

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 20th November, 2013

*The Senate met at the Kenyatta International
Conference Centre at 2.30 p.m.*

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

PRAYERS

QUORUM CALL AT COMMENCEMENT OF SITTING

The Speaker (Hon. Ethuro): Hon. Senators, let us determine if we have a quorum.

*(The Speaker consulted with the
Clerk-at-the-Table)*

Senators, we have quorum, we may therefore commence business.

PAPER LAID

THE NATIONAL HONOURS REGULATIONS, 2013

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the House today Wednesday, 20th November, 2013.

The National Honours Regulations, 2013

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

STATEMENTS

GOVERNMENT POLICY ON TRADE IN SECOND HAND CLOTHES

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Sen. (Dr.) Machage: Mr. Speaker, Sir, I rise to seek a Statement from the Chairperson of the Standing Committee on Finance, Commerce and Economic Affairs concerning Government policy on trade in second hand clothes and cotton production. In the Statement I would like the Chairperson of the Committee to address the following:-

- (i) enumerate the use of cotton wool and seed;
- (ii) provide a short brief on the history of cotton production in Kenya and indicate why it has been neglected;
- (iii) state potential areas for cotton production in Kenya;
- (iv) state whether there is any budgetary provision this financial year for the development of the cotton industry.

The Speaker (Hon. Ethuro): Chairman!

The Chair of the Committee of Agriculture, Land and Natural Resources! Any Member?

Sen. Boy Juma Boy: Asante, Bw. Spika. Nimekubali kuchukua hiyo *Statement* na nitajaribu kadiri ya uwezo ipatikane ndani ya wiki mbili.

The Speaker (Hon. Ethuro): Sen. (Prof.) Lonyangapuo.

KILLING OF THREE KENYANS FROM WEST POKOT

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I rise to seek a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations. This Statement relates to the killing of three Kenyans from West Pokot County on 18th November, 2013, who were coming from a manyata called Lorokon near Turkwel going back to their home in Kases, which is a Pokot Manyata.

In the Statement, I would like the Chairperson of the Committee to explain how this happened yet the Turkana Manyata, Lorokon, is heavily guarded by security personnel from the General Service Unit (GSU), Administration Police (AP), regular police and the anti-stock theft unit. He should also state what action the national Government took in response to this grave matter and enumerate measures that will be put in place to safeguard the lives of innocent *wananchi* in the area.

The Speaker (Hon. Ethuro): Chairman.

Sen. Haji: Mr. Speaker, Sir, we want to give the Ministry, which will respond to this Question, two weeks from today.

The Speaker (Hon. Ethuro): In two weeks' time, Professor?

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, given the urgency of the matter and also the increased tension at the border between the two counties as a result of these acts of banditry and killings, I would request that the Chairman undertakes to issue the Statement as soon as possible.

The Speaker (Hon. Ethuro): Mr. Chairman, this is actually a straightforward matter and I am sure you can deal with it in a lesser period than two weeks.

Sen. Haji: Mr. Speaker, Sir, if it was me who was going to issue it, I would even have issued it in two days but unfortunately, we have to communicate to the Cabinet Secretary and occasionally, it takes time for letters to reach there and for them to respond.

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Therefore, they have requested that they be given a minimum of two weeks, but in view of your feelings, we will try and make sure the issue is answered by Thursday next week.

The Speaker (Hon. Ethuro): Okay. Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, yesterday, I had requested that you give me time to look at the documents in the Statement by Sen. Wangari and I am ready to interrogate.

The Speaker (Hon. Ethuro): I do not see the Senator around. Since the deliberations happened in her presence, I want to believe that she is on her way. So, we can take other Statements from the Chairman of National Security and Foreign Affairs, as we wait for the Senator to come.

RAMPANT KIDNAPPINGS IN KIRINYAGA COUNTY

Sen. Haji: Mr. Speaker, Sir, this is a Ministerial Statement on the rampant kidnappings in Kirinyaga County.

Mr. Speaker, Sir, on 24th October, 2013 the Senator for Kirinyaga County, Sen. Karaba, requested for a Statement on the rampant kidnappings in Kirinyaga County. The honourable Senator sought to be informed whether the national Government is aware that 11 persons had been kidnapped in the last three months and the measures that had been taken to arrest the situation.

Mr. Speaker, Sir, I wish to state as follows:

Contrary to the honourable Senator's suggestion that a total of 11 persons had been kidnapped in Kirinyaga County in the last three months, only seven cases have been reported to the police as follows:

1. Rachael Wanja Njagi – OB. No.14/6/9/2013, Criminal Case No.225/373/2013, court file No.672/2013, Kutus Police Station on 6th September, 2013, age – 7 years, female - Case pending before court.
2. Nancy Nyawira Mwangi – OB. No.44/18/9/2013, 18th September, 2013, age 44 years, female – Case pending under investigation.
3. Harrison Gichuhi Hulu – OB. No.7/22/8/2013, court file No.663/2013 – Kimaciri Police Post, Sagana Police Station, 22nd August, 2013, male – Case pending before court.
4. Cyrus Munene Mwenje – deceased. OB. No.3/15/10/2013 – Kerugoya Police Station, 14th October, 2013, age 73 years, male – Case pending before court.
5. Stephen Kathuri Njue – OB. No.8/20/10/2013, Wanguru Police Station, male, case pending under investigation.
6. Margaret Wambai Muniu – OB.No.2/5/8/2013 – Sagana Police Station, 5th August, 2013, female, age 61 years – Case pending under investigation.
7. Florence Wangui Maina – OB. No.3/22/9/2013, Sagana Police Station, age 46 years, female – Case pending under investigation.

Mr. Speaker, Sir, further to the police investigation and prosecution of suspects, the Government has taken the following measures to address the menace:

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- (i) Formation of a special quick response unit with members drawn from all the security agencies; that is, the Administration Police Service, the Kenya Police Service, the Criminal Investigation Department (CID) and the National Intelligence Service (NIS).
- (ii) Enhanced intelligence information gathering and sharing among the different security agencies.
- (iii) Use of public *barazas* in order to sensitize members of the public on the need to volunteer information.
- (iv) Use of community policing forum and the *Nyumba Kumi* concept to educate the public on the need to be vigilant.
- (v) The Government is advising relatives and friends of the victims not to send money since this will encourage criminals to continue with the vice.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. Karaba.

Sen. Karaba: Mr. Speaker, Sir, I want to thank the Chairman for giving that kind of information but I would be happier if he could tell this House what he means by saying that the cases are under police investigation and others are undergoing prosecution of suspects. The other thing is that when you talk of seven victims having been kidnapped, I am aware, because I come from there and the information you have is from newspapers. It is true because another victim was kidnapped yesterday. Therefore, I am very much informed. It is important that you go back to the drawing board and find out who is telling the truth. Is it your officers or me? I am telling you the truth and the facts on the ground. The facts are as contained by my secret service. There is somebody who was kidnapped at Kagio and killed. He is a butcher.

Sen. Hassan: On a point of order, Mr. Speaker, Sir.

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

Sen. Hassan: In his question, Sen. Karaba just indicated to us that he has a secret service and I know by all definitions of law, it is illegal for a private individual to have a secret service. Is he in order to have a secret service?

Sen. Karaba: Mr. Speaker, Sir, that could be a slip of the English Language. I meant that I have information. Information from the ground indicates that there are more than 11 people so far who have been kidnapped and more have been kidnapped since that time.

The Speaker (Hon. Ethuro): Order, Senator. You have been challenged to confirm whether you have a secret service or not.

Sen. Karaba: I have said that I do not have that. It was a slip of the tongue. I apologise for that mishap.

The Speaker (Hon. Ethuro): Proceed.

Sen. Karaba: Thank you, Mr. Speaker, Sir. I wanted to inform the Chairman that there was one gentleman who was kidnapped at Kagio and murdered. Another one was kidnapped at Karia and was released after they realized that he was the wrong person. Then there was another police officer who was kidnapped from Moyale. He was found dead in Kerugoya Town with his gun next to his body. I am informing you so that you

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can go and find out more from the records so that you can know who is telling the truth, and I believe it is me who is telling the truth. So, when you bring information here, let us also investigate the officers so that they do not embarrass the House. I still need to be told how many people have been arrested and how many people have been charged in the courts for this offence of kidnapping.

The Speaker (Hon. Ethuro): Mr. Chairman, just wait for a few more interventions.

Sen. (Dr.) Machage: Mr. Speaker, Sir, in recent times in this country, most crimes have actually been propagated by the uniformed staff or forces. Could the Chairman confirm that actually all these kidnappings have been planned and carried out by the security forces?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, the Chairman has advised members of the public not to pay ransom to these criminals and you know very well that the ransom money is usually taken to save the lives of the kidnapped people. Could the Government tell us how they intend to protect the lives the people who have been kidnapped if their next of kin refuse to send ransom money?

The Speaker (Hon. Ethuro): Sen. Juma Boy Juma.

Sen. Boy Juma Boy: Mr. Speaker, Sir, we have had two conflicting Statements: The Chairman has given us the number of people kidnapped as seven. The area Senator has given us the number of kidnapped people as 11. In this position, who do we take to be giving the Senate the correct position of the numbers of people kidnapped?

Sen. Hassan: Mr. Speaker, Sir, further to that, reading the Ministerial Statement, it states that contrary to the Senator's suggestion that a total of eleven people have been kidnapped in Kirinyaga County in the last three months, only seven cases have been reported. I think the whole gesture is not particularly a dispute in the numbers but the whole idea of kidnapping. Whether it is seven or 11, the number is such that it creates an avenue of alarm. My question is, does it really matter in terms of---

The Speaker (Hon. Ethuro): Order, Sen. Hassan! This is not question time.

Sen. Hassan: Just a follow up, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Senator, just frame it properly according to the Standing Orders.

Sen. Hassan: I just wish to seek clarification. Is it the volume or is it the subject matter of kidnapping which is the basis for concern? It tends to show us that the Senator has made a wild allegation yet he has made a credible allegation which has been supported by the same Statement.

The Speaker (Hon. Ethuro): Chairman.

Sen. Haji: Mr. Speaker, Sir, I think there is no contest as to what the hon. Senator is saying. I am sure that the hon. Senator is more conversant with his area than any other person but this is the record that has been given. My suspicion is that maybe this other three or four victims that the hon. Senator has mentioned were not reported to the police. Therefore, they might have settled the matter, without the knowledge of the Government.

Sen. Karaba: On a point of order, Mr. Speaker, Sir.

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

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Sen. Karaba: Mr. Speaker, Sir, is the Chairman trying to tell us that when a police officer is kidnapped, killed and the gun recovered, it cannot go into the official government record? That is very serious. So, who is telling the truth here? A police officer is kidnapped and found dead but his details are not recorded by the police!

Sen. Haji: Mr. Speaker, Sir, I am not capable of telling who is telling the truth or who is lying but all I can say is that the police officer who was found dead with his gun next to him suggests more than a kidnapping case because he would have used his gun in case of kidnap. So, he might have been murdered because of another motive.

Secondly, regarding the two questions that the hon. Senator raised about pending court cases, it is straight forward. The matter was reported to the police, police took action, the criminals concerned were taken to court and we are waiting for the court to dispense with the case. Investigations mean that nobody has been arrested because nobody has been taken to court. The matter is still under investigation and I think we should leave it that way.

As to the question raised by Sen. (Dr.) Machage, I cannot confirm and I do not think that the security services are involved in the kidnappings but what has been stated in the newspapers - and we do not go by the papers - is that there are some ex-service men who were involved in these kidnappings. That may be correct.

Regarding the question raised by Sen. (Dr.) Khalwale that the Government is advising people not to pay ransom, I do agree that the money should not be paid because some delaying tactics can be used. You remember there were two Asian girls who were kidnapped and these people were demanding Kshs80 million but negotiations went on and on for two weeks until the police caught up with them. So, the Government is advising people not to enter into an agreement of paying ransom but they should let the Government know and they will be advised by the technical people who know how to end such cases.

Regarding what Sen. Juma Boy Juma asked, I have said that there is no contention on who to believe and who not to believe. I have said that nobody would know better than the area leader but that is the information I was given to issue here.

On the question raised by Sen. Hassan, I quite agree with him that the whole subject matter is kidnapping whether two, three, seven or ten, it is still alarming and it is worrying. So, everything possible should be done to deal with this issue.

The Speaker (Hon. Ethuro): Proceed with the other Statement.

LACK OF CCTV CAMERAS IN MAJOR CITIES

Sen. Haji: Mr. Speaker, Sir, this Statement was sought by Sen. Halima Abdille on 11th July, 2013. We attempted to respond on 24th October, 2013 but more information was sought. With your permission, I wish to give the information as follows:

Despite the installation of CCTV security surveillance cameras being a priority to the Government since 2006, the same has not been achieved due to various factors. Between 2006 and 2008, the project was expected to be funded by the telecommunication service providers including the Communications Commission of Kenya (CCK),

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Safaricom, Airtel and Telkom but that has not been realized. In 2011, the Government managed to negotiate for a concessionary loan with the Government of the People's Republic of China and consequently advertised for the tender in the following year. However, the tendering process faced several legal tussles thus making the conclusion of the same impossible. The designing of the proposal in terms of the specification was prepared by a technical committee chaired by the CCK with members drawn from all the telecommunication service providers. The project entailed:

- (i) Upgrading of police communication countrywide;
- (ii) Installation of surveillance cameras in Nairobi, Mombasa, Nakuru and Kisumu; and,
- (iii) Construction of a national control and command centre, mini-command and control centres in all the 47 counties.

The Ministry is at an advanced stage in re-advertising the tender in order to ensure that the CCTV cameras are installed as soon as it is practicable. The Government is further considering reviewing building laws to provide for the mandatory installation of CCTV cameras in all the buildings.

ISSUANCE OF GUNS TO KENYA POLICE RESERVISTS

Sen. Haji: Mr. Speaker, Sir, I have another Statement on the issuance of guns to Kenya Police Reservists (KPRs).

Mr. Speaker, Sir, on 1st November, 2013, the Senator for West Pokot County, Prof. Lonyangapuo, requested for a Statement regarding the issuance of guns to the KPRs in Turkana County. The hon. Senator requested to be informed on:

1. The number of guns issued to KPRs in Turkana County, especially in Loima and Turkana South districts.
2. The number of guns issued to KPRs in West Pokot County, especially in Central and North Pokot Districts.
3. The criteria used in identifying the individuals to be issued with guns.
4. The number of KPRs in the said districts and confirm whether it tallies with the number and records kept at the headquarters in Nairobi.

Mr. Speaker, Sir, I wish to state as follows:

I wish to seek the indulgence of this House and request that I refrain from issuing details of the firearms that have been issued to the KPRs in both Turkana and West Pokot counties for security reasons. However, the hon. Senator is requested to liaise with the Ministry of Interior and Coordination of National Government for discussion on the matter.

