

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 2nd November, 2016

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

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

PRAYERS

PETITIONS

The Speaker (Hon. Ethuro): Hon. Senators, I have a Petition from three residents of Busia County concerning non-payment of dues by Madam R Enterprises Limited and the County Government of Busia.

Hon. Senators, pursuant to Standing Orders Nos.220 (1) (a) and 225(2) (b), I hereby report to the Senate that the Petition has been submitted through the Clerk by three residents of Busia County concerning non-payment of dues owed to them by Madam R. Enterprises Limited and the County Government of Busia.

In their Petition, the petitioners state the following:-

(a) That in April 2014, the County Government of Busia entered into a Memorandum of Understanding (MOU) with Madam R. Enterprises on solid waste management in Busia County. At the time, it was presented to the County government by Madam R. Enterprises Limited was a German Company.

(b) That consequently the petitioners were approached by the County Government of Busia and employed on a three year contract term by Madam R. Enterprises Limited.

(c) As it later turned out, the County Government of Busia was duped into entering into the said MOU and that Madam R. Enterprises Limited was indeed a Kenyan firm.

The County Government of Busia lost a sum of Kshs8 million which had already been paid to the said firm.

(d) That the petitioners had quit their well-paying jobs and secured employment with the said firm at the behest of the county government and have suffered loss as they have not been paid or reimbursed expenses incurred from the date of employment.

(e) That petitioners launched a Petition with the Busia County Assembly which found in their favour and recommended that the County Government of Busia compensates the petitioners within 30 days of the adoption of the report by the County Assembly on 2nd March, 2016.

(f) Despite their efforts, the County Government of Busia is yet to compensate or settle the dues owed to the petitioners.

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Consequently, the petitioners pray that the Senate investigates this matter and make appropriate recommendations thereon.

Hon. Senators, pursuant to Standing Order No.206, I shall now allow comments, observations or clarifications in relation to the petition for not more than 30 minutes.

Sen. Ndiema: Mr. Speaker, Sir, from what has been read, it is not coming out clearly whether the claimants are employees of the County Government of Busia or are employees of Madam R. Enterprises. There seems to be a grey area here.

Sen. Billow: Mr. Speaker, Sir, the issue of county governments failing to settle debts incurred by suppliers or creditors is very common. This House has seen in the petitions that have come before it pending bills in some of the counties of up to Kshs2.5 billion. We saw it in the case of Murang'a, and I am sure every Senator who sits here knows that in their respective counties, there are pending bills that run into billions. In my own county, the pending bills are estimated to be somewhere between Kshs4 billion to Kshs5 billion.

Contractors who either supplied goods or services in 2013 and 2014 are still waiting for payment. No justifiable reason has been given. There is a system the Government has put in place called the IFMIS, where on the basis of work done, if that system works and the information is fed in properly, you should be paid on the basis of who did what.

Secondly, when you apply for requisition from the Central Bank of Kenya to the operational accounts of the county governments, the Controller of Budget must be provided with information on the basis of specific activities for which you want that money. Under the PFM Act, there should be not a single debtor. However, some of the county governments are mischievous and incompetent in terms of meeting the requirements of the suppliers. This is one example where a supplier has struggled through the county assembly and has now come to the Senate to seek redress.

It is important that we send a message to the county government that they must settle the dues of the suppliers. We have had suppliers and contractors demonstrating in many parts of this country for their money that has not been paid. I think this is a matter that we need to deal with seriously.

Sen. (Dr.) Machage: Mr. Speaker, Sir, it is true that many suppliers to country governments all over the country have problems. I am concerned that the Senate should be used as a court of appeal on matters that have been passed by county assemblies. There is a lacuna in the law on that particular issue, whether an issue that has been dealt with by the county assembly can be appealed at the Senate level.

All said and done, every member of the public as per the Constitution has that latitude to petition the Senate on any matter. We can hang on that and arbitrate.

Sen. Khaniri: Mr. Speaker, Sir, at the outset, let me thank the petitioners for exercising their constitutional right of petitioning the Senate. I sympathize with this case.

As Sen. Billow said, it is not an isolated case. Cases of pending bills where counties owe contractors and suppliers monies are wide spread. In my own county of Vihiga, we have pending bills totaling to about Kshs2.2 billion. One wonders because our laws are very clear that expenditure can only be done on items that have been budgeted for. When pending bills cross over from one financial year to another, then you wonder whether those items were budgeted for.

What is disturbing about this particular petition is that the petitioners had petitioned the County Assembly of Busia which pronounced itself on the matter. It recommended that the petitioners be paid within 30 days. The Senate Committee that is going to look into this matter must delve deep into it and find out why the county executive did not honour the resolutions of the county assembly and without even reverting to them to explain why they could not honour that resolution.

Mr. Speaker, Sir, the Legislature must be respected. It must have its place as provided for in the Constitution. It is important that the executive at the national level and at the county level respect decisions of the legislature.

I support and urge the committee that will deal with this matter to expedite it so that those Kenyans can be able to get justice.

Sen. Haji: Mr. Speaker, Sir, the matter being discussed is serious---

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. I was going to raise this point of order later on until you gave the opportunity to the distinguished Sen. Haji who I respect so much.

We have rules in this House and I want to make a ruling on the dressing of Sen. Haji who is on sandals. I have no problem with the upper dressing because you have already made your pronouncement on that earlier. Are sandals allowed in this House?

Sen. Haji: Mr. Speaker, Sir, I am not wearing sandals; I am wearing shoes. Of course, I do not have socks but I have a reason and I do not need to explain that. I have come from an overseas trip and, therefore, it is in order for me to wear the sandals.

However, this matter as far as payment to contractors is concerned is very serious. This is happening in many county governments including my own county government. A petition is lying in this House where the County Assembly of Garissa recommended that money should not be released as long as the current Governor is still in office. I foresee as we go to the elections, these matters will be left pending, new governors will be elected and they will not feel obliged to pay those debts because it was erroneously incurred by another governor.

Mr. Speaker, Sir, in view of this, this House should take this matter very seriously, whether it has been dealt by the County Assembly of Busia or not. So long as the petition is with us, we need to deal with it.

The Speaker (Hon. Ethuro): Hon. Members, on the issue of whether Sen. Haji is wearing shoes or sandals, of course, sandals are not allowed. He has told us he is wearing shoes. I am just wondering what to do; whether it should be laid on the Table for us to demonstrate.

(Laughter)

However, knowing the other condition that he has stated, I submit that whatever he is wearing is supposed to be convenient for that particular purpose. Therefore, he will be exempted on the basis of that condition.

Sen. Wangari: Mr. Speaker, Sir, I join my colleagues in congratulating the petitioners by using this route to bring this issue to this House. The Controller of Budget has put the amount that is owed as pending bills to Kshs37 billion around the counties. It is quite a huge amount. We have had to deal with it even at the County Public Accounts

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and Investments Committee (CPAIC) with very many counties including Busia. There is no single county without this problem of pending bills.

Concerning the issue of county assemblies, we have had county assembly committees who have requested to sit with CPAIC because they have made recommendations that have been ignored by the executive. In committing this petition to the relevant committee, one of the resource persons we should endeavor to call in the committee sitting should be the county assembly committees. If a petition has been executed, why are these decisions being ignored? We have the case of Siaya County in CPAIC. They came and told us of a decision they took as a county assembly committee and it was ignored.

There is a problem around the country of ignoring the decision of the county assemblies and their committees. These petitioners have done the right thing. They had gone to the assembly as the primary area for petition. However, it did not work out. Therefore, in dealing with this petition, we should help the county assemblies to ensure their decisions are adhered to by the county executive. We need to set these systems rolling.

Again, the one reason why these petitioners are bitter is because we have had upside down priorities in the spending of money in many counties. We have had billions being sent to the Council of Governors' office (CoG) at Delta House that are not even provided in law. Yet, there are suppliers who have done work in the counties and have not been paid. This is something we have to deal with. One can understand the fever and the pressure they have. The elections are around the corner and they know what will happen to the monies they have worked for.

Moving forward, we must look as a Senate on how we deal with local revenue. The CoG has said that the one issue that has contributed to pending bills is the fact that monies are disbursed late by the National Treasury. However, when we sit with the Cabinet Secretary for the National Treasury, we also hear the issue of local revenue collection in the counties. There is no county operating at optimum. These are some of the issues we need to look at.

I congratulate the petitioners and I hope the direction that you gave of 60 days will be adhered to. The other history we have with petitions is that they take too long and lose meaning. I hope the committee that gets this will expedite it, get the action and report out on time.

