to come up with a committee on payment bills, so that we can look at what is pending. This is because by next year, some governors could have got loans of up to Kshs2 billion or Kshs3 billions knowing that they will not be re-elected. Therefore, it will be a burden for the incoming governor to manage.

Thirdly, we also have local collections which are not being reflected in many counties. This is money which goes to governors’ pockets and they are preparing for the forthcoming elections. It is important for the Committee to make sure that we get all these details, through the Controller of Budget, so that we confront our governors. We should have these accounts sorted out, once and for all.

Sen. Wamatangi: Madam Temporary Speaker, I join my colleagues in saying loudly that our county governments cannot continue to be run this way. As my colleague has said, this is a warning signal as to what is most likely going to happen when governors exit office in 2017. The two columns showing how much is pending indicate that recurrent expenditure is about Kshs9 billion and Kshs28 billion development expenditure. What then comes into play is that most of these bills are owed to contractors. What they will do now that they have not been paid, is to seek legal redress and these amounts will be subject to interest. The Kshs28 billion could very easily balloon to another Kshs40 billion or so.

One of the strategies that the Committee should take is to come up urgent measures that will pinpoint the most notorious counties to ensure that measures are put in place so that they do not continue to incur expenditures. As my colleague said, if this is left to run that way, a governor who will inherit office from a rogue governor in 2017 will use all of the first allocation he will receive in paying pending bills.

Some of my colleagues in the County Public Accounts and Investments Committee (CPAIC) are privy to what happened. For example, we looked at pending bills in one of the county governments, I am sure the Senator for Kakamega will remember this; we discovered that they had ballooned from less than Kshs2 billion to about Kshs53 billion.

This is a big issue that needs to be dealt with fully. I support that measures be put in place and a committee be formed so that this does not continue.

Sen. Wako: Madam Temporary Speaker, thank you for giving me this opportunity. I also support the opinions of my colleagues on these figures. Page 3 of this Report provides a summary of pending bills as per the reports submitted by county treasurers. If it depends solely on county treasurers, I can state without any fear of contradiction that this does not properly reflect the figures of pending bills of counties. It very much depends on the honesty of the county treasurers. I cannot say that all of them were born in heaven. So, the figures that are here are not accurate. Somebody has pointed out the figures for Nairobi.

I remember the Governor for Nairobi appeared before us. He gave us a figure far above the Kshs1 billion that is here. It was in the nature of Kshs50 billion or Kshs60 billion that was paid. In fact, he did tell us that was the major handicap in the county government providing services to the people of Nairobi. Therefore, just using this example alone, these figures are not accurate.

In addition to the full report that has been asked for which I support, I also support those who have said that we should set up a pending bills committee or empower the CPAIC to look into this matter with the seriousness that it deserves.

I happen to have been a Member of the Pending Bills Committee under the National Rainbow Coalition (NARC) Government which Sen. (Prof.) Anyang'-Nyong'o stated. The Chief Executive Officer (CEO) was none other than Mr. Njoroge, the former Auditor-General. It went on fulltime basis for more than a year, just ascertaining what pending bills were. After ascertaining what pending bills were, we looked at how they were incurred. We had to find out whether they were incurred lawfully, unlawfully or corruptly. Because of that, we reduced the amount that was legitimately payable by Government to about one-third of the actual amount.

I also remember sitting on the Kenya Ports Authority (KPA) Board. The Board established a pending bills committee for the authority and we looked into this matter. The then Permanent Secretary, Mr. Naikuni, personally went and stayed there for quite some time. We were able to reduce big sums of money to very small sums of money. What is more important is that the people who were claiming actually did not fight back, but accepted. That meant there was something wrong with those figures. There is the need to establish, not just the actual amount of the pending bills, but also know how they have been incurred and what are legitimate and illegitimate, so that we hold accountable those who have been responsible for incurring illegitimate pending bills.

The Temporary Speaker (Sen. Ongoro): Thank you on that intervention. Lastly, I will give the Floor to Sen. Nabwala before I give my ruling.

Sen. Nabwala: Madam Temporary Speaker, I would like to share the sentiments by my colleagues on what they have said about the pending bills. When you look at the schedule, particularly on the Recurrent Expenditure, there is a pending bill for Kshs9.2 billion. What are these recurrent expenditures to have pending bills? I would expect that the Controller of Budget releases money as per schedule, maybe on a monthly basis. So, this trend is very worrying. It could be overdrafts at the bank.

At one point, the Controller of Budget was unable to disburse money to counties because some counties had not prepared their budgets on time. So, we need to know the composition of the recurrent expenditure.

On the other column for development expenditure, it is because maybe some projects are not completed within that particular period and, therefore, payment has not been made or what is this Kshs28 billion for? If counties are left unchecked, then you will find that these debts will keep rising. By the time governors leave office, they will leave most of counties bankrupt.

The committees which has been given the responsibility to investigate this, as Senators from each county, we would like to be given a breakdown of these pending bills. Hon. Senators can follow up the matter with governors and see how best this can be resolved.

The Temporary Speaker (Sen. Ongoro): The very last one to Sen. Karaba. I want to give my ruling on this and we proceed on something else.

Sen. Karaba: Madam Temporary Speaker, it is very important to note that the discussion in the House is trying to suggest that there is a lot of rot in the counties. Going by what I have heard and what Senators have discussed, it leaves a lot to be desired. We should, therefore, come up with an answer to these problems. Without that, we will leave our counties to people who have created a lot of money for themselves as we leave office next year,

We hear from the Auditor-General that some people have even built houses worth Kshs300 million. Is it that they will live there forever? It is like they will because they know how to amass, misappropriate and where to hide the money. So, those committees which were being suggested here should be formed tomorrow, so that by the time we get to June, we will have known who has done what.

We have also heard governors who have bought beds worth Kshs1 million. It is not humanly possible for someone to do so. Some of them have bought dogs. I do not know for what reason. If this Committee could be formed, it would be a wake-up call to many counties. I support and we should do it very quickly because we are living in a very strange world. These governors have opened different accounts and are even collecting money from various tax departments and depositing it in their accounts. So, the Committee should investigate and come up with a solution.

The Temporary Speaker (Sen. Ongoro): Chairperson of the Committee on Finance, Commerce and Budget, you have been in the House and you have listened. Do you want to respond before I give---

Sen. Billow: Madam Temporary Speaker, first, I thank Members because the issues that they have raised are very genuine and fundamental. Let me clarify a number of issues and also propose a way forward on this matter.

First, I advise Members that the Public Finance Management (PFM) Act limits the amount of information or the role played by the Controller of Budget to whom this question was addressed. This is why the Controller of Budget was very specific. She could only get information based on reports submitted to her by county treasuries. They are only required to submit reports to the Controller of Budget. So, they can only extract information from the reports submitted to them.

The second point is that the detailed information, for example, of why were these costs incurred, the list of the projects with respect to each county for which these debts were incurred or the circumstances and how they will be paid, this is not information that the Controller of Budget can be privileged to get. The best institutions would be the assemblies. In our case, the best person who gets this information is the Auditor-General at the national level. So, my own recommendation on this proposal on a Select Committee is that I would advise that even with a Select Committee, you will still get the same information. Under Article 125, we can summon each county to provide detailed information that we require on this matter.

However, they will still get the same kind of information which has not been audited. The same kind of information that the Controller of Budget is given is what you will get. Therefore, the best person is the Auditor-General. Once we get their report as at June 2015 – this is the Controller of Budget report of June 2015 – the Auditor-General will now either confirm this or come up with new figures showing the pending bills in respect to each county.

Based on that, the Committee headed by Sen. (Dr.) Khalwale can interrogate and examine, going to the details in respect of each county on why this happened. I think that is the best way forward.

Madam Temporary Speaker, moving on to some of the specific issues that have been raised: Should pending bills ideally be there? No, they should not, under the PFM Act. They can only be there under the circumstances such as if the Treasury delays disbursements. This happened last year when there were cash flow problems.

As at June, 2015, when these bills were reflected in the reports, county governments had Kshs18 billion in their accounts. However, you will find that the way the system is, is that a county government can requisition money for a specific project. If that money is released for that specific project, counties tend to divert that money to some other activities and in most cases, activities which have not been planned for. So, when that project is now completed and the certificate for payment is delivered, they do not have money to pay. This is part of the reason most counties have incurred debts. They are financing unplanned activities based on roadside declarations normally given by county administrations. You have seen that.

The second reason is that the money may have been committed, but the project certificates are not ready. The contractor has not completed the work and so they are unable to check for the exchequer to be realised. So, the money will still show here as pending.

As hon. Members said, the third reason is there are invoices that are submitted in most of the counties. Let me advise Members here that last December in my county, a special team of consultants was hired to find out the pending bills. The figure that was submitted by those consultants was running in excess of Kshs3.5 billion. That is not on tendered jobs on contracts, but only on Local Purchase Orders (LPOs) and Local Service Orders (LSOs). That is a different matter. So, there seems to be a tendency to overstate or inflate bills, all together, put in bills that do not exist. That is why I still strongly believe that after the Auditor-General submits the report, then it is only him who can be requested by the Committee to do a special audit on pending bills in all those counties where the figure will have remained very high.

Madam Temporary Speaker, the second question that was asked was, that Nairobi is included, but obviously at Kshs1.2 billion and not the Kshs64 billion. The Senator for Vihiga had requested for that. I had already mentioned that counties are not obliged to submit more detailed information to the Controller of Budget. They can only do so through the Auditor-General because he has power to seek, but the Controller of Budget is limited to the reports that they receive. However, the Senate, under Article 125 that I have mentioned has powers.

The request by Sen. Kajwang for youth and women can also be accommodated there and then; when you are now doing a special audit, you want to know how much of this money relates to youth and women. This is a substantial amount because I know from my own county, bills are bills. I know many women who did jobs in 2013, but have not been paid between Kshs3 million to Kshs5 million. This has made them more frustrated. The guys who tend to be paid quickly are the big contractors who for whatever reasons, you respect, fear or they can go to court like it has been mentioned. But the smaller ones tend to get punished.

With regard to Sen. (Prof.) Anyang'-Nyong'o's question, I have already mentioned the best ways to deal with the case by the Senate Committee for Sen. (Dr.) Khalwale and the Auditor-General.

