

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Wednesday, 23<sup>rd</sup> March, 2016

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

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

#### PRAYERS

#### COMMUNICATIONS FROM THE CHAIR

##### CONSULTATIVE FORUM WITH THE CS, HEALTH, ON STATUS OF LEASED MEDICAL EQUIPMENT

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, I have short communications to make. The first one relates to a consultative forum with the Cabinet Secretary for Health regarding the status of leased medical equipment service project by the national Government to county governments.

As you may recall, the issue of the status of leased medical equipment service project by the national Government to county governments has generated a lot of interest in this House with several concerns being raised on the status of its implementation.

Following several clarifications requested by Senators through supplementary statements, I directed on 3<sup>rd</sup> March, 2016, that the Standing Committee on Health convenes a meeting of all Senators and the Cabinet Secretary for Health to deliberate on this important matter.

In this regard, the Standing Committee has invited the Cabinet Secretary to address Senators on Thursday, 24<sup>th</sup> March, 2016. The meeting will be held in this Senate Chamber from 10.00 a.m.

I would like to urge and commend all Senators to plan to attend the consultative meeting to deliberate on this very important matter.

I thank you.

#### PENDING BILLS FOR COUNTY GOVERNMENTS

The second communication is on pending bills for county governments.

Hon. Senators, as you may recall, during the sitting of the Senate on Thursday,

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17<sup>th</sup> March, 2016, the Chairperson of the Standing Committee on Finance, Commerce and Budget issued a statement regarding pending bills for county governments following which many Senators sought further clarifications from the Chairperson.

The following are some of the suggestions made by Senators on the way forward in resolving the matter of pending bills:-

- (a) Establishing a select committee on pending bills to look into the matter;
- (b) Referring the matter to the Standing Committee on Finance, Commerce and Budget jointly with the Sessional Committee on County Public Accounts and Investments to investigate and submit a report to the Senate;
- (c) Asking the Auditor-General to conduct a special audit into the matter and submit a report for consideration by the Sessional Committee on County Public Accounts and Investments following which the committee would prepare a report and submit to the Senate for consideration.

You will further recall that the presiding officer at that time directed that the Rules and Business Committee (RBC) deliberates on the matter during the next meeting with a view to providing direction on how to proceed.

Hon. Senators, the RBC considered the matter during its sitting yesterday, 22<sup>nd</sup> March, 2016 and resolved that this matter be taken up by the County Public Accounts and Investments Committee. In so doing, the Committee shall request the Auditor-General to conduct a special audit on all pending bills for county governments and submit a report to the Committee for consideration. The audit exercise should be completed within three months. Upon consideration of the report of the Auditor-General, the Committee will then submit its report together with recommendations for consideration by the House.

The RBC further resolved that in requesting the Auditor-General, the Committee ensures that the audit is carried out in clusters of ten counties starting with the most critical cases. By critical cases we mean those with the highest pending bills.

I now direct that the Sessional Committee on County Public Accounts and Investments proceeds as per the resolution of the Rules and Business Committee.

I thank you.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I want to thank you and draw the attention of the Senate to what the Chairman of the Council of Governors said when this business was transacted on the Floor. He is quoted as having said that the issue of pending bills was imaginary and that it was politics being pursued by some of the Senators who are their potential opponents.

I would like the Chair to make it clear to the Chairman of the Council of Governors that matters of oversight are not being done in anticipation of the competition that is likely to be there in the next coming election.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Karaba, have you sought the Floor?

**Sen. Karaba:** No, Mr. Deputy Speaker, Sir.

*(Sen. Karaba stood up in his place)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Karaba! You have said no already.

Proceed, Sen. Musila.

**Sen. Musila:** Mr. Deputy Speaker, Sir, I want to commend you for the Communication and the resolution of the RBC. The problem is not just that of pending bills. Could we ask the Auditor-General, who as of now has failed to audit county governments, to not only restrict himself to the pending bills, but to go further and ensure that we get special audits for all counties, so that we can deal with this matter once and for all?

**Sen. M. Kajwang:** Mr. Deputy Speaker, Sir, allow me to comment on the first Communication that you have made regarding consultations with the Cabinet Secretary for Health. I am glad that the cabinet secretaries are taking this House seriously. I have just realized that we have a framework for seeing and discussing what the national Government is doing in many of these devolved units. Unfortunately, there seems not to be a very strong structure for us to discuss with governors and see what we are doing. This issue of leased medical equipment is a national Government matter that was forced down the throats of---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. M. Kajwang! I have made a Communication. Tomorrow there will be a meeting with the Cabinet Secretary. That is the point at which you will raise those issues, if you need to. They are of no help in the House now.

**Sen. M. Kajwang:** Thank you, Mr. Deputy Speaker, Sir. If you allow me just to wrap up on the second Communication that you have made.

It is important that this House also pronounces itself because when we discussed this issue of pending bills, which you have now provided very good direction on, we have seen in the public people who hold positions of responsibility rubbing what the Senate is doing. The Senate must take a strong stand against people who rub what we are doing because the figures that were brought here that prompted us to ask for direction came from county treasuries. There is an impression that came out, particularly from the Chairman of the Council of Governors, that we had picked figures from mischievous quarters. This House needs to be firm on this.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Senator. I will tell you why I did not comment on Sen. (Dr.) Khalwale's intervention. This is because he based it on newspaper reports which I cannot comment on.

The important thing is that the Communication has been made; a direction has been given to the relevant committee and we expect that we shall be getting the reports in batches of ten. As soon as they are ready, they will be tabled in this House and we shall be able to discuss them from time to time until we are able to deal with all the counties where there are pending bills. I think that will be the best way forward.

As pertains to what Sen. Musila said, the specific request in this case was to do with the pending bills. I would rather we deal with the pending bills now and then, maybe, at the request of any Senator, we deal with those other matters that Sen. Musila has referred to, which are also important for this House.

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Sen. Karaba, why is your card showing that you are seeking the Floor? Can you remove your card and feed it again?

*(Sen. Karaba spoke off the record)*

Order, Sen. Karaba! I cannot hear you. You are not using the microphone. Let us proceed.

Hon. Senators, I have another communication to make. This pertains to the visiting delegation from Kitui County Assembly on a benchmarking visit at the Senate.

#### VISITING DELEGATION FROM KITUI COUNTY ASSEMBLY

Hon. Senators, I would like to acknowledge the presence in the Speaker's gallery this afternoon of visiting Members and staff from Kitui County Assembly House Business and Rules Committee. The County Assembly Members and staff are here on a one day visit at the Senate. I dare say that I was privileged to have a meeting with them earlier in the morning.

I request each member of the delegation to stand when called out so that they may be acknowledged in the Senate tradition. They are as follows:-

- |                             |   |                                   |
|-----------------------------|---|-----------------------------------|
| 1. Hon. George Mutua Ndotto | - | Chairperson (Speaker)             |
| 2. Hon. Titus N. Mbiti      | - | Vice Chairperson (Deputy Speaker) |
| 3. Hon. Jacob K. Maundu     | - | Member                            |
| 4. Hon. Alex M. Nganga      | - | Member                            |
| 5. Hon. Alex M. Mwendwa     | - | Member                            |
| 6. Hon. Johnray N. Ngava    | - | Member                            |
| 7. Hon. Peter Mutemi        | - | Member                            |
| 8. Hon. Patricia K. Kimanzi | - | Member                            |
| 9. Hon. Patrick Mutua       | - | Member                            |
| 10. Hon. Samuel M. Ikunga   | - | Member                            |
| 11. Hon. Jennifer Munuve    | - | Member                            |
| 12. Hon. Nzuki Wambua       | - | Member                            |
| 13. Hon. Stephen Wambua     | - | Member                            |
| 14. Hon. Jackson Mwanduka   | - | Member                            |
| 15. Hon. Jane Mutua         | - | Member                            |
| 16. Hon. Ruth Kinyumu       | - | Member                            |
| 17. Mr. Jacob K. Kimanzi    | - | Committee Clerk                   |

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

I thank you.

*(Applause)*

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**Sen. Musila:** Mr. Deputy Speaker, Sir, I thank you for acknowledging these great men from Kitui County. As we have done, with other members of other county assemblies, I welcome them to this Senate. These are very important members of our political system.

These are members who are at the grassroots level dealing with the same people who elected us. For them to come to the Senate, it is an honour to this House. Therefore, I join you and the rest of the Senators to welcome them whole-heartedly and wish them well. We welcome other future committees to this House. It is our pleasure.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Sen. Musila. I mentioned to them in the morning that at the Senate we try very hard to help county assemblies and governments to build capacity. Therefore, they are very welcome here this afternoon.

## PETITIONS

### AMENDMENT OF VARIOUS PROVISIONS OF THE CONSTITUTION

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, I have two Petitions that I want to bring to your attention. The first one is by Mr. Gibson Mareko for amendments of various provisions of the Constitution.

Hon. Senators, pursuant to Standing Order No.221(a) and 225(b), I hereby report to the Senate that a Petition has been submitted through the Clerk by Mr. Gibson Machanga Mareko; a resident of Nairobi City County, calling for amendment of various provisions of the Constitution.

In summary, the petitioner requests the Senate to initiate amendments to the Constitution as follows;

(a) Amend Article 81 of the Constitution to bar any person from holding elective office for more than two terms.

(b) Amend Article 138 of the Constitution to provide that for one to be elected President, such person must garner at least 70 per cent of all valid votes cast in an election. Where this threshold is not attained, that two leading candidates would serve as first and second President for two terms, proportionate to the votes garnered by each candidate during the election.

(c) Amend Article 144(3) of the Constitution to provide that at least two of the three medical professionals appointed to a tribunal to investigate the physical and mental capacity of the President must be psychiatrists.

*(Laughter)*

(d) Amend Article 114(8) and (9) to remove the power of the National Assembly to override a finding of a tribunal where such tribunal determines that the President lacks the physical or mental capacity to perform the functions of the Office of the President.

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(e) Amend Articles 145(6) and (7) to remove the power of the Senate to override the findings of a special committee on impeachment of the President, where such special committee determines that the allegations against the President have been substantiated.

(f) Amend Article 148 of the Constitution to provide that a Person who has held office as a Deputy President for two terms shall not be eligible for election as President.

Hon. Members, pursuant to Standing Order No. 226 I shall allow comments, observations or clarification in relation to the Petition for not more than 30 minutes. I hope this will not take too much of our time.

**Sen. Njoroge:** Mr. Deputy Speaker, Sir, I stand to be guided because I do not know how the scrutiny of any petition is done before it comes to this House.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Njoroge! Are you questioning that the Petition is wrongly before the House?

**Sen. Njoroge:** No, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): What is the issue?

**Sen. Njoroge:** Mr. Deputy Speaker, Sir, I said I stand to be guided on the issue of that Petition.

**The Deputy Speaker** (Sen. Kembi-Gitura): The Petition is properly before the House.

**Sen. Njoroge:** Thank you, Mr. Deputy Speaker, Sir. Most of the points in the Petition by the petitioner are invalid. To me, they do not make any headway as far as this House is concerned.

**Sen. (Prof.) Anyang-Nyong'o:** Mr. Deputy Speaker, Sir, I applaud the petitioner. In as much as we may disagree with his point of view, he is entitled to his democratic space in the Republic of Kenya to raise such issues.

It points to one important fact; that Kenyans are concerned about the Constitution and that they need the best Constitution possible for the democratic governance of this country. Therefore, it also points to the unseriousness of the Independent Electoral and Boundaries Commission (IEBC) in looking at such matters and engaging with citizens in a matter of discourse on how to deal with such matters. We, as a Senate, must accord the petitioner a proper hearing. We must look at the issues objectively. If we want to disagree with him, we must only disagree with him after interaction and discourse and not out of hand prejudice or bias.

I, therefore, take this opportunity to condemn the IEBC in the manner with which it has treated the Okoa Kenya Bill. It has done so unprofessionally, in a biased manner and a manner that cannot help democratic governance in this country.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Sen. (Prof.) Anyang-Nyong'o. That is the fact, Sen. Njoroge; that every citizen has a right to bring a petition to this Senate. You cannot curtail it. If it is in good form and states its case, it is the obligation of the Speaker to bring it to the attention of the House and then the House has to make a decision on it.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I congratulate the petitioner. Standing Order No. 227(1) makes it mandatory that every Petition should proceed to the relevant committee. I hope that the Members of the committee to which you will send

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this particular Petition deals with it expeditiously. This is because almost all the things that the petitioner is raising, including Article 81, where he wants that all officers who have served for two terms should not be liable to serve at another stage, is frivolous.

It is expected that if somebody has served as a Member of the National Assembly, it gives sufficient experience for him to become a Senator or a Governor and thereafter, a President. Therefore, in a way, somebody grows his political career.

In this country, even raising the 50 per cent plus one vote that is provided for under the current Constitution is a herculean task. I, therefore, hope that the committee will dismiss this Petition because it does not warrant the time of this House.

**Sen. Okong'o:** Mr. Deputy Speaker, Sir, as much as Kenyans have a right to petition this House, it is important for them to look at the provisions of the Constitution. It is not incumbent upon the Senate to amend the Constitution. It is incumbent upon a process which takes too long. However, since it is a right, it is important that this Petition be referred to the right committee and dealt with.

Secondly, talking of petitions, the IEBC has taken too long to say that the signatures in the CORD petition were not sufficient and that they did not meet the threshold. We have to condemn them in the strongest terms possible---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Okong'o! You are completely out of order!

**Sen. Okong'o:** I am guided, Mr. Deputy Speaker, Sir. Let me rest my case at that stage. We will look at it at the appropriate time.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Okong'o, you must respect this House. You are an experienced Senator and you must know the ambits within which to bring certain issues. Do not take advantage where it is not necessary.

**Sen. M. Kajwang:** Mr. Deputy Speaker, Sir, I also hold the view that in as much as some people think the Petition is frivolous, it is the work of the committee to which it shall be committed to find out whether it is frivolous or not. I sense in this Petition some desperation on the part of citizens.

The Constitution is clear on ways in which the Constitution can be amended. It can be amended by popular initiative or parliamentary initiative. Probably, this petitioner has looked at the process that some players in this country have taken to amend the Constitution by popular initiative and the kind of obstacles they have come across. Maybe that is why this petitioner has decided to come to this Senate.

The Constitution provides that any Kenyan can amend by popular initiative. However, there is one aspect that has been very misunderstood. That is Article 257 of the Constitution. It says when IEBC receives signatures to support a popular initiative amendment to the Constitution; its role is to verify that the initiative is supported by at least one million registered voters. Therefore, when I take to IEBC the voter registration number and name of an individual, if the identification number is not there, that does not invalidate that record. The account that we have been told which is the message going out to people like this petitioner that if they want to amend the constitution by popular initiative---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. M. Kajwang! You heard

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what I told Sen. Okong'o. It applies to you also. Right now, we are dealing with Mr. Mareko's Petition. However, you are free at the committee level, to express your sentiments about a petition. When we are debating this petition once we have an answer on it, you can bring up those issues. However, you cannot do so, at this point because it is not helpful to the occasion.

**Sen. M. Kajwang:** Mr. Deputy Speaker, Sir, I stand guided. I respect your ruling. However, I want to make it clear for any subsequent petitioner that they do not have to come to this House. They can go by popular initiative. The parties that are supposed to receive the signatures and draft issues for consideration in a referendum should be guided by this Constitution.

Article 257(4) and (5) of the Constitution is very clear. The things that IEBC has done to Okoa Kenya initiative are legal gymnastics. That is why Mr. Mareko has found it fit to come to this Senate for that consideration. I urge IEBC to reread Article 257 and establish what their role is. Their role is not data cleansing, but it is to verify that one million people support an initiative.

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, pursuant to Standing Order No. 227(1), the Petition stands committed to the Standing Committee on Legal Affairs and Human Rights. In terms of Standing Order No.227 (20), the Committee will be required in not more than 60 days from the time of reading the prayer, to respond to the petitioner by way of a report addressed to the petitioner and laid on the Table of the Senate.