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

Sen. Karaba.: Mr. Speaker, Sir, I congratulate the petitioners for doing what they have done. What they are doing is what this Senate should have done earlier. We should have found it fit to take the matter even further and discipline the executive of that county. That is our mandate. For the petitioners to come here, they are telling us that we are sleeping on our work. This is caused by the inefficiencies that we have due to various reasons. For example, they say they are grounded and cannot move or that they have no offices, no facilitation funds or even computers.

This is not the only county with this problem. The problems are in many other counties. A committee which is responsible for handling this petition should come up with something detrimental which will make the executives in all counties in the country to adhere to. That would make it possible for implementation of what the assemblies

discuss without wasting time. Therefore, I thank them for forwarding the petition and I hope it will be done as fast as possible.

The Speaker (Hon. Ethuro): Hon. Senators, pursuant to Standing Order No.227(1), the Petition stands committed to the relevant Standing Committee; in this case the Standing Committee on Labour and Social Welfare. All those issues that the Members have raised will be looked into by the Committee. I am convinced that the matter can be considered by the Senate. That is why I have read the petition.

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

PAPERS LAID

THE 2016 BUDGET REVIEW AND OUTLOOK PAPER FOR THE FY 2017/2018 MEDIUM- TERM BUDGET

Sen. Billow: Mr. Speaker, Sir, I beg to lay the following Paper on the Table:-
The 2016 Budget Review and Outlook Paper for the year 2017/2018; the Medium-term Budget.

(Sen. Billow laid the document on the Table)

STATEMENTS

LEADERSHIP CRISIS AT MOI UNIVERSITY

The Speaker (Hon. Ethuro): Hon. Members, we are on the last page on the Order Paper; Statements to be issued.

Where is Chairperson of the Standing Committee on Education? I do not see the Member who requested for the Statements. We can give it some time.

VISA PROCESS RECIPROCITY ARRANGEMENT BETWEEN KENYA AND SWITZERLAND

That Member is also not there.

CONSTRUCTION OF THE NORTHERN CORRIDOR WATER COLLECTOR TUNNEL

Chairperson of the Standing Committee on Lands and Natural Resources. Sen. Njoroge is in the House.

Proceed, vice chairperson, Sen. Khaniri!

Sen. Khaniri: Mr. Speaker, Sir, I want to report to the House that I have just received this Statement 30 minutes ago. In our usual practice in the Committee, we would want to deliberate on the Statement as a Committee before we can deliver it. With your

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indulgence, you could give us up to next week to go through the Statement before it can be delivered to this House. Otherwise, we have the Statement. It was received in Parliament on 28th October, 2016 but I have just received it 30 minutes ago.

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

Sen. Njoroge: Mr. Speaker, Sir, I have no problem. I pray that probably the Statement should be delivered on Tuesday next week.

Sen. Khaniri: Mr. Speaker, Sir, we will endeavor to meet on Tuesday morning as a Committee. Hopefully by afternoon, we should deliver the Statement. Therefore, Tuesday is okay with us.

The Speaker (Hon. Ethuro): The Statement will appear on the Order Paper on Tuesday next week.

STATUS OF THE CONSTRUCTION OF THE KIRINYAGA SEWERAGE PLANT

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

Sen. Sijeny: Mr. Speaker, Sir, if I remember correctly, you had ruled that this request for statement be directed to the right committee. It does not concern the Committee on Roads.

The Speaker (Hon. Ethuro): Sen. Sijeny, what did you say?

Sen. Sijeny: Mr. Speaker, Sir, the last time this request for statement came up, we were told that the Ministry does not deal with it. You gave a direction that it be taken to another committee.

The Speaker (Hon. Ethuro): Let us establish it.

Sen. Karaba: Mr. Speaker, Sir, my shock is that this question has been here for the last two months. If we are going to establish which committee is going to handle it now, we are already very late. If that is true, it would set a very bad precedence in the sense that we cannot decide quickly which committee should handle this. I am a bit disturbed. A ruling would help for future requests such as this.

The Speaker (Hon. Ethuro): Sen. Sijeny, approach the Clerks-at-the-Table. We have no information to verify your assertions. However, just approach them and they will assist you.

(Sen. Sijeny approached the Clerks-at-the-Table)

In the meantime, Sen. Karaba, bear with us but we will communicate shortly. That should bring us to the end of Statement hour.

An Hon. Senator: We still have Statement (e).

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

PROLONGED DROUGHT DISASTER AND
LOOMING FAMINE IN THE COUNTRY

Sen. Mositet: On a point of order, Mr. Speaker, Sir. Even though the Senator who sought the Statement is not present, this is a very important statement because it affects the whole country and we know the seriousness of the issues the Statement could be carrying. So, I request that it is issued so that the House deliberates on it.

PLIGHT OF RESIDENTS OF KASARANI MALEWA WARD
IN GILGIL CONSTITUENCY

Sen. Wangari: On a point of order, Mr. Speaker, Sir. I had asked for a statement on the plight of residents of Kasarani Malewa Ward in Gilgil Constituency and it was on Order Paper yesterday but the committee leadership was not in the House. I was hoping that it would be there today because it is an issue that is quite critical. I hope you will give the way forward on the same because it was due yesterday.

Sen. Haji: Mr. Speaker, Sir, in support of Sen. Mositet, Sen. Bule did well to ask for this Statement. Unfortunately, the effect of drought will not be waiting until he comes to the House. I request that you allow the Statement to be issued so that we say something about it.

Sen. Murungi: Mr. Speaker, Sir, I also rise to support Sen. Mositet. People are dying even as we are speaking here. This is not a matter that concerns only Sen. Bule but it is a matter affecting this country and the Statement is the property of the House. Therefore, could you allow it to be given so that we can save lives in this country?

Sen. Karaba: Mr. Speaker, Sir, much as I support that the Statement should be issued today because we are here and some of us are victims of what is happening out there, I had also sought a statement which is almost related to this one the previous week. Since I was not in, the statement was deferred. It was on distribution of fertiliser and certified seeds. I am now back, and I am appealing to you to have the statement reinstated.

Sen. (Dr.) Machage: Mr. Speaker, Sir, although a precedent has been set in this House that the questioner must always be in the House when his or her question is being answered, this particular question touches on the real problem in the country currently. That precedent can still be interfered with using your own powers under Standing Order No.1. We need the Statement to be issued.

The Speaker (Hon. Ethuro): Order, Members, let me dispose the easier ones first. Sen. Karaba, your statement will be reinstated to appear on the Order Paper on Tuesday next week, and I hope you will be present. Sen. Wangari's statement should appear on the Order Paper tomorrow.

Regarding the most popular statement, I have the following to say. First, we have established a precedent where a Member who seeks for a statement is usually present when it is being given. That includes some of the statements today. I want us to give the Member that benefit. Since it appears that he was speaking for all of us, why do we want to deny him a chance when all of us are interested? So, let us give him another chance

within 24 hours, so that we will have the statement given tomorrow whether he is present or not. At least, he has another chance to do so.

I would like to know if the Chair of the Committee on Devolved Government has a response.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, indeed, I do not have an answer this afternoon. However, I am in constant touch with the Cabinet Secretary (CS) for Devolution and Planning. He has acknowledged receipt of our requisition to get an answer. As he does so, he should know that the significance of this question is being felt throughout. I know he is actually preparing and compiling data from the rest of the country.

Last week, grain was released from Galana-Kulalu Food Security Scheme. Maize harvested last year was released to the people of Tana River and there is some grain being moved to various areas that are experiencing drought.

Mr. Speaker, Sir, the CS for Devolution and Planning has promised to give us an answer next week on Tuesday.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Your ruling a few minutes ago was an addition of only 24 hours to the period within which the answer must be delivered to the Floor of this House. Therefore, is Sen. (Prof.) Lesan in order to change your ruling without seeking for a proper prayer over the same?

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

Sen. (Prof.) Lesan: Mr. Speaker, Sir, when I came at 1.00 p.m., it is when I got the information which I have relayed to the House. By that time, I had not received your ruling. However, as you have ruled that we need an answer within the next 24 hours, I seek to be allowed to revisit the CS again and see whether I could bring an answer by tomorrow according to your ruling. I still urge the House to allow me to follow up and come with an answer next week as the CS has promised.