Lastly, I want to suggest that as a way forward, that this matter is a serious matter. The figure of Kshs37 billion we are looking at is for June 2015. Now a year down the road, the figure is likely to be worse. This information is grossly understated. We had a Petition from Murang'a County Government on the debts. The figure of debts submitted to the county assembly by the governor was Kshs1 billion. The figure for debts submitted by the County Executive Committee

Member (CEC) of Finance to the same county assembly, was Kshs2.5 billion. Both of them submitted detailed lists of the debts outstanding, and so you can see that counties have now gone into borrowing. We are aware of counties that have borrowed substantial amounts of money and they are required to pay within 12 months under the Public Finance Management Act and they have not.

There are also commercial bank loans which are not here. They were allowed to borrow on short term basis of 12 months up to 2 per cent of their revenue and many of them have borrowed. My county was stopped by MCAs last year from borrowing Kshs1 billion, but I know many counties are borrowing and those are not included as pending bills.

Madam Temporary Speaker, this is a serious issue which is likely to run into billions of shillings. I want to advise the Senators of the Committee on County Public Accounts and Investments that once they get the 2015 reports, they look at the situation and commission the Auditor-General to do a special audit on this matter.

Thank you.

The Temporary Chairperson (Sen. Ongoro): What is your intervention, Sen. Abdirahman?

Sen. Abdirahman: Madam Temporary Speaker, I have listened to the response from the Chairperson keenly and towards the end, I got an indication that we may not rely on the information from the Controller of Budget. There seems to be some discrepancy between what is provided by the Controller of Budget and the actual status in the counties; whether it is loans or pending debts. So, I wonder what the best thing to do is. Do we propose an *ad hoc* committee or we handle this through a joint committee of CPAIC and that of Budget, Finance and Commerce? That could be one of our options because this list is not exhaustive and it does not give us a detailed analysis of the current situation.

I tend to think that we should give it to the two committees collectively or involve the Auditor-General or get an *ad hoc* committee. However, I remain guided through you.

Sen. (Prof.) Anyang'-Nyong'o: Madam Speaker, I do understand how complex this problem is and the answer lies somewhere between what Sen. Billow and Sen. Abdirahman said.

I remember from the Pending Bills Committee that we had in the NARC, it was a Government committee composed of Ministries and other government agencies. The experience was that even after looking at the records of the Auditor-General, they were not adequate; that criminality hides behind official reports and we have to do more than just relying on Government auditors to discover what is happening.

Madam Temporary Speaker, I would recommend that what Sen. Billow has suggested is that we should have a discussion between the two committees and consult - borrowing from the experience of the Pending Bills Committee of NARC - to find out under our circumstances, what can be done to address this problem. My fear is that, next year, elections will be in August. By that time, neither the Auditor-General nor the Controller of Budget will have up to date figures on pending bills and yet we need to arrest county governments piling up pending bills and handing the headache to incoming county governments.

We must come out with a mechanism for ensuring that we do not have runaway pending bills spree in county governments.

Sen. (Dr.) Khalwale: Thank you, Madam Temporary Speaker. I just wanted to emphasize that I am dissatisfied with the position of the Chairperson. With due respect, it was not for purposes of making any other point other than drawing the attention of this House that the

issue of a pending bills is now the elephant in the house of corruption in this country. Maybe, we go the way Sen. (Prof.) Anyang'-Nyong'o has said, that the Rules and Business Committee (RBC) explores avenues so that we create an instrument through which we can control this menace.

The Temporary Chairperson (Sen. Ongoro): Thank you, Senators. Chairperson, you want to add one final response?

Sen. Billow: Thank you, Madam Temporary Speaker. First, I want to advise the Members that personally - I appreciate the concern by the Senators - I have no doubt that pending bills will be over Kshs100 billion as I speak today. To find a solution, if we interrogate the law carefully, I am sure we will find a way in which we can demand that the county governments, not only provide the detailed information, but also limit the ability by the county governments to put the public into debt. That is the most important to do in order to make sure that the public do not supply services or goods to counties without clear guidelines. The law is very clear; that they ought to be having their own rules. I think we can determine that.

Madam Temporary Speaker, I want to thank the CS, Treasury because last month he issued a circular to all commercial banks warning them against lending money to county governments. That is something that we need to support because if we did not close that tap of commercial banks, they were going to borrow again more money through the commercial banks. I think there was a genuine risk that county governments are likely to borrow at will.

The Temporary Chairperson (Sen. Ongoro): Thank you, Chairman and all the Senators in the House for being in agreement that this is one of the most important statements sought by a Senator, especially with regard to our mandate as a Senate. We are also in agreement because everybody who spoke was in one accord, but the Statement sought was very specific and weighty from Sen. (Dr.) Khalwale. We are also in agreement that the answer that you attempted to give did not address the issues that were raised.

Having agreed to that, therefore, and in view of the weighty matters that Senators want to be addressed, for example, specific issues as to how the bills were accumulated, why they took so long to repay and for how long they have been pending, all these matters I believe - I want to agree with the Chairman that he might not be in a position as a chairman of a single committee to provide all these comprehensive answers.

I, therefore, want to go the way proposed by Kisumu County Senator and combine with the input of Sen. (Dr.) Khalwale and the Chairman; that we allow the Rules and Business Committee to either give this mandate to the two committees dealing with this so that they have a wider mandate; that they can seek answers from the counties themselves, budget offices and all other relevant offices so that the Senators can have a comprehensive answer.

Otherwise, we all agree that it was just an attempt, but a good platform to give the Chairman an overview of all the details that the Senators want. We should get a way forward on Tuesday. That will be proper because we are dealing with matters to do with money and bills are being accrued every day. So, on Tuesday, the Speaker will give a comprehensive ruling on the way forward to this matter.

Next order!

Sen. (Dr.) Khalwale: On a point of order, Madam Temporary Speaker, with you indulgence, kindly give me two minutes to request for my statement which you had allowed me to do.

Temporary Speaker (Sen. Ongoro): Proceed Senator!

FUNDING OF COUNCIL OF GOVERNORS' ACTIVITIES

Sen. (Dr.) Khalwale: Madam Temporary Speaker, I rise pursuant to Standing Order No.45(2)(b) to seek for a Statement from the chairperson of the Standing Committee of Finance, Commerce and Budget. The committee chair should:-

- (1) Explain how the Council of Governors (CoG) is funded.
- (2) Explain whether it is true that the CoG has a fund into which county governments make a monetary contribution annually.
- (3) Tell this House when this fund was established.
- (4) State how much money each county Government has paid into the fund to date.
- (5) Tell us whether the fund has received any donations over and above the county Governments' contributions. If so, how much were those donations and from who?
- (6) Clarify what items this money has been spent on so far.
- (7) Clarify whether these funds have been audited and by which audit firm.
- (8) Table the audit reports for this particular account by the CoG.

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

[The Temporary Speaker (Sen. Mositet) Took the Chair]

The Temporary Speaker (Sen. Mositet): Chairperson of the Standing Committee of Finance, Commerce and Budget. Is there any Member of the Committee?

Sen. (Prof.) Anyang'- Nyong'o: Mr. Temporary Speaker, Sir, on behalf of my Chairperson, I give the undertaking that the response will be given in two weeks' time. Allow me to ride on the same statement. Under what law was that fund established?

Temporary Speaker (Sen. Mositet): Sen. Karaba, do you also have something else to add?

Sen. Karaba: Mr. Temporary Speaker, Sir, I want to ride on that statement. It is also important for us to know which criteria some governors use to contribute money to this account. Which law do they use to do so? What will happen to them if they are found to have acted contrary to the law? Will they be jailed and for how long? In Nigeria, for example, half of the governors were jailed for misappropriating public funds.

Some of our governors have even bought helicopters. This should not be allowed to go on.

The Temporary Speaker (Sen. Mositet): Sen. (Prof.) Lonyangapuo, do you want to ride on the same statement?

Sen. (Prof.) Lonyangapuo: Yes, Mr. Temporary Speaker, Sir. I thank Sen. (Dr.) Khalwale for seeking this statement. The CoG has been in existence for nearly four years now. The relevant committee in this House has not received any report. I am a Member of the Standing Committee on Finance, Commerce and Budget. We have not received any report at all. They have even employed staff there.

Is the money they are spending their own donations or part of the money allocated to them every year? We need every detail pertaining to the operations of the CoG fund. Where is their office located? The same council asked every county government to open a branch office in Nairobi. I do not know where mine is located. As a representative of the county, I expected my

office would be the first stopover for the governor in Nairobi. That should be the same for all my colleagues here. We want to know where the active offices are located, who approved and how much they pay as rent.

Sen. Murkomen: Mr. Temporary Speaker, Sir, in addition to the question asked by Sen. (Dr.) Khalwale, and I think he borrowed heavily from my statement earlier. The Intergovernmental Relations Act provides clearly that the CoG shall be funded through resources allocated by the National Treasury.

We want to find out how much was allocated to the CoG. Is there financial overlap where counties are allocating money to the CoG against the law while at the same time there is an allocation from the National Treasury? That will help us appreciate how much is being spent and for what. We want a breakdown of how much was paid for exaggerated legal representation and so forth.

The committee chair should come up with a comprehensive answer in terms of budgeting and expenditure of CoG in relation to various items. In particular, we are interested in these suits against other institutions of oversight that are basically done in fulgurous and vexatious manner. I believe, as Senior Counsel Sen. Orengo agreed with me, that there has been a lot of misuse of legal processes as a conduit for siphoning public resources.

Temporary Speaker (Sen. Mositet): What is your point of order, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. This is a House of record. The record should appear correctly. My brother Sen. Murkomen suggests that I have borrowed the requisition for this statement from his contribution this afternoon.

Let the record be straight that this is not true. I know the crime of stealing somebody's intellectual property. I, therefore, could not, probably, have done this. I filed the requisition for this statement yesterday and the Speaker approved it. By the time the Senator was intervening, it was long after the act.

Temporary Speaker (Sen. Mositet): I can confirm what Sen. (Dr.) Khalwale said. I am the one whom approved that Statement.

Sen. Murkomen, you are completely out of order!

A Member of the Standing Committee of Finance, Commerce and Budget has undertaken to respond within two weeks. However, it is like the Statement is quite loaded. You can come up with a smaller sub-committee within the Standing Committee on Finance, Commerce and Budget to do an inquiry. You will need to call the Chairman of the CoG to come and give out details of what we are requesting. Therefore, maybe you may need three weeks.