I had indicated that there is another Petition by the residents of Changara Location concerning an alleged erroneous placement by the Department of Survey of Changara Location in Busia County instead of Bungoma County. Although the Standing Orders do not require me to do so, I will do it when the Senators of Busia and Bungoma are in the House just in case they want to make certain specific issues.

For that purpose, although the Senator of Busia County is in the House and is not interested, we shall have this Petition read tomorrow at 2.30p.m., regardless of whether the two Senators will be in the House.

## STATEMENTS

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, you know that yesterday we did not take any Petitions because we had pressure to deal with the Divisions. Therefore, there are many statements and I will start with the Senators seeking Statements.

### COMPENSATION OF LAND OWNERS ALONG THE STANDARD GAUGE RAILWAY (SGR) ROUTE

**Sen. Mbuvi:** Mr. Deputy Speaker, Sir, pursuant to the Standing Order No.45 (2) (b), I rise to seek a Statement from the Chairperson of the Standing Committee on Lands and Natural Resources regarding compensation of land owners along the Standard Gauge

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Railway (SGR) route. In the Statement, the Chairperson should state:-

1. The names and national identity card numbers of the beneficiaries, including details of the lands and amounts paid to each beneficiary.

2. Where the beneficiary is a company, the full details of the company, including the names and national identity card numbers of the directors and shareholders of such companies.

3. Why the National Land Commission (NLC) was allocated huge sums of money for compensation of land owners along the SGR route without specifying the details of properties and land owners to be compensated.

4. The interest that has accrued on the funds deposited with the NLC for compensation of land owners on the SGR route and how the same has been or is to be applied.

5. What criteria the NLC uses to determine the beneficiary and amounts to be paid where the lands affected have not been surveyed or does not have a plot or land registration numbers.

6. Why the NLC requested for money for compensation in respect of lands where existing disputes are yet to be solved.

Thank you.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. Allow me to ride on the Statement. The moment NLC started compensating people elsewhere - those of us who are also on the same line - it has raised a lot of anxiety. Could the Chairman confirm that as we wait to prepare the potential beneficiaries on our part of Kenya, the rail will after reaching Nakuru, proceed to Eldoret and Malaba border to dispel rumours that this route has been cancelled and the rail will pass through Narok and end up at Lake Victoria in Kisumu? It is important that we know because it will be a serious attack on the railway economy between Kenya and Uganda. It has traditionally passed through Malaba.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, is that not a completely different issue from what Sen. Mbuvi raised?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I am riding on it so that we prepare the people because they are anxious. Some of them are even looking for land elsewhere.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, you are raising an important issue. However, it is completely not germane to the issue that Sen. Mbuvi raised. You can seek a statement specific to what you want and it will be issued tomorrow afternoon.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I am guided.

**Sen. Njoroge:** Mr. Deputy Speaker, Sir, may I ride on Sen. Mbuvi's Statement. As far as the beneficiaries of where the railway will pass are concerned, I would like to know who are affected in Naivasha so that they can as well be included because the design must be already out and we hope it will pass Nakuru.

Thank you.

**Sen. Obure:** Mr. Deputy Speaker, Sir, you will appreciate that the nature of the

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information requested in this Statement is complex. However, the Committee will do everything possible to ensure that this Statement is answered in two weeks' time.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Mbuvi, is that okay?

**Sen. Mbuvi:** Mr. Deputy Speaker, Sir, most obliged.

*(Interruption of Statements)*

## PETITION

### ERRONEOUS PLACEMENT OF CHANGARA LOCATION IN BUSIA COUNTY INSTEAD OF BUNGOMA COUNTY

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, I had already said that there were two Petitions. I want to reverse myself so that we are done with the issue, once and for all. I can see that Sen. Wako and the Senate Minority Leader are in the House. This Petition has to do with both their counties. I had put it off for tomorrow since neither of you was present. It is important that I read it now.

This is a Petition to the Senate by residents of Changara Location concerning the alleged erroneous placement by the Department of Survey of Changara Location in Busia County instead of Bungoma County.

Pursuant to Standing Order No.221 (a) and 225 (2)(b), I hereby report to the Senate that a Petition has been submitted through the Clerk by 20 residents of Changara Location concerning the alleged erroneous placement by the department of survey of Changara Location in Busia County instead of Bungoma County.

The material allegations contained in the said Petition are as follows:-

(a) That Changara Location has historically been part of the then Bungoma District which, following the transition to a devolved system of government, became the present Bungoma County.

(b) That, indeed, The Districts and Provinces Act of 1992 which formed the basis of the current 47 counties, the said Changara Location is properly noted as being located in Bungoma County.

(c) That following the onset of devolution, the Department of Survey produced official maps of the 47 counties. In the maps, however, Changara Location is now indicated as being part of Busia County.

(d) That the said anomaly has occasioned a lot of challenges to the residents of Changara Location who are unable to get services from either the Bungoma or Busia County governments as it is not clear which county they fall under.

The petitioners, therefore, pray that the Senate undertakes an investigation into how the Department of Surveys came up with the county maps, erroneously placing Changara Location in Busia County instead of Bungoma County and takes appropriate action to have the said anomaly rectified.

Hon. Senators, before I allow comments on the Petition, I wish to note that I have keenly reviewed the subject of the Petition and confirmed that the issue therein is not one

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of a dispute over the location of a county boundary or alteration of county boundaries. Rather, the issue is one of the county maps produced by the Department of Surveys, allegedly placing Changara Location in the wrong county, which has brought about some confusion and occasioned a number of challenges to the residents of the said Changara Location.

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

**Sen. Abdirahman:** Mr. Deputy Speaker, Sir, the merits and demerits of this particular case will be spoken to by the respective Senators. However, I want to confirm that this is a matter affecting a number of counties. Unfortunately, past boundary reviews did not consult the local communities. Many a time cartographers, who do not even know where the locations are, draw certain boundaries for people who are not willing to be part of certain places. In fact, it has contributed enormously to the conflicts within our people.

We have one case before this House this afternoon which I am sure will be handed over to the relevant Committee. However, it will be important to widen the scope, so that we capture as many counties as possible that have similar issues. We have similar issues even where I come. You may find a particular location that was formerly in a sub-county having been ceded off to another area. Therefore, many people are suffering in silence. It is important that we expand the scope of the investigations, so that we can help the silent voices that have not been helped for many years.

Thank you, Mr. Deputy Speaker.

**The Deputy Speaker** (Sen. Kembi-Gitura): There is a lot of interest in this matter. I would, therefore, request you to be as brief as possible. Sen. Wetangula and Sen. Wako can come last.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I want to applaud the petitioners because this is an important matter. It reminds me of 1998 when the late former Vice President, Michael Kijana Wamalwa, led us to a rally in Lwandanyi over this same matter. We were actually attacked with bows and arrows because people misread our mission. When the location was then removed from Bungoma, the local residents thought that we went there to support that position of the Government, which they did not support. They resisted us and after settling, an old man told us that there had been an attempt through a one-man Commission called the Mwangovia Commission to try and justify that this location was actually in Busia. Therefore, this petition gives us an opportunity to have all the parties heard. To the best of my knowledge, even as we have always held political rallies looking for votes, we go to that location when looking for votes for the candidates of Sirisia.

I support.

**The Deputy Speaker** (Sen. Kembi-Gitura): Please, try not to go to the merits of the Petition, because you will be pre-empting the work of the Committee.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, I join my colleagues in congratulating the petitioners for raising a pertinent issue that could easily lead to a conflict. As Sen. Abdirahman said, this case is not unique. This Petition will unearth similar cases in other counties. Recently, I attended a meeting in a homestead which falls

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in two locations. I was shown two maize stores which fall in different locations. People raised issues regarding how the boundaries were set. We also have issues regarding county boundaries. This Senate needs to address these issues.

I thank the petitioners and encourage more people to bring similar Petitions.

**Sen. Musila:** Mr. Deputy Speaker, Sir, I congratulate the petitioners. The issue of boundaries in this Republic has a potential of causing serious conflicts in the country in the years to come. I have repeatedly stood on this Floor to say that we have a problem with the boundary between Kitui County and Tana River County. Some people come into our county, graze on our shambas and claim that they are within their county.

The Petitioners ought to be encouraged. There is need for the scope of boundaries throughout the Republic to be clearly defined. In Kitui County, for example, we are not asking for an inch of any other county. We are only asking that the residents know where the boundaries are, so that we can legitimately tell those who are encroaching into our county for bad purposes not to do it. Therefore, the issue of boundaries in Kenya is of utmost importance.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): There is a lot of interest and we do not have more than 30 minutes on this issue. I will allow Sen. Wetangula and Sen. Wako five minutes each, if they need them, but the rest will have three minutes each.

**Sen. Ndiema:** Thank you, Mr. Deputy Speaker, Sir. This Petition raises fundamental issues regarding boundaries. While this boundary dispute in Changara appears to be administrative, it has some historical perspective. As Sen. (Dr.) Khalwale said, there was a Commission that went to look into the boundaries. Even within Bungoma County there are issues that have to be sorted, once and for all. This Petition has come at an opportune time. The boundary at Changara should be determined. It should also be known to which district it belongs.

Thank you, Mr. Deputy Speaker, Sir.

**Sen. Karaba:** Thank you, Mr. Deputy Speaker, Sir. A petition of this nature had been presented by Kirinyaga residents some time back and the Chair ruled that it should take 60 days. However, the Petition has taken more than three months. I would appeal to you that when such petitions come, there should be a timeframe set, so that we get to know---

**The Deputy Speaker** (Sen. Kembi-Gitura): It is a maximum of 60 days in all cases.

**Sen. Karaba:** What happens after that?

**The Deputy Speaker** (Sen. Kembi-Gitura): I do not know, but the Constitution talks about 60 days.

**Sen. Karaba:** Mr. Deputy Speaker, Sir, it has taken over 200 days. I am expected to respond to the residents of Kirinyaga who are asking what happened to their petition. I hope that this petition will not take the same direction; where it will be dumped to a Committee which will mishandle it and not even report to this House within the expected time.

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

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you hear Sen. Karaba impute an improper motive on a committee of this House by saying that the Committee will dump? Committees do not dump. Therefore, is he in order to say that?

**The Deputy Speaker** (Sen. Kembi-Gitura): Which word did he use?

**Sen. (Prof.) Lonyangapuo:** He said that the said petition is dumped into some committee and it does not come out.

**Sen. Karaba:** Mr. Deputy Speaker, Sir, maybe he never understood my intention. I am trying to implore the Chair to make a ruling as to what should happen to a petition once presented by a petitioner.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Karaba, this will be advice to you because I know what you are talking about and the petition you are referring to. It is true it has taken time. You should come specifically on your petition sometimes tomorrow or today, if you wish, and ask for its status. However, that should not have anything to do with the current petition. Replies to Petitions are supposed to be brought within 60 days. If yours has not come back, you need to raise it with the Speaker or the relevant committee to know what has delayed it so much.

**Sen. Okong'o:** Mr. Deputy Speaker, Sir, I support the petitioners from the outset. This petition may be a trigger to solve very many pending issues in this country. The last review of boundaries was done in 1992. There is a lacuna in our statutes and in the Constitution. Therefore, it is incumbent upon us to come up with a cure to this.

As I speak here today, we have had an issue in Keroka Town which feeds Nyamira and Kisii counties. There has been bloodshed not once and even yesterday there was acrimony. The leadership of those affected areas – Sen. Obure who is Senator for Kisii County and I – came up with resolutions which have not been enacted. If we deal with the scope of this petition, we might solve very many problems.

**Sen. Njoroge:** Mr. Deputy Speaker, Sir, I stand to applaud the petitioners in this matter. Considering that the matter is within a very peaceful region, it is important for the two Senators, to assist the committee which will be allocated the mandate of handling this matter with some speed. I know the petitioners mean good because that is a more diplomatic way of handling such issues.

**Sen. Hargura:** Mr. Deputy Speaker, Sir, I would like to thank the residents of Changara Location for coming up with this issue. It is rightly before us. However, I would also like to join my colleagues in stating that county boundary is a serious issue. The way we handle this one might give us a way forward on how to deal with all the others. So, it is better that the relevant committee acts speedily as concerns have already been raised on delays of petitions in this House.

**Sen. Kivuti:** Mr. Deputy Speaker, Sir, I would like to thank the petitioners. I congratulate them because this matter is not new in this House. We have had many cases which have come to my Committee. If you will remember, one of them was the issue of Konza Techno City in Machakos which generated so much steam. I do not know what happened finally. A committee was formed, following the requisition by Sen. Mutula Kilonzo Jnr., to look into constitutional matters which are supposed to be followed so that the IEBC hears from all counties, so that all county boundaries are settled, once and for

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all.

Mr. Deputy Speaker, Sir, if possible, I request that this particular petition be a trigger to bring about such kind of Motion so that we solve problems of all counties, once and for all.

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

Sen. Wako, you have a maximum of five minutes.

**Sen. Wako:** Mr. Deputy Speaker, Sir, this is a very important petition on behalf of the residents of Changara. I understand that they are only 20 persons who have petitioned. There must be more than hundreds of Changara residents in the location, but only 20 have petitioned. I believe we have two major communities in the location. These are the Bukusu and the Teso. I believe I stand to be corrected that the Teso are about 55 to 60 per cent while the Bukusu are about 40 to 45 per cent. Therefore, we would like to know whether it is in the interest of all the residents of Changara that the location be in Bungoma County, which is mainly inhabited by the Bukusu, or whether it should remain in Busia where there are many Tesos.

The allegations that will have to be reviewed by the Committee, in accordance with the Standing Orders, are whether it is really true that the Districts and Provinces Act of 1992 put the location in Bungoma County or whether the surveys brought it back to Busia County. These are issues that will have to be looked into.

The problem involving boundaries refers to more than just mere boundaries here and there. It involves people in that location. Therefore, it may very well be that, at the end of the day, the right of self-determination of those people to decide whether they should remain in Busia or move to Bungoma will have to be exercised. In other words, it is not just a question of putting a boundary this way or that way. In so saying, it does not mean that they are suffering in any way because they are in Busia County.

Mr. Deputy Speaker, Sir, as you are aware, during the budget process, I have had problems regarding a lot of our money being allocated to Bungoma County on the basis that North Teso and South Teso constituencies were part of Bungoma. That was corrected in this year's Budget. We have reached an agreement on how money for the first year's Budget will be paid back to Busia County by the Government. Therefore, in so far as we have corrected that issue and those people are counted to be in Busia, money being allocated to Busia County serves the people of Changara Location irrespective of whether they are Teso or Bukusu. I do not think they are suffering as such because the governor, who is from the Teso Community, takes care of them very well. The point of stating that they suffer is not true.

In accordance with Standing Orders, therefore, this petition must be submitted. We do not know who has signed it. Only 20 people have signed it, but we do not know whether it is a petition which enjoys the support of both communities in Changara Location. It will be upon the Committee to find out where the petitioners came from because if it is one-sided---

**Sen. Abdirahman:** On a point of order, Mr. Deputy Speaker, Sir.

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

What is it, Sen. Abdirahman?

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**Sen. Abdirahman:** Mr. Deputy Speaker, Sir, Sen. Wako keeps on referring to 20 people signing the petition. In our own understanding and I am sure even from a realistic point of view, petitions are not signed by thousands. An individual can sign a petition on behalf of a community. Is the Senator in order to constantly say that there are only 20 people who signed the petition?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wako, you obviously appreciate that the point that Sen. Abdirahman is making is valid. It is not a question of numbers.

**Sen. Wako:** Mr. Deputy Speaker, Sir, I appreciate that point very much. Even one person can sign a petition. All I am saying is that when a committee is considering these petitions, they must take that into account. If it is just one person and you say that you are speaking on behalf of the community, who gave him that right to speak on behalf of the community? If they are 20 people and they all come from one sub-ethnic group, who gave them the right to speak on behalf of the other ethnic group in the county? These are the issues that the Committee must look into.