The Speaker (Hon. Ethuro): Order, Professor. You have seen, read, witnessed and felt the mood of the House and that is the mood of the country. The CS is on record because he publicly made the announcement. So, he has information of the state of play of his proposals or else he would not have pronounced himself on the same. I am, therefore, directing with finality that the Statement should be brought here tomorrow afternoon. In any case, it does not take eternity for a Government Department to compile a report. A report can be compiled in a day.

(Statement deferred)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF MEMBERS AND
STAFF FROM NANDI COUNTY ASSEMBLY

The Speaker (Hon. Ethuro): Hon. Members, I will like to acknowledge the presence, in the Speaker's Gallery this afternoon, of the visiting Members and staff from Nandi County Assembly. I request each member of the delegation to stand when called out so that he or she may be acknowledged in the great Senate tradition.

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1. Hon. Simeon Bor;
2. Hon. Joseph Lagat;
3. Hon. Francis Kemei;
4. Hon. Caroline Chepkoech;
5. Hon. Domtila Rop;
6. Hon. Sally Lelei;
7. Hon. Rhoda Chepkwony;
8. Hon. Monica Chepkemboi;
9. Hon. Amos Korir;
10. Hon. Julius Arusei.

They are accompanied by the following staff:-

1. Mr. Silas Koech and,
2. Mr. Emanuel Rotich.

On behalf of the Senate and on my own behalf, I welcome you to the Senate and wish you well for the remainder of your stay. I thank you.

(Applause)

Sen. Wangari: Mr. Speaker, Sir, I join you in welcoming the delegation from Nandi County. I specifically welcome Hon. Joseph Lagat whom together we founded the United Democratic Forum (UDF) Party right from the beginning. He was the representative of the party from the county. I hope that they will take home something from this Senate. They should learn what is good and discard what is not necessary.

Mr. Speaker, Sir, I thank you.

The Speaker (Hon. Ethuro): Order, Sen. Wangari, you must declare obvious interest.

Sen. Kittony: Mr. Speaker, Sir, allow me to join you in welcoming the delegation from Nandi County. I want to tell them that the Senate is the place to be. I believe they have listened to the deliberations of this afternoon about the drought situation in the country. I hope they will consider people who are suffering because of drought when they go back to Nandi and share what God has blessed them with. I hope they will take our greetings home and tell people that the Senate is the right place to learn and make devolution a reality.

The Speaker (Hon. Ethuro): Order, Senator! You are not on the microphone.

Sen. Obure: Mr. Speaker, Sir, I wish to join you in welcoming Members of the County Assembly of Nandi to the Senate. I had the opportunity to meet them this morning, when they came for consultations with the Senate Committee on Land and Natural Resources. I found them to be serious representatives since they were championing the concerns of the people of Nandi. We had serious discussions on fundamental issues relating to land. We hope to work with them to resolve a number of those issues that they raised on behalf of the people of Nandi.

As they join us this afternoon, I wish them success and hope that they will pick one or two things from this Senate, which will help them in their deliberations in the County Assembly of Nandi.

Sen. Chelule: Mr. Speaker, Sir, I also join my fellow Senators in welcoming the delegation from Nandi. We sat with them in the Committee on Land and Natural Resources and their contribution was impressive. It showed that they are here to represent the people of Nandi County.

It is my prayer that they will continue to articulate issues the way they did before our Committee. They are most welcome and when they go back, they should take our greetings to the people of Nandi County.

Sen. Karaba: Thank you, Mr. Speaker, Sir. I also take this opportunity to welcome the delegation from Nandi to the Senate. If they have been to the National Assembly, they will note that there is a difference. This is a serious House that listens to and appreciates visitors.

I was to issue a Statement with regard to Moi University which is located in Nandi. Even though we have already finished dealing with Statements, I would plead with you that we go back, because I have taken a lot of time to get the Statement. I would like to issue it now that we have the delegation from Nandi and the Senator who requested for it.

Sen. (Prof.) Lesan: On a point of information, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. (Prof.) Lesan, whom do you want to inform?

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I would like to inform Sen. Karaba.

The Speaker (Hon. Ethuro): He has already concluded.

Sen. Ndiema: Mr. Speaker, Sir, I believe he wanted to inform Sen. Karaba that Moi University is in Uasin Gishu County and not Nandi County.

I also want to join you in welcoming the delegation from the great County of Nandi. I wish to assure them that the Senate is here to protect and defend counties. They have already witnessed some deliberations concerning counties and how serious we are in trying to ensure that decisions of county assemblies are implemented to the letter.

Thank you, Mr. Speaker, Sir.

Sen. Njoroge: Mr. Speaker, Sir, I join you and my colleagues in welcoming these great leaders from Nandi County. I encourage them to be coming more often, so that they can learn more. I know that some of them will be the future Senators. I wish to let them know that the core business of this Senate is to protect counties and their governments.

More so, I want them to know that the Senator whom they sent to this Senate as their representative protects the interests of Nandi County. I hope to visit Nandi County to see what is happening as far as development is concerned, despite being denied the oversight funds.

Thank you, Mr. Speaker, Sir.

Sen. Sijeny: Thank you, Mr. Speaker, Sir. I also wish to commend the team which has come to visit the Senate. More particularly, I wish to congratulate and encourage the ladies to work hard. This is the place to be. Next time, we would like to have them elected as women Senators and not just Members of the County Assembly (MCAs). You are welcome.

Sen. Okong'o: Mr. Speaker, Sir, I also want to welcome this team and tell them that they have an able Senator who sits in the Speaker's Panel. He is also the Vice Chairman of the Committee on Legal Affairs and Human Rights, Chairperson of the Committee on Delegated Legislation. Above all, he came up with the famous Sang Bill,

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which could have brought sanity in the counties. However, the governors, in their wisdom or lack of it, decided to take us to court and the matter is still lying at the Court of Appeal. When that Bill is dispensed, it will bring sanity in the counties.

Sen. Sang: Mr. Speaker, Sir, I wish to join you and the Members of this House in welcoming the delegation from Nandi. I am excited that the MCAs, who are Members of the Committee on Land and Natural Resources in the county assembly found it fit, in their wisdom, to come to the Senate to meet the counterpart Committee in this House, a Committee that has a lot of interest in ensuring that the natural resources and land in this country are properly managed.

I am aware that Nandi County has a lot of challenges with regard to environmental issues and historical land injustices. The position and mandate of this committee from the county assembly is important in resolving a number of those things. It is commendable that they found wisdom to come and consult with the Senate Committee. All other committees in the County Assembly of Nandi and all the other counties must emulate them. However, I want to ask them to continue the fight of ensuring that devolution works not only in Nandi, but also in the entire country.

Mr. Speaker, Sir, it is of interest to all of us to note that almost all the 47 counties have already disbursed bursaries to children. However, the County Assembly of Nandi and I are aware that the County Government of Nandi has not disbursed bursaries. I urge them, through this Floor, to work hard and ensure that they push the county government to release every coin of the Nandi people's resources that have been allocated for bursaries, health and roads. The responsibility of this committee and the County Assembly of Nandi is to ensure that devolution works in Nandi.

Mr. Speaker, Sir, with those remarks, I wish to join my colleagues in urging them to learn the best practices from this House.

The Speaker (Hon. Ethuro): Order, Members. Since we did not make progress to the next Order, we will go back to the Statement that was sought by Sen. Sang. The Chairperson of the Committee on Education will issue the Statement.

(Resumption of Statements)

STATEMENT

LEADERSHIP CRISIS AT MOI UNIVERSITY

Sen. Karaba: Thank you, Mr. Speaker, Sir, for allowing me to issue this statement which has been overdue and has taken me a lot of time to search for it, and I am happy that I have succeeded. I can see Sen. Sang is here accompanied by his voters.

This statement is about Moi University which is the second largest public university in Kenya having been established in 1984. The university has a student population of over 52,000 and a staff complement of about 4,600 spread among its campuses. The university holds 15 schools, 11 directorates and 11 campuses. It has mentored six institutions which have developed into fully-fledged public universities.

Mr. Speaker, Sir, I wish to state that there is no leadership crisis – that was the first question – in Moi University. What we have is a transitional phase as the Council

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processes the replacement of the outgoing Vice Chancellor Prof. Richard K. Mibey who has served his mandatory two terms and he is ineligible for another term. The recruitment of the Vice Chancellor for Moi University like any other public university is guided by the provisions of Section 39 and 70 of the Universities Act 42 of 2012. The recruitment starts with the development of an intent which is done in consultation with the Cabinet Secretary (CS). The Council advertises the position, shortlists, interviews and notifies three candidates on basis of merit, regional, ethnic balance, gender, equity and forwards the same to the CS for consideration and appointment of any one of the three candidates. The CS has discretion which he can exercise including not picking any of the three candidates.