Sen. Karaba: Mr. Temporary Speaker, Sir, the House will be on recess in the next one week. Therefore, we could have given him longer period so that it does not cover then recess time.

The Temporary Speaker (Sen. Mositet): Let it be the first week after recess. That is almost four weeks.

FIRE INCIDENCES IN SIWOT AND CHEPTENYE SECONDARY SCHOOLS

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, Allow me to seek a statement.

Pursuant to Standing Order No.45(2)(b), I wish to seek a Statement from the chairperson of the Standing Committee on Education regarding the recent fire incidences on the night of 14th

March, 2016 at Siwot Secondary School in Bomet County and Cheptenye Secondary School in Kericho County.

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

(1) Whether the Government is aware that on the night of 14th March, 2016, between 6.00 p.m. and 10.00 p.m, a fire gutted the buildings in Siwot Mixed Day Secondary School in Bomet County and Cheptenye High School in Kericho County.

(2) Whether there were any injuries or fatalities in both incidents.

3) The estimated cost of the building, equipment, books and any installation within the gutted buildings.

(4) Whether the circumstances which led to the cancellation of 2015 Kenya Certificate of Secondary Education (KCSE) results in some subjects in both schools are related to the gutting of the buildings.

(5) Whether there is any relationship between the fire and the cancelled KCSE results of 2015 in both schools.

Sen. Murkomen: Mr. Temporary Speaker, Sir, in addition to Sen. (Prof.) Lesan's questions, I would like to know the following:-

(1) Whether the Government is aware that fire brought down the dormitory of Moi Girl's Kapsowar, which is a national school, and destroyed the property of over 120 students.

(2) Whether the Government has a policy on insurance of secondary and primary schools, especially boarding schools.

(3) What is the Government doing as far as creating a good environment and protecting schools is concerned.

(4) Whether the County Government of Elgeyo-Marakwet and other counties across the country are well prepared with fire extinguishers, particularly in towns or headquarters of counties. In Kapsowar it took about six to seven hours for a fire extinguisher to arrive, way after the dormitory had already been completely razed down.

(5) What is being done by counties to ensure that there is access to fire engines in every part of the country, as required by devolved governance? Instead of them funding the wrong things, they should fund the things that were allocated to them.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, further to what my neighbour has asked, could the Chairperson of the Committee also tabulate the counties that have bought fire extinguishing machines and list the counties that have not purchased them? Since we have been discussing about pending bills, are some of them related to the purchase of these machines?

Lastly, it is sad that we are hearing of fires in some schools. Could the Chairperson also tell us some of the common sources of these fires, so that the Senate can address them adequately? I wish to console my neighbour, Sen. Murkomen, because the top girls' school in his county was affected. There is another school in Keiyo South that went through the same scenario. The Ministry, through our Chairperson, should come up with a strategy to reduce such incidences or stop them.

The Temporary Speaker (Sen. Mositet): Chairperson, you need to tell us when we can expect that statement, including the additional requests from the other Senators. Your Committee should make sure that every school, particularly the boarding schools, has the necessary fire equipment. Anytime a public institution is built, the mechanical engineer should make sure that firefighting equipment is installed.

When we will get these answers?

Sen. Karaba: Mr. Temporary Speaker, Sir, I undertake to answer in two weeks' time after we come from recess.

It is also important for Members to note that it is not the Ministry of Education which is charged with the responsibility of installing fire extinguishers. I believe that should be the responsibility of the Ministry of Devolution and Planning. This is because it is not only schools that are gutted by fire, but also shopping centres, villages and vehicles. Therefore, we should not blame it all on the Ministry of Education.

The Temporary Speaker (Sen. Mositet): I do not think we are talking about the need for the counties to purchase portable fire extinguishers and blankets.

Sen. Karaba: Mr. Temporary Speaker, Sir, I can undertake to answer that. It is a requirement that every school in the Republic should have those fire extinguishers. In any case, it is a requirement that all laboratories in schools all over the country should have fire extinguishers. Even the students who are seated at the Public Gallery can attest to that.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Speaker, Sir, I agree totally with *Mwalimu* that schools are required to have these fire extinguishers. In fact, it is a law that even in homes and cars we should have those portable fire extinguishers. However, the kinds of fires that gut schools go beyond the ability of the small fire extinguishers to put them down. Therefore, this is a two-pronged approach. There must be a policy in the Government to enable the county governments - since that is a devolved function - develop the response capacity to deal with fires.

About two weeks ago, Kibuye Market, one of the biggest open air markets in Africa, was gutted by fire. The fire ambulances arrived an hour or so later and could not put out the fire, since it did not have enough water. You can just imagine the loss.

Mr. Temporary Speaker, Sir, this is an issue that should be taken seriously. Schools could have those small extinguishers to extinguish fire on a desk or in a latrine, but they cannot be used during fires in dormitories.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, allow me to ride on this important issue. The Chairperson of the Committee should also report to this House the possible role by the governors and their county executives in the origin of the fire in some of the instances. We have a case in point, in Thika, where the county government was reported to have deliberately and maliciously put an open air market on fire, so as to pave way for construction of some other structures.

There was a similar issue in Kakamega County, three weeks ago, when the open air *Jua Kali* market was set on fire. Kakamega County is privileged because we already have two fire engines, but they were never used in good time. They came in very late; setting the possibility that somebody in the county government might have been interested in those things being gutted. It is important that it be clear that some of these malicious people who are out to make either economic or other form of benefit from potential 'investors' might be harassing and disenfranchising people who are engaged in the *Jua Kali* sector, who are part of our business society, at the cost of innocent and poor people; the *Mama mboga* and *Jua Kali* spanner boy. It should be clear.

The Temporary Speaker (Sen. Mositet): We need to hand that statement to the Committee on Devolved Government. Sen. (Prof.) Lesan, when could we get the statement?

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, I am sorry that I was not paying attention. However, since these questions are related to education, we will sit down together. Immediately after we come back from recess, we will give a response.

Sen. (Prof.) Anyang'- Nyong'o: Mr. Temporary Speaker, Sir, I fear that my colleague, Sen. (Prof.) Lesan, my not have followed the discussion. The important duty for the Committee on Devolved Government is to find out the capacity for rapid response to fire fighting by the county governments. Do they have firefighting equipment and to what extent do we have water points for the firefighting equipment to have enough water when there is fire. In most modern cities, and I believe that Nairobi is one of them, there are usually fire extinguishing points where you turn and the water will come out. If they do not, then there should be a programme for rapid response fire fighting capacity in counties because we will continue to have this kind of thing.

What Sen. (Dr.) Khalwale said is very important. To what extent have certain fires been caused by mischief by certain county officials wanting to achieve certain malicious ends like destroy an open air market so that contracts can be given for something new to be put up. This is a role of the Committee on Devolved Government and distinguished from Education Committee

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, I wish to draw from what my own county has done with regard to disaster management. They have a disaster management department. That is the one that manages---

The Temporary Speaker (Sen. Mositet): Are you trying to answer Sen. (Prof.) Anyang'- Nyong'o's question?

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, I am trying to get the gist of the question. I thought that I understood the question earlier. My county has also been beset with the kind of difficulties that have been mentioned here. The firefighters arrived at the school last night with no water and the capacities of the fire fighting engines were unable to push water for more than 10 metres. Our Committee will try to give an overall picture of all the other counties as well.

The Temporary Speaker (Sen. Mositet): Hon. Senators, we do not have the requisite numbers to go for Division. Therefore, I will defer Order Nos.8, 9, 10, 11, 12, 13, and 14.

BILLS

Second Reading

THE COUNTY STATUTORY INSTRUMENTS BILL
(SENATE BILL NO.10 OF 2015)

(Bill deferred)

COMMITTEE OF THE WHOLE

THE KENYA NATIONAL EXAMINATIONS COUNCIL
(AMENDMENT) BILL (SENATE BILL NO.7 OF 2015)

THE OFFICE OF THE COUNTY ATTORNEY BILL,
(SENATE BILL NO. 37 OF 2014)

THE OFFICE OF THE COUNTY PRINTER BILL
(SENATE BILL NO. 42 OF 2014)

THE WATER BILL (NATIONAL ASSEMBLY
BILL NO.7 OF 2014)

THE UNIVERSITIES (AMENDMENT) BILL
(SENATE BILL NO.31 OF 2014)

(Committees of the Whole deferred)

Second Reading

THE ORDER OF PRECEDENCE AND TITLES BILL
(NATIONAL ASSEMBLY BILL NO.11 OF 2014)

(Bill deferred)

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. This is not the first time that the Chair is being forced to make the kind of ruling and order that you have just made. We came here to consider, debate and vote on Bills. Special offices have been created; the Office of the Whip and their deputies on both sides as well as the offices of Senate Majority and Minority Leaders together with their deputies who earn hefty allowances. They are facilitated and given special means of transport. They are supposed to earn that money. Senators are very busy people. Could the Chair in the next sitting clarify the role that the Whips are playing to ensure that we have enough delegations in this House to vote?

Otherwise, we are shortchanging the taxpayer. The poor people of Shinyalu would have benefitted if a decision would have been made. However, because you are very accommodating, you are making it look like a habit to them. It is important that sanctions be visited on Whips of both sides; the Majority and the Minority side. I will not be surprised if this evening, I will see the Whips on television performing duties that are not related to their duties in this House. For instance, in the case of the Majority side, you will see them with the President in some function while those of the Minority side will be seen with the former Prime Minister in a function. It is important that you pronounce yourself on this issue.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I do not pretend to speak on behalf of everybody else, but we have been on this road before and we went ahead to agree that Wednesdays will be the days set aside to vote and that we would suspend any possibility of statements today so that we can vote. I can confirm that between 2.30 p.m. and 3.30 p.m. Senators were here and eager to vote on the Bills.

Unfortunately, we went on and on beyond the time allocated to statements. Without casting any aspersions to your office, I think that you should be firm on what time should be allocated to statements and it be determined so that in future, Members are aware that they should be here from a specific time so that they can vote.

The Temporary Speaker (Sen. Mositet): Order! You mentioned that between 2.30 p.m. and 3.30 p.m., there were enough Members; that is not true. You must have seen Sen. Sang and I doing the counting. We had agreed that the moment we realize that we have the numbers, we would postpone the statements and go straightaway to Divisions and Committee of the Whole. I

will allow you to finish, knowing that we were aware we did not have the requisite numbers from 2.30 p.m.