I confirm that it can be submitted to the Committee.

*(Laughter)*

**The Deputy Speaker** (Sen. Kembi-Gitura): No, you have no choice. I was going to do in any event. It has nothing to do with you.

Sen. Hassan, I see you had sought the Floor. You have two minutes.

**Sen. Hassan:** Mr. Deputy Speaker, Sir, I sought the Floor when I heard Sen. Wako talk about how this administrative district is here. Sen. Adan will bear me witness that while at the former Kenya National Human Rights Commission (KNHRC), sometimes we would go to these areas of conflict about border disputes. A District Commissioner (DC) would tell you: "I pursued the rustlers until this point. I then had to give it over to the other DC to handle and another Officer Commanding Station (OCS) or Officer Commanding Police Division (OCPD). I think what is testament here is that over the last 50 years, we have not build a nation. People are still feeling insecure about whether you are administered from Busia or Bungoma County. There are politics in here. I was told by my brother, Sen. Mutula Kilonzo Jnr., about a billboard which was put up; where somebody was saying that this is the administrative boundary of Makueni. Somebody else came, pulled it down and put it somewhere else.

There is a certain malaise in this country which we need to deal with. I am getting a bit concerned that we are becoming sensitive about which border. I have heard, particularly in areas of northern Kenya people killing themselves because one group says our border goes up to there, and this other one says ours goes up to here. So, we must try to minimize conflict. We do not have this type of disputes in Mombasa. Maybe there is almost some correlation with development. If we developed people equally and they felt that the services were accessible in the same way everywhere, we would give people livelihoods.

These petitions should sometimes deal with deeper and more fundamental issues than just the matters I have alluded to. I got very surprised as a young Kenyan when I

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was at the KNHRC to realise that there is a Kenya where a DC cannot cross a border because there is another DC and, therefore, you have to hand over the operation to another DC. That was hardly six or seven years ago when I was in the Commission. I hope that things have changed for the better for those of you who come from some of these areas.

I am hoping that these petitions can address deeper issues in terms of how to mitigate ---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senator! Your time is up.

Sen. Wetangula, you have exactly five minutes.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I have been a Member of Parliament (MP) representing this area for quite a long time. I laud the Chair for ruling that the issue of Changara is not a matter of Article 188 of the Constitution, but a matter that needs to be dealt with within the context of the Districts and Provinces Act and the survey that has brought this issue.

For a start, this is not a matter of community conflict. The Iteso and Luhya who live in this area have so heavily intermarried that you cannot tell who is who. The next location of Tamlega, which is 90 per cent Teso, is in Bungoma County and there is no issue about it. The next location of Namubila which is 50 per cent Teso is in Bungoma County and there are no issues. The next location of Korosiandet which is one-third Bukusu, one-third Sabaot and one-third Teso, is in Bungoma County and there are no issues.

This particular location has suffered a very unique problem because of the maps up to where the Petition says it is part of Bungoma County. All the residents hold identity cards (IDs) reading Bungoma County. When they go for police and military recruitment, they are recruited in Bungoma County. When they want Government services, they are given as Bungoma County. However, for some strange reason, it was taken to Busia County for administration. I learnt later that one of the MPs that came before me in Sirisia and an MP that was before those who are there in Amagoro or North Busia as it was called, just sat over a cup of tea and said: "This location is troublesome. Why can I not give it to you?" That was totally unlawfully.

This Petition is so important and it is not because it is ethnic based. I urge the Committee of my distinguished colleague, Sen. Kivuti, that when you look into this Petition, you may even wish to visit the area. You cannot find anybody who says that they are pure Luhya or Teso. They are a cocktail of very good Kenyans.

I am happy that the Petition has come. A huge document was delivered to my office with close to 1,000 signatures supporting this Petition. I want the house and the Committee to help in resolving this problem and distinguish it from Article 188 which deals with alteration of county boundaries. This is simply alteration of a mistake made by the Department of Survey which is different and I am very encouraged by the direction given by the Chair. I encourage the residents of Changara that you are Kenyans, remain so and you are our supporters.

I know that you will vote for Weta to Amani in the next elections. Remain focused on being good Kenyans and do not be distracted by any issues that can bring

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animosity because there has never been a conflict between the Iteso and the Luhya in this area since time immemorial. We do not want it to happen simply because there is an issue. They are peace-loving. In fact, one of my own brothers is married to an Iteso girl from the same area. I am quite happy because they are very good in-laws. We wait to see how the Committee will work. I encourage my brother, Sen. Wako and I who represent the two counties, to be part of the objective resolution of this issue so that, at the end of the day, it is a win-win for both counties and communities.

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, pursuant to Standing Order No.227(1), the Petition stands committed to the relevant Committee, in this case, the standing Committee on Lands and Natural Resources.

In terms of Standing Order No.227(2), the Committee will be required, in not more than 60 days from the time of reading the prayer, to respond to the petitioners by way of a report addressed to the petitioners and laid on the Table of the Senate.

Hon. Senators, I interrupted statements to deal with that Petition. Let us go back to statements.

Are there any more requests for statements?

*(Resumption of Statements)*

#### STATUS OF THE NATIONAL SECURITY COMMUNICATION SYSTEM

**Sen. M. Kajwang:** Mr. Deputy Speaker, Sir, pursuant to Standing Order No. 45(2)(b), I rise to seek a statement from the Chairperson of the Committee on National Security and Foreign Relations regarding the status of the national security communication system.

In the Statement, the Chairperson should state:-

1. The objective and total cost of the project.
2. The geographic coverage of the project and what Kenyans should expect from it.
3. The lead implementers of the said project and the procedure used under the Public Procurement and Disposals Act to select and award the implementers.
4. The current status of this project and its expected date of completion.
5. The security agencies that will utilize the national security communication system.
6. The procedure under the Public Procurement and Disposals Act used to allocate the 4G frequencies spectrum licence to the implementers of this project.
7. Whether the amount paid for the 4G licence has been deposited in the Consolidated Fund.

He should also state how the Government intends to take over control and management of this critical security communication network upon successful completion.

**The Deputy Speaker** (Sen. Kembi-Gitura): I see you left off No. 8. Was that deliberate?

**Sen. M. Kajwang:** Yes, Mr. Deputy Speaker, Sir, Nos. 7 and 8 are intertwined.

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However, if you allow me to read it because you approved it, No. 8 says:-

“The value of 4G license and how much has been paid for it by the implementers”.

**Sen. Adan:** Mr. Deputy Speaker, Sir, I would request the Senator to give us about a month to be able to respond to those issues because it is very lengthy and it also requires a thorough search.

**The Deputy Speaker** (Sen. Kembi-Gitura): Is that okay, Sen. M. Kajwang?

**Sen. M. Kajwang:** A month from today is okay, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Good, one month from today it is. Any more request for statements? Sen. Leshore you had wanted to seek a statement. Do you want to do it now?

#### STATUS OF PUBLIC-PRIVATE PARTNERSHIP PROJECTS

**Sen. Leshore:** Yes, Mr. Deputy Speaker, Sir. I would like to request for a Statement pursuant to Standing Order No.45(2)(b) from the Chairperson of the Standing Committee on Finance, Commerce and Budget regarding the public private partnership projects.

In the Statement, I request that the Chairperson states the following:-

(i) State the number of public private partnership projects undertaken across the country in the last three years and the status of each project.

(ii) State the cost of each public private partnership project undertaken.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Leshore, which statement are you seeking?

**Sen. Leshore:** On public private partnership, Mr. Deputy Speaker, Sir. It is Statement (a) on the Order Paper. Shall I complete?

**The Deputy Speaker** (Sen. Kembi-Gitura): But is that a statement you are expecting an answer?

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

**The Deputy Speaker** (Sen. Kembi-Gitura): We are now seeking statements and I thought you had sought two statements. One on Kenya Airways (KQ) and the other one on the Kenya Electricity Transmission Company (KETRACO).

#### COMPENSATION OF LAND OWNERS IN SAMBURU BY KETRACO

**Sen. Leshore:** Thank you, Mr. Deputy Speaker, Sir. Sorry for mixing the two. I rise to seek a Statement pursuant to Standing Order No.45(2)(b) from the Chairperson of the Standing Committee on Energy regarding compensation of land owners in Samburu County affected by the KETRACO network expansion project in the area.

In the statement, the Chairperson should:-

1. State the number of land owners and families in Samburu County who will be affected by the Loyangalani---

*(Loud consultations)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order! There is too much movement and loud consultations. I would like to hear what Sen. Leshore is saying.

**Sen. Leshore:** Mr. Deputy Speaker, Sir, in the statement, the Chairperson should:-

1. State how many land owners and families in Samburu County will be affected by the Loyangalani-Suswa electricity network expansion project which is undertaken by KETRACO.

2. State the amount of money that has been set aside to compensate land owners who have surrendered their land to the implementation of the project.

3. State the number of land owners who have been compensated so far and by how much.

4. State the number of land owners who have been affected by the project and are yet to be compensated.

Mr. Deputy Speaker, Sir, I have another one.

**The Deputy Speaker** (Sen. Kembi-Gitura): No, let us deal with this one first. Where is the Chairman or a Member of the Committee?

**Sen. Murungi:** Thank you, Mr. Deputy Speaker, Sir. I am a Member of the Energy Committee. We will communicate with the Chairman of the Committee and find out whether the Statement can be given in two weeks' time.

**The Deputy Speaker** (Sen. Kembi-Gitura): I want a commitment because you are a Member of the Committee.

**Sen. Murungi:** Yes, two weeks, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Leshore; is that okay?

**Sen. Leshore:** That is okay, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Okay two weeks. Sen. Leshore, you have another Statement you are seeking?

#### OPERATIONS OF KENYA AIRWAYS

**Sen. Leshore:** Mr. Deputy Speaker, Sir, I have a second Statement which I request pursuant to Standing Order No. 45(2)(b) from the Chairperson of the Standing Committee on Roads and Transport regarding the operations of our national carrier; Kenya Airways (KQ).

In the Statement, the Chairman should state:-

1. The financial status of KQ.

2. The status of KQ grounded planes.

3. Whether KQ has implemented resolutions of the Senate of 3<sup>rd</sup> December, 2015 arising from the Report of the *ad hoc* Select Committee that inquired into the affairs of KQ limited and its subsidiaries.

4. Why KQ has sold off its prime morning landing slot at the London Heathrow Airport.

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**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Obure, is that your Committee? Sen. Hassan what is your point of order?

**Sen. Hassan:** On a point of Order, Mr. Deputy Speaker, Sir. I want to seek direction; I thought there is usually the Committee on Implementation. In the Statement, Sen. Leshore wanted to get from KQ on the status of the implementation of their recommendations of the *Ad hoc* Committee on KQ. In terms of procedure for that type of a question, do you seek the status from KQ itself or do we seek from the Committee on Implementation? I just need direction from you because I thought it is up to us to make that evaluation.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Hassan, I think you are out of order because Sen. Leshore is seeking the Statement from the Chairman of Roads and Transport Committee and not from KQ. We never seek statements from institutions. We seek them from the chairpersons of committees.

**Sen. Hassan:** Mr. Deputy Speaker, Sir, on the status of the implementation of the *Ad hoc* Committee recommendations, that should come from the Committee on Implementation. In fact, we will be very curious for them to present a report as to the status of implementation of the recommendations of the Senate with respect to the *Ad hoc* Committee on KQ. I sat in that committee and we spent a lot of time to come up with a very good report.

**The Deputy Speaker** (Sen. Kembi-Gitura): Is that committee aware whether the report has been implemented?

**Sen. Hassan:** Mr. Deputy Speaker, Sir, that is why I thought the Committee on Implementation has that broad mandate---

**The Deputy Speaker** (Sen. Kembi-Gitura): No, I think this Statement has been sought from the correct committee. The Committee on Implementation needs to give us a report on several things, but in this specific one, the correct committee has been identified. Sen. Obure, is that your committee?

**Sen. Obure:** Mr. Deputy Speaker, Sir, I missed a lot of what the Senator for Samburu raised because there were very loud consultations.

**The Deputy Speaker** (Sen. Kembi-Gitura): No! No! It is because you were consulting very loudly yourself and I can say that without fear of contradiction. That is why you did not follow anything.

**Sen. Obure:** I will follow it up, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): What will you follow up, Sen. Obure?

**Sen. Obure:** Mr. Deputy Speaker, Sir, I will follow it up from the HANSARD and I can commit myself to getting the statement---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Leshore wants to know certain issues pertaining to KQ. He wants to know its financial status, the status of the grounded planes, whether the report of this Senate has been implemented and why KQ sold its planes to other people. How long do you require to give him an answer?

**Sen. Obure:** Mr. Deputy Speaker, Sir, because it is very complex, I will request that we are allowed three weeks.

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**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Leshore are three weeks reasonable?

**Sen. Leshore:** It is okay, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you. Three weeks is enough. Anybody else seeking a statement? If there is none, we now go to issuance of Statements.

#### STATUS OF PUBLIC-PRIVATE PARTNERSHIP PROJECTS

In Statement (a), Sen. Leshore wants a statement from the Chairman of the Finance, Budget and Commerce Committee. The Chairman is not here. Is there anybody from that Committee?

*(Statement deferred)*

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

**Sen. Kivuti:** Mr. Deputy Speaker, Sir, I wish to issue a Statement on the status of possession of land title deeds and certificates by public schools, pursuant to a request by Sen. Khaniri. The questions were as follows:-

(1) To provide a list of all public schools in Kenya indicating those that have land ownership documents for the land that the school occupies.

(2) Explain the status of applications by public schools for land ownership documents.

(3) State whose responsibility it is to ensure that public schools have land ownership documents.

(4) State the action that is taken against those who fail to procure the ownership documents for public schools.

Mr. Deputy Speaker, Sir, I will answer as a representative of the Cabinet Secretary in this House. I am not able to provide a list of all public schools---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Kivuti, I have had occasion to say this in the past; the question was directed to the Chairman of the Committee and it will be answered by the Chairman of the Committee. You are not representing any Cabinet Secretary here.

**Sen. Kivuti:** Mr. Deputy Speaker, Sir, I wish to answer as the Chairperson of the Committee.

(1) I am not able to provide a list of all public schools in Kenya as that information is not within my Committee's domain. However, I am able to provide a list of schools which have applied for land ownership documents.

(2) The status of applications by schools for land ownership documents is as follows:-

Approximately 5,319 schools have submitted requests for documentation of their land. Out of these submissions, 1,412 parcels of land have been examined and

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investigated to verify their status, which is as follows:- The schools with titles are 345. The schools whose land is registered in the names of individuals are 158; schools occupying land reserved for other public purposes are 136; transfers prepared by the National Land Commission (NLC) in favour of schools are 726 and 3,534 parcels of land are in the process of being verified with a view to issuing titles to schools as appended in Annexes 1 and 2.

Mr. Deputy Speaker, Sir, I will not read the appendices because there are about 200 pages. In the interest of time for this House, I will proceed to answer the third question.

(3) It is the responsibility of both the national Government and the county governments institutions to ensure that public schools have land ownership documents. These institutions are the Ministry of Education, Science and Technology, the Ministry of Land, Housing and Urban Development, the National Land Commission and the county governments.

(4) Each institution has its own disciplinary mechanism - I am referring to the four institutions above - as spelt out in the Public Service Code of Regulations, which should apply to any of the stakeholders who fail to process ownership documents for public schools.

Thank you, Mr. Deputy Speaker, Sir.

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, I wish to thank the Chairman for the response but I am disappointed by the response that he has given. It is extremely inadequate and does not respond to the issues that I had sought in my Statement. Clearly, even after none other than His Excellency himself was on national television giving assurance that all public schools will have been issued with title deeds by the last day of March, which is just a few days from today- this was a deadline that he imposed on himself and the Government- nothing has been done since then. You have heard clearly that there are 5,319 schools that have applied for title deeds but only 300 have been issued with the title deeds. After the Lang'ata Road Primary School saga, one would have thought that the Government would be more serious and ensure that all public schools have their titles. These statistics are worrying.