An hon. Senator: Wewe!

Sen. Karaba: Mr. Speaker, Sir, it is true that Prof. Laban Oyiro is the current Acting Vice Chancellor at Moi University. As a matter of fact, there are two substantively appointed Deputy Vice Chancellors; Prof. Okech and Prof. Kimengich. It is, therefore, not true to say that the Vice Chancellor and two of the deputies are holding office in an acting capacity. The other two deputy vice chancellors are facing disciplinary processes.

Mr. Speaker, Sir, the Moi University's Governing Council is still in the process of recruiting the Vice Chancellor. The process has not been completed. It only ends when the CS makes a substantive appointment. Given that the exercise is incomplete, it is premature to ask for the details of the candidates and their respective scores. The substantive Vice Chancellor shall be appointed as soon as the Council satisfies the provisions of the law and the accompanying regulations and the CS makes an appointment as per the existing procedure and law. In appointing a Vice Chancellor, the CS, besides merit, is also guided by the Constitution of Kenya, 2010, the principles and values in Article 10 of the Constitution, regional, ethnic diversity and gender balance. According to the University Act, the CS has the discretion to accept the recommendations, vary them or decline to appoint any of the candidates if the interview process is believed to be fraud or where there is canvassing or the chosen candidate does not satisfy, gender, ethnic and regional balance rule.

Finally, Mr. Speaker, Sir, I wish to reiterate that this exercise is conducted with utmost professionalism in keeping with the spirit and letter of the law and will no doubt lead to the appointment of a vice chancellor who will provide the requisite leadership that Moi University deserves.

The Speaker (Hon. Ethuro): Sen. Sang!

Sen. Sang: Mr. Speaker, Sir, I now understand why this statement had to take over two months for us to get a response from the Minister. If you look at the statement that I sought, they were very clear questions. For the Ministry to have taken this long, I now understand because the information given to us appears to be information that is cooked. I want to ask the Chairman for the following clarifications:-

1. He has indicated that there are two substantively appointed Deputy Vice Chancellors. Can he give us the dates of the appointments or confirmations of the two and the full names? He has said there is Prof. Okech and Prof. Kimengich. Can he give the full names of these people and when they were appointed? One of the Deputy Vice Chancellor was confirmed after I sought this question.

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2. In my statement, I asked whether the CS can confirm that he has received communication from the Council. His response is vague. Has the Council communicated to the Cabinet Secretary? That was the question. I appreciate that the process is not concluded but has he received the communication? In that communication, can he give us the names of the three top candidates as forwarded to him by the Council?

Mr. Speaker, Sir, we are living in a country where access to information is imperative. For a CS to lie to this House that he has not received information from the Council yet we are aware that he has received, can he confirm that he received the communication and give us the three names?

Finally, Mr. Speaker, Sir, can he also confirm that this criteria given to us on the basis of merit, ethnic and regional balance and gender has been used in the appointment of the last four vice chancellors of the various public universities where replacements of university heads had been done? I am looking at the last four. Can the Chairman provide us with information as to whether this criteria was adhered to in the last four appointments Vice Chancellors in this country so that we know whether merit, ethnic and regional balance is starting with Moi University or is a concept or principle that has been applied in the last four appointments of Vice Chancellors?

Mr. Speaker, Sir, the CS has not responded to the other clarifications that were sought by Members. I can see the Minority Leader is here, he had sought some information and looking at the response that came from the CS, there is no response to that. Can the Chairman confirm the clarifications that I am seeking? Members of the Cabinet must be honest. We cannot continue having Members of Cabinet who continue to blatantly lie especially to this House and doing public relations (PR) to the Senate and the National Assembly when important issues are sought; taking two months only to come with some statements that you can be sure that they are cooked. That is why they take such a long time.

The Speaker (Hon. Ethuro): Sen. M. Kajwang, let your clarifications be specific and direct.

Sen. M. Kajwang: Thank you, Mr. Speaker, Sir. Just to establish my interest in this matter, I am a former student of Moi University and to be more specific, I was the Secretary General of the students' union in 1999. It saddens me when---

The Speaker (Hon. Ethuro): Order, Sen. M. Kajwang! You should do that if you have been challenged. For now, it is clarifications time.

Sen. M. Kajwang: Thank you, Mr. Speaker, Sir. I was establishing *locus standi* on this matter. I want to find out from the Chairman of the Committee whether it is the policy of Jubilee Government to ethicize our universities.

When I was at the university, our Vice Chancellor was Prof. Raphael Munavu, a Kenyan and an academic who came from what we called Eastern Province and the university thrived. Is it a policy by the Jubilee Government to ethnicize university education because some of the calls that we have been hearing are that universities must be led by people from those regions?

Secondly, what action has been taken against the leaders who threatened to disrupt graduation at Moi University? Thank God they did not carry out their threat. However, we have National Cohesion and Integration Commission (NCIC) that is meant

to insulate these institutions from tribal war lords and mongers. What action has been taken against those people who threatened to shut down the University?

Sen. Boy Juma Boy: Bw. Spika, nikiongezea, nimemsikia Mwenyekiti akisema ya kwamba wakati wamahujiano, majina matatu yatawasilishwa kwa Waziri. Naye Waziri, atachagua moja kati ya hayo matatu au pia ayawache. Faida gani kufanyiwa mahojiano wakati Waziri hatachukua hata jina moja?

Pili, atueleze iwapo kumekuwa na mahojiano na majina matatu kupelekwa kwa Waziri? Aseme ukweli wala asidanganye. Wee, sema ukweli!

(Laughter)

The Speaker (Hon. Ethuro): Order, Sen. Boy Juma Boy! You do not do that to your colleague.

Sen. (Dr.) Machage: Mr. Speaker, Sir, the hullabaloo and anarchy that has happened in Moi University is known in this country and not acceptable at all. It is also of interest to the citizenry of this country to know the qualifications of those who have submitted their names to lead that institution. Once one submits himself to be a leader of a public institution even if it is a country, like you submit your name to be a president of a country, your qualifications are supposed to be public property. Can we, therefore, be told the qualifications of the three people who have been shortlisted to be picked as Vice Chancellor of this institution?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I noticed that the distinguished Chairperson concentrated on what was asked by Sen. Sang and very deliberately avoided to answer to any of the rider questions. For the risk of repetition, I asked the Chairperson ---

The Speaker (Hon. Ethuro): Order, Sen. Wetangula! Even the ones sought by Sen. Sang who just demonstrated that he did not concentrate.

The Senate Minority Leader (Sen. Wetangula): Exactly. At least he made some weak attempt to respond to what Sen. Sang asked. I asked the Chairperson that while the discretion of the appointment lies with the Cabinet Secretary (CS) including rejecting all the proposals as he has rightly said, what was the Government doing against two governors from the central rift of Uasin Gishu and Elgeyo-Marakwet counties, who are pursuing a reckless ethnic agenda by raiding the university and attempting to evict Prof. Laban Ayiro? Remember Prof. Ayiro did not even apply but had been requested by the State to be an acting Vice Chancellor pending the substantive appointment of a Vice Chancellor. These two governors were seen on national television stations and quoted extensively in the media that they did not want Prof. Ayiro because he was not one of their own. Are we going to run public institutions on the basis of ethnicity or competence? He did not answer any of those.

Sen Karaba: Mr. Speaker, Sir, this is the answer that I have.

(Laughter)

You agree with me that it has taken time to get it. If you want further clarification, I can still go for them but this is exactly what I have. That is the predicament that we face as chairmen of committees.

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

Sen Karaba: On a point of order again?

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Is it in order for the Chairperson to give an impression that he is a conveyor belt who just comes here to parrot what has been written elsewhere when he was here when all the issues were raised starting with Sen. Sang and close to five or six Members, including Sen. (Dr.) Khalwale who has informed me that he is away in Kakamega spending time with his children who are candidates? Is he in order to tell us that this is the response that he has when he has, in fact, taken two months and has had an opportunity to tell the Ministry whether the answer given to him responds to the issues raised or not?

Sen. Mositet: Mr. Speaker, Sir, on the rider that the Senate Minority Leader had sought, I was wondering whether it should be directed to the Ministry of Education, Science and Technology or the Ministry of Interior and Co-ordination of National Government.