Sen. Murkomen: Mr. Temporary Speaker, Sir, it is safer to stick to the argument that Wednesdays should be set aside for voting. Therefore, we should mobilize Senators to be here as from 2.30 p.m. to vote.

As Sen. (Dr.) Khalwale said, the Whips on both sides should lead a little bit harder because at some point we were just down by one person. Maybe if we had rung the bell, we would have returned one or two Members to be here to vote. It is a challenge that we have to deal with because we are not like the “lower House” which has more Members. Sen. (Dr.) Khalwale and Kenyans must know that this is the only House that since Independence that requires a proper majority to vote; 24 Members which is half of the House. It is clear that this is a unique challenge that the Senate faces that is not in many Houses across Africa.

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, I support the proposal by Sen. (Dr.) Khalwale that a strong message needs to be sent out to the Whips on both sides of this House. We are employed by the people of Kenya. We are not self-employed. Our terms and conditions of service indicate that on Tuesday, Wednesday and Thursday, we should be in this Chamber between 2.30 p.m. and 6.30 p.m. It is not 4.30 p.m. We are expected to be here to work on behalf of the people of Kenya. In fact, it is only between Tuesday and Thursday where we have an obligation to be in one place. From Friday to Monday, you can decide to play golf, go to the counties or go for political rallies. We need to restore the confidence of the public in this House. Today, as I speak, we have a delegation from a visiting school and most likely a top school. They expected to come and see their Senators yet they are seeing seats.

Mr. Temporary Speaker, Sir, in as much as we cannot talk of a mechanical application of the times of operation of this House, but there are certain Bills that are so significant. Last week, the President went to northern Kenya and talked about the implementation of the Equalization Fund yet that legislation has not come to this House. There are Bills to do with water and fisheries which cannot progress simply because Members are not available. I urge that we take some action and prosecute some reminders so that Members of this House can take the business of this House seriously.

Sen. Karaba: Mr. Temporary Speaker, Sir, it is a pity that we are discussing this issue of lack of quorum. We should not be discussing it. We should be here to continue with the business as per the Order Paper. It is sad that some Senators are here throughout from 2.30 p.m. to 6.30 p.m. so to speak. One might be surprised to find out whether we are all intelligent. We might be seen that others are taking advantage of us; when we execute business of the House, they ride on the success of the Senate while some Senators have not been here at all to contribute to any Bill or any other business of the House.

Therefore, what would the Whip be doing if we cannot whip. If it is not possible to whip, then we de-whip the Whip.

Sen. (Dr.) Khalwale: She has just come!

The Temporary Speaker (Sen. Mositet): Order, Sen. (Dr.) Khalwale! Do not harass the Senate Majority Whip!

Proceed, Senate Majority Whip.

Sen. Elachi: Mr. Temporary Speaker, Sir, first of all, I have just come in. We have a delegation from the Chinese Embassy. Since the Speaker was not there, I had to meet the Ambassador. That is why I came in late. However, a few of us have maintained constant

attendance, for instance, you; Mr. Temporary Speaker, Sen. (Dr.) Khalwale, Sen. M. Kajwang and a few others. When the House began this afternoon, we were more than 22 Senators. We know that we do not do just conduct the House business; we also have Committee work that is going on.

I plead with the Senators to take the business of the House seriously. Every day, we send text messages to our Members. It is not fair because these are Members who are elected. They agreed that they will work for their people. It is unfortunate if every day our Whips, either from the Minority or the Majority side, should remind you to perform your roles. One of your roles as outlined in the Constitution is legislation. That is why we are in this House. The next role is oversight. That is why you have to come to House, look at the Bills and see whether you are oversighting on what is happening in the counties or at the national Government.

It is unfortunate for me to stand and plead with Members who asked for this job; and knew their obligation which have timelines – they have to be in the Senate three days a week. The Senate is a new institution. We need to lay a good foundation so that come 2017, the Senate will be strong and stable. We have to take the business of the House seriously as the Senator for Kakamega County said. He always reminds us to be serious. It is always good to be serious with our business. I plead with the Senators; it is not for the Whips to remind them of their obligation. You should get a pay which you have worked for. I wish our Senators would do so.

The Temporary Speaker (Sen. Mositet): Hon. Senators, tomorrow, the Whips will make sure that we have all the Senators who are not engaged elsewhere.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF STUDENTS AND TEACHERS FROM ALLIANCE HIGH SCHOOL

The Temporary Speaker (Sen. Mositet): Hon. Senators, I have a communication to make on visiting students and teachers from Alliance Boys' High School.

Hon. Senators, I wish to recognise the presence of visiting students and teachers from Alliance Boys' High School in Kiambu County. They are seated in the Public Gallery. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

(Applause)

Proceed, Sen. Murkomen.

Sen. (Prof.) Anyang'-Nyong'o, do you have an intervention?

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Speaker, Sir, as an old boy of Alliance High School---

The Temporary Speaker (Sen. Mositet): I give you a minute.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Speaker, Sir, thank you. As admission No.1836, I would like to welcome colleagues from Alliance High School. I was in Wilberforce House, Dormitory No.11 and the House Captain of Wilberforce House in 1967.

(Applause)

As our school motto says, “we are strong to serve.” I have lived up to that motto all my life.

When I went to Makerere University, our motto was, “*Profutura edificamus*” which means we build for the future. So, I hope you will build for the future when you leave the great school.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I was not a student of Alliance High School, but I have been a parent at a neighbouring school, Alliance Girls High School since 2008. There is a famous phrase which they use. They say; “they are going across.” I do not know what “across” means. It might mean these young men here.

I commend the school for keeping the education standards high. They are always at the top. Many schools in the Republic benchmark with Alliance Boys’ High School. We welcome you. My neighbour here is your Senator. We always look up to all of you, the 1,400 of you. I do not know whether you have exceeded that number, but that was the case last year. Keep it up. Some Senators here, including Sen. (Prof.) Anyang'-Nyong'o and Sen. Orendo passed through your school. I wish you well. We are creating many schools like Alliance High in our counties.

The Temporary Speaker (Sen. Mositete): Order, Senator! We have quite a number of Senators who are interested. So, I give one minute to each Senator.

Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, it would be wrong even if I was not a student of Alliance High School for me not to acknowledge their presence. This school has set the standard of education in this country. I ask them to send my greetings to the following people; teachers and the cooks.

(Laughter)

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, I will not send greetings because the Senator for Kakamega has done what people from his county are good at.

However, I went to Lenana School and we used to beat Alliance High School in Rugby, once in a while in drama and when it came to the ladies, but they used to beat us in academics. I congratulate the teachers and students of this great school for upholding the high academic standards. I know that in this Gallery today, there are a number of you who will be sitting where we are sitting today. Some of you will sit in the State House and also in the Cabinet.

As one of the youngest Senators in this House, I encourage you to have confidence in yourselves, adopt a straight line and avoid the “X-Factor” party. You can always go for the “X-Factor” parties when you become a Senator. Now, you should concentrate on your academics. I am sure that many of you will find us here. In the next 30 years, Sen. M. Kajwang’ will still be here and I am sure some of you will be sitting with me.

Sen. Hassan: Mr. Temporary Speaker, Sir, I was watching the proceedings when I heard Sen. (Prof.) Anyang'-Nyong'o saying that he was in Alliance High School in 1967. So, I came to give the young people hope. I was not in Alliance High School, but I went to Lenana School. Your motto is “Strong to Serve” but Lenana School’s motto is *Nihil Praeter Optimum*. This is Latin which translates to “Nothing But The Best.” I can confirm what Sen. M. Kajwang’ said, that we used to beat you in everything. The thing that took us to Lenana School was academics. That in itself shows that there is a strong tradition of excellence in your school.

I thought there would be an evolution of a joke that we used to make. This is on a light touch. One of the things that always made me proud not to be in Alliance High School was the green sweaters. That said and done, it is a joke we have had for very many years.

I wish you well because by next year, these positions will be vacant. I also have one more thing to tell you. We only have hope in Kenya to fight ethnicity if you grow out of it. We are almost a nation that has been relegated to ethnic engineering and manipulation of our electoral process. I can tell you for a fact that our hope rests in you. When you come to sit in this Senate, you will think of this nation, but not your region or tribe. So, as you go out there, let that Kinyanjui, Omondi or Omar who is your classmate be a brother both in and outside Alliance High School.

Thank you.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I would like to congratulate the students of Alliance High School because the school has been a role model for all of us. I did not go to Alliance High School, but I went to one of the best schools. That is St. Patrick's High School in Iten which was one of the top schools in last year's Kenya Certificate of Secondary Education (KCSE).

Mr. Temporary Speaker, Sir, I preached in Alliance High School a few years ago on invitation of the Christian Union (CU) and the then principal, Mr. Khaemba, who is now a County Executive Committee (CEC) member serving Nairobi County Government. I want to tell those in the CU and in school that there is hope and there is a future.

I want to emphasise on the kind of education we have at the moment. We have an education system where we have very many As, but many of our students are not inculcated in appreciating knowledge and applying it. One of the challenges I gave teachers and students last weekend in my county is that we yearn for our old C- plus because a person who got C- plus was more knowledgeable than a number of students nowadays who score As. As you continue studying, do not study for the purpose of getting marks. Instead, study to be knowledgeable like Sen. (Prof.) Anyang'-Nyong'o, the late Bii Kipkorir who was my very good friend and many others who after leaving Alliance High School were very creative and contributed their best to this country.

As we support the education system that we have as a country, one of the greatest investments must be investment in knowledge. Secondly – I really appreciate Alliance High School for that – we want a school that not only succeeds in academics, but also in extra-curricular activities. Some of the best artists and debaters like Sen. Orengo was a member of the Theatre Club went to Alliance High School. You need to grow in sports, theatre, singing and other areas of creativity, so that you become an all-round person.

Mr. Temporary Speaker, Sir, thank you.

Sen. Wamatangi: Mr. Temporary Speaker, Sir, in the usual tradition of our House, I wish to take the opportunity to welcome students of Alliance High School. Alliance High School is in Kiambu County. The school, as most Senators have said, is a school that has put the cradle of academics in this country at the top. What is even more inspiring about the school is that even when the examination system has been raided with cheating and shortcuts to being at the top, Alliance High School has consistently chosen to follow the right route and curves and has still emerged top. For that, we need to congratulate them.