My questions to the Chairman are as follows:-

(1) What is the Government position to the effect that titling costs would be waived, so that schools are given titles without paying?

(2) He has given two appendices to this answer that contradict one another. Appendix 1 states that 378 schools in Vihiga have applied for titles, but none has been given. In appendix 2, there are eight schools that have been given titles. I want him to clarify which is which, because that information is contradictory.

The Chairman was also unable to give us a list of all schools. I thought we work in the spirit of collective responsibility and are expected to get the list of all the schools in the Republic of Kenya. I want you to compel the Chairman to bring that particular list to this House, so that Members can scrutinize schools from their various counties.

**The Deputy Speaker** (Sen. Kembi-Gitura): I allowed Sen. Khaniri more time because he is the one who requested for the Statement. The other Senators can seek

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clarification if they have any and that can be done in a minute or so.

**Sen. (Prof.) Lesan:** Mr. Deputy Speaker, Sir, I thank the Chairman of the Committee on Land and Natural Resources for the answer that he has given. In the county which I come from, there are multinationals which own large tracts of land. There are several public schools within those large tea estates. In fact, there are 11 primary schools and two secondary schools. Currently, there is a requirement that before a school receives Government funding, a Land Reference (LR) number should be given for those institutions. The Chairman should tell us the conditions for registration that those schools should follow in order to benefit from Government funding, since they are located within land owned by multinational companies.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I am glad to hear that the Chairman had promised that there would be a waiver of fees. The trouble with many schools in the former Western Region is that the former owners of some of the pieces of land are individuals. In Trans Nzoia County, for example, a farmer who had 50 acres of land could have given out five acres to a primary school. At Malinya in Ikolomani, there are villagers who have given land to Malinya Primary School.

Could the Chairman extend that waiver to include all fees, from fees for succession and stamp duty, so that schools can get the title deeds? Even Sen. Wako has donated his land---

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

**Sen. Karaba:** It is true that the Chairman might have had problems in getting the list compiled from various stations and moreso, from the Ministry of Education, but to my understanding and experience, it is not that difficult to get a certificate or a title deed. All that is required is for the head-teacher or the chairman of the board to go to the lands office. Since this function has been devolved to the county level, it is even easier because land is held in trust for the county government. In this case, I would like to ask the Chairman to move a step further and order the county governments to issue title deeds to schools. It is not that difficult.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Karaba, for the sake of the HANSARD, do county governments have the capacity to issue title deeds? I thought that is a function of the national Government. Are you talking about facilitation?

**Sen. Karaba:** Then it can be transferred to ease the release of the certificate. It can temporarily be waived--- It can temporarily be done so that county governments are ordered to process it quickly.

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

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, this is a very critical point because if the chairman of the Committee may recollect, there are many schools that sit on land that was donated by generous members of communities and when these members die, their sons squander family assets, then turn round and demand land from the school thereby engaging schools in endless litigation. I know of many schools in my area where children or grandchildren of families that donated land have sold all family land and then turned to the school with succession papers claiming the land. Sometimes, they end up dispossessing the school.

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We live in a country where land grabbing is known up to the Vatican. When the Pope was here, he warned against land grabbing in this country. Could he tell us when the President's directive that all schools will be issued with title deeds, "regardless", is going to be implemented? Has the national Government set aside sufficient funds for the process of acquiring of title deeds; namely survey, mutations and eventually the extraction of the title deed for the schools? Most schools do not have resources to process title deeds unless they turn to parents who are already over-taxed and do not have money to contribute towards that. They have many things they are contributing for, including mock examinations, buses and other things.

Could the national Government set aside money and timelines now that the time given is over? The title deeds should be issued with caveats so that rogue headteachers do not mortgage the land and the school ends up being auctioned.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, I would like the chairperson to find out what is being done to schools built in areas which were initially forests. For example, in Cherangany hills and Embobut forest, we have about eight primary schools and four secondary schools located in areas which were forests. These schools do not have title deeds and are not sure whether they are part of the forest or not. This applies to many areas of Elgeyo-Marakwet. Some of them are in Keiyo South, Marakwet East, Marakwet West and Keiyo North. What is the Government doing to ensure that those schools in gazetted zones get title deeds?

**Sen. Hassan:** Mr. Deputy Speaker, Sir, I would like the chairperson to tell us the particular process where certain people are authorized to hive off school land. I was in Lenana School and someone wanted to hive off part of that land for building certain amenities. My former primary school was brought down and other amenities put up. I would like to know the criteria used for allocation of school land to private individuals for other purposes. In this era of grabbing public school land, when can we expect that all schools will have title deeds?

**Sen. Okong'o:** Mr. Deputy Speaker, Sir, I beg to seek a clarification on the issues of County Land Boards managed by the National Land Commission (NLC) who have the authority to issue title deeds especially when they are dealing with county governments? I have information from my county that there are so many schools whose land was grabbed and county governments who are supposed to facilitate the NLC are not doing anything. Is the chairperson aware of that?

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, many schools have sponsors who are mostly religious organisations. Sometimes the land belongs to the community but there is a sponsor. Could the chairperson clarify that when registration is done, what will happen with the sponsor? Will the land be registered under the name of the sponsor or the school?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Kivuti, you have so many questions to respond to. For the record, I would like to know whether these are nationwide figures. For example, the figure showing schools whose land is registered under the name of individuals is 158. Is this figure countrywide or local, like for Vihiga, for example?

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**Sen. Kivuti:** Mr. Deputy Speaker, Sir, I will try my best to respond to all the issues raised starting with the concerns of my brother the Senator for Vihiga who raised this matter first.

While acknowledging that my President may have issued an ultimatum, I cannot stand here and say that all the schools in this country, which may run into thousands, would be having title deeds in the next one-and-a-half months---

Personally, I think that is a good wish. I am sure that it is the wish of this House that all schools must have title deeds. Nonetheless, what I have presented to this House is what has been achieved and we can only project to what is achievable.

Mr. Deputy Speaker, Sir, Sen. Khaniri asked what the Government's position was on the waiver. To the best of my knowledge, once a waiver is given, it is specific. In this particular case, the waiver was only for the payment of title issuance for the schools which is a response to what Sen. (Dr.) Khalwale asked; if the waiver can be expanded to cover all other issues that the schools may need. I would also put a question mark to that.

There is an important issue that was raised by Sen. Khaniri about the list of schools. In my response, I stated clearly that the record on the number of schools in this country is not in the Ministry of Lands and Natural Resources. Those records are in the Ministry of Education, Science and Technology. For that reason, I would like you to give us guidance whether Sen. Karaba, the Chairperson of the Committee on Education could assist us with that information. As far as I am concerned, my Committee is very fast in dealing with land matters.

There was an error in the typing of the list because Schedule 1 shows schools in Vihiga County have no title deeds. This is not true. Some schools in Vihiga have title deeds. I am sure that is just a typing error. The list of schools in Appendix B shows the names of schools with title deeds.

Sen. (Prof.) Lesan asked a question about the public schools which are housed in private property. There was also a follow up question by Sen. Murkomen about public schools on forest land. Sen. Ndiema was concerned about the schools on farms owned by big companies. I would like to answer as follows:-

According to the Government policy, once a school is established either on private farms or forestland, it becomes a public institution. Our laws provide that if one occupies a piece of land for more than 12 years, automatically that land becomes his. I do not think that there is anybody who would shut down a public school even if it is built on their private land safe for what was highlighted by Sen. Wetangula that a family may choose to sell the land---

**Sen. Khaniri:** On a point of order, Mr. Temporary Speaker, Sir. I do not know whether you are satisfied that the Chairperson should continue answering because I am not. He has been unable to answer the first and the most basic question that I asked him; to provide a list of schools in Kenya and the status of the title deeds. I had a reason to ask this question. The Chairperson has only provided information on a few schools and says that the information is not under his jurisdiction. I know that there is a Liaison Committee and we have a Chairperson of the Committee on Education. Therefore, that cannot be an excuse. The question is very clear and I believe that this House deserves an answer. The

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Chairperson should give us a list of all public schools in Kenya and the status of their title deeds.

**Sen. Kivuti:** Mr. Deputy Speaker, Sir, I still stand by the answers that I have given on the Floor of this House that I do not have that information. The information I have from the Ministry is on all the schools that have applied for land title deeds. There could be other schools which have not applied for title deeds, but I do not have that information.

I wish that you could allow me to respond to the interventions that were raised by other Members.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Kivuti, with all due respect, Sen. Khaniri sought certain specific answers. His first question was that you provide a list of all public schools in Kenya. There must be a reason as to why he asked for that list. He then asked you to indicate the ones that have land ownership documents. However, in your first answer, you said that you were unable to give that list because it is not in your domain. You then mentioned that you are able to provide a list of schools that have applied for land ownership documents. Secondly, you said that 5,319 schools have submitted requests for title deeds, but you did not give that list. We could easily conclude that there is not a single school that has title documents.

The concern raised by Sen. Khaniri is genuine because that is not the response that he is seeking. We are in one Government and it should have been possible for you to get the list from the other Ministry. One Government department can always get information from another one.

**Sen. Kivuti:** Mr. Deputy Speaker, Sir, I am very clear in my mind about what he asked. His first question has two parts. He asked---

**Sen. Hassan:** On a point of order, Mr. Temporary Speaker, Sir. When the Chairperson started to answer the questions, he assumed that he is the Cabinet Secretary in charge of Lands and Natural Resources. Is it possible that he is still making that assumption?

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Hassan! We have gone beyond that. Sen. Kivuti, let me hear your explanation to this matter because Sen. Khaniri is making an important point.

**Sen. Kivuti:** Mr. Deputy Speaker, Sir, the point I am making is that the first question has two parts; one, provide a list of all public schools in Kenya. I do not have that list. I insist that information should be provided by the Committee on Education because all public schools in Kenya are in their domain. They should be able to give us a list of all public and private schools in Kenya. If there are any schools that need title deeds, I am responsible for providing that information as the Chairperson of the Committee on Lands and Natural Resources. There is a process of application which I can outline in this House. I talked of 5,319 public schools which have applied for title deeds.

Out of these, 1,412 schools have been looked into; 345 have already been issued with titles. Others have been found to have title deeds with other individuals, they are 158. Schools occupying land reserved for public purposes---

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**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Okong'o, what is your point of order?

**Sen. Okong'o:** On a point of order, Mr. Deputy Speaker, Sir. Is the Chairman in order to mislead this House that he cannot seek information from any other Ministry other than it being redirected to the relevant Committee? I understand that any Chairperson can seek information from the Government. Has he done that and failed?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Khaniri, what is your point of order?

**Sen. Khaniri:** On a point of order, Mr. Deputy Speaker, Sir. As you correctly pointed out, my first question was in two bits; the list of all public schools which he says he is unable to obtain but I also requested for the status. The Chairperson has said that he can only have information about schools that have applied for title deeds or those which have already been issued with. Then he goes on to give us the applicants who are 5,319. He says out of that only 345 have been issued with titles. I believe these are the new applicants. So, does the Chairman mean that in the Republic of Kenya, only 345 schools have title deeds? How about those that were issued with title deeds earlier on? He says he can only access information of schools that either have applied for titles deeds or already have title deeds.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Sang, what is your point of order?

**Sen. Kivuti:** Mr. Deputy Speaker, Sir, this is very clear. It brings us exactly to the position where I said the information in the Ministry of Education is not in my domain. I do not intend to imply that only 345 schools in Kenya have title deeds. These are only those which applied and have been processed.

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

**Sen. Ndiema:** On a point of order, Mr. Deputy Speaker, Sir. Looking at the way we are proceeding; so many issues have been raised. Would it not have been in order that the Senator is given more time to find out information and bring it at a letter stage? At this rate of asking and answering questions, we might take the whole afternoon.

**The Deputy Speaker** (Sen. Kembi-Gitura): Proceed, Sen. Sang, or have you withdrawn?

**Sen. Sang:** On a point of order, Mr. Deputy Speaker, Sir. While I agree with the concerns raised by Sen. Khaniri; on several occasions in this House, when a Member seeks a statement that cuts across two departments – and that has been directed to me at several occasions – we have always had an opportunity to ask the other Committee in this House to solicit for that information and bring it to the House. Therefore, is the hon. Chairman in order to shift blame and avoid taking responsibility for the specific questions that have been asked?

**The Deputy Speaker** (Sen. Kembi-Gitura): If hon. Senators would allow me; my problem with this situation is that in question one, Sen. Khaniri seeks two issues: he wants to have a list of all public schools. Maybe that is the fulcrum on which he expects an answer; so that if you say you cannot get that list and then maybe everything else falls.

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That is the problem. Then, the second question is; out of all those 10,000 schools, for instance, how many have title deeds? I get a little more confused when you say that you are not saying that only 345 schools in the whole country have title deeds, but these are 345 out of the 5,319 schools. So, again, this answer is in coit, it is not complete because there is something missing. Then, even the second question in number one is not answered; there are those that have land ownership documents; you do not even have that answer because you have said you do not have the list of schools and the 345 schools is part of the 5,319 schools. So, it appears that there is a situation which we might not overcome this afternoon.

**Sen. Kivuti:** Mr. Deputy Speaker, Sir, I am happy you have hit the nail on the head. The question of how many schools – or for example, we can say, how many citizens are there in Kenya? We can have a list. Then, how many of them have applied for land title deeds? It is very easy for us to know how many people have applied for title deeds. However, to know how many people have title deeds and have not applied or maybe how many people may need title deeds. In this instance, I am talking about schools. It would be very easy if the Chair asks the Committee on Education to give us the information on schools. We have a tradition in this House; whereby a question cuts across many committees and you can direct that the Committee on Education works with the Committee on Land and Natural Resources and we get all the information that is required in the House.

**The Deputy Speaker** (Sen. Kembi-Gitura): Okay, I have heard you. In this situation, I will give direction. I am not satisfied when one committee says that information is not in its domain. That information can be obtained from other departments of the Government or from another committee. So, I am directing that the Committee on Land and Natural Resources liaises with the Committee on Education to ascertain the number of public schools in Kenya, in the first instance, so that however we do it, we have a list. We know how many public schools are in Kenya so that the first tranche of that question is answered. Based on that, I expect that you will tell us how many of those schools in the whole country have title deeds. That is important so that this question is answered once and for all. I direct that we suspend further debate on this statement; we send it back to you. Liaise with the Committee on Education; ascertain how many public schools are there in this country. Out of that information, you will tell us how many have title deeds.

Then, again on that, the question did not talk so much about how many applications have been made for title deeds; it is how many schools have title deeds. So, these 5,319 schools will be part of the question but it does not answer the question because I do not believe for a minute that in the whole country, only 345 schools have title deeds. I do not think so, but you said 345 schools are out of the 5,319 schools. So, there is something that does not quite tally. That is my direction; so that in two weeks, you can give us a full answer on this situation. You asked for a direction and I have given it.

**Sen. Kivuti:** Mr. Deputy Speaker, Sir, I oblige.

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

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deferred for two weeks when we hope we can get the answer.

*(Statement deferred)*

Let us proceed with the next statement.

Which other Chairperson is ready with a Statement? There are very many statements. What is your point of order, Sen. Musila?

#### STATUS OF CASH TRANSFER PROGRAMME

**Sen. Musila:** On a point of order, Mr. Deputy Speaker, Sir. My concern is Statement (c) because you have called out the next one. The Chairperson is missing and for the record, I raised this matter in June last year, even the Acting Cabinet Secretary for Labour and Social Services came here and unsatisfactorily responded. She promised that she would come back. So, the issue here on a very important matter of cash transfers, not only to the elderly but even to other beneficiaries has been taken casually by the Ministry or perhaps the Chairperson of the Committee.

Mr. Deputy Speaker, Sir, I plead that you prevail on this Committee to give us this information which it has taken so long to deliver.

**The Deputy Speaker** (Sen. Kembi-Gitura): Do you have a copy of that response, Sen. Musila?

**Sen. Musila:** I do not have, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Okay, we will direct the Secretariat to check the position and report on it tomorrow, afternoon at 2.30 p.m.