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

(Laughter)

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I thought – I could be wrong and I stand corrected if I am – that when a question is sought, other than the question itself, the Committee is supposed to send the HANSARD with the questions to the Ministry. I also thought – I stand corrected – that once the answer is brought, the Committee is required to interrogate the answers *vis-à-vis* the questions asked. So, you cannot look as if you have been left hanging on nothing, Chairperson. You are making yourself look powerful yet we have granted you a position to be powerful. Could you please re-direct because the Chairperson appears to be talking about something that is not part of what we do?

Sen. Okong'o: Mr. Speaker, Sir, from the outset, the Senator for Nandi County said that the responses seemed cooked. Considering the fact that there are many issues bedeviling the education sector in the country, I request that you direct that we broaden this aspect of question and summon or request the Cabinet Secretary (CS) to be appear before the whole House in a *kamkunji* here to respond, considering that national exams are going on and children have been told to write on the floors and others have found their names missing. There are many issues in that sector. Kisii University Campus has been closed.

The Senate Minority Leader (Sen. Wetangula): Maseno University was closed yesterday.

Sen. Okong'o: I mean, these are issues that I request the Speaker to do something about.

The Speaker (Hon. Ethuro): Order, Sen. Okong'o! You are also being reduced to a trumpet.

Sen Obure: Mr. Speaker, Sir, at the time when this issue was raised in this House by Sen. Sang, I did not personally seek any clarification or ride on that request. However, I know that the people of this country have been waiting for a response to these concerns. I recall very clearly listening to the various clarifications sought on that day and one of them, which people have been waiting for, is what action has been taken on the two governors who raided the University intimidating the University management purely on ethnic grounds. The country is waiting for that answer. I am surprised that the Chairperson is being very casual about this issue.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, there is some new information that has been brought through this answer. The information is that there is an acting vicechancellor in Moi University and there are two deputies who are under disciplinary process. This implies that the two are not on duty. Therefore, it means Moi University is run single-handedly by an acting vicechancellor. Could this be confirmed as the position?

Sen. Sang: Mr. Speaker, Sir, this is an important Statement. The Chair has requested to be given more time to look for more answers. We hope as the Speaker gives directions, the Chair of the Committee should not just come back with another lackluster Statement like we have received.

I seek one clarification from the Chair. He should clarify if indeed, as indicated in the response, that there are two substantive deputy vice chancellors. A Prof. Laban Ayiro is the acting Vice chancellor. Why did the Cabinet Secretary not consider appointing any of the two deputy vice chancellors to act in that position? What interest did he have in appointing Prof. Laban Ayiro? It is also important to know the position Prof. Laban Ayiro held in the university prior to his appointment as the acting vice chancellor. What is it that made him more suitable than the two deputy vice chancellors who were in office?

The Speaker (Hon. Ethuro): Order Members. I am satisfied that the Committee on Education need to do more.

(Applause)

It was just as well that Sen. Obure did not ride on that question. I do not need to expound.

Sen. Mutula Kilonzo Jnr. has put it even better. The Chair of a Committee of the Senate of the Republic of Kenya is not just hanging. The Senate Minority Leader said that we are not a conveyer of half-truths and incomplete information but we have a responsibility to make sure that the responses are credible. First and foremost, they should make sense to you.

I direct that this response to Sen. Sang's Statement plus the other Statements sought by the Members is completely inadequate.

(Applause)

The Statement coming from the Cabinet Secretary of the Ministry of Education, Science and Technology through the Chair of the Committee on Education, who is a former principal, to the intelligent Members of the Senate, you are lucky I am not a judge because I would have given you a summary dismissal and taken you to prison straightaway.

I direct that we get a more appropriate response taking into account all the issue raised since the first time the Statement was sought and all the issues raised today. Make use of the HANSARD because it will cover everything. You also make it available to the Ministry of Education, Science and Technology so that whatever response you get, it will be checked against the issues captured in the HANSARD.

Today is Wednesday, 2nd November, 2016. This Statement should be on the Order Paper Wednesday, 9th November, 2016.

(Applause)

The Speaker (Hon. Ethuro): Hon. Senators, you realize that the next Orders No.8, 9, 10, 11, and 12 will require the quorum for Division. Therefore, we will leave them in abeyance until we get the quorum. We now proceed with Order No. 13.

BILL

Second Reading

THE ASSUMPTION OF OFFICE OF GOVERNOR BILL (SENATE BILL NO. 10 OF 2016)

(Sen. Wamatangi on 1.11.2016)

(Resumption of Debate interrupted on 1.11.2016)

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, thank you for allowing me the opportunity to contribute to this Bill. I support this Bill. I have been concerned that the only transition we provided for under the County Governments Act was the transition from the former municipal councils and urban councils to the new county governments but there is no similar provision of transition between the current governors and incoming governors.

There is a wrong assumption that the current governors are the ones who will serve in the office as if they have been elected for a term of 10 years. Therefore, I laud the proposal by Sen. Wamatangi on a process where the current governors, if not elected; will provide a ceremony to hand over office to the incoming governors.

Mr. Speaker, Sir, under Clause 5, the Committee of Legal Affairs and Human Rights has proposed that there should be an additional person in the interim committee. These are two persons that will be nominated by the governor-elect. That is the new addition.

The committee that is provided here starts its work before the election. This is a good thing as opposed to having a ceremony after the election. The only objection that we have is the swearing in ceremony. I want to make two comments; Clause 11 proposes that the new governor-elect shall be sworn in by a judge and in the absence of a judge, a resident chief magistrate. This is lowering the standard of a governor. We have proposed an amendment to Clause 11 because we know judges are available and there is no excuse why we cannot have 47 judges. There are more than 47 judges currently. Therefore, we have proposed an amendment so that there can be a judge to swear in the incoming governor.

Sen. Wamatangi was proposing in Clause 11 as follows:

“THAT, the ceremony shall take place the first Tuesday following the 21st day after declaration.”

That simply means that if the general elections are held on 8th August 2017 and the results are announced 10th of August 2017, therefore, 21 days takes you to the month of September or at the very least the end of September. This is a very dangerous clause. There is no reason whatsoever in law now that we have a transitional committee called Assumption of the Office of Governor Committee which will start sitting 60 days before the elections, why a governor cannot be sworn in seven days after declaration. There is a reason for this. I suspect and my suspicions are based on the fact that there will be high competition in these offices. If you allow a governor who has been defeated 21 days in office, there is high likelihood of interference, materials being hidden and sabotage of the incoming governor.

Mr. Temporary Speaker, to avoid that sort of politics which is not new and which is something that is not imagined in this Republic, this Assumption of the Office of Governor Committee must ensure that immediately after the election, the only thing that the governor-elect is going to do is most likely change the programme because the programme would be ready, change a few colours if the colours have not been chosen, change a flag or something. However, there is no reason to have 21 days of a vacuum. When I requested to know the reason behind this clause, I was told it is because they are waiting for the President to be sworn in and in case of a petition of the elections of the President. Nothing could be further from truth. It does not help because the two are not related in law, in fact or otherwise.

We have proposed the handover should include assets and a schedule of debts to be signed by the governor, the deputy and county secretary. There should be responsibility so that we do not have a situation where you are assuming office and the governor continues to engage in debt. I hope we can propose this amendment – that at some point before the elections, we should stop the County Executive Committee from awarding tenders. This is a method that is being used at county government level to create debts and shady contracts. We have seen what National Youth Service (NYS) were doing. They can collect money from these people or just for the sake of it have contracts or bind the incoming governors with contracts they cannot walk away from. Therefore, we should provide just like they do in national government a period where before the elections and just after handover, there cannot be signing of new contracts, except essential services that cannot wait for the assumption of the incoming governor.

In line with that argument, I suggest, therefore, we reduce the 21 days of assumption of office to seven days and assume that by 15th August or the latest 20th August 2017, the 47 governors-elect would be in office so that we can provide continuity for the services that Kenyans are enjoying.

Mr. Temporary Speaker, the spirit behind the assumption of governor's office is the same spirit that is in the assumption of the presidency. We are just making sure that what is done at national level is mirrored at the county level. At the national level, committees are prepared in advance for the assumption of the President. That should happen at county governments' level. However, more importantly, it is not the process. It is not where the carpets would be or what food will be cooked, but it is to provide a transition that is smooth, to provide a transition that where a governor loses office, he goes home nicely and quietly and leaves the assets and liabilities of the county.