(Applause)

Lastly, when I was in Alliance High School last time, I urged the students and teachers to spread the love in Kiambu County by ensuring that there is a mentorship programme. For example, in the last examinations, the school had almost 300 As. Our thoughts are that if the 300 students could have a peer-to-peer mentorship programme where they adopt each one student in lesser privileged school of Kiambu County, then, that student could get his A and leave another A student in a less privileged school. That will make the entire country better and take our academics even to higher heights.

We welcome you, Alliance High School, and also recognise the work that you have done exceptionally. Please, say the same to your fellow students and teachers.

Congratulations once more time. Thank you.

Sen. Karaba: Mr. Temporary Speaker, Sir, it is important for the students to note that the one talking is the Chairman of the Committee on Education. I have also been a teacher and I taught in a number of schools. I also went to school, not Alliance High School, but Kagumo High School. All the same, I would like to say something about Alliance High School. Having been the Chairman of Sports and the Chairman of Headteachers in former Central Province, Alliance High School should be emulated by every other school because it does not only shine in academics, but also in co-curriculum activities. They go outside Kenya to represent our country in various games. For example, the school represented us in hockey in competitions that were held in Rwanda. The students are also active in rugby, swimming and many other things, including drama and music festivals. This is a school that is all round.

We thank you very much for making us proud. Continue working hard. Congratulations for the just released KCSE results which were very good. Thanks to the teachers and the principal whom I know very well. Also make us proud next time.

Sen. Elachi: Mr. Temporary Speaker, Sir, I also thank the school and, more importantly, the teachers for the discipline that the school has had for many years. This is one of the schools where we have never heard of any disciplinary actions taken against it. We also appreciate the mentorship programme that they have in the school which instills values. I hope it is a programme that can be carried beyond the school.

Today, the issue of discipline is a challenge to our young people in schools. I hope that teachers will continue assisting students. These are students who come from very different backgrounds. Some of them come from very poor backgrounds. However, you should know that the moment you arrive in school, you become an Alliance brother and you know very well that you are seen. There is no difference whether you come from a rich or a poor home. All of you become students. That is why education is the key to success in our country.

We urge you to hold on to values and respect your teachers because they are the ones who will make you excel and move on to the next level. Congratulations for doing well in the examinations that were released recently.

Sen. Ongoro: Mr. Temporary Speaker, Sir, I feel privileged to see the students of Alliance Boys High School, being a parent there myself. When I was a student at Mary Hill Girls School many years ago, one of the fiercest battles that I ever experienced in my life was between Alliance Boys High School and Mang'u Boys High School. It was not physical. This was an academic contest of brains. Being a Form 1, I had not witnessed such a contest before. So fierce was it that when I left the debating hall where these two schools had been debating, I had a formed an opinion that when you fight physically this world, it is nothing compared to anything mental.

We know that Alliance Boys High School has been the epitome of excellence in this country for decades. However, excelling academically is just one aspect of what helps you to excel in life. You can get all the As and when you face the real life situations, still find it difficult to excel. You need academic qualification, yes, but it just forms about 20 per cent or even less of what makes you become a better citizen and to excel in life.

What you need most as a human being is the strength of character to deal with real life situations where you only need your academic qualifications as an input to help you with some information. What you also need most is personal discipline – how you carry yourself when nobody is supervising you; when the headmaster, principal, house teacher or prefects are not there and you are alone somewhere in one part of this world facing a real life challenge. How you will carry yourself in that situation, personal integrity and everything else brings out the success that you need. Sustained hard work not just in class --- You cannot believe that once you get straight As in your academic qualifications, that you have worked hard. No. That just gives you the platform to now work hard.

Mr. Temporary Speaker, Sir, when you graduate, then you are faced with that reality when it is announced that you have now been given authority to read. If you go to any graduation ceremony, you will hear the graduands being told that they have been given power to read. In the last graduation that I attended, the lady who was with me had brought along her grandmother. When that pronouncement was made that: “We now give you authority to read”, this old woman was so shocked. She had come all the way from some part of this world to witness the graduation of her grandchild thinking that now her granddaughter had done it all. Only to be told that it is now after you get your first degree that that is actually when you are officially given authority to now read.

Now, you see how far we all come. I thank you one more time, not just for the sustained good academic qualifications but for the discipline that comes from Alliance Boys High School, Alliance Girls High School and other institutions that you represent.

Thank you and welcome as you visit the Senate.

Sen. Hargura: Mr. Temporary Speaker, Sir, I would like to join my colleagues to welcome students and teachers from Alliance Boys High School. This is a school which has been there for a long time – from the pre-Independence era. What comes to mind when you say Alliance High School, is that sustained culture of excelling; a culture which is not easy to maintain. So, I am sure that there must be something beyond the normal academics. Maybe the likes of Sen. (Prof.) Anyang'-Nyong'o can tell us what goes on there because it takes a lot to sustain that kind of academic excellence.

I went to a school in the same region, Mang'u High School. So, I know what goes on because the kind of competition which is there --- I know how we used to relate to them back then. It is also a school which many Kenyans aspire to go to. For those who have gone to that school even from the remote areas which we represent, it has not failed them and they have made it in life. Maybe it has all to do with the culture and discipline which is inculcated at that level.

I welcome them and also encourage them that they have to be good role models and represent what Alliance Boys High School represents in the real life out there. That way, many will still have that aspiration of attending that school, making it in life and becoming responsible citizens of our country.

The Temporary Speaker (Sen. Mositit): Let us go back to our business – Order No. 15

BILL

*Second Reading*THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL
(NATIONAL ASSEMBLY BILL NO. 18 OF 2014)

Sen. Murkomen: Thank you, Mr. Temporary Speaker, Sir. I have the privilege and honour of moving the Fisheries Management and Development Bill (National Assembly Bill No. 18 of 2014).

This is a very important Bill in many ways. First of all, it wants to mainstream the exploitation, preservation and protection of fisheries and aquatic resources in this country. For a long time, this nation has survived by just dealing with agricultural products and livestock. However, there are many other resources in this country which have since been discovered. Places that we called marginalized in the past are now the new frontiers of development. If you go to places like Turkana now, there is a lot of attraction of investments because of the discovery of oil and water. Places like Marsabit County have a lot of interest now because of wind energy. Places like Samburu and Isiolo have a lot of potential and many investors are moving there, looking to invest in property.

One of the areas that we have ignored for a long time is the development of our aquatic resources and particularly the fisheries sector. We have over-dependended on Lake Victoria and Lake Naivasha. However, we have far more resources in this country in parts of the coast when we talk about our coastline and our link to the ocean. This is a very important Bill that has many parts. It is a very bulky Bill that many of us should take time to read. It has about 20 parts.

Mr. Temporary Speaker, Sir, Part 1 is about preliminary provisions. As I said earlier, one of the objectives of Vision 2030 was to develop a governance and investments structure for the oceans and fisheries resources. The author of Vision 2030 is seated here, a very humble Sen. (Prof.) Anyang'-Nyong'o, who was among the chief architects and the Minister for Planning and National Development then when it was launched.

As a result of that, in 2008, we developed the National Oceans and Fisheries Policy (NOFP). This policy outlines key interventions that should be made to ensure that the fisheries sector and fisheries resources are exploited but in a manner that will be utilized well and protected, particularly in our exclusive economic zone and other parts of the country. For example, we have Lake Turkana which has fantastic fisheries resources but because of accessibility, marginalization and infrastructure of that area, those resources have not been exploited properly.

Mr. Temporary Speaker, Sir, in 2010 which is the chronology of these issues - remember vision 2030 was authored when NARC Government came to power and in 2008, the NOFP was put in place - we passed a new Constitution which has very elaborate provisions on protection of the environment and resources. It has a legal framework that ensures that there is participation of communities, county and national governments in so far as protection and exploitation of our resources is concerned.

Mr. Temporary Speaker, Sir, this Bill is very important in ensuring that there is implementation of that Constitution in a manner that respects the Constitution but also the interests of the people of Kenya and enables us to progress further in terms of exploitation of

resources. There has also been a challenge when it comes to exploitation of fisheries resources. For those of us who are in the trade sector--- I know many people may never associate me with the trade sector but I want to tell you that my Master of Law (LLM) which I scored highly with distinction was in the area of trade and investment.

Mr. Temporary Speaker, Sir, one of the things that inhibit the exploitation of fisheries in this country is the inability of our nation to achieve the sanitary and vital sanitary standards required globally under the World Trade Organization (WTO) law and the agreement on sanitary and vital-sanitary standards which require that all resources whether in the horticultural or fisheries sectors, achieve required standards of health. That includes the manner in which you are fishing, the place where you are going to store the fish, the fishing nets and the fishing area.

There was a time that fish from Kenya was banned from Europe because the European inspectors on matters of sanitary and vital-sanitary standards came to Lake Victoria and found out that the fishing area was not clean or rather not of the required standard. For a long time, the Government had to struggle to ensure that those standards were achieved before our market was again opened in Europe.

Mr. Temporary Speaker, Sir, this Bill provides for those standards and enables us to meet our international obligations. If you go to WTO law and particularly the disputes settlements body, many of the conflicts taking place between Europe and China, Europe and the United States, Japan and United States is about how fishing can be done in a sustainable manner.

You will find the debate around Article 20 of the guards in terms of sustainability of exploitation of resources and protection of environment and natural resources. Again, this Bill domesticates those international obligations by ensuring that we fight illegal, unreported and unregulated fishing so that states benefit from the fisheries resources within the exclusive economic zones but also do so in a manner that respects the interests of future generations.

Mr. Temporary Speaker, Sir, therefore, this Bill from Part I is about the introduction. You have definitions of various terms that are used in the law. Part II is very important because it is about establishment of institutional framework for carrying out exploitation of those resources in a manner that is sustainable.

Clause 6 establishes the Kenya Fisheries Advisory Council which will have representation of the Cabinet Secretary for Agriculture, Livestock and Fisheries and the Cabinet Secretary for Interior and Coordination of National Government. This is very important because you are also dealing with the intrusion of national territories by foreign fishermen which has something to do with security. There are matters of transport and infrastructure because of use of fishing equipment that are related to fishing.