Sen. Ndiema, what is your point of order?

**Sen. Ndiema:** Jambo la nidhamu, Bw. Naibu wa Spika. Yangu ni kuhusu pesa zinazolipwa wazee na Serikali yetu. Mwenyekiti wa kamati hii angetilia maanani jambo hili ili kuhakikisha wazee wote waliohitimu umri unaohitajika wapate marupurupu hayo. Sisi sote tukienda katika kaunti zetu tunakumbana na swala hili. Tunajua ni wazee wachache wanaopata marupurupu hayo na wengine wengi hawapati. Kwa hivyo, tunataka majibu kuhusu jambo hili.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Ndiema, you are preempting the situation. I have indicated that the matter be reported on, tomorrow afternoon so that I can make a communication.

*(Statement deferred)*

**Sen. Obure:** Mr. Deputy Speaker, Sir, on behalf of my chairperson of the Standing Committee on Lands and Natural Resources, I wanted to deal with the question numbered as (d). However, my colleague, Sen. Okong'or, is not around.

**The Deputy Speaker** (Sen. Kembi-Gitura): He was here. He has disappeared. Too bad for you.

Is there any other chairperson with a Statement to issue? Sen. Kivuti?

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**Sen. Kivuti:** Mr. Deputy Speaker, Sir, I actually have three more. My Committee had five today.

**The Deputy Speaker** (Sen. Kembi-Gitura): Which one do you have now?

**Sen. Kivuti:** Mr. Deputy Speaker, Sir, I had one to make for Sen. Muthama. However, he is not in. That is Statement listed as (f) on the Order Paper. It is not really a statement though. The Ministry requested more time to provide details on it.

We also have a response to Statement listed as (l) on the Order Paper. I can see Sen. Hargura. If you allow me, I can deal with that. I also have a response to the Statement listed as (n) on the Order Paper. However, Sen. Wangari is not here. Therefore, I can deal with (l).

**The Deputy Speaker** (Sen. Kembi-Gitura): Deal with Statement listed as (l) on the Order Paper because the Member is present.

#### CONSTRUCTION OF BADASA DAM IN MARSABIT COUNTY

**Sen. Kivuti:** Mr. Deputy Speaker, Sir, I would like to make a response to a Statement requested by Sen. Godana Hargura on the Construction of Badasa Dam in Marsabit County. In the Statement, the Senator sought the following information;

- (1) Whether the Government is aware that the project has stalled.
- (2) The circumstances that led to staling of then construction works.
- (3) The status of progress on the construction of the dam to date.
- (4) Plans by the Government to complete the dam as well as the completion date of the project.

The Government is aware that the project has stalled. No construction work has been going on at the dam site since November 2012. The stoppage of Badasa Dam construction works arose primarily due to a dispute on the extension of time for completion. The dispute was between the contractor who was Midlock Water Drilling Contractors Limited. and the client who was the National Water Conservation and Pipeline Corporation. Another reason was levying of liquidated damages by the client which the contractor disputed.

I wish to provide more details for better clarity of the circumstances that led to the stalling of dam works. Construction of the dam began in July, 2009, and was expected to be completed by December, 2011. That is a construction period of 30 months or two-and-a-half years. However, by December, 2011 physical progress of the works stood at 57 per cent. The contractor was way behind schedule.

The contractor applied for an extension of time for completion of six months. It was granted, thereby pushing the works completion date to June, 2012. This extension was granted by the client as provided for in the contract between the two parties. However, by June, 2012, no progress had been achieved in the construction work. The contractor applied for yet another extension time of six months which was granted. However, it was granted with the condition that liquidated damages be levied on the contractor for non-completion of the dam project as contractually agreed upon by the parties.

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In February, 2013, the contractor was finally given the notice of contract termination due to non-performance. The contractor then went to court challenging the decision of the client to levy the liquidated damages. He also wanted to prevent the client from terminating the contract.

The parties then engaged in seeking an amicable solution out of court. The process was not successful due to disagreements on the amount owed to the contractor and the levying of the liquidated damages. The contractor reverted to the court. The matter is still before court. I have attached a chronology of the events in this matter. I may not have to read the attached pages.

With regard to the progress of the construction of the dam to date, it stands at 57 per cent as I foresaid which was the position when the work stalled. At that time, site clearance and excavation had been done as well as the diversion culvert. The downstream cover dam had also been completed while grouting works were 75 per cent complete. Still outstanding, however, is the construction of the main dam embankment and the spill way.

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

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

My committee is well aware of the urgent need to have Badasa Dam completed so that the intended beneficiaries can have their right to clean water in adequate quantities fulfilled. I have, therefore, instructed the NWCPC to immediately resolve the legal dispute and embark on the completion of the works.

In this connection, I undertake to inform this House when the legal dispute is resolved and advise on the completion date on the project once it is retendered and the tender date of completion is known.

In addition to that, I have discussed this with Sen. Hargura. Apparently, from the notes which I have attached on the statement, the matter went through court and ended up to arbitration. In February, the court ruled that the two parties have an extra 30 days up to the end of this month to come to amicable conclusion of the negotiations. Otherwise, the matter will have to go back to court.

**Sen. Hargura:** Mr. Temporary Speaker, Sir, I thank the Chair for having kept his word because I asked this Question last week and I was promised that it will be answered within a week. It is true that within a week, it has been answered. It is one of the few cases where we have received the response on time.

Northern Kenya is a weathered division. This was one of the projects that we had hope in. It was started in 2009 and was supposed to have improved water supply to Marsabit Town, which is the Marsabit County headquarters. It has for a long time lacked reliable source of water. We thought with this project, we will have reliable source of water and the county headquarters was going to be developed together with its environs. However, the project stalled in November 2012 and since then, there has been nothing going on. We have heard there have been court cases but on the site, there is nothing

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going on.

Mr. Temporary Speaker, Sir, according to the annexed notes, the contractor and the National Water Conservation and Pipeline Corporation had set 21<sup>st</sup> March, 2016 to amicably sort out this issue, which date has passed. The Chair should inform the House what was discussed and what was agreed upon by the two parties on the issue.

Secondly, can we have a timeframe when the process of this contract will be commenced? Since the date has passed, is there anything fruitful out of that discussion?

Mr. Temporary Speaker, Sir, I had asked for the reasons which led to the stalling of the project. From the information I have, it is the extension of time and liquidated damages. All these must be because of the other issues that arose. In a normal contract, the contractor cannot ask for extension of time, for instance, six months and another six months. What did not come out clearly is the cost involved. This is a Kshs2 billion project which by the time it stalled, the whole cost had been paid to the contractor and he was demanding for more payments. In fact, what the contractor is claiming is about Kshs300 million over what had been paid.

The information in the public domain is that there are technical faults involved in this project. So, some people must be held accountable even if they are professionals. If there are technical problems, then a contractor cannot be held accountable when designs and quantities are changed. If you look at the normal procedure, a contractor can only be given a 15 per cent variation. This project has been awarded 53 per cent variation over the normal 15 per cent. Therefore, someone is quietly accepting blame; that he made the mistake and is covering it by giving variations simply like that.

Mr. Temporary Speaker, Sir, the National Water Conservation and Pipeline Corporation should have been held accountable for violating the law because of giving out a variation of more than 15 per cent. They are hiding something. Can we be told why this extension was warranted and why the variation? There are technical issues that the National Water Conservation and Pipeline Corporation and which to the public, appears like it is the contractor's problem and not the technical matters.

**Sen. Kivuti:** Mr. Temporary Speaker, Sir, there are two ways of looking at this matter at this moment. First, in the annexed notes, I indicated that the two parties were to meet again on 21<sup>st</sup> March, 2016. This answer was prepared on 20<sup>th</sup> March, 2016, a day before the day of the meeting and it was received at the Senate on 22<sup>nd</sup> March, 2016.

I do not want to say that by the time we prepared this answer, we knew what transpired the previous day. At the same time, whatever transpires in negotiations out of court must go back to court for adoption and final decision. Therefore, I request Sen. Hargura to give us more time so that we get to know what happened in the court before we report to the House. I know he will be the first Member to receive the information because he has interest since he hails from the area.

Mr. Temporary Speaker, Sir, having said that, I agree with the Senator that commonly, we wish away matters like this when something has been done wrongly. Someone has caused suffering to people for many years yet the Government had committed a lot of money. I do not know what kind of direction the Chair will give but regularly - if money is misappropriated - there is a general guidance to follow by the

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investigation authorities. However, I do not think there was corruption but a technical problem. Whoever committed the error, he or she did not finish the job.

At the end of the day, I am sure what Sen. Hargura would like to see is the dam being constructed. The matter needs to be resolved between the contractor and the Government so that we can formally terminate the contract and start the tendering for the construction of the dam from 57 per cent to 100 per cent.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I was a Permanent Secretary in the Ministry of Roads and Public Works for three-and-half years. What I have heard - if it is true - that a 53 per cent variation was given is criminal and according to the Public Procurement and Disposal Act, one is not supposed to go beyond 15 per cent. Whoever raised this from 15 per cent to 53 per cent should have been arrested and the money returned. I do not know what the Chairperson is telling Sen. Hargura. Someone should be in jail. Unless someone used his or her extra money, this 53 per cent is another extra dam.

**Sen. Kivuti:** Mr. Temporary Speaker, Sir, I agree with Sen. (Prof.) Lonyangapuo because he was the Permanent Secretary, Ministry of Roads and Public Works. If the Chair recalls, I asked for directions as to the issues pertaining to other misdeeds and the violation of the law during the process but going forward, we still need the dam.

I request your guidance.

**Sen. Hargura:** Mr. Temporary Speaker, Sir, I agree with the Chair that my interest is the completion of the dam. My prayer is that the matters before court end as soon as possible so that the dam project can be revived through issuance of another tender. We know the cases of Umaa, Chemususu and Kiserian dams. Badasa Dam was also one of them. That is why we had a lot of hope in it.

These kinds of variations which were given are covering for some technical faults which the National Water Conservation and Pipeline Corporation should have taken responsibility for.

When the technical faults were noted, the contractor was told to extend their stay. It reached a point where they could not continue forever because the cost of the dam was twice the initial cost. The cost is now about Kshs4.3 billion instead of the Kshs2 billion which was supposed to complete it. As a result of some technical incompetence or oversights, we are losing taxpayers' money on such an important project. The relevant Government department, like the National Treasury, should have been taken to task to explain why the anomaly happened. They had supervisors on the ground yet we reached these kinds of overruns and there is no project. At the end of the day, the people of Marsabit County have nothing out of the Kshs2 billion which has been spent on that project.

**The Temporary Speaker** (Sen. Sang): Mr. Chairman, how much time do you need to provide information as to the outcome of the court process with regard to formalizing that arbitration?

**Sen. Kivuti:** Mr. Temporary Speaker, Sir, it is not possible for me to give a timeline for a court process because it is the court to give the date of judgement. However, in the interest of this project, I will inform the Ministry of the decision that we

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are waiting for the information. I will do that in writing. If you allow, I may also add the question of what steps have been taken against the misdeeds, as suggested by Sen. (Prof.) Lonyangapuo, to indicate that we are also sensitive to the issue of public funds being misused on projects which are not performing. I seek your guidance.

**The Temporary Speaker** (Sen. Sang): I appreciate that you have no control with regard to the court process. However, as you communicate to the Ministry, include what Sen. (Prof.) Lonyangapuo has indicated; if in the process of handling issues of the dam and the extensions, whether the Public Procurement and Disposal Act was followed. If not, you should find out what steps the Ministry has taken to ensure that the law is followed and the action that has been taken against officers who obviously broke the law on this matter. We expect a response from you on those particular concerns within the next three weeks.

**Sen. Kivuti:** Mr. Temporary Speaker, Sir, most obliged.

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Temporary Speaker, Sir. The Chairman of the Committee on Agriculture, Livestock and Fisheries is here. I have had two pending statements for the past three weeks whose answers have not been provided.

**The Temporary Speaker** (Sen. Sang): Which ones are those?

**Sen. (Prof.) Lonyangapuo:** Statements (h) and (i). Now that Sen. Ndiema is here, he should respond to my question about fertiliser.

In Trans Nzoia, people are looking for fertiliser. Maybe you could direct that he gives me a response now that I am here, he is also present and the planting season is just about to begin.

**The Temporary Speaker** (Sen. Sang): Sen. (Prof.) Lonyangapuo, we will come to that shortly. We were dealing with Statement (i). Let us move on to the next statement.

#### ALLOCATION OF UWEZO YOUTH FUND TO MARSABIT

The Chairperson of the Standing Committee on Finance, Commerce and Budget is not here. Let us move on.

*(Statement deferred)*

#### HUMAN-WILDLIFE CONFLICT AROUND THE KIGIO WILDLIFE CONSERVANCY

**The Temporary Speaker** (Sen. Sang): The Chairperson of the Committee on Land and Natural Resources and Sen. Wangari are not in the House. So, we will move on.

*(Statement deferred)*

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

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The Chairperson of the Standing Committee on Finance, Commerce and Budget and Sen. Obure are not in.

*(Statement deferred)*

#### BOAT SAFETY IN KENYAN LAKES

**The Temporary Speaker** (Sen. Sang): The Chairperson of the Committee on Roads and Transportation and Sen. Elachi are not in the House.

*(Statement deferred)*

Let us go back to Statement (h).

#### SUPPLY OF FERTILIZER AND OTHER FARM INPUTS BY THE NCPB

This Statement was directed to the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries. He was to issue a statement on the supply of fertiliser and other farm inputs by the NCPB to farmers ahead of the planting season.

Mr. Chairman, you are aware that it is no longer ahead of the planting season, we are almost running late. What is your response?

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, this was a very genuine request for a statement on a matter that is very critical in terms of food security for this country. We have contacted the Ministry and they have been promising that they would provide the answers. However, I am sorry to say that, up to now, we have not received an answer. They are still promising. I, therefore, request for additional time to get the answer.

I agree that fertiliser should have come by now. People in Trans Nzoia County are waiting for fertiliser. We were supplied with some NPK fertiliser but the most popular fertiliser is DAP. From my own personal experience, this is nowhere from the Government. It is a serious issue and I undertake to follow up with the Ministry and ensure that this is answered on Tuesday.

**The Temporary Speaker** (Sen. Sang): Professor.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, it is disappointing to hear what the Chairperson is saying about this Statement. Today is 23<sup>rd</sup> March, 2016. The long rains are just about to start and large-scale farmers in Kenya, particularly south rift valley and north rift valley, which includes Nandi, Uasin Gishu, Trans Nzoia, West Pokot, Elgeyo-Marakwet, Baringo and Nakuru counties and parts of Bungoma are preparing their farms. It is shocking to hear that type of a response from the Chairperson. He said that he wrote to the Ministry but nobody has responded. Does the Ministry want to tell Kenyans that we should be prepared for terrible hunger in the coming year? People who do dry-planting have now failed. I was told yesterday that it drizzled in Trans Nzoia

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which neighbours West Pokot. Therefore, I do not understand what the Chairperson is telling us here.

Lastly on the same, they delivered some strange looking tiny NPK fertiliser with very strange substances inside. It does not look like fertiliser. People who got it do not even know how to get out of the blunder. The fertiliser needs to be taken back to the Government Chemist for testing in the laboratory. The Chairperson should tell us what it is that was delivered. He should also assure farmers, who are now very desperate in the streets of Eldoret and Kitale, looking for the same, when this will be answered. He has promised to give an answer next week on Tuesday but we will be on recess. Instead, he should have told us that he will give a response tomorrow. You should authorise him to bring the response tomorrow. He should not escape.