There is a reason for that. Where the Constitution says that a person shall be held accountable for instructions issued or that have caused loss of funds whether in office or outside political office, mirrors with my sentiments that they must sign on the dotted line the liabilities they have created. Whilst we think while seated here that county executives are submitting reports on the projects they are doing, you will be shocked to know that there are county executives particularly of finance that are not submitting quarterly reports under Section 164 of the Public Finance Management (PFM) Act. They are also not submitting annual reports under Section 166 of the PFM. Hon. Senators, even if we have a mandate to interrogate what counties are doing, we have no recourse. We do not want that sort of thing.

We want a schedule that shows we have submitted reports for the last four years that shows that in a particular ward, this is what we have done, so that the next Senators, county assemblies and auditors can follow this all the way to where it is even if they hide all the way until under the stones, if that is where they are hiding, we must take this seriously. The way county governors are treating our funds is that they have this assumption they will continue holding office and the assets of the counties including funds are their personal kitty to do what they feel like.

I am happy to tell you, Members, that if you look at the Election (Amendment) laws that were signed by His Excellency the President, no person will promise development during the campaign period because it will be an election offence. So I will be happy to see those schedules so that I see a project that was done during the campaign period and, therefore, find fault in those persons who have campaigned for high office.

Mr. Temporary Speaker, Sir, I support. Thank you.

Sen. Sen. (Prof.) Lesan: Thank you, Mr. Temporary Speaker, Sir, for this opportunity you have given me as well. First, I want to congratulate Sen. Wamatangi for bringing this Bill. It is an appropriate Bill for the time which we anticipate that there will be a lot of transition. Certainly, there will be many new governors who will assume office. Therefore, there must be a smooth legal process in which they will assume those offices. I stand to support this Bill.

However, I want to make one or two comments regarding some of the clauses that are in this Bill. Clause 2 talks about the committee that will run and ensure that there will be a smooth transition. It is proposed here that it will be made of several officers currently working at the county level. However, we are aware that many officers in most

of the counties are in an acting capacity. I would like it be clarified in this Bill that that committee will compose of officers who are on full time employment so that they can take responsibility of their actions during and after election. This responsibility should not be entrusted to officers on acting capacity because they may not be accountable and be servicing other interests.

Secondly, it also says the two officers who will serve in this committee must be nominated by the governor-elect. This committee comes into the office one month before the election. There is no governor-elect at that time. There can be no possibility, therefore, that this non-existence governor-elect can have any two representatives.

In most situations, there will be two or three persons who are running for governor. Of course, their interest needs to be protected because any of them can become a governor.

Mr. Temporary Speaker, Sir, I suggest that each of those candidates should elect one person to this committee and then bring in one, two or three people. They truly represent interest of individuals thus they would be better off than just two persons who will not exist in any case. The governor-elect will not be there until the election has been done. Therefore, Clause 2 (k) should be looked at in order to make sure this situation is rectified.

In Clause (4), the chairperson of the committee shall convene the first committee meeting 30 days before the date of the general elections. One of the roles of this committee includes security for both the outgoing governor and the incoming governor. It is a very significant function. Those officers come into office during the campaign period. Security is a big issue during the campaign period. The duration of this committee should start three months before the actual elections. That way, they could take full control of the security situation of the governor-elect and the other officers.

Thirdly, this committee is going to work very hard as it involves a lot of people who will require funds to run their activities. We require a lot of funds to deal with security. Therefore, it is important to state in this Bill where the budget and funding comes from as regards to running of this committee. In the miscellaneous proposals, we should insert somewhere in this Bill, a statement that the budget and funds for this committee should come from the budget of various counties where the governor is going to be elected. That way, there will be no confusion as to who will fund these processes.

I also support very strongly the sentiments by Sen. Mutula Kilonzo Jnr. about the handing-over process. The proposals in the Bill here talk so much about the incoming governor and almost says nothing about the role of the outgoing governor during this handing-over ceremony. We would want to create some tools and symbols of handing over power during this time of transition. I, therefore, strongly support the proposal that there is 21 days after the election before the swearing in. This will give ample time for the outgoing governor to bring a complete register of the assets and liabilities of the county government in which they have been managing.

As it is at the moment, we have a big challenge in safeguarding the assets of the very many counties because there is no register. The current governors have continued to mess whatever information we have had about the assets and increased liabilities of these counties. During the handing-over process, this register of assets and liabilities is one of the tools that should be bound together nicely and be done in the colours of the county, become one of the things to be referred to and be handed over ceremonially at the

ceremonial place to the next governor. All this should include the symbolic things about the handing over of power, that is; the seal and the flag of the county. These are the things we should hand over to the governor done by the outgoing governor. The handing-over ceremony is very important. First, it is done in public thus there is a sense of participation of the people with regard to this new force that is coming in to run the counties if it is a new governor. Even then, there should be a process in which a governor who has been re-elected into office should use the occasion to renew and give a speech during this time. He should also present the register of assets and liabilities which he has made in offices as matter of record for those who will use it, say, for the next hand over.

Mr. Temporary Speaker, Sir, the Senator for Makueni made a very commendable recommendation which we should consider. We are exceedingly worried at the moment as to the serious possibilities that the outgoing governors will leave behind enormous pending bills for the incoming governors. This will be a huge handicap for the incoming governors to perform and some with a new broom and sweep the environment. This will not be possible because of the huge pending bills.

The pending bills will come about due to the contracts that will be signed, legal and binding. The contractors will win their cases in court. They know county governments will not have any room to maneuver and serve the public. We wish that this Bill would have a clause in which there would be no new contracts signed by the outgoing governors, at least three months before they exit office or else, there can be another body to vet some of those contracts to ensure that we do not jeopardize the opportunities that the incoming governor is likely to use when they come into office.

With the exception of those comments, this is a very commendable Bill. It is a torch that will show the light in which we will follow during the difficult transition time.

I support this Bill but perhaps with a few amendments as we go into the next stages of the Bill.

The Temporary Speaker (Sen. Mositet): Sen. Sang!

Sen. Sang: Mr. Temporary Speaker, Sir, I join my colleagues in congratulating Sen. Wamatangi who has moved this very important Bill. The Assumption of the Office of the Governor Bill, 2016 is such an important Bill that this Parliament should approve and have this legislation enacted into law with reasonable speed so that we have certainty with regard to the management and running of our counties even as we proceed into the elections. This Bill came to the Standing Committee on Human Affairs and Legal Rights. We have a set of amendments that we propose to this Bill.

It is important, as a country, to have certainty on the way we handle our processes in this country. Being elected into a political office is a very competitive process. Looking at the politics ahead of 2017, one of the positions that have attracted a lot of serious competition is the position of governor. It is therefore, important that many of these things are not left to chance. We saw the swearing in of the current set of governors. It varied from one county to another. Stories are being told of counties who organized functions to make the governor-elect an elder which preceded the formal swearing in. We saw counties where the very solemn responsibility of swearing in a governor was overtaken by the political sideshows that did not give serious regard to the activities of assumption of office of a governor.

If you thought what you saw in 2013 was something interesting, you are likely to see worse things happening in 2017 when we will have a new set of governors elected to replace the current ones. That is why it is important for us to have a procedure that is enacted by law, so the process of swearing in, handing over and taking over within our counties is provided for by law.

Mr. Temporary Speaker, Sir, we thank the Transition Authority (TA) because the three years were largely handled by the TA. They had committees working in the counties. This is a responsibility that should not just be left to chance but it must be captured by law.

I want to laud the provision requiring establishment of a committee to carry out this responsibility. If you look at the composition of the committee, you will see that it provides for the county secretary as the chairperson and the county attorney. I take this opportunity to urge the National Assembly to consider this. There are certain Bills that this House has passed and they are now before the National Assembly. For example, the Office of the County Attorney Bill was approved by this House but it is still pending in the National Assembly. I urge the National Assembly to enact that particular legislation by our Committee into law.

The second person to sit in the committee will be the county attorney. We do not want legal advisors that are appointed by governors or legal officers in the counties. A county attorney should be appointed pursuant to an act of Parliament that this House already approved. The other people who will sit in the committee include the county commissioner, the head of the National Police Service (NPS) in the county, the head of the National Intelligence Service (NIS) in the county, the county assembly representative and two persons nominated by the governor-elect.

Mr. Temporary Speaker, Sir, the participation of the county commissioner, the head of the NPS in the county and the head of the NIS in the county is important. This is not just a county function. It needs to be understood that every element of security has to be addressed. A county governor will be working together with the county commissioner in addressing a number of issues in the county. Therefore, the participation of the county commissioner is important in this committee.