Mr. Temporary Speaker, Sir, it is important that we have the Cabinet Secretary of Security and Foreign Relations and the Cabinet Secretary of National Treasury. Also, we have a representation of other bodies that deal with fisheries and also a designate from the Council of Governors with expertise in fisheries, who shall be nominated by the Council of Governors. That nominee is one. Maybe going forward, if need be, at the Committee Stage, perhaps, we may need to increase representation of county governments. He should be an expert in matters of fisheries and also it should be a person that comes from the areas that are dealing with fisheries like the coastline, Lake Victoria, Naivasha, Lake Bogoria and Lake Turkana. I think that nomination will also be considered by the Council of Governors. You have also representation from the research institutions in the universities and the institution on consumer protection.

Mr. Temporary Speaker, Sir, this is an important provision. Going forward as I move this Bill, we might need to consider the Senate - because this Bill came from the National Assembly - ensuring that you do not just have people who represent the Government only in the Council but may also have some experts that have no attachment alone to ensure that the Council becomes more independent from purely being a government entity.

The Council's responsibility is to look at coordination of policies that are related to fisheries, allocation and access to fishery resources in terms of licensing. You have research education in development of resources, the Council leads on matters of research; the management of resources is also led by the Council.

Mr. Temporary Speaker, Sir, in Part III, you have the establishment of the Kenya Fisheries Service; you have the Kenya Forest Service that deals with management of forest resources and you also have the Kenya Wildlife Service that deals with wildlife. So, it is an equivalent of those institutions that is being established in as far as fisheries is concerned and it will be a body corporate that runs like any other parastatal in this country.

The functions will be to ensure that there is an appropriate conservation and development of standards on management, sustainable use and development and protection of fisheries resources. They formulate policies and monitor the implementation of the policies regarding conservation and utilization of fisheries. They develop guidelines that deal with fishing matters, matters about standards and fisheries, they collect data, analyze it in relation to matters of fisheries, they identify manpower requirement for level of services and administer and coordinate matters related to protocols, conventions and treaties that are related to fishing and aquatic resources.

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

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

Mr. Temporary Speaker, Sir, we also have other issues including the health standards; the Public Health Act and the Food, Drugs and Substance Act. Standards that are required in relation to aquatic resources are also expected to be implemented by the Kenya Fisheries Service as an institution. This institution will have a board of directors, representation of various Ministries and various sectors and interested parties, you also have a board of directors that are there, there is a management led by a managing director and the staff. There is a board that oversees that management structure just like we have had in all other parastatals. Of course, the board meets like any other board.

Mr. Temporary Speaker, Sir, there are also financial and administrative provisions of that institution. That will come from money appropriated by Parliament. They will also have monies that are collected as fees and licences, they will also receive donations. There are parts of donations that are invested in this sector, generally, because there is a global interest in the protection of aquatic resources. Many institutions globally would like to work with such an institution that will deal with matters of aquatic resources and fisheries. Their accounts will be audited to ensure that we do not have corruption.

Mr. Temporary Speaker, Sir, many boards and parastatals in this country collapse because of bad beginnings. Even as we go forward to fill the membership of the board and subsequently those who will be employed, there is a terrible culture in this country. If you know

that the chairman of a board is from a certain community and the managing director is from community X, the rest is obvious; that the membership of that board is the direction of one community. Then, a culture begins where they put their people in positions and forgets the national interest. The national interests, objectives and global standards that we are talking about become secondary, because the people being employed there have an objective of either achieving financial interests on behalf of certain people or employing people in a skewed manner to basically prepare themselves. They will subsequently go back to their communities and ask to be voted for because they worked at the Kenya Fisheries Service, for example, and employed a certain number of people.

There is a culture in this country that we must fight. The only way we can fight it as Parliament is if we stand firm and insist that standards and oversight responsibility of this House must be achieved. We are still a long way from achieving that, but we should continue fighting. We talk about certain institutions being corrupt but corruption started in its conception, in the manner in which people were appointed or hired. Subsequently, those people had godfathers who were 'untouchable.' As a result, corruption, favoritism, nepotism and tribalism became the order of the day.

I urge those who will implement this Bill to know that the fisheries sector is important. It can earn us billions of resources that can go to the Exchequer and help us develop this nation. I request them to think about how they will ensure that it becomes a sector that is corruption-free, which gets people who are qualified and have the national interest and the interest of future generations at heart to run these institutions.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. I am proud of Sen. Murkomen this afternoon because he has talked of corruption by way of appointment of kinsmen into line Ministries or parastatals, where the headship comes from that particular ethnic community. Could he substantiate or shed more light, the kind of changes that have taken place at the Energy Regulatory Commission (ERC), upon the appointment of the last two Cabinet Secretaries?

The Temporary Speaker (Sen. Sang): How is the ERC related to the Bill being discussed?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, the beauty of debate can be seen when you are debating with a brilliant man, like Sen. Murkomen. Now that I have provoked him, you will see the beauty of his response. It leaves nothing in doubt that there is corruption in Jubilee.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I take it to mean that Sen. (Dr.) Khalwale just wanted to take advantage of the opportunity to pass information. I agree with you that there is no relationship between what he has with what I raised. Should there be corruption in any sector, whether the energy or agriculture sector, we must always condemn it. The only compliment from Sen. (Dr.) Khalwale should be to the extent that other institutions of Government must not condone this kind of corruption that I am talking about even in the fisheries sector.

There is a culture around the people who say that the Jubilee Government is corrupt. I want to make it clear that a government cannot be corrupt, because it is not a legal entity in the sense of ability to steal. The Jubilee Government should not be accused of stealing. It is the human beings who are thieves; it cannot be objects. Actually, companies do not steal; it is the persons who run those companies that steal. Parastatals do not steal; it is the managers and the

board members of those parastatals that steal. Therefore, there should not be blanket condemnation that the Government is corrupt, because it is not possible. It is only possible to talk about the bribe giver and the bribe taker. Sometimes the briber giver becomes the person who is in the Opposition and the bribe taker becomes the person who was running that institution. We must be careful as a nation when we make generalized statements---

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. I am not happy to interrupt Sen. Murkomen, but is he in order to suggest that a government cannot steal, knowing well that a government functions through its agent? The agents are those top appointees. For example, one of the agents of Government is the former Cabinet Secretary, Anne Waiguru, who through her own affidavit, has not only admitted that there was corruption when she was in charge, but also given a list of senior Government functionaries, including Members of this House, who were part of the conduits of corruption? Is he in order to mislead the House that the Jubilee Government is not corrupt?

Sen. M. Kajwang: On a point of order, Mr. Temporary Speaker, Sir. The Senator for Kakamega, whom I respect a lot, has said that some Members of this House have been associated with corruption at the National Youth Service (NYS). Could he substantiate which Members of this House he is referring to, because I am a Member of this House and I have not been mentioned with regard to the NYS?

The Temporary Speaker (Sen. Sang): Sen. (Dr.) Khalwale, can you address yourself to Sen. M. Kajwang's concern before we go to Sen. Murkomen?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, with a heavy heart, I am forced to refer, without fear of contradicting myself, to the affidavit sworn by former Cabinet Secretary, Ann Waiguru and others, that points to Members of this House, who include Sen. Murkomen. He is sadly on the list of the people who were abetting corruption according to that affidavit. It also includes Hon. Duale, Member of the National Assembly. I can go on and on, but it is really sad that the country has sunk this low.

The Temporary Speaker (Sen. Sang): What does the affidavit say specifically about the Member of this House that you have just mentioned?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, as a lawyer, you know that there is a *sub judice* rule on matters in court. So, I can only go this far.

The Temporary Speaker (Sen. Sang): If you allege that a matter is *sub judice*, you should produce evidence that it is, indeed, the case

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, the same rule provides that you can give me 48 hours within which I would have brought documentary evidence, including copies of those sworn affidavits that will confirm that this matter is actually active.

The Temporary Speaker (Sen. Sang): I direct that you furnish this House with the said documents within 48 hours.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I would like to know what you want me to furnish. You have to be specific.

The Temporary Speaker (Sen. Sang): I would like you to furnish us with the affidavit.

Sen. (Dr.) Khalwale: Thank you very much, Mr. Temporary Speaker, Sir.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I would like to emphasize that the fight against corruption is about people and actors being brought to book. I was laughing when Sen. (Dr.) Khalwale was trying to insinuate that he supports Ms. Ann Waiguru. If he read the affidavit, which I have no problem to it being brought here-- Even if he wants to come with a

substantive Motion to discuss me, I have no problem because the Standing Orders provide for ways of discussing a Member and I am ready for it. That affidavit is very clear. It speaks about me in a very fantastic light. I am not denying any of those contents of the affidavit because the same lady says in her affidavit that Sen. Murkomen warned her that she would face unspecified consequences if she continued to perform the acts that she was doing. She went ahead to insinuate that those unspecified consequences, included her impeachment.

I have nothing to worry about or run away from. I am happy and proud. I would like to confirm for the record of this House that I walked to Ms. Ann Waiguru's office and warned her that from the information I had stumbled upon through my client, she was actually treading on a very dangerous ground on matters of corruption.

When I speak about corruption in this country, I do so with a clear mind and conscience. I not only do so as a former Sunday school teacher, but as a man who believes that if we, as a nation, do not fight corruption and deal with it decisively, we will not develop this county. In every sector that I have served, the things I have said here about corruption are those that I believe.

Mr. Temporary Speaker, Sir, if we want to put an institution like the fishery sector in the right direction, we must get rid of men and women who only think about their tribes and how they will make money and satisfy their families and clans. We have people who imagine how they will use public resources to enrich themselves. We must get rid of that culture in this nation. To make it more clear and as a requirement, we must appoint men and women of integrity to run our key sectors such as fisheries where we are putting a lot of money, especially borrowed money.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. So that I do not run the risk of raising this point of order too late in the contribution by Sen. Murkomen, in your view, do you think it is still necessary for me to produce the affidavit now that Sen. Murkomen has confirmed knowledge of the same and that he has no objection to what I have said? Would it not be nice and befitting for you to vacate that directive because you will be making a directive in vain yet Parliament does not speak in vain?

May I also clarify to Sen. Murkomen that I was not imputing an improper motive on him. If I had wanted to do so, I would have moved a substantive Motion. I was merely responding to the correct challenge under the Standing Orders by the Senator for Homa Bay County. I believe that the discourse has been fairly factual and intellectually guided.

The Temporary Speaker (Sen. Sang): Sen. (Dr.) Khalwale, you alleged that the former Cabinet Secretary, Ms. Ann Waiguru, made certain proclamations in that affidavit to the effect that two Members of Parliament; one in the "lower" House and Sen. Murkomen abetted corruption. However, what Sen. Murkomen has said, contradicts that particular position. That is why it is important that you furnish this House with that affidavit so that we are able to know whose position is true. That is important for us to ascertain.