Mr. Speaker, Sir, while enlisting KPRs, the following criteria is followed:

- (i) identification of potential recruits by the local community through the community leaders;
- (ii) vetting by the local Provincial Administration officials, that is, chiefs and assistant chiefs;

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- (iii) those shortlisted are then subjected to further vetting by the sub-counties recruiting intelligence committee, in order to determine their suitability and competence;
- (iv) fingerprints of selected candidates are taken and sent to the Criminal Investigation Department (CID) Headquarters for examination to determine their criminal record;
- (v) holders of certificate of good conduct are then recruited and trained on rifle handling and maintenance and the law governing the use of the rifle as per the Constitution and National Police Act, 2011, before they are finally enlisted as community volunteer security detail; and,
- (vi) the enlisted applicants are then issued with a certificate of appointment;

Mr. Speaker, Sir, the KPRs are subjected to regular training sessions by the area Officer Commanding Station (OCS) to enhance their performance and discipline. I wish to state that the records held at the headquarters tally with those on the ground and whenever there is a variation in the numbers due to removal or additional recruits, both records are updated accordingly.

Thank you, Mr. Speaker, Sir.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. In the answer by the Chairman, he refused to give information on the number of arms and types to the Senate of this country citing matters of security. The worst that he could have done is to ask the Chamber to be heard in camera, because that information is very important to this House and matters of security lie in our hands. Is he in order?

The Speaker (Hon. Ethuro): Sen. Haji, just respond to that specific point of Order.

Sen. Haji: Mr. Speaker, Sir, from the outset, I asked for the indulgence of the House. This is a House of dignity and I am sure that we will not want this country to expose everything to the detriment of the security of the nation. So, I do not see any reason I should ask for this thing to be discussed in camera.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. The honourable Chairman is perfectly in order to ask that we grant him an opportunity to hide some facts from the public. If it is in the thinking and desire of a Member that they must have access to this information, then the Standing Orders normally tell us that a Member can move and request that all strangers be asked to leave the House. So, Sen. Haji might not necessarily have been out of order. Sen. Machage could as well have asked that strangers be asked to leave the House. He is quite in order.

Sen. Haji: Mr. Speaker, Sir, as I said earlier, nothing stops the hon. Senator from walking to the Office of the Cabinet Secretary and asking for this information in confidence, and he will be given. I asked for the indulgence of this House that this is not a big deal. This information can be sought and it will be given. I will assist the hon. Senators to get this information.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Once a Statement is sought, it is the property of this House and ceases to be an individual Member's issue. Is

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the Chairman in order to tell this House that the individual Senator who asked the question should now seek private consultation to get the necessary information?

Sen. Haji: Mr. Speaker, Sir, the hon. Senator should withdraw the word “private.” I never said “private,” but I stand by what I have said; that this information will be given.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I want to thank the Chairman for labouring to bring this Statement. Like my colleagues who have spoken before me have mentioned, I sought this Statement while knowing very well that I needed the answers to be given. So, if there is anything that the ordinary mwananchi is not supposed to know, the hon. Senators are supposed to know this. I took an opportunity to talk to the relevant officers and they told me that I would be given the information when I seek this Statement. So, the Chairman should not speak on their behalf. You cannot say that we cannot reveal this when there is a lot of mayhem right now at the border of West Pokot and Turkana and also Samburu and Turkana. We need this information to come in the open, so that we can know whether or not the firearms that are being used there belong to the Government.

Mr. Speaker, Sir, lastly, the Chairman has given a very long list of almost ten criteria that they follow in identifying who becomes a KPR. I have just sought a Statement a few minutes ago, where one bandit from Turkana killed three people and it is known that he is a KPR. His name is Ang’olesin Lokuron. I do not know whether this criterion was followed in identifying him. The Officers Commanding Police Division (OCPDs) from the two sides are looking for this character at the moment. So, the Chairman should not say that he cannot reveal the information when there is a problem there.

Mr. Speaker, Sir, the information on the firearms can also assist us to determine whether the guns that got lost in Baragoi are the ones being used to kill people.

The Speaker (Hon. Ethuro): Hon. Senators, before we proceed, I think that the Senators have raised a number of points of order on whether the Chairperson of a Committee can refuse to give information, because it is secret by nature. I think that Sen. (Dr.) Khalwale was referring to Standing Order No.235, when asking Sen.(Dr.) Machage-- It reads:

“A Senator may, at any time, rise to claim that the public or any particular person be, for reasons stated, excluded from the Senate or from a committee, and if the Speaker is of the opinion that there are justifiable reasons for the exclusion, he or she may order that the public or such person withdraw from the Senate or the committee.”

Of course, that must be determined by the Speaker, if you gave reasons.

Standing Order No.230 reads:-

“The Speaker may direct any matter which, in the Speaker’s opinion, is secret or purely personal to be excluded from the Journals of the Senate and from the verbatim report of the proceedings of the Senate, and to be the subject of a separate verbatim report, which shall be kept in the custody of the Clerk and made available only to Senators.”

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This anticipates that we can actually discuss secret issues to some extent.

Standing Order No.90 deals with matters *sub judice* or secret. Standing Order No.90 (1) reads:-

“Subject to paragraph (5), no Senator shall refer to any particular matter which is *sub judice* or which, by the operation of any written law, is secret.”

I think that the Chairman needs to confirm to us whether that information is secret and by which law. Failure to do so, that information should be availed.

Sen. Haji: Mr. Speaker, Sir, I represent the Cabinet Secretary by issuing this Statement. I am not a lawyer to quote any section of the law of the country that will bar them from giving this information. That notwithstanding, if you so direct, I will ask them to provide that information. But I think that, first and foremost, we should consider what value it will add by making public the number of guns held by KPRs in Turkana.

Mr. Speaker, Sir, as to the question asked by the Senator; whether or not some of those guns were taken from the police in Baragoi, the information does not really tell us about that. This was a request from the Cabinet Secretary, but we will abide by whatever ruling the Chair will give.

Sen. Munyes: On a point of information, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Mr. Chairman, do you want to be informed? Before the information, let us get the point of order by Sen. Machage.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. You did give a direction and maybe it could be taken as a ruling; that unless the Chairman quotes the section of the law that he thinks privileges his information, then he should give us the information that we want. Instead, the Chairman has stated that it adds no value despite your directive. Is he in order?

The Speaker (Hon. Ethuro): Order, Sen. Machage! The Chairman said that the Cabinet Secretary had requested not to provide that information. So, obviously, even the Chairman, as he sits here, does not have the information. But he also says that if he is directed to do so, he will go and get the information. I think that, that is on record. It must also be clarified that the Chairman said that Sen. Lonyangapuo was asking for information on KPRs from Turkana County. Mr. Chairman, I think that you need to properly represent the Senator; that he was asking for information on the KPRs from the two neighbouring counties of Turkana and West Pokot.

Do you want to get information from Sen. Munyes?

Sen. Haji: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Let us get some information from Sen. Munyes.

Sen. Munyes: Mr. Speaker, Sir, I have information that might just help to put this matter very clear. We might end up prejudicing the security of our land if this information is given, knowing that Turkana County has three international borders. We have Sudan, Ethiopia and Uganda borders. So, by giving such information to the whole world, I think this is endangering the lives of the people of Turkana.

I also want to inform Sen. (Prof.) Lonyangapuo, who has this habit of raising issues about Turkana, that the guns in Samburu were not brought to Turkana and that the Samburu are not Turkana---

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(Several hon. Senators stood up in their places)

The Speaker (Hon. Ethuro): Let us hear him, and he is done.

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. (Prof.) Lonyangapuo?

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I am surprised at the way my brother, Sen. Munyes, is talking. People are being killed at the border of West Pokot and Turkana, and I came to speak for the two communities. When he says that I keep talking about Turkana, what does that mean? Are you saying that they are not my people? You should declare your interest, because those are my people and I should talk for them.

(Laughter)

Sen. Munyes: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order! Order, both of you! Order, Sen. Munyes and Sen. (Prof.) Lonyangapuo! You are not going to turn this Chamber into another corridor of Turkana and Pokot counties!

(Laughter)

In fact, any Senator is at liberty to request a Statement – which will be sought from a Cabinet Secretary – which shall be relayed to the House through the Chairperson of the Committee. We must desist from using these opportunities to try to either vindicate ourselves or address matters that are really not necessary for this House. What we come to do here in the House is to try to give solutions to the problems affecting our people, whether they come from your county or another country.

So, that must be made abundantly clear; and for the Chairperson, in terms of the information, because you had suggested that maybe you may invite Sen. (Prof.) Lonyangapuo for the meeting, I will direct that you actually invite the two Senators so that now you can mediate in that process. You can see even from the Floor of the House that the situation is threatening to get out of control. So, unless any of the Senators is not satisfied with the information you provide, my Chambers are still open for the business to be transacted.

The Acting Senate Minority Leader (Sen. Abdirahman): Thank you, Mr. Speaker, Sir. Besides your direction, the Chairperson was asking whether it will add any value; and I am not saying this just for Turkana and Pokot, but from the fact that almost in all pastoralist districts---

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

The Acting Senate Minority Leader (Sen. Abdirahman): I got this particular one---

The Speaker (Hon. Ethuro): It cannot be besides; it can only be in addition to.

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The Acting Senate Minority Leader (Sen. Abdirahman): Mr. Speaker, Sir, I want to say that it will add value because it will stop speculation, rifts between communities and build confidence in terms of boosting security. There will be absolutely no harm; even if you do not share the information with the whole House, for instance, and just share it with the two Senators as directed. It will really help to reduce tension between the communities because many a times, people complain of an additional strength or favor from one particular Government source. So, it will really help and add value---

The Speaker (Hon. Ethuro): The point has been made, Sen. Abdirahman.

(Sen. (Dr.) Machage stood up in his place)

What is it, Sen. (Dr.) Machage?

Sen. (Dr.) Machage: Mr. Speaker, Sir, I rise on Standing Order No.108 as regards the conduct of Sen. Munyes on his address to Sen. (Prof.) Lonyangapuo. If that trend continues, where hon. Senators cannot ask about issues which are pertinent to the neighboring counties, then we will be mouth-gagged. Is he not out of order? He should actually be declared disorderly and so punished.

Sen. (Prof.) Lonyangapuo: What is the punishment?

(Laughter)

(Sen. (Dr.) Khalwale stood up in his place)

The Speaker (Hon. Ethuro): Yes, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, mine is not a point of order. I just want further clarification. I quite agree with the Government that there is nothing that we are going to gain from disclosing the number of firearms in the hands of our people, but because we have severally heard leaders from the Pokot side on one side, and leaders from the Turkana side on the other side complaining that the Government is arming one community better than the other community, could he then, without disclosing the number of firearms, confirm that the Government ensures that we have an equal number of firearms in the hands of both communities?

The Speaker (Hon. Ethuro): Mr. Chairperson, before you respond to Sen. (Dr.) Khalwale, I was just looking at Standing Order No.108, which was cited by Sen. (Dr.) Machage, and I really do not find anything disorderly with the conduct of Sen. Munyes. Just read all of the clauses, from (a) to (i). I have an idea of what you wanted to say, but I cannot give it to you--- That is not for me. But from the Standing Order you specified, it does not qualify.

Sen. Haji: First, I want to oblige, as you directed; I will facilitate the two Members of Parliament to---

The Speaker (Hon. Ethuro): Order, Senator! There are no Members of Parliament here; there are Senators.

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Sen. Haji: I will facilitate the two Senators, Mr. Speaker, Sir.

Secondly, as to the question raised by Sen. Abdirahman, first and foremost, we know that there are a lot of illegal arms held by various communities. First of all, they should be asked to surrender those arms and then we will look into the possibility of arming homeguards in various places of this country.

Thirdly, Mr. Speaker, Sir, the question raised by my good friend, Sen. (Dr.) Khalwale, I think we cannot give arms equally because it depends on the population of the people and the area that is affected---

The Acting Senate Minority Leader (Sen. Abdirahman): On a point of order, Mr. Speaker, Sir.

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

The Acting Senate Minority Leader (Sen. Abdirahman): Mr. Speaker, Sir, I thought my contributions were adding a little value on the efforts that the Chairperson is going to make. I was not asking a question as such with regards to arming more people. I was talking about providing information to both parties to help build confidence amongst the communities in terms of---

Sen. Hassan: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. Hassan Omar?

Sen. Hassan: Mr. Speaker, Sir, I need direction. We are creating an impression in this Senate in terms of the arming of communities as if we want to create some equal armies because we anticipate a fight between these two communities. By the way, we are conducting the last bit of the session. It appears as if we want to create a balance of firepower so that when there is some kind of fight, it is equal. I do not think that is the intention of the security agencies.

The Speaker (Hon. Ethuro): Order, Sen. Hassan Omar! You are completely out of order!

(Laughter)

Proceed, Sen. Haji. You were responding to Sen. (Dr.) Khalwale's question.

Sen. Haji: Yes. I have not said that we should arm people equally. First of all, the number of people is not the same; the areas of conflict are not the same; one part of Turkana may be peaceful, another part of West Pokot is peaceful, so there is no unrest as Sen. Hassan said, as far as homeguards are concerned.

The Speaker (Hon. Ethuro): Yes, Sen. Munyes?

Sen. Munyes: Mr. Speaker, Sir, just discussing the issue of arms again, the people of Turkana have been affected by the transfer of the Kenya Police Reservists (KPRs), who we are talking about, to the oil operations. We have lost nearly all the KPRs, who have been transferred to the three oil companies, and the Government promised to replenish them but, up to now, we have not got any replacements. Maybe that is the reason why we have lost over five people. There was a raid this morning where a Red Cross vehicle was shot at from across West Pokot. There was also a raid that happened five days ago where somebody was killed in Nakwamuru; and there are so

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many other raids happening as a result of this. Could the Chairperson help in replenishing---

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. (Prof.) Lonyangapuo, let him finish.

Sen. Munyes: Could the Chairperson help in replenishing our security? I am talking of as at the time when even the General Service Unit (GSU) ---

The Speaker (Hon. Ethuro): Order, Sen. Munyes! You must conclude also; you are quite specific.

Sen. Munyes: The GSU and the Ray Company, who were along that border, have now been transferred to support the oil operations. What are we doing along these borders to ensure that peace will prevail and to control this banditry?

Sen. Haji: Mr. Speaker, Sir, I think Sen. Munyes is raising a new issue all together. But as you have directed, since the two Senators are going to meet the Cabinet Secretary, these are some of the issues that we can discuss with them and find a solution.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): When are you organizing the meeting so that we stop more interventions?

Sen. Haji: Mr. Speaker, Sir, we have scheduled the meeting for Tuesday next week.

The Speaker (Hon. Ethuro): Take note of that, Senators; next week on Tuesday. Are there any other statements?

WITHDRAWAL OF SENATOR MUTHAMA'S SECURITY DETAIL

The Speaker (Hon. Ethuro): Sen. Orengo, do you have a request for a statement?

Sen. Orengo: Mr. Speaker, Sir, I had requested a statement last week and the Chair gave his word and promised to present the statement today. This was with regard to the withdrawal of security personnel from Sen. Muthama. I would like to know whether the Chairman will make the statement.

Sen. Haji: Mr. Speaker, Sir, I would like to apologise to Senator Orengo because I have not given him the statement. There was a hitch in communication. Unfortunately, the letters requesting for this statement came in yesterday. This morning, I requested the Clerk to follow it up. I will ask the Clerk to follow up. Hopefully, he will give the information as soon as we receive it, then I can give the statement. I will talk to him before that.

Sen. Orengo: Mr. Speaker, the Chairman has not given an indication of when he will give the statement. So, I am still left at a loss.