It is important to be understood that in every county government, you have the executive and the county assembly. In this case, the county assembly will be represented by the clerk of the county assembly and that is important.

Mr. Temporary Speaker, Sir, I want to shed some light on the provision for two persons nominated by the governor-elect. We need to understand and appreciate that a county secretary and most of the chief officers were appointees of the governor. Therefore, the interests of a sitting governor who will be re-elected will be well taken care of. It is important to look at a situation where you have a sitting governor not being re-elected for a second term or in the next election where he has already served his full term of 10 years. It is important that the interests of the governor-elect are catered for within the committee by ensuring that the two nominees are appointed. Perhaps the two nominees should be one man and one woman, so that the principle of gender balance is captured within the law.

Mr. Temporary Speaker, Sir, I will not be excited to have a provision where aspirants are given opportunity to nominate people. In other counties like my own

county, we have 12 aspirants and other counties have 20 aspirants. You cannot have a committee where you have aspirants nominating persons to sit in the committee. Let us appreciate that the quorum of the committee is something that needs to be looked at. The law provides for one-third. However, in our committee, we felt that it should be half. Even if you were to raise that threshold, that means you can only raise it to a maximum of two-thirds. Therefore, with or without the two persons, you can still run the committee for 30 days before the elections and you will have no problem because you do not have a governor-elect. That means the positions of the two persons will only be filled after having a governor-elect.

Mr. Temporary Speaker, Sir, it is also important to note that we need to allow each of the 47 counties to infuse some sense of their own county pride in the swearing in process of a new governor, so that a county like ours can have traditional dancers performing traditional songs. Let us allow some bit of flexibility so that once you secure the solemn and very important responsibility, the other issues can be left to the machinations of every county because every other county will want to present their culture and tradition and blend it within the swearing in process. That should be the case so that you have various colourful functions in the name of swearing in of governors across the various counties without losing sight of the very important aspect of swearing in a governor in accordance with the law.

Regarding the timelines, as a committee, we agreed that you need to make the period between the elections and the swearing in of a new governor to be as brief as possible but not too brief to allow for planning. In our Committee, we were of the opinion that 14 days would be enough. We need to be aware that as you want to allow more time to the sitting or outgoing governor to put together the list of debts and a catalogue of the county assets and liabilities, if you give too much time, the same outgoing governor might use it to try and clean up the books of accounts of the county to try and address certain things that may not be useful. Therefore, the maximum time should be between 7 and 14 days so that you have the new team of leadership coming to take over. We have several proposed amendments as a Committee.

Mr. Temporary Speaker, Sir, the other issue I want to address is the oath of office or the oath to be taken by a governor. The Constitution provides for the President, the Deputy President, Members of Parliament (MPs) and other officials to take oath of office but it has not provided for the oath to be taken by a governor. That particular oath needs to be looked at. We might propose a few changes so that you realign it to what is provided for within the Constitution like that of the President, the Deputy President and also the other elected leaders. That will be very critical at this point.

Mr. Temporary Speaker, Sir, finally, we need to know that not every aspect of swearing in of a governor will be captured within legislation. As a country, we need to develop some sense of tradition and culture in that and this should be unique to each of the various counties.

We need to develop good manners in politics. If a sitting governor has been voted out by his constituents, he must behave honorably and handover to the incoming governor. We hope that we will not see theatrics of goons being hired to boo the incoming governor. We also hope that we will not have overenthusiastic supporters of an incoming governor booing the outgoing governor. We need proper manners so that as

these functions in our 47 counties will happen in a manner that upholds the integrity of the office of a governor. Therefore, I call upon any candidate who has considered presenting themselves as a candidate for governorship in the next elections to exercise utmost good manners, so that as we run the campaigns, get into the elections and after the elections, good manners will prevail. Governors should take over in an environment of peaceful co-existence where there is no animosity between the outgoing and the incoming governor. I also call upon the governors-elect not to engage on a trajectory of vilifying and headhunting the other governors who have been voted out.

Just like it happens in the Senate, county assemblies and the National Assembly, we are likely to see a huge turnover with regard to the position of governor. We need proper manners in order to have proper handover within our counties, in a manner that depicts the proper stature of the office of the governor. We will then have a governor who will take over with the blessings of not only the membership of the particular county, but also the outgoing team.

Mr. Temporary Speaker, Sir, this is a wonderful Bill. We need to expedite the process of enacting it, so that we can have the law ahead of time to ensure proper handover or assumption of office within our counties, in a manner that is predictable and provided for within the law.

Mr. Temporary Speaker, Sir, with those remarks, I beg to support.

Sen. Okong'o: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to this timely Bill by my good friend, Sen. Wamatangi.

I have some views on the issue of the outgoing governors who have lost elections appending their signatures on the documentation. The ideal scenario should be that the governor, who is the CEO, and the county secretary, be the only people to append a signature. It is of national notoriety that most governors have disconnected themselves from the activities of the counties and most deputy governors are exploring other avenues. Some will be running for governorship and other offices. It will be difficult to persuade a deputy governor who has disconnected with his governor for the last three or four years to append a signature regarding a handing over ceremony on matters that he or she is not versed with.

Mr. Temporary Speaker, Sir, at the appropriate stage, it would be important that we remove that clause and leave it to the officers who have been running the counties effectively; that is, the governor and the county secretary. It is the constitutional mandate that the governors and deputy governors are supposed to work harmoniously, but the opposite is true with regard to what is happening in this country. As we move towards elections, more governors will disconnect themselves from the activities of the governance of the counties.

The Transition Authority (TA) bungled most efforts in documenting and collecting information on inventories of assets and liabilities of the counties. Their tenure lapsed without them having that documentation in place. We now have a new body called the Inter-Governmental Relations Technical Committee under Prof. Karega Mutahi, who we previously summoned to our Committee and told us that they have a very ambitious programme to fast-track the idea of getting assets and liabilities of counties by March, which is five months to elections. This House needs to also follow closely with the Inter-

governmental Relations Technical Committee, to make sure that the assets and liabilities are documented before we move to the next election.

Mr. Temporary Speaker, Sir, accountability issues are dealt with by the Auditor-General. This House is seized of various reports of counties. The County Public Accounts and Investments Committee (CPAIC) has extensively dealt with 2013/2014 reports, despite the fact that governors went to court and put the Committee in a very awkward position to await this long. Considering the fact that the 2014/2015 reports have been tabled in this House, I request that they be fast-tracked. These reports will inform the way forward in terms of the lapses and what has been done by governors in various counties. It is incumbent that we support the CPAIC to fast-track all these issues, so that when this Bill passes, it will make way for the transitional period for either the governors who will leave or those who will retain their seats.

I canvassed with my learned friend, Sen. Mutula Kilonzo Jnr., on the issue of swearing in. Senators and Members of the National Assembly are sworn in by clerks who are practitioners of long standing. Sen. Mutula Kilonzo Jnr. insists that it is important that the governors be sworn in by resident judges of the High Court. I saw a disconnect but he told me that the dispensation of justice in this country has grown save for only a few cases. The office of the governor can be held in high esteem, especially when they are sworn in by a judge in full regalia because it brings the authority and honour of that office. We need to fast-track these issues. At subsequent stages, we can get relevant amendments that give effect to this good Bill.

Mr. Temporary Speaker, Sir, with those few remarks, I beg to support.

The Temporary Speaker (Sen. Mositet): Since the Mover of the Bill is not around, I will put the question.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Temporary Speaker, Sir. If you allow me, under Standing Order No. 54 (3), I seek your leave that you defer the putting of the question to tomorrow, so that we can finalise with this Bill.

The Temporary Speaker (Sen. Mositet): I defer the putting of the question to tomorrow.

(Putting of the Question on the Bill deferred)

Next Order!

THE COUNTY GOVERNMENTS (AMENDMENT)
(NO.2) BILL (SENATE BILL NO. 7 OF 2016)

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, I beg to move that the County Governments (Amendment) (No.2) Bill (Senate Bill No.7 of 2016) be now read a Second Time.

In this Bill, we are amending the County Governments Act to provide a procedure for the disposal of a report of the Commission of Inquiry established under Article 192 (2) of the Constitution. It also provides for a process of the termination of suspension of a county government under Article 192 (4) of the Constitution. The prevailing position has a legal lacuna. To explain, Makueni County had the fortunate or unfortunate experience

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of undergoing the process contemplated under Article 192. The President in his wisdom declined to suspend Makueni County, although the Commission of Inquiry was of the view, based on the findings that they made and save for the dissenting opinion of my good learned friend, Mr. Taib Ali Taib, that Makueni County Government should be suspended.