**The Temporary Speaker** (Sen. Sang): Chairperson, this Statement was sought on 1<sup>st</sup> March, 2016 and was due on 9<sup>th</sup> March, 2016. It was deferred to 16<sup>th</sup> March, 2016 and today is 23<sup>rd</sup> March, 2016. You, the Chairperson, and your Vice Chairperson of the Committee on Agriculture, Livestock and Fisheries come from an agricultural region and you obviously understand the urgency of this issue. Chairperson, you have not shared any information as to how much effort you have put in to try and get this response. Just telling us that you have tried and they have not responded is not enough. The Chair has directed on several occasions that you can even just walk into the Cabinet Secretary's (CS's) or Principal Secretary's (PS's) office just to establish because this is an urgent matter.

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, I am seized of this matter and quite concerned in my capacity as the Senator for Trans Nzoia where farmers are really having a problem. As to what steps we have taken, I can confirm here that I have personally gone to the office of the Cabinet Secretary (CS) for Agriculture, Livestock and Fisheries and discussed the issue of having fertilizer in time, among others. You know that there was a change in positions there but that is not an excuse. I have said I will provide the answer on Tuesday because even if we go on recess, the Office of the Cabinet Secretary (CS) will not be on recess and committees will still be working. I will make sure that the response is with the Senate by that Tuesday.

My Committee is very serious on this and we intend to, in fact, call the Cabinet Secretary (CS) in our next meeting to discuss this and other pertinent issues concerning agriculture. I am also talking in terms of item (i) on food security. I am equally concerned just like my farmers, and I am with the Senator for West Pokot on this one.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, you heard the Vice Chairperson alluding to the fact that there is a new office holder in the Ministry of Agriculture, Livestock and Fisheries in the name of the Cabinet Secretary (CS). Could there be sabotage? I do not think it has anything to do with whether the officer is new or not. Mr. Bett is one of the top performing officers that we knew as the Managing Director (MD) of the Kenya Seed Company. To the credit the Government, they have enough seed to spare, courtesy of Mr. Bett and his team. Could there be some kind of a sabotage that no fertilizer is coming and the Deputy President has been going around telling farmers that this fertilizer will come in good time this year? Could there be some people who

want to fail the leaders of Jubilee Government, now that we are going to elections in the coming year? I want to hear that because this is the first time that we are hearing this kind of drama. Never before in Kenya have we had fertilizer delayed so much. We are almost in April and it has not come.

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, I do not know but the initial question did not include the issue of sabotage. I am not aware of any sabotage unless there are further investigations to be carried out and additional evidence provided to that effect. However, all I can say is that as Chairperson of the Committee on Agriculture, Livestock and Fisheries and as a Committee, we are concerned about the delay in procurement of fertilizer. This is something that we have discussed with the Cabinet Secretary (CS) and even the former ones who were there. We have told them of the need to ensure that there is fertilizer in good time. We even held a high level conference in Naivasha sponsored by the Senate and this item of early provision of inputs was discussed and agreed upon. It was one of the points that were emphasized. Unfortunately, what the Ministry is doing, we are not aware until we now get the answer on why there is delay and yet there was a budget for that purpose.

**The Temporary Speaker** (Sen. Sang): Chairperson, looking at how long it has taken us to get a response from you; appreciating that you should be more concerned than any of us because of the constituency and county that you represent with regard to issues of fertilizer; appreciating also that the gentleman at the Ministry of Agriculture, Livestock and Fisheries who was your constituent just the other day; if you were to invoke your good relations with the Cabinet Secretary (CS), being your former constituent in Trans Nzoia and also with the help of the Senate Deputy Majority Leader who has just stepped into the Chamber; you should be able to get us a provisional response to this Statement tomorrow afternoon. I, therefore, direct that you provide this House with provisional response to this issue on the basis of the urgency of this issue tomorrow at 2.30 p.m.

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, when a Speaker directs that we do it, especially when the Senate Deputy Majority Leader is also undertaking, then I will attempt to ensure that we have an answer by tomorrow.

**The Temporary Speaker** (Sen. Sang): Thank you, Chairperson. The Chair has directed that the same is done by you, working closely with the Senate Deputy Majority Leader.

**Sen. Murkomen:** On a point of order, Mr. Temporary Speaker, Sir. I just walked in when you were making a very important ruling. I was following it from the other side. You have solicited my assistance to ensure that the Chairperson responds accordingly because you, the Chairperson and I represent the food basket of this country and it is important that we get the answer. Be that as it may, am I in order to ask you, in your capacity, also be included in those who will ensure that this response is achieved, considering that the Cabinet Secretary (CS) comes from your county?

**The Temporary Speaker** (Sen. Sang): Sen. Murkomen, I have just participated by directing that you and the Chairperson can get the response. I have made my contribution from where I sit. So, Chairperson, let us have a provisional response to this

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House tomorrow at 2.30 p.m.

*(Statement deferred)*

#### ACUTE FOOD SHORTAGE IN WEST POKOT COUNTY

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Temporary Speaker, Sir. I thank you for the support that you have given to the Chairperson and I in waiting for this response tomorrow afternoon. The last one, (i) relates to the same. It has also been long overdue and this one is relating to acute shortage of food in West Pokot County and people are already dying. People are already dying out of hunger, so they may not be related with fertilizers and seeds but this one is food.

**The Temporary Speaker** (Sen. Sang): Chairman, what is your response to that?

**Sen. Ndiema:** Thank you, Mr. Temporary Speaker, Sir. On this Statement, the answer is the same as the earlier one; that we have not received any response from the Ministry but we have reminded them of the urgency in view of the sanctity of life, but surely, we had enough food. Even our stores in Kitale were overflowing with food and we see no reason as to why some of this food should not be provided to the people.

I will give a provisional answer by tomorrow.

**The Temporary Speaker** (Sen. Sang): Thank you. A provisional statement with regard to that will be issued tomorrow.

*(Statement deferred)*

Next order!

#### COMMITTEE OF THE WHOLE

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

THE COUNTY ASSEMBLIES SERVICES BILL  
(SENATE BILL NO. 27 OF 2014)

THE COUNTY HALL OF FAME BILL  
(SENATE BILL NO. 33 OF 2014)

THE COUNTY GOVERNMENTS DISASTER MANAGEMENT BILL  
(SENATE BILL NO. 40 OF 2014)

THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL  
(SENATE BILL NO. 35 OF 2014)

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*(Committee of the Whole deferred)*

**BILL**

*Second Reading*

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

*(Sen. Murkomen on 16.3.2016)*

*(Resumption of Debate interrupted on 22.03.2016)*

Sen. Elachi, you had eight minutes left, so you can proceed.

**Sen. Elachi:** Thank you Mr. Temporary Speaker, Sir. When I started contributing to debate on this Bill, I raised key fundamental issues and I wish to continue. Indeed, I know the Homa Bay Senator clarified some issues but when you go beyond reading the Bill, we will have created two new funds. One of the funds will be for the management of the fisheries and the other one will be for the new authority of food.

It is important for the Government to also help us understand this whole process. When you say you are reducing authorities and yet within new Bills, we are creating new authorities, then it is something we need to question because it brings in the issue of cost. The other issue we need to ask ourselves is how the Government wants to manage trade in imports and exports, and also the marketing of fish within this Bill.

Mr. Temporary Speaker, Sir, when you look at most of the people who trade in imports, you find that most of the storage is not in Kisumu. The storage is in Thika. So, you find that the locals who are the fishermen will always fish and sell it. The people who benefit in this sector are mostly brokers. I know the Government has ensured that locals benefit. There should be market access for the materials that one may want to trade in, be it fish or any other product that you may want to sell. There should be a market to sell that product.

When we look at what they are proposing, for example, in Article 54 (2) of the Bill, which says:-

“No person shall import any live fish into Kenya without the written approval of the Director-General in accordance with such procedures as may be prescribed and the approval shall only be given upon production of---“

The moment you put the words; “the approval shall”, it means people can also import fresh fish into this country while we have fresh fish that we need to export. So, that is something we need to discourage if we want to build the fisheries sector. There are some things we must decide as a country to safeguard. One of the things is to ensure that before we import any fish---

Mr. Temporary Deputy Speaker, Sir, people are now doing different businesses, from importing eggs, ginger *etcetera*. This is something we need to discourage because

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this is a country within the equatorial region and we can produce some of these commodities. There should be a policy to consume what is local first before we import things like vegetables because our people are able to plant them.

If we are now building capacity for young people to have fish ponds and you bring in an Article and say: “approval shall”, be by the director, then I think we will be trying to quietly bring in another law and we will soon find people importing live salmons and many small fish species that we know we do not have.

Mr. Temporary Speaker, Sir, the other thing is that no person shall import live fish and release it into our waters except with written approval. In trying to do this business, we should come up with laws that will favor the business. This is something this Senate should take up to protect counties. The Senate must protect agriculture and fisheries. We should raise eyebrows when we see such Bills.

We may not thoroughly read a Bill as huge as this. I have also not read the whole Bill but only what is of interest to me and I think it is wrong. We should take time to read and I want to plead with the Senators that we should take time and read this Bill. In fact, we need to bring in someone who can take us through so that we understand the implications. You might think you are creating a good Fisheries Bill for the country and yet we are destroying the same fisheries that we want to protect.

We need to amend this section to include the counties. As we talk about the Director-General, where are the structures of the counties? There are many conflicts regarding the regional authorities that the counties want. If we create such an authority to work in the counties, why do we need a Director- General?

The importer and exporter of any fish that is destroyed under subsection 4 shall not be entitled to compensation. If we have an authority that deals with fisheries, how will we ensure that it will not be in conflict with the other authority?

In this Bill, we have also created the council. We are creating many structures but not questioning the conflicts that we will witness. We will employ people who will start fighting and not work hand in hand. For example, the Kenya Airports Authority is in conflict with the Immigration Department, yet they should be working together in terms of ensuring security. We have created many authorities whose job descriptions overlap. We have also created the Food Authority. The Bill that was passed in this House ---

**The Temporary Speaker** (Sen. Sang): Sen. Elachi, you have one minute to conclude.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, the Food Authority that has been created completely contradicts the Food Security Bill and the structures we had.

With those few remarks, I beg to support the Bill with the amendments that will come.

**The Temporary Speaker** (Sen. Sang): Sen. Cheruiyot, Senator for Kericho County.

Since this is his maiden speech, he has 15 minutes of uninterrupted contribution.

**The Senator for Kericho County** (Sen. Aaron Kipkirui Cheruiyot): Thank you, Mr. Temporary Speaker, Sir---

**Sen. Murkomen:** On a point of order, Mr. Temporary Speaker, Sir.

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**The Temporary Speaker** (Sen. Sang): I have just made a Communication that it is uninterrupted and you are interrupting.

**Sen. Murkomen:** ..... (*Words expunged at the order of the Temporary Speaker*)

**Sen. (Dr.) Khalwale:** ..... (*Words expunged at the order of the Temporary Speaker*)

**The Temporary Speaker** (Sen. Sang): As I directed, Sen. Cheruiyot's maiden speech should be uninterrupted by other Members. The Speaker can still give directions. I direct that the comments made by Sen. Murkomen and Sen. (Dr.) Khalwale be expunged from the HANSARD. I now give the Floor to Sen. Cheruiyot, Senator for Kericho County.

**The Senator for Kericho County** (Sen. Aaron Kipkirui Cheruiyot): Mr. Temporary Speaker, Sir, thank you for giving me the chance to contribute to this important Bill. Before I do that, allow me to first of all thank the people of Kericho for granting me the opportunity to be one of the Members in this distinguished House. It gives me great pleasure.

The people of Kericho County, just like the rest of the other 46 counties, when presented with the opportunity to select a man or woman who would be the custodian of one of the best things ever to have happen to them, which is devolution, saw it in their best interest to give the chance to a young man by the name, Sen. Aaron Cheruiyot. Therefore, I wish to recognize and thank them for this opportunity. I send a message to them that I am here to do the great work that they sent me to do.

Allow me to also appreciate my party, the Jubilee Alliance Party (JAP) for the chance that they gave me. Just like many other political parties, we went through a rigorous nomination exercise and eventually it was announced that I emerged the winner. Like in many organisations, you do not miss the naysayers who kept on asking about the identity of the young man who had broken out of the world of the unknown and now wants to sit and dine with the kings of politics in Kenya. They thought I would not be a good representative of the JAP, but the leadership of my party stood with the decision of Kericho County. It is a party that respects the ideals of democracy and they gave me the chance to run.

Eventually, on 7<sup>th</sup> March 2016, the people of Kericho spoke loud and clear, and that is why I am here today. I want to strongly appreciate the JAP and urge other political parties that are represented here to pick a lesson or two from how we conducted a free and fair nomination. I was given a chance without anybody asking who my father was or how much I had in the bank.

I am addressing this House knowing that the people that sent me here are the peasants of Kericho County who have many questions. They see the Senate as the only place where their issues can properly be addressed. It is their hope that as their representative, I will not for a single moment forget them and focus on other issues. The people of Kericho County continue to ask if the Senate of the Republic of Kenya is aware that in the last five or six years, the tea prices have been plummeting and now they have become impoverished. As a community we have put so much of our communal land under tea and our people get concerned when their issues towards that end are not

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addressed. It is not the question of which Government has been in charge. This is a problem that they have been facing for decades now and they keep wondering what happened. When they send us to Nairobi as leaders, they expect us to speak their language. It is my hope and belief that I will keep the same spirit and attitude.

I would wish to fulfill the promises that I made to the people of Kericho. They continue to look at devolution with a sense of pride, unlike in the past years. They appreciate the Jubilee Government, being the first Government that has successfully implemented devolution. In the last three years, the Government has successfully funded the counties, the challenges notwithstanding. That we have functional county governments is not something that should be taken lightly. It is my hope that during my time in this Senate, I shall continue to contribute towards making the counties and devolution stronger and more successful so that everybody gets a chance, unlike in the past when power was centralized. Leaders used to seek appointments with the President so that they could lobby for development in their regions. With devolution, it is possible for us to develop and determine the fate of our counties.

Mr. Temporary Speaker, Sir, as I conclude making my maiden speech and before I address myself to the Fisheries Management and Development Bill (National Assembly Bill No.18 of 2014), I wish to make an observation and address the young Senators in this House. I know that they are not many of them, but with the benefit of the HANSARD, they will be able to read my message to them.

I would like to remind the young Senators of my generation that not considering our political divide, we are a representation of hope to many of the young people of this country who look at us and wonder whether we will be the answer to many of the challenges facing our country and whether we will be the generation that will finally break the jinx and that our politics will cease being organized along tribe and money considerations, but instead, be organized along considerations of ideals and virtues that they espouse so strongly and hope that they can get champions in us. I hope this “Upper House” will set good precedence in our deliberations and the laws we pass in here shall send a clear signal that the Senate is the way to go.

Mr. Temporary Speaker, Sir, in the last two weeks that I have sat here, I have listened keenly to distinguished men and women speak on the Floor of this House. These are people that I have admired throughout my life. They have made good contribution during their time in leadership and are now passing the baton to us. I hope we, as a nation, can speak as one family and address ourselves to the challenges facing us. It is easy when speaking about the challenges that we face as a country to apportion blame to the Government of the day. However, it falls upon us squarely to rise above the petty politics of division and stand up strongly to face these challenges head on. We must find a solution because we have the capacity and the mental aptitude to do so.

Mr. Temporary Speaker, Sir, finally, allow me to address myself to the Fisheries Management and Development Bill (National Assembly Bill No.18 of 2014). This is the first Bill I am interacting with in this House. Although I have read it only partially, there are certain things that I wish to point out.

This Bill addresses itself to fishermen and women of this country and here we are

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supposed to pass laws that protect our people. The Bill outlines the role of the authority. It talks about how the system will work and who is responsible for issuing licenses. There is also a board that will manage and demarcate our waters so that we get good protection. I believe men and women who will sit in this board will do a good job so that the fishermen of this country will afford a smile and reap benefits from their fishing activities.