Sen. Haji: Mr. Speaker, Sir, God willing, I will give it on Tuesday next week.

Sen. Orengo: God willing?

The Speaker (Hon. Ethuro): Order, Sen. Orengo! You cannot impose your beliefs on other people. Let me urge you, Sen. Haji, to see that this is a matter involving one of

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us and it concerns security. It should be taken very seriously. We understand the reasons for the delay but you should take keen interest in it since it is a matter affecting a Senator.

Sen. Haji: Mr. Speaker, Sir, I do not want to make a promise that I may not deliver. However, I will attempt tomorrow.

If I face any problems, I will talk to him.

The Speaker (Hon. Ethuro): You should be happy about that, Sen. Orengo.

ALLEGED INVOLVEMENT OF PUBLIC OFFICERS
IN COACHING OF ICC WITNESSES

Sen. Orengo: On a point of order, Mr. Speaker Sir I had also made a request for another statement in the absence of the Chair of the Legal Affairs and Human Rights Committee. On his behalf, the Vice Chairperson promised to give the statement next week on Thursday. Now that the Chairperson is here, could he confirm when he will give the statement? This was in relation to the prosecution at The Hague.

Sen. Wako: Mr. Chairman, indeed, the Vice Chairman, informed me about the statement sought. I am now looking into it and I hope that I can respond to it next week with the help of the Government Ministries concerned. I will endeavour to do it. If I fail, I will come back and inform you.

The Speaker (Hon. Ethuro): When, next week, will you give the statement?

Sen. Wako: Let me say that I will give all the statements on Thursday, next week.

The Speaker (Sen. Ethuro): Our records show that on the issue of the ICC witnesses, your Committee undertook to make a statement on 26th November which will be on Tuesday. That should remain.

With regard to the statement requested by Sen. Orengo, you must appreciate the given timelines.

Sen. Orengo: On a point of order, Mr. Speaker, Sir. This undertaking was given by Sen. Sang pending confirmation from the Chair. Therefore, he said that he could not give a statement unless the Chair confirmed. I am just wondering whether---

The Speaker (Hon. Ethuro): Order! Any Member of a Committee and, indeed, any Senator can give an undertaking to transmit the information to the Chair. As honourable as we are, we have no basis of doubting the ability of Sen. Sang, who is the able Vice Chairman, to deliver that statement to the Chairman.

Sen. Orengo: On a point of order.

The Speaker (Hon. Ethuro): Order! You will not engage the Chair. That is my considered opinion on this matter and there is nothing useful that you will add.

Is there any other statement?

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I had requested but I realized that the Chairman is not around. I would like to request, if you do not mind, that you allow me to interrogate the matter a week after next week. Tomorrow, I will not be around. We are having a crisis meeting with farmers of cane in Butali. Therefore, I will not be in the House tomorrow.

The Speaker (Hon. Ethuro): When will you want it?

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Sen. (Dr.) Khalwale: Tuesday of the week after next week.

The Speaker (Hon. Ethuro): Anybody who knows the whereabouts of Sen. Wangari?

Sen. Murkomen: Sen. Wangari is my Vice Chair in another Committee so I undertake to deliver the message to her.

The Speaker (Hon. Ethuro): As you deliver the message, remember that these are matters that we canvassed yesterday and agreed that the matter would come up today. For her to evaporate into thin air, that is very worrying.

Sen. Murkomen: Mr. Speaker, Sir, in all due fairness, Sen. Wangari is just but a Member of the Committee. When she undertook yesterday to report today, she was doing it on behalf of the committee. So, the Chair of that Committee and the Vice Chair should also have been prudent enough to avail themselves.

The Speaker (Hon. Ethuro): Order, Sen. Murkomen! You are completely unfair to the rest of us who followed the proceedings yesterday. She rose up with two statements, she was being referred to as the Chair and did not object at any one time. As far as we are concerned, she had all the powers and might of the Chair. You should know, Sen. Murkomen, that whenever you sit on my Chair, you are accorded all the full privileges that appertain to the Chair.

Sen. Khalwale, we will probably push this to 3rd December.

Sen.(Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I want to thank you for your indulgence. Probably for the benefit of the House, when the Chairperson spoke yesterday, she assured us that Kshs100 million would be paid to the contractor by the end of last week. We held a meeting with the associated contractors who are in charge of this construction and they confirmed that they have not received a single cent from the Government. It should be on record that when she comes back, two weeks from today, that she brings evidence of payment of Kshs100 million to the contractor.

The Speaker (Hon. Ethuro): Any member of the Committee? Sen. Kipchumba, you need to complete your assignment. Could you undertake to pass the message?

Sen. Murkomen: Mr. Speaker, Sir, I undertake to pass the message through the short message service (SMS) and if need be, through *WhatsApp*.

The Speaker (Hon. Ethuro): What did you say?

Sen. Murkomen: Mr. Speaker, Sir, I said that I undertake to pass the message immediately using the latest technology; either through *WhatsApp* or SMS so that she gets it today.

The Speaker (Hon. Ethuro): While we are impressed by your technological skills, I wish you had used the same a while ago because she would have surely been near here within the time that Sen. Khalwale was waiting for her arrival. However, let us give you the benefit of doubt. In any case, that will not be necessary. There is a bit of time because 3rd will be on a Tuesday.

Is there any other statement or should we move to the next order?

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PROCESSING OF DRAFT PUBLIC FINANCE MANAGEMENT (UWEZO FUND)
REGULATIONS, 2013

Sen. Billow: Thank you Mr. Speaker, Sir. I rise on a point of order to seek your guidance on a matter that is important to this House.

It is in the public domain that a Motion on the draft Public Finance Management (Uwezo Fund) Regulations, 2013, proposed to be made by the Cabinet Secretary, National Treasury, is before the National Assembly for debate.

Once it is debated, those regulations will be gazetted and form the basis for the operation of the Uwezo Fund. In these regulations, the Cabinet Secretary referred to Section 24 of the Public Finance Management Act which empowers him to create special Funds like the National Government Public Funds which are approved by the National Assembly. He referred to Section 24(4) of the same Act that gives him the powers to set up those Funds and 24(11) that require regulations to be made for the management of operations of the fund, among other things.

However, that same section talks about regulations that must guide the operations of this Fund. Section 205 of that Act is the one that spells out the procedures for establishing, setting out and preparing regulations. That Section 205 is very clear for carrying out or giving effect to this Act and goes on to say:-

“That regulations made under that Section shall not take effect unless approved by a resolution passed by Parliament”

In Sub-section 5 it continues and says:-

“Regulations approved under that sub-section shall take effect on the day after the date on which both Houses approve the regulations”.

The import of Section 205 is clear; that any regulations made under the Public Finance Management Act must be approved by both Houses of Parliament. Therefore, it is important to note that the Cabinet Minister for Treasury, in my view, was not correct to simply forward the same to the National Assembly only. It is guidance I am seeking; that the regulations be sent to this House in accordance with the law so that the Committee on Delegated Legislation together with other relevant committees can at them. That is the guidance that I am seeking.

Sen. Hassan: Mr. Speaker, Sir, I would like to expand the sphere of Sen. Billow's request. I think the Senate and the National Assembly have ultimately also been guided as to how the legislative process shall take effect in between the two Houses. I do acknowledge that there are several other legislations that have since been presented to the National Assembly and I seek further clarification from the Chair whether your input has been sought and whether some consultations have been going on. This request may be specific to one law but we have all these other legislative functions that appear to be ongoing without necessarily the preserve of the Constitution or the Speaker's input in terms of what is required by law and the Constitution. So, I seek your direction on that matter so that we can know as Senate how to proceed on these matters, where the Senate

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is deliberately not involved in legislative processes where, inherently, that mandate rests partly with the Senate.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, when this matter came before the National Assembly, it came as business by way of debate on rules and regulations. As far as Article 110 (3) of the Constitution is concerned, does this cover regulations or is it only limited to the business of Bills? It would be nice for you to tell us. If it does, maybe you will tell us whether you were invited for that discussion before this business went to the Floor of the House.

Sen. Wako: Mr. Speaker, Sir, along those lines, I think we would like to be informed what steps have been taken to implement that very important advisory opinion that we received from the Supreme Court of Kenya. It was a landmark decision, it was very clear in its terms on the procedures that must be followed on issues of legislation; on the roles of the Senate and the National Assembly. I would have thought that immediately after the ruling was given, then steps should have been taken to see how to implement that ruling in future and if those steps have not been followed in the past, how to rectify what was not followed in the past.

I must say I was a bit surprised – I do not know whether it was reported correctly – when the Speaker of the National Assembly is reported to have said that that ruling is of no consequence whatsoever which really flies in the face of what the rule of law is all about and that caused me a lot of worry; that here is the first major ruling from the Supreme Court of Kenya on the interpretation of the Constitution on a very important issue and here is somebody saying that that ruling is of no consequence whatsoever. Hence my rising up and asking you what steps have been taken to ensure that that the advisory opinion which was given is strictly being followed. If that is so, then, obviously, the regulations which we are talking about are matters which this House must be concerned with because regulations are part of the law of the land. It is part of legislation.

Sen. Murkomen: Mr. Speaker, Sir, the regulations we are discussing are related to a Fund called Uwezo Fund which is basically domiciled in a Ministry called the Ministry of Devolution and Planning. The Ministry of Devolution and Planning should be friendly to the Senate and even if we had prior knowledge, these regulations should have started from Senators before they went to the National Assembly.

Be it as it may, while concurring with what my colleagues have said; whether you met with the Speaker of the National Assembly and whether the procedure that was required under Article 10 was followed, I think there is another issue that we need to be clear about. Once a decision of the magnitude of the Supreme Court's ruling was made, was there a team from both Houses that was able to sit down, digest the decision and come up with a roadmap as to how to implement it, the procedure for implementation and correcting the impression that Parliament is just one arm of the House which is the National Assembly.

We are a little bit worried if the National Assembly leadership and the Speaker for that matter will consider himself to be merely a leader of one Chamber when the Constitution has been generous to allow him to be the leader of the Parliamentary Service Commission (PSC) which serves both Houses and that he should demonstrate in terms of

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demeanor, operations, friendship and also as a leader of Members of the Senate when he is sitting as the PSC Chairman. Do you, in your own personal interactions, have a reason as to what actually disturbs the Speaker of the National Assembly?

The Speaker (Hon. Ethuro); Order, Sen. Murkomen! While Sen. Billow sought a very specific matter and rightly so and I will definitely respond tomorrow, other Senators have sought in the words of Sen. Hassan to expand the specifics which I find, of course, is a contradiction because you can only reduce from the larger to the smaller. I do not know to what extent you can magnify the smaller to the bigger. Assuming they are related issues, I think it must be abundantly clear that our Standing Orders do not allow us to discuss our colleagues in the other Chamber. So, that must be made abundantly clear. But the issues you are raising in terms of how we have proceeded after the advisory opinion was given in terms of the implementation of Article 110 (3) of the Constitution, I want to confirm to you that we are working on that. From where I sit, I do not see any hostility to that particular advisory opinion from any quarter. I will provide a considered ruling which will deal with all those matters.

For the last one of Sen. Murkomen, we have actually very good personal, cordial relations and so I cannot help to answer you in the manner in which you may have wished to. We relate very well, so suffice it that way for now.

Sen. Wako: On a point of order, Mr. Speaker, Sir. Thank you for giving me this opportunity to make a request under Standing Order No.39 (2) which states:-

“The business shall be disposed of in the sequence in which it appears on the Order Paper or in such other sequence as the Speaker may, for the convenience of the Senate, direct”.

Mr. Speaker, Sir, as you notice from the Order Paper, we are now going into Division. There will be two Divisions which will be held but the quorum does not appear to be there. Thereafter, there will be the Second Reading of a very important Bill; the County Government (Amendment) (No. 2) Bill (Senate Bills No. 4 of 2013).

This is a very important Bill that has taken my Committee a lot of trouble and we have indeed produced a report. I wish to apologize to the House that when you came to Order No.5, I was just coming in and I was not able to lay our report on the table of the House. I would, therefore, kindly request that this be laid before we commence the Second Reading of that Bill because it will really facilitate a more informed debate and contribution to the Bill which is coming up for the Second Reading.

I humbly request.

The Speaker (Hon. Ethuro): I want to confirm that Sen. Wako had approached the Chair and apologized profusely for not being there when the Order for laying of the documents on the table under Papers was called out. In view of the arguments he has put and on the need to move that particular Motion if we reach there in a way that will enrich and inform the debate, I will therefore, allow the tabling of that particular Standing Committee Report on this particular Bill.

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PAPER LAID**REPORT ON THE COUNTY GOVERNMENTS
(AMENDMENT) BILL**

Sen. Wako: Mr. Speaker, Sir, I beg to lay the following Paper on the table:-

The report of the Standing Committee on Legal Affairs and Human Rights on the County Governments (Amendment) Bill (Senate Bill No.2 Bill of 2013.

(Sen. Wako laid the document on the Table)

The Speaker (Hon. Ethuro): Let us go to Order No.8.

BILL**THE NATIONAL FLAG, EMBLEMS AND NAMES
(AMENDMENT) BILL, (SENATE BILL
NO. 2 OF 2013)**

(Sen. (Dr.) Khalwale on 6.11.2013)

(Resumption of Debate Interrupted on 12.11.2013)

Sen. (Dr. Khalwale): On a point of order, Mr. Speaker, Sir. I rise on Standing Order No.51 (3) to say that in view of the provisions of Standing Order No.68 (2) (c), the Division be adjourned to a later day.

The Speaker (Hon. Ethuro): What is your proposal?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, tomorrow being a Thursday, it will be tricky and it is starting to be our practice that we carry out voting on Wednesdays afternoon.

The Speaker (Hon. Ethuro): But so is today?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, today, we will not be able to comply with Standing Order No.68 (2) (c), in view of the mood in the House.

The Speaker (Hon. Ethuro): My argument is that you are saying that it seems the tradition for going to Division is Wednesday afternoon. Then you need to explain the break from tradition for today. Is today not Wednesday afternoon?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I heard a rumour - I am not allowed to proceed on the strength of it – that quite a number of distinguished Senators are representing this Senate in various aspects outside the country.

The Speaker (Hon. Ethuro): So, we will postpone the Division to Wednesday next week, that is, 27th November, 2013.

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(Putting of the Question on the Bill deferred)

Next Order!

MOTION

MEASURES TO ASSIST COUNTY GOVERNMENTS DEVELOP CAPACITY IN PRE-PRIMARY EDUCATION

THAT, noting that Article 6 (2) of the Constitution recognizes that the National and County governments are distinct and inter-dependent; aware that devolution is an important principle in the new structure of governance; recognizing the fundamental role of education world-wide in fostering economic and social transformation prompting governments to create specialized agencies to among other functions, regulate the training, registration, recruitment and deployment of teachers; aware that the function of pre-primary education is vested in the County Governments pursuant to the Fourth schedule to the Constitution; noting with concern that one of the main obstacles to the efficient and effective operation of County Governments is inadequacy of appropriate capacity; cognizant that Section 15 (2) of the Sixth schedule to the Constitution requires the national government to assist County Governments in building capacity to govern effectively and provide services for which they are responsible; the Senate calls on the National Government to take measures to assist County Governments to develop capacity in the training, recruitment and deployment of teachers for pre-primary education.