Sen. (Dr.) Khalwale: Much obliged.

Sen. Murkomen: Mr. Temporary Speaker, Sir, thank you for the good ruling. I have always said that as a nation, one of the factors that undermine the fight against corruption is the politicization of the vice; where we just want to gain political mileage without adherence to facts.

We must be very careful when a person is under investigation in a matter of such magnitude. We must not lend credence to everything that they try to hang on. If that be, we sometimes need to lock up those people in cells as we investigate the people they are

mentioning. We, as a country, why would we want to lose Kshs791 million? We are now told they have also misappropriated youth funds. Why do we have certain people having special protection to the extent that the only preservation they receive is by saying that they were with Sen. (Dr.) Khalwale or any other leader and they are left to continue doing bad things to this country?

Let me focus on the fisheries sector because Sen. (Prof.) Anyang'- Nyong'o has told me that he is sitting here because he is waiting for a debate on this sector and not corruption. If we really want to debate about Ms. Ann Waiguru or me, then lets us have a substantive Motion to debate me because I am more than ready to be debated and to debate in this House.

There is establishment of the Office of the Director General which, in consultation with county governments, will take certain measures to ensure that there is development of the fisheries sector. This includes framework for extension and training services. We need to train people about how they will carry out fishing and do fish farming.

Mr. Temporary Speaker, Sir, we have lived in this country for a very long time with a lot of myths about fisheries, fishing, fish eating and fish mongering. Some of my best professors in universities who taught me were from Nyanza region; whether it was Prof. Jackton Boma Ojwang, Prof. Sihanya or the late Professor of land law, Prof. Okoth Ogendo. We were told that the reason as to why they were very clever is because they ate fish. I was so encouraged by that and I even dreamt that I would feed my children with fish so that they could do better than myself. For us, those myths were positive. However, other people were told that eating fish is backward and primitive.

Mr. Temporary Speaker, Sir, we need training and extension services so that people can understand how to go about fish farming and to preserve aquatic life. Research and surveys must be done. I am told by fish experts that if you do not do proper survey, you can clear all the stock and you will not have fish in a sustainable manner.

We should promote cooperation on matters to do with fisheries and spearhead the orderly marketing of fish. We have issues to do with promotion and development of ornamental fisheries which are the ones that we put in aquariums and bring a lot of beauty. One of the biggest aquariums in the world is in Dubai Mall. It attracts a lot of tourists to Dubai. This is one of the ways that we can develop aquatic life in a manner that promotes fishing and tourism. We should encourage persons to deal with matters of sanitary and vital sanitary requirements and invest in the necessary equipment.

There are also international fisheries and conservation management measures that must be carried out by the Director General and the institution thereof of Kenya Fisheries Institution (KFI) to deal with matters of investigation of vessels that cross the border to fish in our exclusive economic zone, among others. There is also coordination of fisheries management with counties; that is in Clauses 34 and 35. There is cooperation that is required and regulation of the sector. Then we have establishment of beach management units that will ensure that the community participates in matters of fishing.

Mr. Temporary Speaker, Sir, under Clause 37, there is an establishment of the same. Then, there is fisheries conservation and management. The Director General and the institution is responsible for the same; ensuring that there is proper planning and fishing, proper fisheries management plans that take care of national interest, conservation of fish and so on. I have talked about that.

Mr. Temporary Speaker, Sir, in Clause 39, there is the role of the Director General and the institution; consultation with the counties and other stakeholders to develop guidelines and standards for development of fisheries management, plans that must conform with the Act which include identifying the resources, assessment of standards of exploitation, management measures and so on. I do not want to read it in details. It is up to us to do that.

Clause 40 talks about fisheries management measures which include measures that are related to conservation and management of the fisheries. It talks about a closed season and where fishing is prohibited, limitation of use of nets and the size of those nets. These are very important provisions in international law because one of the reasons why there has been exhaustion of all the resources in terms of fishing is that if you use very fine nets, you will clear all the aquatic life. The future generation of the aquatic life will be destroyed. We also have preservation and protection of species like aquatic plants among others.

Mr. Temporary Speaker, Sir, Clause 42 provides for permitted and prohibited fishing gear and methods. Those fishing whether from international waters or locally must conform to those standards.

Part VI outlines provisions related to the import, export, trade and marketing of fish and fish products. This is a sector that we must take care of. If we must make these resources useful to our people, we must look for the relevant market abroad. That is also the role of the institution; to ensure that they find out market for our fish farmers; the Kenya Fisheries Service and the Director General's office does its job to ensure that fish farmers, exporters and importers conform to certain standards; particularly, for us because we have an improperly exploited sector. We will ensure that we develop markets abroad which will assist our farmers.

Part VII addresses fish quality and safety. I talked about it earlier in the sanitary and vital sanitary standards; that we must follow the laid down Government procedures related to safety standards that will ensure that – and also harmonization of fish safety and quality standards so that you do not have standards that are different from various types of aquatic life but also in different parts of the country so that they are harmonized.

There is also development of aquaculture which is the equivalent of agriculture. I am told that one of the areas where we have the highest rate of fish farming in this country, the former Central Province, does not have a lake or sea. This is because fish ponds and fish farming have become very lucrative. This is due to supply of fish to those who are living in urban areas and the increased urbanization that is around the former Central Province. Therefore, it is important to identify suitable methods, species of fish and aquaculture and many other mechanisms that must be put in place.

Mr. Temporary Speaker, Sir, Clause 63 talks about collaboration with county governments. This is very important for us as a Senate. That, aquaculture development becomes a factor that will be promoted by our counties so that we can reach the local areas of our counties dealing with matters of livelihood, culture and traditions of local communities requires also collaboration of the county governments.

The county's responsibility to monitor non-commercial agricultural activities in Clause 65 is provided therein.

Mr. Temporary Speaker, Sir, there are many other provisions in that part but if we can move a little bit faster. As I said, this is a bulky Bill; many of us can pick various sectors.

Part IX talks about information and data records. The Kenya Fisheries Service must keep data and information to inform us where we have more fish, proper land, research, storage, food

safety, processing buying and selling, exports and other related transactions concerning fish; accounting - the millions of fish that have been exported. There must be data and information that would determine how we are exploiting and selling these resources abroad.

In Part X, we have provisions related to licensing and registration. It is important that not every Tom, Dick and Harry can walk into our country and engage in fishing. It is important that there must be licensing procedures. This is where some fees will be paid. There is a difference between the licensing procedures for foreigners and Kenyans. Licensing is important so that you can hold to account those fishing if they violate provisions related to environmental protection or provisions related to safety standards or sanitary and vital sanitary. That sector is important; who licenses? Which is the institution? How to acquire a licence? How it can be revoked? So that it is not just done arbitrary but in a manner that will protect the interest of those who are fishing but also it does not become a sector that is abused.

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

Sen. (Prof.) Lonyangapuo, are you on a point of order?

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Temporary Speaker, Sir. The Mover of this Bill has gone into details. I have been listening keenly; he is not considering the functions of the national Government and county governments as outlined in the Constitution.

Function No.22 concerning the national Government states:-

“Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including in particular-

(a) Fishing, hunting, gathering;”

For the County governments, Part 2 (1)(e) states:-

“The functions and powers of the county are—

(e) fisheries.”

It is written in bold.

The presentation of this Bill does not take cognizant of the fact that this function is devolved fully. Is he not misleading this House by returning a function that has already been devolved to the counties from the national level? I expected him to talk about establishment of committees in every county; expound on policy then establish councils for every county rather than one in Nairobi

The Temporary Speaker (Sen. Sang): Order, Sen. (Prof.) Lonyangapuo. Do you have concerns with the manner in which the Bill is being presented or the content of the Bill? If you are talking about the content of the Bill, then, you will be suggesting that in your own assessment, this Bill is unconstitutional, but that issue has been addressed. Issues of constitutionality of a Bill are addressed before it gets to the Floor of the House. Do you have a problem with the content of the Bill or the manner in which the Mover of the Bill is presenting it?

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, the Mover is doing it very well. However, he was reading something else. He should have thoroughly looked at the Constitution, so that he can advise the promoter of the Bill to---. I know we will introduce amendments but I am worried by the way he is moving it as though nobody is paying attention to that. He wants to allow the national Government to return functions through the back door.

The Temporary Speaker (Sen. Sang): Before I give Sen. Murkomen time to respond, I want to rule that this Bill is constitutional. It went through prepublication and all the procedures and steps. Therefore, you will advance your argument when your time comes to contribute. You

will have the opportunity to air your views and propose amendments. However, at this stage, the Bill is constitutional. You can reserve your right to give contrary views relating to the Bill.

Let us hear from Sen. Murkomen.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I do not want to say much because I want this Bill to be seconded today. Sen. (Prof.) Lonyangapuo is arguing points of debate and he can do that when he gets an opportunity to contribute. However, he was not here when we said that the institution that will be established is intergovernmental in nature. It has representation of both the national and county governments. Therefore, functions devolved to counties and those to be carried out by the national Government will be carried out by the institution. That is how the Kenya Fisheries Service (KFS) is structured. I remember saying earlier that we might need to increase the representation of Council of Governors (CoG) in the council.

Mr. Temporary Speaker, Sir, in conclusion, this is an important Bill. There are many more sectors and chapters that I have not discussed. I hope Members including experts like Sen. (Prof.) Anyang'-Nyong'o will pick parts like Clause 13 that contains provisions on monitoring, control and surveillance in relation to implementation of international and domestic law. There are also parts that deal with issues of arrested persons such as Clause 14. Other parts deal with giving out of evidence when you arrest people who violate the provisions of this Bill among others.

Therefore, it is time we put this law in place. I know one of the objectives of this Government was to ensure that we develop our exclusive economic zones and use of resources. One recommendation was that we should get experts to assist us explore resources in order to become one of the leading fish exporters to other countries of the world. We should also, as a nation, be consumers because it is said that fish or aquatic resources are more healthy food for consumption than red meat that we have consumed over time. Sen. (Dr.) Khalwale who is a doctor can confirm that later in his debate.

Mr. Temporary Speaker, Sir, I beg to move and ask Sen. M. Kajwang' to second this Bill.