I would also like to know how this Bill will tackle the issue of import and export because that is where the real debate is. At the end of the day, it is not difficult to fish and bring the catch offshore. However, how can we safeguard Kenyans in this industry and make sure they benefit from fishing? Many of them are poor and impoverished. I have no doubt whatsoever that if this Bill is enacted, then our fishermen reap will maximum profits and live happily. We need to protect them from brokers who exploit them like they do in other industries, for example, the tea subsector and other sectors. It is my hope that over time, we will have a good Bill like this one that will safeguard the interests of tea farmers so that Kericho County residents can also be proud.

Thank you for this opportunity. I beg to support this Bill.

**The Temporary Speaker** (Sen. Sang): Thank you, Sen. Aaron Kipkirui Cheruiyot, the Senator for Kericho County for having made your maiden speech in this House.

*(Applause)*

Hon. Senators, you will appreciate that it is not easy to make a maiden speech. We are informed that there are some Members who have not made their maiden speech since the election. It is good that you have managed to do that within the first two weeks in the House.

There seems to be no other interest to contribute to this Bill. Therefore, I direct that the Mover replies.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, I have listened and read some of the contributions that were made yesterday when I was not around. I have listened to the contributions of other Hon. Members, including the new addition to the Senate, the Senator for Kericho County. I thank them profusely for making very substantive suggestions.

First, I want to congratulate Sen. Cheruiyot. I have heard him speak before because I was part of the people who went to cheer him on. He was very eloquent in his mother tongue. My worry was that maybe he does not know so much English. However, I have listened to him and he is equally eloquent in the English language. He is a very important asset to this House in terms of contributions. This Bill is bulky and the fact that he read it and made important contributions to it is good for us.

I thank all the Members for their contributions. I heard Sen. Elachi, Sen. (Prof.) Anyang'-Nyong'o who made his contribution on the day I moved the Bill, the Senate Minority Leader and the Senator for Kakamega County, among many others. There were a lot of wishes that many Members expressed. There was also a lot of digression to issues

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that may not relate so directly to the Bill. I challenge all the Members who had suggestions contrary to what the Bill is at the moment to prepare and bring their amendments at the Committee Stage so that we have a final product that is useful in terms of management of this sector.

Mr. Temporary Speaker, Sir, currently, we have the Agriculture and Fisheries Act that captures a number of these issues. Many of them will be replaced by the enactment of this Bill. I, therefore, challenge Members to also look into those issues so that when we come to harmonization of this Bill and the other Acts, we will appreciate the new changes that have come in place. As I said in my moving notes, the sector of fisheries is an untapped sector. The amount of resources that we have in the exclusive economic zones is able to add up to Kshs500 billion to our economy yearly if we only embrace modern technology and attract foreign investors to this sector. We also need to protect the natural resources that are God given because they are not for us alone, but for our children and those of our children. We are borrowing the resources for the future generations. It is important for us to also put in place proper mechanisms to ensure that they are properly protected.

The proposed Kenya Fisheries Service is very important. However, many people raised issues about this institution being for the national Government and not for the counties. We need to appreciate that this is an inter-governmental body. There will be representation of the county governments in it. In the Fourth Schedule of the Constitution, protection of natural and development of those natural resources is basically the function of the national Government; dealing with territorial waters, security related matters and protecting territory but to the extent that fisheries and fish development is important to the local economy and the people of this country, it is important that there is an institution that harmonizes that responsibility. I have always insisted since I came to this House, that devolution is not county governments; county assemblies or county executive. It is a higher and bigger concept. It permeates both levels of Government.

Mr. Temporary Speaker, Sir, Article 174 of the Constitution provides that through devolution, you can take services of both the national and county governments to the local level. It also provides that it takes services closer to *mwanaanchi*. So, if you have an institution that is already marrying the roles of national and county government together; that is already bringing the representation of national and county government together, then, it plays a critical role in ensuring that we have a harmonized mechanism for running our fisheries sector.

I propose an amendment; the representation of county governments in the board of the Kenya Fisheries Services should be increased so that you have three or four people representing county governments. Again, the Bill provides for representation of persons who have interests in matters related to fisheries, those who come from that sector, those who have studied that area or experts in that area. It is very important that it is incorporated so that everything that will be done, whether it is a national or a county function, it has a representation of the membership that is of quality enough to ensure that the interests of counties have been observed. These institutions protect these interests.

Mr. Temporary Speaker, Sir, budgeting of resources to these institutions is a

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function of the National Assembly but reporting what is happening in these institutions must come to the Senate because we are here to protect the interest of the counties to the extent that any report or function which will be performed by these institutions should not be seen from the eyes of only the institution that does the budget because it does so on behalf of all of us. However, in terms of reporting and oversight, as a Senate, we must keep a watchful eye. Even as I agree that this Bill is very bulky, important and captures many issues, we need to ensure that reports that come from this institution must come to Parliament; the National Assembly and the Senate.

As I said earlier, this Bill gives us an opportunity to harness a sector that has been ignored for a long time. For many years, even pastoralism has been ignored in this country. Now therefore, we are coming to our senses and saying that it is important that we harness and manage the fisheries sector in a manner that is beneficial to the national and the local communities. I am grateful that this Bill talks a lot about participation of the local economies; issues related to equipment that will be used, domestication of international law, marketing and so on.

Lastly, in Clause 201, there is an elevation of a sector; the board of directors of the fish marketing authority shall consist of the chairperson appointed by the President and so on. Again, this authority is important but in relation to what Sen. Elachi said, about a year ago or so, the President suggested that we need to reduce the number of parastatals in this county.

Mr. Temporary Speaker, Sir, however, if you look at all the Bills we have been passing here, every day we are talking about new institutions. Is it possible that the Kenya Fisheries Service does both the marketing and development and perhaps creates different committees or directorates; you have the Director-General but you have marketing, fish development, fish protection departments and so on? I encourage Sen. Elachi - I heard her eloquent presentation in so far as that issue is concerned - to look into bringing an amendment that marries the marketing department with the service department so that we reduce these institutions because we are engaging in a paradox; hypocrisy. On one hand we are saying that there are too many institutions that are dealing with the same sector.

We also need to know to what extent we will reduce the institutions under the Agriculture and Fisheries Act that was also dealing with matters of fisheries and to what extent because there was this move towards the elections; that, we marry all agricultural parastatals to one institution. This seems to have already failed because every sector seems to have its own challenges. However, even as we do that, it would be sad if we have three parastatals in the fisheries sector; marketing, development, environmental protection and security related issues. Before we go to the Committee Stage, I suggest that the Committee on Agriculture, Livestock and Fisheries leads us in trimming down the largesse that comes with this institution.

Kenyans would like to have less at the top and more resources at the bottom. We have spent so many resources employing people. We have spent a lot of resources hiring staff; we are using a lot of resources on overheads yet we have the opportunity to become lean. We have a “fat Government”. I would rather we fatten the people of Kenya and

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make Government lean at the top. This is the suggestion that comes with marrying these institutions together to become one body.

Mr. Temporary Speaker, Sir, I do not know whether Sen. Wetangula has substantiated what he had raised here about appointment of people to various sectors; whether they come from all communities and have a general representation. It is very wrong for us as leaders to become alarmists. I heard the presentation of the Senate Minority Leader. These blanket accusations - you wake up one morning and say, this country has been taken over by two tribes when you know that appointments that have been done even in the last one week have had representation across communities - is unacceptable.

Leaders, particularly, the Senate Minority Leader who has presidential ambitions - is my friend and has failed to get a place to launch his presidential ambitions which is sad because this is a united country. If you come from Bungoma, you should be free to go to Kakamega where my sister, Sen. Kanainza, comes from and launch your political bids; but because ODM is threatened by its partner FORD-(Kenya), my friend here is unable to land in Kakamega. I have already indicated to him that he can come to Elgeyo-Marakwet, Iten.

If you are in a plane which is not too big and consumes very little fuel and you circle around one place for a long time, if the fuel gets finished, it is possible that it can easily crash. I have offered the Senate Minority Leader that, for emergency purposes, he should land in Iten and launch his bid because Iten is in Kenya. We welcome people of all tribes.

**Sen. Kanainza:** Mr. Temporary Speaker, Sir, I suggest that the Mover while replying, should stick to what he is supposed to do rather than dwell on what does not concern him. The Orange Democratic Movement (ODM) party is still the main player in the Coalition for Reforms and Democracy (CORD) and we cannot be threatened by our brother the co-principal and the leader of FORD (Kenya) party. I request that you stick to what concerns Kenyans about the Fisheries Management and Development Bill and leave what concerns CORD to us.

**The Temporary Speaker** (Sen. Sang): Sen. Kanainza, what is your point of order? You seem to be giving directions instead of raising a point of order.

**Sen. Kanainza:** Mr. Temporary Speaker, Sir, my point of order is that Sen. Murkomen should stick to issues of the Fisheries Management and Development Bill rather than discussing our Senate Minority Leader who is not in the House.

Thank you.

**The Temporary Speaker** (Sen. Sang): So, your point of order is that Sen. Murkomen is deviating from replying on the Bill and getting to political discussions relating to landing of one of the CORD principals.

**Sen. Kanainza:** Mr. Temporary Speaker, Sir, yes.

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

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, Sen. Kanainza has confirmed my worst fears that ODM sees itself in Kakamega as the big brother and that they cannot be threatened by FORD (Kenya) party. That is the fight I was talking about. In order to

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address issues of fisheries, we want the Senate Minority Leader to be in a safe environment with a clear mind without being harassed. I was only contributing to the issues that he had made on public appointments which had nothing to do with the Bill.

I said that the Senate Minority Leader should refuse the temptation of being an alarmist but in the same contribution, I said I am offering a good hand to him. Perhaps the reason why he diverted those issues is the disturbance that is in his mind when it comes to this question. He is unable to move from Bungoma to Kakamega and he wants to lead the whole country. How can you be the president yet you cannot land in Kakamega? It is a sad affair. I have taken notice of what is happening in our country.

Mr. Temporary Speaker, Sir, it was in the same line that Sen. Kanainza said that I pointed out the Senate Minority Leader and I diverted the attention to raising political issues. I said, perhaps, it was because of the challenges he was going through.

Be that as it may, I agree with Sen. Kanainza that ODM is the big brother in CORD and the big brothers must take care of their young brothers. Allow your brother to launch his bid and maybe he will not go far. A young brother should not be harassed when we are in the leadership of this House.

Mr. Temporary Speaker, Sir, as a country, we must remain consistent in the things we raise. We should not oppose appointments because they do not come from our community or if they do, we do not agree with them politically. I have heard the Members from the CORD party when appointees are from western Kenya say that they are too old. When others are appointed, they say they are sell-outs.

We debated here for a long time when Hon. Eugene Wamalwa the Cabinet Secretary for the Ministry of Water and Irrigation was appointed. They said Hon. Wamalwa is selling the community and when Noah Wekesa was appointed, they said he is too old. When Ronald Osumba was appointed, they said he is too young. Therefore, we do not know exactly where they are. We should be consistent as leaders when others are appointed to serve in some positions and give them the opportunity to serve. We should have national interest and not be led by tribalism or nepotism and appoint people with expertise that represent the face of Kenya. Therefore, it is important to remain conscious of the constitutional requirement that we should have the face of Kenya represented as a whole. Someone today may head the Kenya Fisheries Service and another heads another parastatal in the same Ministry but when you look at the Ministry as a whole, it should have the face of Kenya.

Mr. Temporary Speaker, Sir, in the wake of terrorism, it is important that we protect our borders. I congratulate our Cabinet Secretary in charge of the Ministry of Interior and Coordination of National Government, the Inspector-General of Police and the Commander of the Kenya Defence Forces because they have done a good job. We know we are facing serious terrorism threats. Terrorism is no longer the fight of one country. Our soldiers suffered a major setback a few months ago but we were not discouraged; rather, we moved forward. The work they are doing in Somalia is fantastic. There was a time when fishing and sea transport was affected as a result of terrorism but because of the intervention of our defence forces, we now have a country that enjoys peace.

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I pass my condolences to those who suffered in the Belgium attack both at the airport and the Metro Station. When I watched the pictures stream, it could have been any of us. It is an international airport and anyone can travel through Brussels. The casualties were not from Belgium only. They were from other countries all over the world. Therefore, terrorism is a global threat. We must be vigilant and increase the surveillance in our exclusive economic zone and ensure that the seas and lakes are not misused for purposes of attacks.

Mr. Temporary Speaker, Sir, one factor that undermines security is corruption and love for money. Love for money did not start today; it started with Judas. There are those who are willing to sell their brother and country for 30 pieces of silver. Once that is done, one cannot enjoy the 30 pieces of silver because after the attack of schools or churches, any of us including the accomplice or his or her children and relatives can suffer as casualties. The amount is nothing compared to the integrity that one would have kept in order to and live in peace with neighbours.

The security mechanisms that are provided in the Bill are useful and coordination of the security sector is important in ensuring the safety of the country and territorial waters. I commend the Inspector-General of Police for working in coordination with other security machinery. Since Inspector-General Boinett took over the command of the Police Service, there has been a lot of improvement in sharing information to pre-empt violence and communicating them to the public. Gone are the days that we used to have uncoordinated communication of information and sometimes, they were confusing. Nowadays, there is a lot of coordination and we should move in that direction.

Mr. Temporary Speaker, Sir, there was a report the other day that stated that our police service is corrupt. We must balance between the alarmist statements that we say about the sectors even if it is about corruption. I like what the Cabinet Secretary said. He said that Kenyans should stop bribing the police. If the supply is stopped, there is no demand side. If all of us stop bribing the police, we will not be complaining. However, Kenyans are not willing. When a motorist is overspeeding, he is not willing to be arrested but chooses to bribe. Therefore, we are the ones who create the demand. We should take the responsibility that we are the ones creating the menace and should take steps to address it in the manner in which it must be tackled.

The other issue about corruption is the fact that we are no longer interested in solving the problem or punishing the corrupt people. What we are interested in is, for instance, where someone wakes up one morning and says: "We saw Sen. Kanainza taking tea with someone being suspected of this and that" and that is enough news. You could also find a story headlined: "A Senator found taking tea with a Eurobond suspect", if there is anything like "Eurobond suspect". You may find that Senator going around answering questions on things that are not crucial.

Mr. Temporary Speaker, Sir, we must tackle that. I become very sad when I see what is happening in the youth sector where there is purported corruption in the National Youth Service (NYS) regarding the Youth Enterprise Development Fund (YEDF). A colossal amount of money has been wasted. The money would have gone to develop the fish sector to boost the livelihoods of fishermen in Migingo, Kisumu or Mombasa who

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wake up at night when we are asleep.

There is a man who went somewhere and said that the people of area x are lazy. He was asked why he thought they are lazy and he said that they sleep the whole day. He never cared to find out that fishing is done at night. So, those people do their work at night and relax during the day waiting for another night to do the same. Such hardworking people deserve to be protected by us, by ensuring that we do not have a corrupt regime.

I want to insist that we cannot fight corruption as Government versus the opposition. We cannot fight corruption as the intellectual versus those who never went to school. Each one of us must take that responsibility to close doors to corruption. If you are a businessman or a supplier and you know that you influence companies to take tenders in the wrong manner, you must stop supplying things by means of corruption. You will find that such people are public officers who tell others that a tender is worth Kshs10 billion and they could make Kshs500 million, for example. Both Government and private sectors must deal with corruption so that we make it a thing of the past and make our country beautiful again.

The last issue I want to put across is that our counties must not use the fact that the national Government is tackling corruption as an excuse to perpetuate and continue with corruption. Every time we have asked questions as Senators, we have been told not to ask questions. Instead, they have asked us to deal with corruption in the national Government. The bad manners of the national Government must not be devolved. Corruption was not one of the functions to be devolved. Our counties were supposed to start on a clean slate.

As Sen. (Prof.) Lonyangapuo has said, over and over again, when you go to the local area, you will find people running around with big cars threatening other people with elections. The British Ambassador to Kenya, Mr. Edward Clay, said that they have eaten everything that we devolved and now they are vomiting on our shoes because they do it so openly in the presence of everybody else. You cannot explain how certain things happened.