(By Sen. Karaba on 5.11.2013)

*(Resumption of Debate interrupted
on 6.11.2013 – Morning Sitting)*

Sen. Karaba: On a point of order, Mr. Speaker, Sir. Following the same argument by my friend, Sen. Khalwale, that most of the distinguished Senators are out of the country, it is apparent that we might not realize the requisite number. Therefore, I do request that the Division be postponed.

The Speaker (Hon. Ethuro): I guess for the same reasons, although I do not know why they should be tied, we will push the putting of the question to Wednesday next week.

(Putting of the Question on the Motion deferred)

Next Order!

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BILL*Second Reading*THE COUNTY GOVERNMENTS (AMENDMENT)
(NO.2) BILL

Sen. Sang: Mr. Speaker, Sir, I beg to move that The County Governments (Amendment) (No.2) Bill, Senate Bill No.4 of 2013, be now read a Second Time.

Mr. Speaker, Sir, this is a Bill to amend the County Governments Act of 2013. The Bill seeks to amend the County Governments Act to provide for a platform for the county governments and national Government to engage at the county level. If you look at the Constitution, the role of the Senate, as captured under Article 96, provides that the Senate represents the counties and their governments and to protect the interest of counties and their governments. The second constitutional responsibility given to the Senate is the lawmaking process. The final one is to determine allocation of national revenue among counties and oversight the same.

Mr. Speaker, Sir, we have been discussing in this House the structures available for the Senate and Members of this House to carry out their constitutional responsibilities under the new Constitution. Therefore, the amendment Bill that I am proposing seeks to provide that platform. I, therefore, wish to look at the highlights of the Bill.

Mr. Speaker, Sir, I want to appreciate the indulgence that you have given to the Chair of the Committee on Legal Affairs and Human Rights, in terms of allowing him to table the Report. As a Committee, we have looked at this Bill and carried out a lot of public participation on it. We have also received a lot of valuable contributions from the various stakeholders. When this Bill was first published, we had a lot of serious resistance from various stakeholders. One of the issues that were raised was the fact that we had not carried out public consultations. I want to single out two institutions that raised some of these issues. One of them was the Constitution Implementation Commission (CIC). We invited them as the first stakeholder and they made their presentations. We had discussions with them and allayed some of the fears that they had. We eventually settled on a more agreeable version of the Bill, which we will amend as we move on.

Mr. Speaker, Sir, the Bill seeks to provide this Senate with a platform to carry out its constitutional responsibilities. It is important to note that you cannot expect the Senate to protect the interests of the counties and their governments when they have no idea what goes on within those governments. You cannot expect me, as the Senator for Nandi, for example, to contribute effectively to the County Allocation of Revenue Bill or the Division of Revenue Bill when I have no idea of the needs of my county. We are seated here in the Senate and very few of us know the details of the annual budgets of our counties. If we do not get to understand the details of what goes on in our counties and their needs, it is very difficult for us to represent our counties. Therefore, based on Article

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96 (1), where the Senate is given the responsibility to protect and represent the interests of counties, the proposed County Development Boards, under the amendment Bill, will provide that platform.

Mr. Speaker, Sir, a lot of issues have been raised. If you look at Article 96 (2), we are given the responsibility, as the Senate, to make legislation. It is important that we make it clear in this House that the Constitution does not give us the responsibility to make legislation that pleases Governors, Members of the National Assembly or any other institution. As a House, we have the responsibility and mandate to think through what kind of legislation is needed to enable the county governments to run. I think that this is one of the legislation that we are proposing.

Mr. Speaker, Sir, we are expected, as Members of the Senate, to determine the allocation to the counties, but more importantly, to carry out oversight. How could a Member of this House oversight county governments, when we have no idea what goes on in the counties or what financial needs our counties have? We have not even contributed to the development of the county budgets at the county level. It is very possible that at the end of the term of the Eleventh Parliament, we will have counties where the Governors and Senators have not had a platform to meet. I, for one, meet with my Governor in social places, including funerals and weddings. We cannot engage and discuss matters affecting our counties if we cannot have a formal platform for the Senate and county governments to engage.

Mr. Speaker, Sir, Members of the National Assembly participate in discussions over the Division of Revenue Bill. For them to effectively participate in those discussions, they also need to understand the financial needs of our counties. I think that this platform, through the County Development Boards, as proposed in my amendment Bill, seeks to provide for that particular engagement.

Mr. Speaker, Sir, in the discussions out there over this proposed Amendment Bill, a lot of issues were raised by various other stakeholders, particularly, on the distinctiveness between the national Government and the county governments. I want to clarify that it is not proper that we do selective reading of the Constitution. Whereas Article 6 (2) of the Constitution provides that the governments at the national and county level are distinct, it goes on to provide that they are distinct and interdependent. Why are we overemphasizing the distinctiveness of the county governments without looking at the element of interdependence? Therefore, we must be able to provide for a platform that will ensure that members of the county governments, the National Assembly and the entire leadership at the county level are able to engage. This is what is provided under the County Development Boards that I am proposing in this Amendment Bill.

Mr. Speaker, Sir, there is need to create synergy and coordinate development at the county level. As I speak, we have resources going through the county governments; the Constituencies Development Fund (CDF) and Uwezo Fund. Sen. Billow earlier sought your directions with regard to regulations on Uwezo Fund. That means that we already have the Uwezo Fund established in this country. We have line Ministries carrying out development at the county level. We also have state corporations and regional agencies within our counties that are engaged in development activities within

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our counties. We also have donors and civil society organizations within our counties that are engaged in development activities in the counties.

The challenge that exists right now is that we do not have a platform and legal framework for us to synergize development. Soon, we will have cattle dips in one area funded by different institutions. We will also have the CDF funding one particular project and at the same time, have another programme funding the same activity. That provides an opportunity for misappropriation and embezzlement of public resources.

Mr. Speaker, Sir, there is need to create synergy and coordinated development at the county level. It is also important that all of us are able to look at the effectiveness that we seek to achieve through this coordinated development. How do we coordinate and harmonize development projects at the county level, if we do not have a platform where the members of the CDF committees can have an idea of what the Governor is going to do? The status now is that even as the Governors project their county budgets, they have no idea what activities the CDF is going to engage in. As I speak, those who are in charge of the CDF, as they carry out their planning, have no idea what the Governor and county government will do. All of us have no idea what the line Ministries are going to do.

Mr. Speaker, Sir, it is important that we are able to provide a platform where the Members of the National Assembly, Members of the County Assemblies and the representatives of the line Ministries at the counties can engage. By doing this, we will be able to synergize and coordinate development at the county level. How can we do this if we do not have a legal framework? The County Development Board seeks to provide for this.

Mr. Speaker, Sir, we have seen budgets within the counties that ignore certain regions. In my county, we have six constituencies. A budget within Nandi County should, therefore, be able to provide for equity in development across the six constituencies. It is important that we are able to synergize and create coordinated development in the counties, so that we can ensure that equality is achieved. If we do not have coordinated development, oversight becomes a challenge. We cannot expect this House to oversight or the Senators within those counties to raise the red flag in this House that some things are not right within their counties.

Recently, this House dealt with an incident in Turkana County, where members of the county executive committee in Turkana were able to amend the budget after it was passed by the County Assembly. Those are some of the things that the County Development Board will provide an opportunity for us to discuss and deal with issues at the county level.

Mr. Speaker, Sir, public participation is a constitutional principle under the new constitutional dispensation. The Constitution mandates and dictates that we must have public participation at every level of engagement at the county and even at the national level. If the Constitution requires that we have public participation, it would be absurd to imagine that the same Constitution would not encourage the participation of elected leadership. This amendment Bill provides for a structured and a high level consultation and participation by the elected leaders at the county level. We must provide the broader

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consultations; an organized and formal consultation between all the elected leaders at the county level. This is one of the objectives of the proposed County Development Boards.

Mr. Speaker, Sir, we need to create goodwill among the leadership on some of the major projects that we are going to engage in at the county level. It is very regrettable that last week, one of the counties in this country was engaged in a major project – the launch of the Machakos City Project – in Machakos County. It is a pity and a shame that whereas such a county is engaged in the launching of such a big project, the entire leadership of Machakos was not together. We may point fingers in this House – that the Governor was wrong, that the Senator was wrong or, maybe, that some of the Members of the National Assembly from Machakos were wrong – but did we provide a legal framework for them to engage?

If we do not have a legal framework to engage, we are going to point fingers, but that is not going to provide a solution. I look forward to a situation where when other counties will be launching major and mega projects like what was being done by Machakos County, you would see the Governor, the Senator, the Women Representative and all the elected leadership there providing goodwill for such kind of a leadership. I think that is very crucial; it is important that we provide for that platform. The amendment provides that we establish a County Development Board that will provide and create an opportunity for all the leaders to build consensus and to create goodwill in terms of the kind of projects that we will engage in.

Mr. Speaker, Sir, the Constitution is very clear; that the role of the legislators, and in this case, these are the legislators at the national level – the Senators and Members of the National Assembly – and legislators at the county level – the Members of County Assembly (MCAs) – will perform the various constitutional responsibilities, one of them being legislation, the other one being representation and most importantly, doing oversight.

Mr. Speaker, Sir, the role of the county executive is to execute based on the policies, legislations and divisions of the legislature. But whose responsibility is it to create a sense of leadership, togetherness, unity and also vision for a county? I propose that this is the responsibility of all the elected leadership. We cannot leave the responsibility of creating a vision for a county to only one individual. All of us are stakeholders; all of us were elected by the members of the public.

More often than not, when I travel to my county, when I go to the grassroots within my county in those villages, members of the public always stop me and ask me several questions; for example, why are we not getting this road done? But I cannot tell them that, that is not my responsibility; I cannot tell them that they need to look for the governor to address some of those things. *Wananchi* need services, and we, as a leadership, must provide for a legal framework that can allow *wananchi* to discuss and present their issues to whichever leader they want to present it to or need to present it to.

It is our responsibility to sit down under the auspices of this County Development Board and advise each other; so that I am able to tell my governor that I travelled to Tinderet Constituency and in those areas, people are raising issues with regard to value addition on sugar cane; or that I travelled to the other constituency and the issues being

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raised are X, Y and Z; but most importantly, that all of us in that platform or Board are able to discuss and agree on implementation.

Mr. Speaker, Sir, the fate of the Senator, the Members of the National Assembly and the MCAs are tied to the fate of the governor. If a county is going to fail, that responsibility will squarely lie on all the elected leadership and, therefore, we must create a sense of collective responsibility with regard to development at the counties. Over the weekend after the launch of the mega city by Machakos County, I went to some of the parts within my county and the question that I was facing from my residents is: “How is it that Machakos County is launching a mega project and you, the leaders we elected in Nandi, are launching cattle dips and very small things in the constituencies?” I did not have answers for the same because I cannot explain to them that, that is not my responsibility.

I do not think it is important for us to tell *wananchi* to start shifting blame when they raise issues with us. It is very important for all of us to create a platform that gives us an opportunity to have collective responsibility so that when issues are raised by the residents or citizens we represent, we collectively take the opportunity, sit down within our County Development Boards and address some of those issues.

Mr. Speaker, Sir, soon, one of the major challenges which will face our county governments is the challenge of a lot of resources going to recurrent expenditure and very little resources being available for development projects. How do we sit down as the leadership at the county and agree on apportioning, for example, the percentages that would go to recurrent expenditure and the percentages that would go to development expenditure? You cannot do this unless you have a sitting where all of you can agree as a leadership within your various counties. It would be absurd to imagine that my friend, the Senator for Kisii, would have an equal say with regard to some of the development projects that go on in Nandi.

You do not expect the Senators to come together in Nairobi, sit down within the Senate and just discuss things in absurdity instead of going down to the grassroots, where they were elected, to participate in the development processes within their counties. These County Development Boards seek to address these particular challenges that the Constitution and the existing legislation may not have captured.

Mr. Speaker, Sir, it is also important to mention that within the devolution laws, during the process – and we have the advantage that some of the Senators in this House were Members of the Taskforce on Devolution that went round this country, thought through some of the legislative proposals with regard to devolution – and some of the things that we seek to introduce at this level were already thought through. When we will be discussing the report by the Senate Committee on Legal Affairs and Human Rights, this will be abundantly clear; that some of these structures that we are proposing through this amendment had already been thought through by the Taskforce on Devolved Government.

So, Mr. Speaker, Sir, it is important that this House sits down, discusses this issue in a more sober manner and looks at the concerns that have been raised. We went through the public participation forums; we have had formal and informal discussions across the

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counties; we have met MCAs and a number of them have made proposals; indeed, the importance of the Board is not in question; everybody agrees that we need this platform for consultation by the leaders. But some of the contentions and some of the proposals which we discussed and agreed upon as a Committee is that we need to cascade the Board down to the ward level so that we have a constituency or a Sub-county Development Board and a Ward Development Board. The concept is simple; the concept is very similar; that we need to provide platforms at whatever level where *wananchi* and the citizens who elected us can make valuable contributions with regard to the development projects that need to be done and considered at the county level.

Mr. Speaker, Sir, the amendment Bill proposes that we have the key functions of the Board; and I am proposing that the Board will handle a few of the following issues. One, that the Board will consider making recommendations with regard to the County Integrated Development Plan (CIDP). If you look at the legislations that exist right now, future budgets in our counties will be based on the CIDP. If you look at the CIDPs of almost all of the counties in this country, the components captured within them do not relate only to functions that are going to be undertaken by the county governments. For example, if you look at the CIDP of Nandi County, we are talking about developing and establishing of three public universities. That is not a function of county governments, but that means that we, as a county and as the residents of Nandi County, are already saying that this is the direction that we need development to take in our county government.

We need to bring all the agencies that will be necessary or the agencies that we will need to implement our CIDP. If you look at it, we are talking about our referral hospital in Nandi; we are talking about some of the projects that we think are crucial; but all those projects are not going to be implemented by the county government. That tells you that the implementation of the CIDPs in all our counties cannot be fully done by the county governments alone. That is why it is important to have a platform that brings together all the agencies – whether you are talking about the line Ministries from the national Government or the Constituencies Development Fund (CDF), or the State Corporations and development agencies at the county level; so that we are all able to draw up a plan on how to implement our CIDPs.

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

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

Mr. Temporary Speaker, Sir, it is important that we co-ordinate our efforts, and one function of the County Development Board is to co-ordinate and harmonize projects at the county level. We need equality in all our counties; for example, the county you come from, Elgeyo Marakwet County, is a county that has two major distinct communities – that is the Keiyo side and the Elgeyo Marakwet side – and it is important to note that at the end of the day, people will be keen to look at the equality that is

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achieved through the county development projects, ensuring that they spread across the entire county.

We have seen the counties engage in the process of hiring staff and one of the questions that is now being raised within the counties is the skewed way of hiring. We have a lot of staff being employed from the region where, maybe, the Senator comes from, but in this case, mostly where the Governor comes from. We must sit down as a leadership and ensure that we have equality in terms of employment and development activities at the county level.