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, I wish to second this Bill. When Sen. M. Kajwang' seconds a Bill moved by Sen. Murkomen, it shows the nation that there is hope that we are not partisan as a Senate and we focus on the national good when it comes to serious business.

Mr. Temporary Speaker, Sir, fisheries industry is said to contribute to about 0.5 per cent revenue to the Gross Domestic Product (GDP). Since we rebased our GDP, it is reported that our GDP is about USD55 billion. So, if you take 0.5 per cent of that, you can clearly see that fisheries brings in quite some revenue but not to its full potential. It is one of the leading employers especially in the coastal areas and in the areas surrounding Lake Victoria with a very high dependency ratio. One fisherman has been confirmed to support at least 10 other people. So, the fisheries sector is a very important industry to many of our people.

Mr. Temporary Speaker, Sir, considering the constraints of time and also the importance of this particular Bill, I wish to point out a few aspects of this Bill that I believe are worth considering by this Senate. First of all – this has already been flagged by Sen. (Prof.) Lonyangapuo – is the issue of devolution and what has been devolved. The interesting debate which I would urge this Senate to think about is that there are two terms in the Constitution that have caused a lot of confusion even for us who have been sitting in the Senate Committee on Agriculture, Livestock and Fisheries. That is the distinction between the words “fisheries” and “fishing.” That is the root cause of confusion on what ought to be devolved.

If you look at the Fourth Schedule of the Constitution, Part 1(22)(a) refers to fishing. Part 2(1)(e) talks about fisheries. One time, we went to the State Department of Fisheries in Mombasa and we told the officers there that fisheries should be devolved. We wondered what they were still doing referring themselves to as a state department. They told us that the Government position is that fishing is a responsibility of the national Government whereas fisheries is a responsibility of the devolved governments. The tragedy is that when you look at this Bill, there is no definition of “fisheries” but “fishery.” When we met as part of public participation, officials from the Ministry of Agriculture, Livestock and Fisheries claimed that there is no global definition of fisheries. Therefore, we must find a working definition of fisheries so that we know what we devolve. If you cannot define it, you cannot devolve it.

As we look at this Bill which I am seconding, let us make sure that we capture a proper definition of “fisheries”. We should clearly draw a line and say that this is what the national Government should be doing and this is what the county governments should be doing. This reminds me of the drama surrounding Migingo Island. You will remember that the President of a neighbouring country declared that the water belongs to Uganda but the rock belongs to Kenya. It is that kind of murky situation that we have with The Fisheries Management and Development Bill (National Assembly Bill No.18 of 2014). This is because fisheries belong to the county governments while fishing belongs to the national Government. I believe that we are up to the task of resolving that confusion.

Clause 6 of this Bill introduces the Kenya Fisheries Advisory Council (KFAC) which will advise the national Government on fisheries related matters. It proposes five Cabinet Secretaries (CSs) and four others, including one representative of the CoG. You could have some comfort that someone who represents the devolved units has been represented. However, as we consider Clause 6, we also need to know that the Agriculture, Fisheries and Food Authority (AFFA) was also established to provide advice to the national Government on agriculture, livestock and fisheries related matters. Are we creating another layer of bureaucracy or duplication of the role that has already been given to AFFA?

Clause 7 talks about the Kenya Fisheries Service. As the Mover of the Bill has said, this is something quite similar to the Kenya Forests Service. It is a mongrel between the Kenya Forests Service and the Kenya Wildlife Service (KWS). It has got a lot of functions. The Kenya Fisheries Service is a very powerful agency. It will be responsible for defining policies, coming up with standards, quality assurance, marketing, coming up with guidelines, conducting public awareness and research. It will also be involved in ratification of treaties, raising revenues, monitoring, control and surveillance. These are very striking similarities with the objects of the KWS and the Kenya Forests Service.

Mr. Temporary Speaker, Sir, the Kenya Wildlife Service (KWS) is established as a disciplined and uniformed service. The Kenya Fisheries Service (KFS) is not explicitly designated as such even though the Bill says that the Director General of the Service can appoint disciplined officers. The cadre of the disciplined officers that can be appointed is provided in Part “b” of the First Schedule.

The KFS will have powers to carry out the following functions; arrest, hot pursuit, search, seize vessels, detain, remove information and inspection. It will be manned by disciplined officers, particularly the Monitoring, Control and Surveillance Unit (MCSU). Disciplined officers, as provided in the Schedule, will be commandants, inspectors, sergeants, corporals *etcetera*. The question that we need to ask ourselves as the Senate is, how can these

structures where you have disciplined officers, exist in a non-disciplined and ununiformed service? I know we have attempted something similar with the Kenya Forest Service (KFS) but as we deliberate on this, we will need to ask ourselves whether this is the best arrangement for managing fisheries resources.

Again, when you get these people doing monitoring control and surveillance and they go to the exclusive economic zone where sometimes you find pirates roaming around, do you want to get civilians dealing with pirates? Come to Lake Victoria, do you want to get civilians dealing with Uganda People's Defence Force (UPDF) that is armed? So, we will need to get a proper mix and structure for this Kenya Fisheries Service (KFS).

Mr. Temporary Speaker, Sir, proceeding further, the Bill proposes to set up two funds. One will be the Fisheries Research and Development Fund (FRDF) and the other is the Fish Levy Trust Fund (FTLF). As the Senate, we have previously seen to it that – for example, in the Roads Fund – some conditional allocations are taken back to counties. So, we need to be clear on whether this Fish Levy Trust Fund (FTLF) will sit at the national level or part of it will find its way back to counties that are identified as having significant fisheries resources.

Clause 33 of the Bill talks of coordination of fisheries management within counties. This is where we need to be very keen. The Bill says that the Director General of the Kenya Fisheries Service (KFS) and county governments shall keep each other informed. It says that each county may develop fisheries management measures and plans. However, the Director General will have to approve. So, I am looking at a county like Homa Bay which has 80 per cent of Kenya's share of Lake Victoria and understands what fishing and fisheries is all about. However, even when Homa Bay County comes up with fisheries management plans, it still has to come to Nairobi for the Director General to approve.

This Bill goes further in Clause 33 to say that where there is a conflict, the Director General shall give directions and that he has powers to direct the withdrawal of functions or powers exercised by county governments. This is contrary to the Constitution and what is specified in the Inter-Governmental Relations Act. The Director General or Cabinet Secretary (CS) cannot withdraw functions that have already been assigned to one level by the Constitution. I urge Senators that as you process this Bill, we look out for some of these clauses that could defeat devolution.

Clause 37 talks about Beach Management Units (BMU) and the Bill gives the Cabinet Secretary (CS) powers to come up with regulations for the units. Whereas it could be proper for the Cabinet Secretary (CS) to provide regulations, we need to observe the principle of subsidiarity, so that BMU should be managed and licensed at the lowest level possible. The best level would be the county level.

Mr. Temporary Speaker, Sir, aquaculture is captured in Clause 61 and the old Fisheries Act, which this Bill seeks to repeal, did not make any provisions on aquaculture. In this case, the Bill is very clear and detailed on aquaculture. However, the Cabinet Secretary (CS) will make regulations regarding aquaculture and this is a bone of contention. This is because the Council of Governors (CoG) believes that aquaculture is part of fisheries, which is devolved. So, there is need for clear and thorough analysis of this Bill to ensure that we do not have some conflict in expectation.

Mr. Temporary Speaker, Sir, Clause 65 of the Bill implies that counties shall only monitor non-commercial aquaculture activities. I am yet to come across someone who goes into aquaculture for non-commercial purposes because very few people put up fish ponds to feed

their families. About 99 per cent of the cases of aquaculture are commercial. Therefore, to give counties non-commercial aquaculture activities will be to significantly limit their authority.

Going further, Part X talks about licenses, authorization and registration. Without going into a lot of details, the Bill says that artisanal vessels shall be registered but this should not be done by the Director General. The principle of subsidiarity should also apply; that artisanal fishing vessels can be registered at the lowest level and not at the level of the Director General.

Mr. Temporary Speaker, Sir, the Bill also talks about recreational fishing vessels having to be registered by the Director General. As we went through public participation on this Bill, it was clear that we have not exploited the potential of sport fishing. In the United States of America, we are told that anglers and fly fishers generate more revenue than the National Basketball Association (NBA). Sport fishing generates more revenue in the USA than the NBA. It is for us to find ways of exploiting and making sure that we get that money. I believe that if this was left to the counties rather than the Director General, it could be done in a much better way.

Part 18 talks about the establishment of a Fish Marketing Authority. This Authority is established to market fish and fisheries products from Kenya. The Bill is not very explicit on how this authority will be engaged in value addition, value chain and supply chain interventions but I believe that we will be able to expound on that as we process the Bill.

Mr. Temporary Speaker, Sir, finally, this Bill is very long. It is a 200 page Bill. When you look at the Constitution, it is 204 pages. You cannot have a Bill that it is longer than the Constitution. What is happening here is that we seem to be mixing up policy, regulation and legislation. I think there is a section on data and information, lots of pages on things that could be captured under policy.

I want to urge the Senate that even as we process this Bill, we look at some of these things because 200 pages for a Fisheries Management and Development Bill, the devil will lie in the details and you will find a lot of contradictions. This Bill has been approved by the National Assembly. However, we are the custodians of devolution. I urge fellow Senators that we review the Bill with a fine tooth comb and we ensure that it reflects the spirit of devolution even if it means making fundamental changes to the Bill.

I beg to second.

(Question proposed)

Sen. (Prof.) Anyang'-Nyongo: Thank you, Mr. Temporary Speaker, Sir. I stand to support this Bill, long as it is, but I will support it in substance. I do concur with Sen. M. Kajwang that may be things that belong to regulation and policy should be looked into.

One of the very important issues about fisheries management in this country is that we have underestimated the important role of State in managing the exploitation and use of aquaculture and fisheries. Fishing has been seen as an economic activity for subsistence. When there is trade, that trade has been minimal to non-processed fish except for export. A lot of fish that we use and eat domestically---

ADJOURNMENT

The Temporary Speaker (Sen. Sang): Order Sen. (Prof.) Anyang'-Nyong'o. You have a balance of 14 minutes to contribute to this Bill the next time it is on the Order Paper. Hon. Senators, it is now 6.30 p.m. - time to interrupt the business of the Senate, the Senate stands adjourned until tomorrow, Thursday, 17th March, 2016, at 2.30 p.m.

The Senate rose at 6.30 p.m.