It is important that as we continue doing our oversight work as Senators---. This is something that Sen. Cheruiyot needs to put a lot of focus on in his county, because there was a lull period between his predecessor being appointed and the time he came. You never know what has been happening. So, he also needs to move with speed in Kericho to find out what exactly has been happening and if the resources have been used well because all of us have a responsibility to do matters of oversight. If we do that, we will have a beautiful country.

**The Temporary Speaker** (Sen. Sang): Sen. Murkomen, why are you directing that to Sen. Cheruiyot and not any other Senator, for example, Sen. (Prof.) Lonyangapuo or Sen. (Prof.) Lesan?

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, the rest of us have been in this field continuously and have even learnt the ropes. Some Members of this House have decided that they want to be the change themselves and go back to counties. The Senator for Kericho has just been elected and, as I said, there was lull. I know you have been a

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serious crusader against corruption in Nandi County.

The other day I read in the newspapers that the people of Nandi County are even driving you to be the governor. Sen. (Dr.) Khalwale who has been chairing the Committee on County Public Accounts and Investments, a very fierce defender of county resources, has now decided that he wants to go there himself to be the change that the people of Kakamega County want. Luckily, he is not part of the people who have been denied the chance to land in Kakamega County but his neighbour has a small problem.

As Senators, we have the opportunity to fight that vice called corruption. Those of you who will go there and those of us who ---

**The Temporary Speaker** (Sen. Sang): Sen. Murkomen, are you sure that Sen. (Dr.) Khalwale is not one of the passengers in the plane?

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, so far as it has been reported, it appears as though it is actually him that is trying to invite another visitor who is a Member of this House and there is a lot of frustration. As Sen. Kanainza said earlier, there is a threat that that visitation is bringing on a sister political party or a bigger brother as she said. Those are in-house things that they have to deal with.

However, should he become the Governor of Kakamega County, I have some little hope that there will be no wheelbarrows to be purchased for over Kshs100,000. If there will be, I will be here to summon him the way he has summoned all governors in this country to answer for accountability of resources. I have that faith. Your people are crying that you should be the Governor of Nandi County. Should you go there, I will have some faith that there will be a lot of good work that will happen there because of the manner that we have worked together. If you dare, we will also summon you.

I beg to move.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I do not know whether it is still valid but I wanted to tell my neighbour that he should be forthright. He is the one who has been “admiring” to be the governor and not you. I know him.

**The Temporary Speaker** (Sen. Sang): Senate Deputy Majority Leader, you have just replied. You know the procedure; that what should follow is a vote. However, you need to do the needful.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, just as a supplementary ---

**The Temporary Speaker** (Sen. Sang): No, just proceed to ---

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, as the tradition has been and as has been ruled by the Speaker before, that when we do not have the numbers, the day for Division will be determined by the Speaker. This is because this is a Motion that affects counties.

I, therefore, beg that the question be put at a later date to be determined by the Speaker.

**The Temporary Speaker** (Sen. Sang): Granted.

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

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, with all due respect to the

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distinguished Senator for Elgeyo-Marakwet, if he has a point of order which he wants to use to move the House, that the vote be taken another day, then he should go right ahead instead of mentioning something called tradition. There is nowhere in these Standing Orders where it has been provided that there is tradition that we will *blah blah blah*. He should just stand, I think on Standing Order No. 54(3). He is completely out of order.

(Laughter)

**The Temporary Speaker** (Sen. Sang): Sen. (Dr.) Khalwale, it is only the Chair who can pronounce any Member to be out of order. On that particular one, you are out of order. On the initial one, Sen. Murkomen, you know that it is just a procedural request that you have to make.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, Standing Order No. 54(3) is clear. It is a Standing Order that has been used over and over, and has become a tradition. The Speaker has ruled on that matter including setting aside Wednesdays in the past for the same reason.

**The Temporary speaker** (Sen. Sang): Okay, so granted. We are done with order No. 13; we will proceed but, Sen. (Dr.) Khalwale!

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, it is important that the rules of this House be followed. According to what Sen. Murkomen has just said and the HANSARD will bear me out, he was attempting to move the House under Standing Order No. 54 (3).

That Standing Order is very clear that:-

“Despite paragraph 2, the Speaker may, on the request of a Senator defer”.

The Senator for Elgeyo-Marakwet has not made any request. He has just said:-

“According to Standing Order No. 54 and it has been the tradition of this House”.

Mr. Temporary Speaker, Sir, because of his youthfulness, allow me to train him; that he should have said that:-

“Mr. Temporary Speaker, Sir, I rise under Standing Order No. 54 (3) to request that the vote be deferred”.

Until he says that, how will the Speaker know whether he is inventing rules that are being practiced in the County Assembly of Elgeyo-Marakwet and bringing them here?

**The Temporary speaker** (Sen. Sang): Senator, we have gone through this over and over but the Senator has requested the deferment of putting of the question to another day and I direct that the putting of that question will be done tomorrow.

Next order!

## MOTION

### ADOPTION OF MEDIATION COMMITTEE ON THE MINING BILL (NATIONAL ASSEMBLY BILL NO. 9 OF 2014)

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THAT, the Senate adopts the Report of the Mediation Committee on the Mining Bill (National Assembly Bill No. 9 of 2014) laid on the Table of the House on Tuesday, 15th March, 2016.

**The Temporary speaker** (Sen. Sang): The mover of the Motion is not present, so it is deferred.

*(Motion deferred)*

Next order!

## BILLS

### *Second Reading*

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

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, you remember that this is a Bill that mirrors what we passed in this House already and which was moved to the National Assembly. We are part of a mediation over another Bill with the mover of this Bill, Sen. (Dr.) Khalwale and he communicated. I think I should have also told our Whip. We agreed that when we finish that mediation, we consult with the National Assembly team which is the Justice and Legal Affairs team dealing with the same Bill and know how to handle this issue where two Bills, one had already been passed by this House and went to the National Assembly but was ignored completely. Another one is brought here.

Mr. Temporary Speaker, Sir, what proper mechanism should we use? Should we have used the other Bill that was passed earlier by the National Assembly so that these issues are incorporated? So, if we go for recess, by the end of the recess we should have finished the consultations so that it can be brought and the Senator for Kakamega will be satisfied that the Senate is not undermined by the process.

**Sen. (Dr.) Khalwale:** On a point of information!

**The Temporary speaker** (Sen. Sang): Who do you want to inform, Sen. (Dr.) Khalwale, and yet Sen. Murkomen is done?

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir---

**The Temporary speaker** (Sen. Sang): Order Senator! Let us hear Sen. (Prof.) Lonyangapuo's point of order and we will come to you.

**Sen. (Prof.) Lonyangapuo:** On a point of order Mr. Temporary Speaker, Sir. I want to concur with the Deputy Leader of Majority in the sense that the same replica Bill was done nearly two years ago and the mover is there. This is Parliament and Parliament has procedures. If the other House has rejected it, let it come. So, we cannot bring a copy of the same. In English, they call it plagiarized. We cannot deal with such a version until we are done procedurally with the other one.

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Mr. Temporary Speaker, Sir, I support that we step this one down until we hear where the life of the other has reached.

**Sen. (Dr.) Khalwale:** On a point of information, Temporary Speaker, Sir. For purposes of setting the record straight, whereas the Senate Deputy Majority Leader is right, allow me to inform you that we seem to be getting mixed up. The Mediation Committee in which you and I sit is dealing with the Political Parties Act for funding of political parties. We have agreed on the Bill by hon. Wamalwa, which is also a photocopy of mine.

We have had consultations and agreed to move forward. As far as this is one is concerned, it is a different problem but very similar. I want to agree with you that we stand it down and thank Sen. (Prof.) Lonyangapuo for seeing the importance of standing it down.

Given that Sen. (Prof.) Lonyangapuo is a holder of PhD, he appreciates the meaning of Intellectual Properties Right. It is a serious thing which is recognized internationally. Therefore, if we step it down, we will be able to sort it out between us and hon. Keynan.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I want to thank the Deputy Majority Leader and the Senator for Kakamega who was the originator of the Bill. As we step down this Bill in a political process, the National Assembly should understand that while we bring Bills in the National Assembly or the Senate, it is always important to appreciate the originator of the Bill and the amount of work they have put in and resources they have used to do research or draft those Bills.

One of the things that the Constitution did not envisage is how to deal with such a scenario. Such a process leaves us wondering what legal process to follow. We now need the goodwill of both Houses to sit down and agree. I hope the Speaker will sit down with his counterpart from the National Assembly and deal with this once and for all.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, I agree with the Senator for Kakamega that we are dealing with a different Bill. I had mentioned it as a different Bill and said that in that context, this is one of the things to be addressed. One way to solve the impasse is basically to continue with this Bill and amend it 100 per cent to fit into what Sen. (Dr.) Khalwale has said and then go to mediation and solve this problem.

If the consultations fail, we can amend the whole thing. But before we go there, we accepted from the word “go” that since we are the “Senior House”, we will take the higher road and have already put ourselves in a higher pedestal. We will attempt to do that negotiation and if it fails, we will follow the second route to resolving that issue which is just amending the Bill.

We do not have to come here and debate the whole day. The Committee that is concerned should sit down and bring Sen. (Dr.) Khalwale’s amendments and pass them in one afternoon so that we can have mediation and solve this problem.

**The Temporary Speaker** (Sen. Sang): With that information, I direct that Order No.15 be deferred until the consultations are concluded and the matter is taken before the Rules and Business Committee for further directions.

*(Bill deferred)*

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*Second Reading*THE ORDER OF PRECEDENCE AND TITLES BILL  
(NATIONAL ASSEMBLY BILL NO. 11 OF 2014)*(Bill deferred)**Second Reading*THE COUNTY GOVERNMENTS (AMENDMENT) (No. 4) BILL  
(SENATE BILL NO. 18 OF 2014)

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, it gives me great pleasure to move this Bill which has been pending for a time to facilitate consultations. We have consulted widely on some of the issues that are here. As we move forward, I request Senators to assist us in bringing their thoughts towards making it a better Bill.

I brought these amendments partly in my capacity as the Chairperson of the Committee on Devolved Government based on the petitions that came from the deputy speakers and governors across the county. This Bill basically captures the responsibilities of the two institutions; recognizing the office of the deputy speakers and governors in the counties.

Sen. (Dr.) Khalwale and I experienced an initial preliminary objection---

**The Temporary Speaker** (Sen. Sang): Order, Sen. Murkomen. You need to move the Bill.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, I beg to move:-

THAT, the County Governments (Amendment) (No. 4) Bill  
(Senate Bill No. 18 of 2014) be read a Second time.

Some of the amendments were as a result of experiences that we went through, part of it being the impeachment of Governor Wambora where I gladly deputized Sen. (Dr.) Khalwale. We did a fantastic job although the people of Embu County were dragged through courts in the name of people weakening the Senate. There are still other cases pending in courts related to the same matter. However, I am glad that we have been vindicated. A report that came out recently showed that Embu County is one of the most corrupt counties; so is Murang'a County. That means that our judgment was not wrong. We can be taken round in circles, but we were not wrong. We made our point then and the seeds that we sowed at that time will be reaped by the people of Embu County in the next elections because we helped them identify who can and who cannot be a good leader.

As a result of that experience, we ended up having certain suggestions; one of them being that there was no provision in law as to the removal of a deputy governor. Therefore, we want to put it here succinctly as it is. The deputy speakers in the counties

have also faced a number of challenges in the counties where some people wanted to challenge their offices on account that they are not provided for in the Act. Therefore, the first amendment in this Act is the amendment of Section 7 of the County Governments Act and creating the office of the deputy speaker for each county assembly who shall be elected in accordance with the Standing Orders from among the Members of the County Assembly (MCAs).

Mr. Temporary Speaker, Sir, this is an important process because there might come another time in future that someone may go to court to challenge the existence of the office of the deputy speaker. Therefore, for avoidance of doubt, we thought that it is important to organize this office of the deputy speaker and recognize it in law. You will realize that as a result of this provision, I have suggested another amendment to the Intergovernmental Relations Act so that there is a caucus that captures the offices of the deputy speakers and governors so that they can have national recognitions and not according to the various Standing Orders of counties.

County assemblies are very important although many people take them for granted. County assemblies are the place where we can make or break the county government. I go to social places and I have heard people say that the MCAs are useless people and those county assemblies should not exist. There are few MCAs across the country who have given that office a bad image because they have refused to be servants of the people at the county.

They have refused to recognise the importance of their offices in the counties and what it means for the development of our counties yet we are here presiding over an institution that oversights these counties. So, it is important that they have a strong office of deputy speaker that can deputize the speaker when is there and when he is not presiding over the House and ensure that it is running. In some places, because of educational challenges - when we went to some counties, we were told of a story of people saying in another county, "let us just talk without following the Standing Orders because people get tired."

If you get one educated person who is clever, sharp and alert like Sen. (Dr.) Khalwale and raise a point of order, they wonder under what Standing Order you are raising that point of order. So, many of them get confused because they did not go through the necessary orientation or they have no capacity of appreciating the Standing Orders. One of them just stood and said, "Madam Speaker, can we just talk without this thing called Standing Orders?"

Therefore, we need an institution of the deputy speaker that is recognised by law so that the position can inform the manner in which the House is being run. It should be recognised nationally. There might come a time when someone will go to court to challenge the existence of that office.

Mr. Temporary Speaker, Sir, the second amendment is in relation to the removal of the deputy speaker. The deputy speaker should not feel like he or she cannot be removed. The procedures that are provided for in Section 11 of the principal Act, the County Governments Act - we want to insert and recognise, just like in the deputy governor's situation that a deputy speaker can be removed in the same manner that a

speaker is being removed.

It will also provide for national norms and principles that will guide the removal of the deputy speaker because nothing stops some county assemblies for purposes of achieving mischievous ends in their Standing Orders, they can attempt to change the manner in which a deputy speaker is being removed and say, "By a third of the county assembly." We bring this amendment to the parent Act, the County Governments Act, for posterity so that if one wants to interfere with the Standing Orders of the county assembly to make it easier to: - remove deputy speaker, be manipulated, be cajoled and intimidated, then, it would be a bit more difficult because we have national norms and standards that cut across all the counties in relation to the removal of a deputy speaker. So, it is a straightforward provision on the recognition of the office of the deputy speaker and the removal of the deputy speaker.

The fourth amendment deals with a matter related to the functions of the governor. Clause 30 outlines the functions and responsibilities of a county governor. You will realise that in No.1, he takes the oath of office then he does certain things. Sub Clause 3 states that the governor will provide leadership in county governance and development, provide leadership to county executive committee administration based on county policies and plans, promote democracy, good governance, unity and cohesion within the county, promote peace and so on.

In performing all the functions of a governor under Clause 30(2), the governor should consult the deputy governor. There is a reason for this. The experience we have so far is that many deputy governors go to the office, read newspapers and go home. The deputy governors were elected by the people as part and parcel of the governorship just like in the national level, the presidency. It would be dangerous if you had a president who does things without consulting the deputy president.

The reason why consultation is an important factor – it is all over our Constitution - is because, for example, the issue of Machakos, a governor wakes up in the morning, does not tell his deputy governor where he has gone, does not hand over instruments of office to the deputy, God forbid - he goes for over a month out of the country, you cannot hold county executive committee meetings because the deputy governor is less recognised by the county.

Therefore, it is important that when you choose a person to be your deputy governor, you must also accept to live with that person. You cannot just waste a person's career for five years doing absolutely nothing, being unrecognized in any way. Consulting is not agreeing but it is important---

Mr. Temporary Speaker, Sir, my time is over. I will continue from there.

**The Temporary Speaker** (Sen. Sang): Sen. Murkomen, who has told you your time, is over?

*(Sen. Murkomen gestured at the lights at the Table)*

It is okay, it has just ended right now.

Sen. Murkomen, you have a balance of 51 minutes to move your Bill the next

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time it appears on the Order Paper.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Sang): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The Senate stands adjourned until tomorrow, Thursday, 24<sup>th</sup> March, 2016, at 2.30 p.m.

The Senate rose at 6.30 p.m.