Mr. Temporary Speaker, Sir, it is important that we provide a platform that will discuss any other emerging issues that have an impact on the running of our counties. We have serious security challenges in my county. All the elected leadership at the county and national level can enhance security in counties. These problems would have been averted if we had a platform where all of us could engage. We have challenges with regard to boundary issues in our counties. We cannot address some of these challenges if we have no platform to help us deal with issues.

In some counties, we have seen Governors disagreeing with Members of the County Assembly (MCAs). We have seen disagreements between Members of the National Assembly and those of the Senate. We have seen conflict among the leadership. What platform is available for us to deal with the conflict that is rising at the county level? I propose that the county development boards should provide us a platform to engage and deal with emerging issues at the counties.

In terms of the structure, we are providing that the composition of this Board will bring together MCAs and Members from the national Government. We have provided that the Board should be chaired by a Senator although it has been a very contentious issue. Why do we say so? This is because this is an advisory board. A Governor cannot sit as the Chair to advise himself. How can one chair a board that advises him? Conventional wisdom dictates that where you have an advisory board, the Chief Executive Officer (CEO) is always the secretary. That does not mean that the CEO becomes the person to take notes. We are talking about the Governor providing secretariat services to the Board. However, it is unfortunate that some of our Governors do not understand the conventional wisdom we have adopted. In an advisory Board, the Chair is always non-executive. That is why we are looking at the Senator. The secretary of the Board is the Governor and hence, represents the institution. We are looking at the Governor as the CEO of the county to provide secretarial services for the board.

The Constitution brings on board MCAs and Members of the national Government. A neutral arbitrator that can provide the chairmanship of this board can only be a leader who has been elected on both sides. The Senator is elected at the county level to represent the interests of the county at the national level. Therefore, if the Senator chairs this Board, then he will be better placed because he will have one leg in the county government and the other in the national Government. We have already had discussions in our Committee. We will be making fairly extensive recommendations and possible amendments to this Bill to ensure that it captures the spirit, contribution and many of the issues that we want.

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As I conclude, one of the challenges we are facing at the county level is the fact that *wananchi* know that they voted for county governments for purposes of having devolution and to have services and development at the county level. However, what we have seen, in the last few months, is that county governments are expending a lot of time and resources creating bureaucracy and protocol issues that are not useful. We seem to have county governments that admire the bureaucracy at the national level and yet that is what *wananchi* and the people of Kenya were running away from. We expected county governments to be centres of service delivery and development, but instead we are creating bureaucratic structures at the county level.

We must focus our counties on development. That is why this board will provide a platform for all of us as elected leadership at the county level. We should change our attitudes and reorient ourselves into ensuring that we get development at the county level. At the country level, this platform will allow us to engage and agree, as leaders, at the county level on issues that we want to approach the county government on in unison. These are some of the benefits that will come with the board. We have even discussed and even agreed that when we get to that level, we will suggest amendments so as to create structures further down to reach the grassroots because the principles of the new Constitution are based on devolution. We need to take some of these services closer to *wananchi* and that is very important.

The board is non executive. Therefore, the fear being raised that senators are keen on taking something--- Under Standing Order No.98(4) could I---

The Temporary Speaker (Sen. Murkomen): Order, Sen. Sang! Do you want to make a request on a point of order?

Sen. Sang: Mr. Temporary Speaker, Sir, I would like to make a request to seek your indulgence so that you give me a few more minutes under Article 98(4) of the Standing Orders.

The Temporary Speaker (Sen. Murkomen): I do not know whether the Standing Orders have Articles. You will have to be very specific. How many minutes do you request?

Sen. Sang: Mr. Temporary Speaker I request for four minutes.

The Temporary Speaker (Sen. Murkomen): Considering the weight of this Bill and the interests that Members have and being the Mover of the Bill, I will add you ten minutes.

Sen. Sang: Thank you, Mr. Temporary Speaker. I wanted to allay fears that have been raised by Cabinet Secretaries and some organized groups with regard to the thought that through this Bill, the Senators want to take up the running of county governments. That is far from the truth. We are looking at creating a platform for us to discuss, engage, advise and make contributions to the development of the counties. We are not and I am sure that none of these Senators, seated in this House, want to take the Executive authority of the county governments. We are only seeking a platform for us to engage and to contribute to the development of our counties.

This board will only make recommendations and offer advice. It is, therefore, incumbent upon the person being advised to take or not to take up the advice. However,

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we, as elected leaders in our counties, will have done our bit in ensuring that our voices are heard. The board is already in line with some of the constitutional sections of the County Governments Act. Section 91 of the County Governments Act provides that at the county level, there would be a platform and an avenue for elected leaders at the county level to engage with county governments. I think this is creating a specific platform in accordance with Section 91 of the County Governments Act.

Some issues have also been raised with regard to the functioning of the board. Allegations have been made to the effect that this Board will take over the responsibilities of the MCAs. However, MCAs have the constitutional mandate to approve budgets, County Integrated Development Plans (CIDPs) and all the others. The Board will only provide advice. It is absurd for somebody to imagine that an advice would mean taking the approved responsibilities of the county assemblies. It is important that we allay some of these fears.

These structures will provide a platform for elected leaders, especially for the Senate to carry out these oversight responsibilities. As I finalise, it is important to note that in politics, that is where all of us are, we may not have the legal recognition. However, the moment you lose political recognition, that becomes the end of the position. I think one of the constitutional flaws and among the gaps that exist is how to provide a platform for the Senator at the county level. At the end of the five years, you will be asked by your residents and voters what you did, as a Senator, for the county. It is important for us to find these opportunities.

In one of the public forums, one participant, interestingly, gave us a very weird analogy of where a Senator finds himself versus where a Governor finds himself. In his own words, he said that a Senator operates “in space” while a Governor operates “in place”. We need to provide a landing ground for the Senator who has been operating in space. I think this is one of the platforms that we need to give Senators and all elected leaders so that they meet and design the destiny of their counties. They should make recommendations, have discussions, and create goodwill and advice the counties.

Some Senators in this House are very senior politicians in this country. For example, the Chairman of the Legal Affairs and Human Rights Committee is a distinguished legal practitioner of this country with a wealth of experience in terms of leadership and running of Government. This also applies to the rest. Why can their counties not benefit from their expertise and wisdom? It is important that we provide that platform so that we move development at the county level. We should create a sense of collective responsibility by the entire leadership in all our counties.

It is important that this Senate proceeds to amend this Act which is enacting constitutional responsibility. If somebody decides to stand in the way of the Senate in carrying out its legislative responsibility, that will be unconstitutional. Therefore, we have addressed all the issues. We will look at the wording of the amendment Bill so that we carry on board everybody. We want to include the concerns of the Commission on the Implementation of the Constitution (CIC), the Council of Governors and those of the Forum of County Speakers so that we have an amendment Bill that will become law and allow all of us to move forward and ensure that development in the county is realized.

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With those many remarks, I beg to move and request the Senator from Busia, Sen. Wako, to second.

Sen. Wako: Mr. Temporary Speaker, Sir, it is my pleasure to second this very important Bill which shows that the Senate is entering into its second phase of development. We are moving away from Motions which appeal to the Government to do “a”, “b” and “c” to what we are elected to do, which is legislation. To me, this is one of the most important legislations and we should thank the originator of the Bill, Sen. Sang of Nandi County, one of the youngest Senators in this House, for coming up with this excellent Bill.

The Bill, as usual, was referred to us; the Committee on Legal Affairs and Human Rights. Therefore, I will focus on the technical aspect of it since Sen. Sang has told us what this Bill is all about. We want to make sure that this Bill becomes constitutional.

In accordance with our mandate, we held public hearings. Amongst the public entities that came before us – this is mentioned on page 2 of our Report – were the CIC, the Governors Council, the County Assembly Speakers Forum, FIDA Kenya; The Law Society of Kenya (LSK), Pamoja Trust and the Multi-level Government Initiative, Sen. Kiraitu Murungi, Delarua Residents Association and Zacharia John.

Mr. Temporary Speaker, Sir, a number of them raised various objections which I have just enumerated for the purposes of the record. One of the objections was that the Bills is unconstitutional in that the board is likely to interfere with the county Government. That is the county executive and the county assembly who to them were the only institutions that have powers to prepare, approve and implement all county development plans, projects and budgets. The other objection was that the Bill as it stood involved Senators, Members of the National Assembly and Members of the County Assembly and, therefore, created a conflict of interest. They thought that conflict of interest was tantamount to interfering with their oversight role. The third one was that this oversight role has been given to the Senate corporately and does not grant individual Senators specific oversight responsibility over the counties that elected them. It is the county assembly in those counties which elected them which has an oversight role over the county executive committee.

Another objection that was raised was that the proposed Bill conflicts or duplicates the functions of the Intergovernmental Relations Act. The Bill goes into what is essentially the business of county governments. Another objection was that it interferes with the budget making processes at the county level set out in the Public Finance Management Act and the County Government Act. The body would, therefore, duplicate the functions of the already established forums under the Act. They also mentioned that there was also a conflict of interest as Members of the county assemblies sitting on the Board will make recommendations and then go thereafter, sitting as the county assembly to exercise their constitutional role in approving the budget.

The other one which came from the Federation of Women Lawyers (FIDA) was that they were not happy that the county women representatives were given the role of vice chairpersons. They felt that we should describe that in a more neutral fashion to say that if the Chairperson is male then the Vice-Chairperson should be female. I almost told

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them that they should have campaigned very hard for the women leaders to be elected in their own right as Senators of their respective counties. The other one was that the board appeared executive and, therefore, because it appeared executive, that is a function of the executive organ of Government and not the legislative organ of Government.

Mr. Temporary Speaker, Sir, as the Mover of the Motion also stated, the Governors also wanted to chair the Board. They also wanted the name changed from the Board to the County Leaders Consultative Forum. The other objection which came from, particularly, the residents associations, was that the board should be expanded to include people other than the elected leaders. The final one was that the Bill ought to have been subjected to public participation before publishing.

These are the very broad objections to the Bill. All of them came with these objections, but when we interacted further, they came to agree on one thing. They agreed that there is an urgent need to have a consultative forum at the county level which brings together all the leaders. That was agreed by nearly everybody. Secondly, when we suggested the type of amendments that we can make to the functions, they all agreed that if we made those amendments, they will, to a large extent be consistent with our Constitution. Therefore, our Committee embarked on that exercise.

I want to assure the country that the Bill which we are now debating is very much constitutional. In fact, in enacting this particular Bill, we will be enhancing the implementation of the Constitution of this country and, in particular, the Devolution Chapter of the Constitution. It is because the Constitution is replete with much phraseology such as, we must have a participatory Government where everybody participates in the decision making process that affects them. The Constitution is also replete with the issue of freedom of expression which includes the freedom to seek, receive and impart information or ideas, which right belongs to everybody. Your rights are not curtailed merely because you are a Senator. You are also an individual in that particular county. Therefore, you have ideas to give, you can ask for information and also impart information and so on.

Mr. Temporary Speaker, Sir, the principle of devolved Government is to enhance the participation of the people in the exercise of the powers of State and in making decisions affecting them. Once you take that into account, then you realize that the Bill which we have before us is very much consistent with the Constitution. In fact, this is the Bill which anchors the provisions of Section 91 (g) of the County Government Act which is already in place. That Section (g) provides that avenues must be made for elected leaders in the county, not limited to Senators and Members of the National Assembly, to participate in the affairs of the county. When they say, not limited to Senators or Members of the National Assembly, the only other elected leaders were the MCAs. This Bill anchors that particular section. It is implementing that particular section of the county Government Act which was enacted, pursuant to the provisions of the Constitution and, in particular, Schedule Six of the Constitution. So, we are very much consistent with that.

Under Article 179 of the Constitution, the county authority is vested in and exercised by the County Executive Committee consisting of the Governor, his deputy and

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members of the executive, with the Governor being the Chief Executive. I can assure you that this Bill does not interfere with the functions of the Chief Executive or the county executive committee as laid down under Article 183 of the Constitution. I do not want to go through what that provides. But I just want to assure you that it does not interfere with their functions whatsoever. When it comes to the county assembly, I want to assure you that this Bill does not in any way interfere with the powers of the County Assembly to make laws necessary for the effective performance of the functions and exercise of the powers of the county government under the Fourth Schedule which is set out under Article 182 (2) of the Constitution.

This Bill does not interfere with the functions, both of the county executive and of the county assembly. This Bill does not interfere with the oversight functions of the county assembly, the executive committee and any other executive organ. Therefore, the fears that have been raised, a close examination of the Bill and the amendments that we are proposing will clearly show that we have not interfered with any of those functions of the county executive and the county assembly.

Mr. Temporary Speaker, Sir, our role as Senate, as the Mover of the Motion had clearly stated, is to represent the interests of the county and to protect the county and its government. It is also to legislate. Those functions have been given to us by the people in whom the sovereignty of this country is vested. I know this looks like an obvious thing. However, I wanted to emphasize it because when people are now exercising their right to vote and they are voting for the Governor---. When they are voting for the Governor and the Deputy Governor, they are delegating to that Governor executive authority. They are telling the Governor to exercise the executive authority in accordance with the Constitution. But when the same people are now voting for the Senator, Member of the National Assembly, Members of the County Assembly, they are telling these people: "Go and represent us in legislation, in the oversight role and in all the other issues that matter". So, really when it comes to the county, the voice of the county is not the Governor, but the Senator. We have been elected by people to be their voice in the issues relating to the county.

The role of the Governor is to exercise executive function in accordance with the provisions of the Constitution. We are the voice of the people. We are the protectors of the people. Therefore, we, as Senators, cannot be told to go and stay in Nairobi and argue about division of revenue and so on. However, when it comes to the county, the Governors are the bosses. This cannot happen because we are there. I want that point to come out clearly because it is not coming out as clearly as it ought to come out. The Governors are the executive authority. Therefore, they should remain executive and we shall not interfere, except in our oversight role. We shall point out the mistakes they make. We shall do this with vigour and gusto because we are protecting the interests of the people at the county level.

Mr. Temporary Speaker, Sir, the same applies to Members of the National Assembly. They are the voice of the people in their constituencies. The same applies to the MCAs. They are the voice of the people in the county assembly. That is why in the amendments that we are proposing, we are proposing, not only the County Development

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Forum for the entire county chaired by the Senator who is the voice of the people, but we are also saying that even at the Constituency level and the sub-county level, let the Member of Parliament as the voice of the people in that constituency chair the development forum. At the ward level, let the MCA as the voice of the people in that ward chair a similar body at that level. Therefore, there should really be no confusion whatsoever.

I know the Governors wanted to chair, but I think my Vice-Chairman has answered them well here and I do not want to repeat that. After having said that, I would like to answer those who said that the Senate cannot undertake certain roles. I want to tell them that Senators are the voice of the people. This has been affirmed by the advisory opinion of the Supreme Court of this country. The advisory of opinion of the Supreme Court of this country has stated in clear terms that the Senate also represents the people of the county. Therefore, there is no need to argue about this.

Sometimes I wonder why some people agree with us and then after one week they are saying other things. I wonder what their motivation is. Do they want to be Governors or Senators? They keep on changing their language when they had earlier on agreed with us on exactly what we are stating. As I said, we agreed, but then afterwards I have been hearing some noises. I do not where those noises are coming from.

Mr. Temporary Speaker, Sir, I would very much want this debate to be done taking into account, not only the published Bill by Sen. Sang, but also the amendments that we have put to it. One of the amendments is that this Bill is not anchored in Section 111 of the County Governments Act, but in Section 91 of the County Governments Act. That is the section that I have just quoted, which clearly states that the elected leaders must be given the avenue to also participate in the affairs of the county. So, that is a change from Section 111 to Section 91.

Mr. Temporary Speaker, Sir, as far the functions are concerned, we say: "The board will adopt." So, whenever the word "adopt" appears we have agreed that it should read "make recommendations on." This is because this board, as the Mover rightly stated, is not an executive board to make decisions which will be implemented, but a board which provides a consultative forum, which will come up with recommendations and advice from time to time. We do hope that because those recommendations and advice will have been given by consensus in those fora of leaders and so on, they will be of persuasive authority to whoever is implementing them, whether in the county assemblies or county executive. They will be very persuasive and you will vary them at your own peril. So, this board will be purely advisory and will make recommendations.

Mr. Temporary Speaker, Sir, we have added another clause, which reads:-

"This board will consider and make recommendations on any issue of concern that may arise within the county."

The way it was before, it was basically focused on the budget process, development and so on, whereas the more we listened to people, the more other issues came up, of course, out of the county, which may not necessarily, strictly speaking, be of a budgetary nature. For example, we talk here about security. Most of the questions here that have been asked and Motions passed here concern security. Even today, most of the

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Statements that were issued concern security. So, security could be one of those issues that the board can also discuss and make recommendations on.

The other day, we were having differences between the Governor and the county assembly of Makueni. Such differences can be ironed out in such a forum. In fact, my colleague, the Senator for Makueni was approached when they were having those differences. However, there was no framework in which he could really intervene. Now with this legislation, at least, if such an issue occurs between a Governor or the Senator or Governor and county assembly, we now have a forum where the leaders of the county can come together and solve issues. We now have a forum where leaders of the county can come together and solve issues whenever there is a conflict in development. The leaders can come together and find ways of attracting investment to the county. They can even assign specific people to travel to India, America or wherever to look for investors, rather than every person from the same county going there. So, we have added this particular clause, to consider and make recommendations on any issues of concern that may arise within the county.

Mr. Temporary Speaker, Sir, we have also provided for the establishment of sub-county development boards, chaired by the elected Member of Parliament from that sub-county. The membership is all set out there. I do not want to waste the Members' time by going through it. It is clear on who the members will be, but suffice to say, it will also include persons with disability, gender factor, community leaders, religious leaders and so on.

Mr. Temporary Speaker, Sir, we have also now added the word "development board." They will also have more or less the same functions as the county development board. In law we call it *mutatis mutandis*.

Mr. Temporary Speaker, Sir, this is really what is now before us. In the report we have included the submissions of the various people who appeared before us and the relevant minutes of the Committee. This Bill is long overdue and should be enacted. In my view, it should be enacted before the end of this year, so that we can hit the ground running in 2014 and move forward, as Senators, Members of Parliament and leaders from all walks of life within the counties.

Mr. Temporary Speaker, Sir, I beg to second.

(Question proposed)

The Acting Senate Minority Leader (Sen. Abdirahman): Thank you very much, Mr. Temporary Speaker, Sir, for allowing me to contribute to this very important Bill.

Mr. Temporary Speaker, Sir, from the outset, I want to thank Sen. Sang for introducing this Bill which is in its Second Reading stage. I also want to thank the Attorney General *emeritus*, for the technical details that he gave. I hope that this is transmitted, not only live, but also in all the print media, so that Kenyans can understand what the objects of this Bill are and how beneficial it can be for the ordinary mwananchi.

Once this Bill was introduced in this House, I remember that there was hue and cry, particularly from the Governors and a number of other stakeholders. But I find that hue

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and cry was not based on any sensible thought. This is because neither Sen. Sang nor this House envisages a position in which Kenyans' interests will be compromised. I think that we are here for a good cause.

Mr. Temporary Speaker, Sir, we are not reinventing the wheel. The Governors did not find a vacuum because there existed something in the counties long before the last elections. Sen. Sang is said to be the youngest Senator, but a number of the Governors are older than him. Therefore, they should have known that there was no vacuum in this country with regard to planning for development. We are not reinventing the wheel. A number of us will remember that at one point there existed what we used to call the district focus for rural development. That provided a platform at the lower levels, particularly in districts, to plan, not only for development programmes, but even for humanitarian efforts.

There also came the district development committees, where until recently, development partners and district organs used to plan development programmes in the nation up to the national level. In fact, it cascaded to the sub-locational level. Where were these Governors then? A number of them might have been in schools or working. But they may not have internalized these issues. At one point, with due respect to the Chairman of the CIC, when he spoke of the fact that by actually enacting this Bill, he indicated that we were going to actually perform the role of what he was calling the members of the MCAs; we were not usurping the role of the MCAs as clearly enumerated by both speakers before me.

Mr. Temporary Speaker, Sir, we are not in any way going to do roles of other people. What is going to happen is that all development programmes will actually be discussed at this level. For the information of Governors and those who purport to believe that the county coordination board, as envisaged, is only going to talk about county government funds, it is actually a place where all donor funds, county funds and faith-based organizations support programmes will actually be discussed. This belief that this is meant only to curb the excesses of the county executive does not exist. According to me, it is a myth. Unless we actually develop these coordination mechanisms, we are bound to lose. There is going to be duplication of projects and wastage of funds, as one project which was bound to be undertaken by one agency will be repeated even by the county government itself. We will also not be able to monitor these projects.

Mr. Temporary Speaker, Sir, the truth of the matter is that today, in our counties, Members of Parliament are running their CDF programmes. The county governments are haphazardly planning projects without the involvement other elected leaders. I know that we have had a County Integrated Development Plan that is way beyond the budgets of county governments. If we do not actually create synergy and understanding between our various roles and complement each other in what we try to do, our people are bound to lose. The four years that we have in office will end without us showing results for why we, as Senators, are here and why they are even there as Governors. We do not want to get to a position where we will fail.

Mr. Temporary Speaker, Sir, I appreciate the effort that was made by the Committee on Legal Affairs and Human Rights in terms of listening to a number of

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stakeholders and the input that they have made. I am sure that we will have time to discuss that particular report as a House. But I want to thank them for what they have done in terms of these preliminary stages in giving us some food for thought. My first observation, when I looked at the composition of the board, is that I fear a bloated membership generally. At times, bloated membership may not perform the expected functions. I do not mind compromising on any other. However, regarding the one of the Deputy Governor, I want us to approach the Governor's office as one institution, so that the Deputy Governor can attend in the absence of the Governor. We really do not need so many people from there.

Regarding the rest, I am sure that we have a chance to talk about whether we will have the leader of the majority or leader of the minority. These people represent members at the lower level or MCAs level, even if they do not really appear there. It is not a political function or role. Therefore, those two leaders could even stay away.

Mr. Temporary Speaker, Sir, the reason we will have to talk about managing development programmes at the county level is particularly because of ownership. If, as suggested by Sen. Sang, two or three agencies will be putting up cattle dips without consideration, we will even lose the ownership bit. In terms of sustainability, how will these things be sustained if some of these projects that are being proposed by county governments or even the donors are not digested or synthesized properly in these forums? It is going to be wastage.

Mr. Temporary Speaker, Sir, the other item or issue which, through these boards, we will eliminate is disparities in development. Not all regions of this country are developed at par. Not all constituencies or wards in one county are developed at par. Therefore, this board will actually curtail the excesses of the executive, even at the county level. People must know well in advance which particular project will be done in which particular constituency or ward so that we do not have disparities. We want to get our priorities right, so that we do not make a mismatch between the funding we have and the possible project which would have been implemented.

Mr. Temporary Speaker, Sir, I forgot to say that until recently after the District Development Committees (DDCs), we had the District Steering Groups (DSGs). What is all this fuss about? What is this that makes people fear that this Board will be any different? The biggest enemy of any development is fear of the unknown. I want our brothers and sisters who serve at the level of the executive to know that the Senate or even the National Assembly is going to perform, as clearly stated by the Attorney-General *emeritus*, our representative role and our oversight role without any fear, for the interest of *Wanjiku*.

Thank you very much, Mr. Temporary Speaker, for allowing me this opportunity. I beg to support.

(Applause)

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Speaker, Sir. I rise to support this very important Motion for development. I want to start by thanking the Mover for
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bringing this Bill, in spite of his age, which I respect. This gives us a moment to give credit to our youth. Here, I am speaking like a father. I really must say shame on he who, in a public function somewhere in the Rift Valley, doubted the ability of Sen. Sang, purely on matters of marital status. I know these things.

(Laughter)

Marriage has got nothing to do with the ability to think or speak clearly and to do what Sen. Sang has done. There are very many polygamists from Kakamega who I know who would not do what he has done. I really congratulate you, Senator.

Mr. Temporary Speaker, Sir, this particular Bill is going to sit very well with the Governor of Kakamega because two months ago, it occurred to him that it was important that he knows what goes on in all the constituencies. I recall that he hosted all our 12 Members of Parliament and asked them to go through their development plans for the current financial year, showing what is going to what and what is going to that. So, it occurred to Governor Oparanya that he should have a clear understanding of what these Members of Parliament were doing. I am sure that he is going to find this one a very welcome legal tool that he can use on a regular basis to enrich that which he had started.

Mr. Temporary Speaker, Sir, the County Development Board is about sharing of the common wealth of the counties and county governments. May I use this Floor to say that this is a matter of life and death; if you ever thought or if you ever doubted that it was not a matter of life and death, only one week ago in Matungu Constituency, Kakamega County, there was a shooting at a funeral. The security detail of the Governor had to shoot to disperse the crowd because the Deputy Speaker was now reporting back to the people the frustrations that they were going through in ensuring that there was equity in the distribution of the money that this Senate supports me in taking to Kakamega. The bodyguard had to shoot in the air. People went scampering and the body was buried unceremoniously. Upon leaving the funeral, the Governor went to the police station in Mumias to write a statement; the same with the Deputy Speaker as well as the MCAs. All went to record statements because we did not have a common board like this one to address these things.

Mr. Temporary Speaker, Sir, it is not that I like matters funeral, but I am just telling you the practicability of this issue. A few days ago, we were at a funeral in Busia County. We were stunned by a Member of Parliament (MP) who faced the Governor and challenged him thus; “you were unable to balance your budget because you did not involve us, as the elected MPs from your area.” The Governor came and started telling the mourners that the MP was lying; that, indeed, he had balanced his budget. Yet we all know what happened. For those of us who sit in the Senate Committee on Finance, Commerce and Economic Affairs--- I can see the ‘duke’ of Makueni County is here. I call him the ‘duke’ because of the way he dresses, Sen. Mutula Kilonzo Jnr.

(Laughter)

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For those of us who sit on this Committee, we were given a list of which counties had balanced their budgets and so on. So, this Bill is timely.

After witnessing what took place in Matungu, I was really hurt. I said: Must we really go through this. Must it always be Kiambu or Kakamega, where we get these negative things?" I chose to go and have a bird's eye view on the budget of one of the departments as raised by the Deputy Speaker. Do you know what I found out? The Deputy Speaker was abundantly right. There was a budget line of fencing a hospital where they had proposed to spend Kshs20 million. They proposed to spend this amount of money to fence a hospital that does not have wards for women to deliver in.

Sen. Omondi: On a point of information, Mr. Temporary Speaker, Sir.

Sen. (Dr.) Khalwale: I do not mind being informed, Mr. Temporary Speaker, Sir.

Sen. Omondi: Thank you, Mr. Temporary Speaker, Sir. I would like to inform Sen. (Dr.) Khalwale about the funeral he has spoken about that took place last weekend. I want to concur with him that it happened last Saturday again in Matungu at the funeral of former Councilor, Leni Baraza. The Deputy Speaker again came with the same, same budget and it was handed over to members of the public. It was really shameful because it showed how irresponsible the leaders are. I was forced to tell the people that they should give us time, as Senators and that we were to control the messes that are happening all over the country.

Mr. Temporary Speaker, Sir, it is really irritating to see how leaders are behaving at the county level. I do not know what I can say, but it is really embarrassing---

The Temporary Speaker (Sen. Murkomen): Order! Order, Sen. Omondi! You will have your time to contribute. The information you have already given is enough.

Sen. Omondi: I just wanted to inform the House, as I concur with Sen. (Dr.) Khalwale.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Murkomen): Thank you.

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Speaker, Sir. Indeed---

The Temporary Speaker (Sen. Murkomen): I notice the emotions, passion and commitment of Sen. Omondi. It was noted by the Temporary Speaker.

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Speaker, Sir. This was the vote of the Department of Health by the county. I continued perusing the document and I found that a whopping Kshs10 million had been budgeted for the purchase of a generator in a sub-district hospital. In our other lives, we have purchased generators for our businesses. I do not think there is a generator in the market worth Kshs10 million. One of the biggest generators that I have in my practice cost me around Kshs500,000. So, when somebody puts this kind of budget line, either he does not know what he is talking about, or it is a deliberate effort to confuse people so that the money is eventually abused. It went on. In my nursing home, I have Autoclave. This is something for doing laundry quickly. There was a budget line of Kshs10 million for buying an Autoclave. I do not understand how somebody would do that.

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Mr. Temporary Speaker, Sir, before I conclude, I would like to remind the House that in the National Assembly during the budget-making process, the National Assembly participates in it through the Budget Committee because they are the representatives of the people in their constituencies. Since we carry out representative roles in our counties, this gives us an opportunity to also participate in the budget process so that what the governor is spending money on does not surprise us at the end of the day when we are carrying out oversight. It is my belief that the County Development Board will be a legal point of entry for the citizenry of a county to know how the governor wants to spend his money. If they think there are better ways of doing it, then they will give their input.

Mr. Temporary Speaker, Sir, we have strategic institutions in the counties where members of the public, MCAs, MPs and Senators would like to see emphasis being put on. But if the governor is left unchecked, he might lose track of these important institutions and resources to the extent that, before we know it, five years will be over. I say this remembering that one of the potential areas of revenue collection in Kakamega County, probably only second to Nakuru and Mombasa, is tourism. Because there was no consultation, you look at the budget line for the money that is supposed to be spent on tourism in Kakamega and you just say “Why do we not get this quick money?” We are talking about the scenic Kakamega Forest which some of you who are well endowed fly over with your private choppers, and you have seen that it is very scenic. These are the things that we want to attract tourists to come---

(Loud consultations)

Mr. Temporary Speaker, Sir, protect me from the ‘duke’ of Makueni; he is laughing in a sarcastic way.

The Temporary Speaker (Sen. Murkomen): Order, Sen. (Dr.) Khalwale! The assertions you are making against the Chair are---

(Laughter)

I think you should withdraw them.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I am so directed.

Mr. Temporary Speaker, Sir, if you were to bring MPs at a sitting with all of us, as stakeholders, then you would not see the kind of blunders that we saw in the National Assembly last week. The Committee on Agriculture, where two MPs from Kakamega County sit, released a statement that they were directing the Kenya Sugar Board to withdraw the operating license for Butali Sugar Company, and our MPs were seated there. So, if we were given a platform like this one, these MPs would know that to attempt to stop Butali Sugar Company from operating and crushing of cane in Butali was not the right thing to do and they should go home. The two honourable Members of Parliament from my county, who are part of this terrible decision, during this forum, I will sit them down and tell them that Butali Sugar Company will not stop crushing cane.

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If they stop crushing cane, we will take back Kakamega to where it was before we brought in Butali. That was when cane stayed in the farms for four years.

However, today, cane farmers are paid. Every Thursday, we pay between Kshs60 million and Kshs100 million. Why would you want to close that kind of enterprise? However, because of lack of such a forum, Members of Parliament, probably because of inexperience get away with this. The same applies to Mumias Sugar Company, West Sugar Company, the upcoming Busia Sugar Company and Nzoia Sugar Company in Bungoma.

We want the Governor to understand the devolved functions. Today, we are seeing Governors, not just in Kakamega, but also in Nyeri and elsewhere, putting Kshs5 million in secondary schools. The Constitution has not devolved that function to counties. Therefore, all we are doing by not being proactive is to allow our Governors to walk into jail with their eyes wide open. That is a straight audit query. You do not have to argue very much about it and all that you need is a report of Edward Ouko, the Auditor General, and they will be fixed. If Governors want to focus on education, they are free to focus on polytechnics. As we debated yesterday, we all agreed that we need to strengthen our polytechnics. We will realise further development by way of emphasis on science research and technology.

Before I conclude, I want to comment on something that is very important in the Bill. This is Clause 2. In Clause 2, the establishment of the County Development Boards through 111(a) and (1)(g) gives a proposal to have the Deputy Governor of the County and (h) to have the Speaker of the County Assembly. I think we are beginning to lose focus. If the Governor is seated in the Committee, why would the Deputy Governor sit there? Secondly, what role would the Speaker of the County Assembly be playing in the Committee? He is supposed to sit in the county assembly and make sure that there is order during county debates. He will not go to the assembly and say what happened when he attended the meetings because he will never have that opportunity. Why waste state resources by inviting him to come and sit in this committee?

In the Committee Stage, I will be proposing that we delete the Deputy Governor and the County Assembly Speaker. I want to persuade the speaker who spoke before me, the Senate Minority Leader, although he will be in that position for a short time considering that Sen. Wetangula is coming back, to bear with the County Assembly Leader of Majority and County Assembly Minority Leader because, in my view, this position is very important. This is captured very well in the presentation by Sen. Murungi when he appeared before you. We need to establish similar structures all the way down to the grassroots level. Therefore, MCAs will be chairing those boards in their wards and they should have representation in the county boards. Just because of a desire not to bloat the county board too much, probably that is why we did not want the MCAs to be there. They should be represented by the County Majority Leaders and County Minority Leaders; that would be good.

Mr. Temporary Speaker, Sir, I have no problem with the representatives from the Government; one responsible for Finance and Planning, the one responsible for budget; and, the one responsible for the Public Service Board. This matter has received a lot of

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debate, sometimes because the Governors have taken a position and spoken very passionately about it. I want to make it very clear to the people of Kakamega that I am not interested in fighting the Governor. I want this law so that the Governor of Kakamega can succeed. If he does not succeed and, probably goes to jail, he will have failed. I will have failed and the people of Kakamega will have failed. I would like him to understand me and to know that when I chose to become the Senator for Kakamega, I did it from a position of knowledge because I am one of the people who participated in the creation of the new Constitution. I also find it very difficult to play politics that confine me only to Kakamega. Kakamega is a very small place in Kenya.

I believe there is room for my politics to go beyond Kakamega County. I am playing at the county level and the national level. I have no intention of engaging a reverse gear to go back to a village that I have grown in, Malinya, the Constituency called Ikolomani and the County which I am representing. I think the county and the country is looking at me to make sure that this little prize that seems to be very difficult to get can also be delivered in my village. It should also be hosted there by the man himself.

With those remarks, I support.

Sen. Ong'era: Thank you, Mr. Temporary Speaker, Sir. I rise to support this Bill. From the outset, let me congratulate Sen. Sang for showing his great wisdom and mind by bringing this Bill to the House.

This Bill lies at the very centre of what we, Members of the Senate, are suppose to do under the Constitution. Our role as Members of the Senate is to be the guardian angel of devolution. This Bill goes a long way in illustrating that.

First of all, I would like to look at the objects and reasons of this Bill, which we have been told is to provide a forum for leaders to meet. These are the leaders of the county who can discuss issues that would make the county grow. Therefore, there can never be a better forum which is led by the Senator because Senators are people of wisdom. I find that it is very timely that we have this Bill.

As legislators, Governors need not worry that we want to take their jobs because we are people's representatives. We are legislators. We are not arbitrators. That is why we keep on saying that we do not need to have CDF under Members of the National Assembly. Therefore, the illusion that many Governors have; that Senators are interested in their jobs is extremely unfounded. They have misplaced interests. I think the truth of what they are doing will be discovered when we have such a forum. Therefore, I support the creation of a forum that can bring all leaders of the county to discuss development of the county.

The second thing I have noted and I commend the Mover for bringing it up is that this Bill will be for coordination and harmonisation of development projects and programmes. There can never be a better forum under the county unless we have such a forum. This is the only forum that can bring harmonisation of all the issues.

As you have heard many Senators say, at the moment, we do not know what the left hand or the right hand is doing. We do not know what the Member of National Assembly is doing with the CDF. We do not know what the MCAs are doing with the allocations they have been given under the county assemblies. We do not know what the

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executive committee members are also doing. Coincidentally, during our hearings, as we were listening to appeals, we heard them being referred to as Ministers. However, nowhere under the Constitution have I seen them being referred to as Ministers. So, we need to bring harmony to counties. We need a forum that can make sure that we know what the right hand is doing and what the left hand is doing.

I want to plead with the Mover to look at Clause 1(g). I want to support those who have requested that it be amended. The need for the Deputy Governor should not be there because this will create conflict with Article 182(2) of the Constitution that states that when the County Governor is absent, the Deputy County Governor shall act as the Governor. This is one body. I do not think we need to have the Deputy Governor being a substantive member. I think the Deputy Governor should act in the absence of the Governor as a member of the Board.

Finally, there will not be a time that this Senate can stamp its authority as the drivers of devolution unless this Bill is enacted.

Thank you.

Sen. (Prof.) Lonyangapuo: Thank you, Mr. Temporary Speaker, Sir. I join my colleagues in thanking Sen. Sang for bringing this amendment Bill at this time. For the last six months, since we got into devolution, we have seen scenarios of developing the counties. I wonder whether these governors are the same people who were campaigning before March, 2013.

I also want to thank the Standing Committee on Legal Affairs and Human Rights for taking this Bill through all the steps that were mentioned by the Chairman, Senator Wako. They visited and consulted several stakeholders that are the guardians of the implementation of the Constitution, particularly the Commission for the CIC. Very many jumped into condemning the originator of this Bill even when no other Senator had seen it. I was surprised that even in my own County of West Pokot, before I knew that this Bill was in existence, everybody was up in arms confronting an innocent person. That was me; I was accused of wanting to take up their work. People in the neighbouring counties were saying the same thing to the extent that the relationship between the Senator and the leadership on the ground today, total incitement has been passed on to the county executive members.

We were in Rwanda with the Committee on Education, Information and Technology (ICT). I met the County Majority Leader from West Pokot while I was watching citizen TV in my bedroom. The fellow was saying that Senators are very idle. I did not know what he was talking about, but when I came a month later, I had the privilege to look at this. I could not believe whether they were talking about the same thing that had been written here or it was something else. So, there is total misunderstanding on the ground. So many people have given it their own versions, but I want to thank the Committee for being very thorough and considering to sit down and talk to the relevant people.

I remember when the Constitution was promulgated in 2010, Sen. Obure and I, immediately embarked on interpreting what the then Ministry of Public Works was supposed to do. What we found out was that because of devolution, there was going to be

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need for county assemblies to be put in place. The county assemblies are a replica of the Parliament that we have. We were given money by Treasury. The moment we started advertising that is when we saw the CIC saying that we could not build county assemblies until the Governors and the Speakers were in place. The whole process collapsed and nothing was done. I am saying this because it is important that we take views of all the relevant bodies and organizations although sometimes there are things that we must just do when we think it is right.

Mr. Temporary Speaker, Sir, looking at the proposals; these are not excessively strange proposals the way it has been put in the Bill. Every organization that we know in this world has a board starting with nursery schools, primary schools and secondary schools. They have parents' associations where there is a chairman. Today, we have 247 parastatals in Kenya. I am told they are going to be reduced to almost 180. In all of them, there exists a board. That board is not executive. There are very few that are executive. The boards advise and bring all the top processes. In the universities, for example, the University Council has on board people with rich backgrounds on their boards. They advise the Vice Chancellor. The office of the Vice Chancellor offers secretariat services.

It defeats logic and makes me wonder whether we really know what we are saying when we walk around and hear people say that the Governor has suddenly been reduced to a secretary, an equivalent to a typist. We now need to consolidate our leadership to think through and find out the reason for us to go into devolution. We found that for 50 years we could not run Kenya from Nairobi at all with one executive. So, it was essential then that we go into 47 small units. We should now go and practice what we are seeing.

I do not know whether any of you have had the privilege of visiting the Governors' offices. You would see many human beings queuing to see the Governor. Some think that Governors have money to give them and so on. Some of them may think that they have a lot of power when people are lining up to see them in their offices. You are contained there until you cannot come out. We have never seen people queuing at Harambee House or State House, but the opposite is happening at the offices of the Governors. We have created problems where I am told that there are some offices of Governors that have been attacked at night. Thieves are breaking into their offices thinking there is money in their lockers because of the impression they have given to wananchi.

We have forgotten that there existed districts. There was a time the first and the second Presidents of the Republic of Kenya talked about District Development Committees (DDCs), which were chaired by the District Commissioner (DCs). This was prior to 1992. They used to chair these committees in what today are the counties. The DDCs would often meet to synchronize development projects in their areas from the little money they got from the central Government.

It is now more important and so urgent that we must in our time have these boards which are not executive the way it has been proposed here. They will not accrue any sitting allowances the way some people have been imagining. This should be a board where we can check some of these funny excesses. I do not know whether some of you have noted that what is developing in the counties and we are going to soon discuss it in

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this Senate; when the chief executive officers are going out to carry out their duties in their own counties, they are paid *per diem*. How can you be paid when you are in the jurisdiction of your service?

There are erroneous things that are already happening. If this board was there, it would have made sense when we have Members of the National Assembly who are as few as the number of constituencies in your county and the Senator who plays the oversight role. When I am oversighting in Nairobi, am I not supposed to oversight on the ground? When I am protecting the county government and the counties, what am I supposed to do? Every inch of West Pokot County should be known by me. I should know which soil has been taken by anybody. How will we know those things if we are not sitting together in a forum?

There is also another thing which is coming out that is very interesting where people are now refusing to work from their counties. Instead of going for training in hotels in their counties, they fly to Mombasa. Who told them not to build hotels in their counties? Instead, they should create airstrips in their counties. When I asked, I was told that they do not have room. I told them that they can purchase tents which they can use for the time they have not developed.

The other day, Mr. Temporary Speaker, when I was in your county, I challenged the executive committee members that I wanted to see the beautiful scenery of Elgeyo Marakwet and that I wanted to know where I could spend the night. They told me to postpone the holiday up to February next year when they will have built a hotel at Rimoi. That is the type of language I want to hear, so that they stop travelling to Mombasa and in turn clear all the votes and go back home to West Pokot and Mandera. They think that they are making progress.

Mr. Temporary Speaker, Sir, we have to step in and put some of these things in order. A classic example is Machakos County which has beautiful drawings of an upcoming city. Other counties can also do those drawings. It was so honourable that all the leaders in that county sat together so that when they have the energy, they will then move to implement rather than fighting each other. It is not a campaign period. We should not compete to see who is stronger between the Senator and the Governor. When problems arise in the form of disasters, they will need each other.

I want to thank the Mover of this Motion and say that we should cascade it to the three levels; the county, the sub-county and the ward. I have just read here that in the sub-county we are saying that the National Assembly Member chairs, which is right, but all the Members of the County Assembly must be members. I have not seen that. I have pointed this out to the author. We need to insert that so that they are also included to bring their ideas. The cooking point is the ward then it is upgraded. Finally, when we are here together, things are done properly and efficiently.

It will also remove some of these prototypes where we are saying that the person with the longest queue of vehicles whenever there is a function is the one who is very important. I thought even the Bible says that the one who is least should be the one who is recognized most. What are we trying to show? I read in the newspapers that in Migori County the other day there was going to be a fundraising and one hundred vehicles were

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on the trail of one Governor because he had arrived. Now were the vehicles going for the fundraising? I thought it was the people going for the fundraising. We need to account for this.

I know everybody can tell us what has happened in their counties. I do not want to name them. In Nyamira County, my brother here was talking about banana farming. Is there something that has happened there? I do not know because I only had the privilege to visit Nandi County. The only thing they were saying was that their Senator was very tiny, whereas there is no office which is tiny. It does not matter who is sitting in that office. We should see how things can move. We already have sufficient work when we are here, but when we are debating on issues touching on our counties, we need to know what is happening in the counties.

Mr. Temporary Speaker, Sir, our counties have now turned into employment bureaus. The newspapers are enjoying because there are a lot of employment advertisements as though we did not have people who were working before. What are we trying to advertise? What was the meaning of the Constitution when it talked about devolution so that development can go to the grassroots level? What is devolving now is employment. Before I retired as a Permanent Secretary, we had sent a county roads officer, county public service officer, county agricultural officer and county livestock officer to every county. I expected that before advertising jobs, the Transition Authority (TA) together with the Governors and national Government would have said: "Wait a minute. Who do we have on the ground? This money has come; how much do we want to spend?" We wanted to spend about 60 per cent to 70 per cent on development in the counties. Instead, we are spending almost 70 per cent on salaries. We were running away from problems in the centralized system, where we were spending a lot on salaries. But now we have made it worse in the counties.

Mr. Temporary Speaker, Sir, with that scenario, it will be very difficult to see action on the ground. Personally, as the Senator for West Pokot, I would want to see roads and other things being done. But look at the county integrated development plans that we have just talked about. I looked at our county and we had about Kshs20 million set aside for tourism. Our county has attractive sceneries, hills and valleys. The biggest elephant in the world is also found in that country. Can Kshs20 million advertise that elephant? If I was called to sit in that board that came up with the budget, it would have been very easy. We want to see how we can link up the integrated development plans of all the neighbouring counties. For example, there is a tarmac hanging in the middle of Marakwet. We do not know where it came from and where it is going. When will it be joined to another one, so that we can enjoy using it?

Mr. Temporary Speaker, Sir, we need to support this Bill and tell our colleagues and friends that we chose to vie as servants. I was telling someone that a whole Professor of Applied Mathematics, like me, was not a sleep when he was choosing to be a Senator. Some were asking: "Did you err?" I did not err. I came here so that we can develop the whole nation and properly anchor devolution. We decided to go to court for interpretation of the Constitution because we would like the counties to be developed.

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Mr. Temporary Speaker, Sir, I support what Sen. Wako said; the quicker we pass this Bill, the better, so that common sense can prevail. Anybody who does not want to follow the law, really, has to explain why they went there. We also do not want our Governors to be arrested and so on. Some people do not want Senators to be involved, but we are just doing oversight. Therefore, all of us should look at this Bill thoroughly, so that all the excesses that may be envisaged can be checked.

Mr. Temporary Speaker, Sir, I visited Eldoret Town in Uasin Gishu County to purchase an item from one of the shops. One of the top investors in Eldoret Town said that we need to involve them in the development of our counties. He said that they have been there for 35 years and nobody from the Governor's office has recognized that they spend billions there. Who are these investors who visit our Governors' offices? They are briefcase investors and quacks. This is very serious because---

Sen. Billow: On a point of order, Mr. Temporary Speaker, Sir. With all due respect to the hon. Senator, is he in order to really cast very negative aspersions on the people who are not here to defend themselves; that the investors that we see everyday in the media, from the investment conferences that are being held in all the counties, in fact, are briefcase and quacks; when none other than the President of the Republic graced one of those investment fora in Machakos? Is he in order to really discredit institutions, just to get support for the Bill? I think that this is really sad.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, my colleague should have waited for me to conclude my statement. I said that more often than not, quacks parade themselves in those offices, which is true. We do not want the anchoring of devolution to have those types of fellows crowding the development agenda for our counties. We have very good people. I expected a forum like this one to say: Can we begin with the investors that we have here, as small as they are? Let us call them and ask them how our counties can be developed with the brains that we have. From there we can expand the way we want. We recognize what happened in Machakos. Beautiful drawings are good and we also saw investors. They need to be appreciated by everybody in the whole county.

Mr. Temporary Speaker, Sir, we must do things right. It might be painful for some people, but we need to move on in this direction, so that five years later, we will be the generation that anchored devolution on the right footing.

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

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Temporary Speaker, Sir, for this opportunity to support this very important aspect of the Constitution.

Mr. Temporary Speaker, Sir, first, it is fair that I say that for those who had doubts, particularly our Governors, that there was anything personal from the Senate or Senators, the Mover of this very important amendment was very cautious and used the law. This is because we have not reinvented anything as Senators. This is part of the law that the country passed even before the election. Most of those who contested the seat of Governor are deemed to have been aware that, in fact, under Section 91 (f), there is a provision for Senators and elected Members to participate in county issues. Therefore, it

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is not a favour that we are asking for. It is something that is in the law and we must enforce.

Mr. Temporary Speaker, Sir, I want to also put it to those people, particularly Governors and other people who have vehemently opposed and bedeviled my good friend, Sen. Sang. I am also aware that you were booed at a funeral sometime back about the same issue. The fact of the matter is that under Section 36 of the Constituencies Development Fund (CDF) Act, we as a country, have also another forum called the County Projects Committee. In this committee that most counties have not put in place, you will find the Senator, Governor, Members of Parliament, members of the CDF, members of the national Government, *et cetera*. So, Sen. Sang has not reinvented the wheel. He is just implementing what already exists in law in terms of constituencies. We are now moving it to another level in the counties. So, I support him and agree entirely with all the sentiments that have been expressed here.

Mr. Temporary Speaker, Sir, most people have personalized this debate without considering the law. Since we were taught in Law School that ignorance of the law is not an excuse, I, therefore, repeat that this Bill is anchored straight in the law. I will refer to Article 96, particularly on the argument as to whether or not the Senators ought to chair these proposed boards. The role of the Senate, as envisioned in Article 96 is oversight. Any definition of oversight that does not include chairing is not a definition of oversight. For us to effectively manage this role of oversight, we cannot be in any other position other than that of the chairperson. To accept any other role would be, as a Senate, violating the Constitution because the people of Kenya said that the Senate will conduct oversight of county governments and county assemblies. Therefore, the argument that “the Senators are looking for work” and all those paid advertisements that “we have been doing this for purposes of looking for other seats at some time later in future” is not, again, anchored in law. It is misplaced and, therefore, it is fair that we tell the country that the role of the Senate *vis-à-vis* this Board is anchored in Article 96 of the Constitution and the County Governments Act.

Mr. Temporary Speaker, Sir, in terms of the functions, it is in the public domain, particularly in my County of Makueni, that my Governor almost resigned – and I have no personal issues with him – because he was having problems from whatever sources, Members of the County Assembly (MCAs), *et cetera*. My role as Senator was to attend and arbitrate, which I did. But I was doing it informally in boardrooms, meetings, telephone calls, through elders, *et cetera*. But if a forum of this nature was there at the time when the County Assembly of Makueni and the Governor were having a tiff, then this sort of thing would not have come to the public domain, where people are washing dirty linen in public.

The same is true with the case of Machakos County which involved my good friend, Governor Mutua and my other good friend, Sen. Muthama. If we had something of this nature, where people could sit in Machakos, we would not invite the country to start looking at both Governor Mutua and Sen. Muthama in a manner to suggest that they are competing for space, which is not the case. Yet, ideally, I am aware that there is no conflict in terms of the actual development of the city itself. Therefore, some of these

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issues which came out in the public from various counties would have been addressed if we had expedited this particular Bill.

Mr. Temporary Speaker, Sir, it is in the public domain even today that only about 22 to 24 counties have balanced budgets. It is also in the public domain that as a result of these counties not balancing their budgets, they have only received the money for the month of August. Senators are not aware of all these developments, and if this Board was in place, we would be aware and we would offer leadership and possibly some experience in it. It is extremely sad because this came out to play; as Senators are aware, at a sitting of a public hearing we had in Nairobi on county proposals on transfer of functions, we ended up with an exchange between the Governor and the Senator. Why did they have this exchange? The Governor had relayed some information that the Senator was not aware of, and then he asked the question; “When did you call me for a meeting? Why do you not pick up my calls?” *et cetera*.

Why would we allow these elected leaders to come to a forum, like the one we had in the public, and display what I call “washing dirty linen in public”, yet ideally the law has provided a formula for sitting down and discussing these issues so that then, the public, who had elected both the Governor and the Senator, were not treated to a charade and *camaraderie* of many things that are not helping development at home?

So, Mr. Temporary Speaker, Sir, in supporting this amendment Bill, the devolution aspect of this Constitution – and you were at the heart of devolution in terms of amendments, drafting legislation, *et cetera* - there is no single component other than the Bill of Rights that is as important as devolution. Sometimes you wonder whether or not we should celebrate 50 years of Independence. In fact, I can say this with authority; that it is possible that Makueni County has not received the Kshs5 billion that it was to receive this financial year because of devolution. There are some places in this country that do not have any basic services. So, I am standing here to say that devolution in this country is going to lead to what I call a revolution; that revolution where you change the lives of people for years to come. Therefore, the formula that we are adopting here through some of these things and in this amendment is for purposes of ensuring that we all synchronize and work together.

Under Section 107 of the County Governments Act, the Governor and the county governments are supposed to come up not only with the CIDP that we have all mentioned, but they are supposed to come up with a spatial plan; they are supposed to come up with a plan on urban cities and many others. Why would these people be planning all these things while excluding members of the Senate, who have been elected? Why would we allow them to run counties in such a manner to the extent that we are then excluded from these sorts of things, and yet we have an interest? There is a reason why counties are having problems with budgets, and I want to say so without fear or favour. Governors are people who are elected and have an interest in budgets because they want to implement their manifestoes. We, as Senators, have not been given such a mandate to the extent that we have no interest.

Therefore, by lacking interest in the implementation and disbursement of funds, we are at a better position, in terms of devolution, to sit in these Boards and offer

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independent advice. I want to thank Sen. Sang for the proposed amendments because it is a recommendation; instead of walking this way, why do you not do this? Instead of building a big house, why do we not give this health centre the money? Instead of buying big cars, why do we not buy small cars? They are called recommendations, and they cannot be ignored.

I want to agree with Sen. Sang because the people of Makueni, Nandi and many other places do not want to know why Sen. Sang or Sen. Billow is not bringing development. They know he is a leader and it does not matter; what matters is that they want to see development. When they ask him a question, he cannot then say “Why do you not go and ask the Governor; I am not aware and I do not have funds.” We cannot give that excuse! It is an embarrassment to the Senate and to the Senators.

The Senate Majority Leader and even the nominated Senators have got similar obligations; we have a role to play; and since we have a role to play because we have been elected – like in my case, by 92 per cent of the voters – therefore I have got an even larger mandate. Therefore, this amendment Bill has come too late in the day and we must go for it---

Sen. Sang: On a point of information, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Murkomen): Yes, Sen. Sang.

Sen. Sang: Mr. Temporary Speaker, Sir, I wish to inform the Senator, or the ‘Duke’ of Makueni, that one of the persons responsible for the 8 per cent is none other than the person on the Chair and the Senate Majority Leader seated in this House.

(Laughter)

Sen. Mutua Kilonzo Jnr.: I have my own view about the 8 per cent, but I shall not disclose it. You can imagine what he did when he attended to that entire crowd in Makueni!

(Laughter)

So, Mr. Temporary Speaker, Sir, as I wind up, I want to say that it has come to pass – and most of us have seen this in all our discussions – that some of the moves, particularly to get rid of the Transition Authority (TA), *et cetera*, in this Senate are all aimed at us, Senators; you know, it is a loaded gun. This is because they will soon realize that Senators are playing such a role in this country that it does not matter whether the Senate Majority Leader was elected in Tharaka Nithi; because he has an interest in Makueni and every other place where devolution is going to pass.

When we sit in our Senate Committee on Finance, Commerce and Economic Affairs with my Chairperson, Sen. Billow Kerrow, and we are discussing the Equalisation Fund and disbursement of funds under Articles 204 and 205, and how those funds are going to go to various counties. I do not sit there and say “why do not we do this for Makueni?” We are doing it for the whole country. Therefore, if we are going to be sitting at such forums to offer such advice to the Government of the day for purposes

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of devolution, it only behooves for this Senate to pass this Bill as quickly as possible so that we can sit and offer similar advice to our county governments.

In fact, Mr. Temporary Speaker, Sir, an issue arose in the Senate Committee on Finance, Commerce and Economic Affairs about budgets on donors and donor funded projects. In counties, Senators are just supposed to sit, possibly around a fire, get entertained and know nothing. This will not happen.

Therefore, I support this Bill. The last word, as I finalise, is that there is an element of dispute resolution. Disputes will always arise. We, as Senators, in our oversight role, must offer leadership in some of these things so that we do not become part of the problem as opposed to being part of the solution.

I have heard, very many times, in this Senate that this is a House of solutions and not problems. This is a House of ideas and not tyranny of many things including fear and tribulations. Therefore, I support this in every sense of the word and agree.

Mr. Temporary Speaker, it is only fair for us to tell the country that many people who came to give us views; including the CIC who walked into that room saying that this Bill was unconstitutional, ended up like Paul in the Bible while on his way to Damascus; and, changed their minds. They all agreed that this is constitutional and legal.

Therefore, our Governors and Speakers who are wondering whether we want to overshadow their roles should know that this amendment is anchored straight in the law. There are no personal issues and if there are, they are not in these amendments. We are making an attempt to assist these counties develop so that our role as Senators is not to be flower girls in devolution. We should play the role we must offer under the Constitution.

I support.

Sen. Okongo: Thank you, Mr. Temporary Speaker, Sir. I also take this opportunity to support this Bill as brought by my good friend, Sen. Sang.

We are in a new dispensation and riding on a new Constitution. We need to set it right and lay a firm foundation so that tomorrow when we are done, history puts us in our rightful place. The law proposed herein will curtail, among other things, haphazard developments based on service, political and parochial whims.

This Board is just a solution and we are all leaders. There is no Senator who is interested in leaving his national role to go and run for a gubernatorial position. Therefore, those fears are misplaced. This Board is premised on the same line with the District Development Focus (DDF) under the Moi regime which was a very good policy. However, it lacked implementers during that time.

We need to do a lot of dissemination of information in terms of what projects are being done and where. The MCAs, Members of the National Assembly and Senators are all stakeholders in the counties. You cannot purport to be a leader if you are not involved in what is being done, where, by whom and under what terms. Members of the National Assembly have a privilege since they are provided with the CDF which has money for roads. They also have the Uwezo Fund. We also need a way to oversight, by virtue of our constitutional requirement, as provided by the Constitution.

Some of us have not seen any documents with regard to what is happening in our counties. Governors are flying left, right and center to Britain, UK, Egypt and other

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countries. They do not involve other people and yet they should involve, at least, MCAs so that if they are planning to develop a sub-county, then the Member of the National Assembly can know what investment is coming up.

Mr. Temporary Speaker, Sir, the British say that consultation does not necessarily mean concurrence. When we sit in those Boards and consult widely, we will gather more knowledge from our people. For the last three months, I have had issues with the Members of the County Assemblies and the other gentlemen at the county level. Yesterday I took three hours at a local FM radio station to explain to the people what was happening because they think that I am the person in charge of the Constituencies Development Fund (CDF), and I am supposed to be employing people because they had seen advertisements in the newspapers.

Sen. Ong'era: On a point of information, Mr. Temporary Speaker, Sir.

Sen. Okong'o: Mr. Temporary Speaker, Sir, I will take that point of information.

Sen. Ong'era: Mr. Temporary Speaker, Sir, I would like to inform the distinguished Senator for Nyamira that the county assembly is not just composed of male Members only, but there are also women Members of the County Assembly.

Sen. Okong'o: Mr. Temporary Speaker, Sir, I appreciate the sentiments of my sister, and I stand corrected.

The Temporary Speaker (Sen. Murkomen): Although it would not be wrong if the Senator basically went to the radio station to only talk to men.

Sen. Okong'o: Mr. Temporary Speaker, Sir, the role of this House; the House of knowledge and wisdom---. For instance, I interacted with the Governor for Nandi County and when he discovered that I was a Senator, because he found us discussing Sen. Sang's Bill with the Member of Parliament for Endebess, he claimed that Senators were out to kill devolution. When I engaged him further, I discovered that he did not understand the roles of REA, KeRRA and KURA. I informed him that the Bill was not intended to render them jobless. So, Senators should portray a national outlook. For instance, I was the only interim Senator for four years before I was formally elected and I did not at any one time only concentrate on my county. I would like to travel all over the country to see projects in other counties for possible replication in my county. So, those fears are misplaced.

Mr. Temporary Speaker, Sir, Members of the National Assembly are supposed to be involved in the sub-counties in terms of development projects. I support the sentiments of Sen. Wako who said that we should fast track this Bill and God willing, pass it before we break for Christmas.

With those few remarks, I support.

However, I have been informed that I have one more minute.

The Temporary Speaker (Sen. Murkomen): For your information, the Chair will inform you that even if you have one more minute, you do not rush yourself based on the time provided here because even after the time, you still have 24 more minutes and you can still continue to contribute tomorrow if you so wish. However, you could conclude your remarks.

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Sen. Okong'o: Mr. Temporary Speaker, Sir, I would like to reiterate that this is a new constitutional dispensation. Fifty years after Independence, the whole nation is looking at this House to set all the structures right for the purpose of development.

With those few remarks, I support.

ADJOURNMENT

The Temporary Speaker (Sen. Murkomen): Hon. Members, the time being 6.30 p.m., it is now time to adjourn the Senate sitting until tomorrow, Thursday, November 21st 2013 at 2.30 p.m.

The Senate rose at 6.30 p.m.

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