I sought that the report that was generated by the Commission of Inquiry, famously known as the Nyaoga Report, be tabled in the Senate and the Speaker issued a ruling that the report issued by the Commission of Inquiry to suspend the County Government of Makueni be tabled in the Senate for discussion. That Report to date has never seen the light of day. What then is the result? The result is that there are several findings that I am aware of, which would have helped Makueni County or other counties in the process of termination. That Report and the Commission, which spent a lot of public funds, has been put in the usual shelves of Government museums for reports of this nature. That is unfortunate because in my view, some of the recommendations, which I have read, would have helped Makueni County and other counties to develop legislation to avoid what we saw in Makueni.

Mr. Temporary Speaker, Sir, I shared a copy of the Report with Sen. Kagwe. The impeachment of Governor Nderitu Gachagua was in some instances, from what we now know, propelled or precipitated by a dispute on the budget. The governor had refused to sign the budget that was proposed by the county assembly because the county assembly had allocated itself funds where it should not have, particularly in wards. This is the same case that precipitated the dispute in Makueni County. There was a disagreement on the budget that degenerated into a dispute and a shooting incident. It was unfortunate because I was present. Thereafter, there was a paralysis of the whole county.

I must say on the Floor of the Senate that Mr. Nyaoga found as a fact that this Petition was propelled by the County Government of Makueni, and it made recommendations on it. It also found as a fact that there was an offence committed by the storming of that assembly and in the manner that was done, and proposed amendments. I am happy that the Bill proposed by the Committee on Legal Affairs and Human Rights on the assembly and the protection of the precincts of the assembly has been signed into law. If that Act was in place in Makueni, several people would have been charged with a criminal offence. It is like storming the precincts of Parliament. That is what happened in Makueni and it resulted in bad things.

Mr. Temporary Speaker, Sir, in that Report, there is something that I had done as a Senator, in an attempt to create harmony. There are solutions on how county governments and county assemblies can resolve their disputes. In the Committee Chaired by Sen. Murkomen, we proposed an intra-dispute mechanism. Nobody contemplated that we would have a dispute between a county assembly and county government. We only contemplated a dispute between the national Government and the county governments. We have seen time and again that the county assemblies have wrongly used their powers to impeach the governors, so that they can get their way. Governors have also wrongly used their veto power to pass laws, which they think, in their own view, should be passed. A case in point is the Kiambu County Assembly and the County Government of Kiambu, where the governor used his veto powers to pass a law which the county assembly did not agree with.

Therefore, we cannot say that since Makueni underwent this, no other county will undergo it. It is contemplated in the Constitution and the County Governments Act that a petition to suspend a county is predicated by the will of the electorate; that somebody has violated and the county government cannot perform its role, not a situation where governors use public funds to cause an election where none is sought for. These are the sort of things we are attempting to amend.

In Clause 2, I have proposed to amend subsections 7, 8, 9 and 10. Under subsection 7, the Commission shall inquire into the matters before it expeditiously and report the facts and make recommendations to the President. The new clause says that the Commission shall inquire into the matters before it within three months. We have specified the time. The Nyaoga Commission of Inquiry was acting endlessly. It said 'expeditiously' which did not mean much. We have amended the clause to include a timeline.

Subsection 8 says that upon receipt of the report of the commission and upon being satisfied that justifiable grounds exist for suspension of a county, the President shall within seven days forward the report and recommendations of the commission, together with the petition for suspension of the county government to the Speaker of the Senate. We have amended that and provided a new clause which reads:-

"Where the commission does not recommend the suspension of a county government, the President shall within seven days of receipt of the report of the commission, under Subsection 7, submit to the Speaker of the Senate:-

- (a) The report and the recommendations of the commission,
- (b) The petition for the suspension of the county government."

Why do I say so? It is because it is possible that in the suspension of a county, the petition would have more issues than the mere suspension of the county so that there can be an election. That is why we have proposed that both the report and the recommendation and the petition be submitted to the Senate.

With regard to New Clause 9, the existing clause says that the Speaker shall cause a Motion for the suspension of the county government to be laid before the Senate within seven days and approval by the Senate shall be by a resolution adopted in accordance with the provisions of Article 122 and 123 of the Constitution. We have provided a new clause which reads:-

"Where the commission recommends the suspension of a county government, the President shall within seven days of receipt of the report of the commission, under Subsection, submit to the Speaker of the Senate the following:-

- a) A memorandum stating whether or not the President is satisfied that justifiable grounds exist for the suspension of the county;
- b) the report and the recommendations of the commission;
- c) the petition for suspension of the county.

Mr. Temporary Speaker, Sir, we are now providing another tier system. Where there is a recommendation for the suspension of the county, the President will be required to send a memorandum of his satisfaction. We do not want to leave too much discretion with the President. The suspension of a county is a serious issue. The petition is a serious issue.

The idea that the President can appoint a commission of seven people who then go to a county like they did in Makueni; spent six months or more and then report back to the President, who on his own motion, without consulting anybody or the advice of the Attorney-General, refuses and does not give any reason is a serious issue. The only reason that we are doing so in legal terms is to provide a similar case like the one where the President refuses to assent to a Bill, he is required to provide reasons. I do not think that there is anything beyond the ordinary or the jurisdiction of the exercise of presidential power to say that I am satisfied that this county should be suspended for one, two and three reasons. I will explain once I go down to lifting or retaining of the suspension by the Senate.

Under the New Clause 10, the existing clause reads as follows:-

“Upon approval by the Senate, the President shall by notice in the Kenya Gazette, suspend the county government for a period not exceeding 90 days or until the suspension is terminated earlier than the Senate in accordance with Article 192(4) of the Constitution.”

This provides two things. One is that there is a process of the suspension of a county within given period. There is also another process for the lifting of the suspension by the Senate. However, there is no provision both in the Constitution and in the County Governments Act that provides for the process. In fact, our Standing Orders upon signing of this Bill into law will have to change because there is no process provided in the Standing Orders of the Senate or the County Governments Act as to how you will lift a suspension, if at all it can be done. Therefore, my attempt to amend this clause was to seal that loophole. Had the President then sent the report to this Senate, we would have been stuck. This is because what were we supposed to do had we disagreed or in the process of the 90 days thought that we should lift the suspension. Therefore, the new sub-clause (10) will read:-

“Where the President, in the memorandum submitted under sub-section (9)(a), is satisfied that justifiable grounds exist for the suspension of a county government, the Speaker of the Senate shall refer the documents received under sub-section (9) to the relevant Committee of the Senate for consideration.”

Again, we are providing for a method where one of the committees, either sessional or standing committee – in my mind I thought of the Committee on Devolved Government – would tackle this matter on behalf of the Senate as opposed to having a plenary of the Senate, so that they can interrogate the matter before we make a decision. Again, it is the same way where we have an impeachment. We have two options; either to go to plenary or provide for a special committee. It is the same process. So, we are not re-inventing the wheel on this one.

I have provided for a new sub-clause:-

“The Committee shall within fourteen days of receipt of the documents under sub-section (10), consider the documents and make its recommendations to the Senate on whether or not the Senate should authorise the suspension of the county government.”

Again, it is a process.

Clause 12 says:-

“An authorization by the Senate under sub-section (11) shall be by a resolution adopted in accordance with the provisions of Articles 122 and 123 of the Constitution.”

That talks about the delegation.

New Clause 13 says:-

“Upon authorization of the suspension of a county government by the Senate in terms of 192(2) of the Constitution, the President shall, by notice in the Gazette, suspend the county government for a period not exceeding ninety days, or until the suspension is terminated earlier by the Senate in accordance with Article 92(4) of the Constitution.”

This Bill provides for a full proof method so that we avoid the discretion which now lies with the President and cannot be checked in any manner.

New Clause 14 says:-

“Where the Commission does not recommend that suspension of the county government or where the President is not satisfied that justifiable grounds exist for suspension of a county government, the Senate may consider any other recommendations of the Commission not relating to whether or not the county government should be suspended and make a determination on the way forward with respect to those recommendations.”

The Nyaoga Commission had 25 recommendations other than suspension of the Makueni Government. Those recommendations have gone to waste. Nobody knows what we were supposed to do. So, whilst everybody thinks and imagines that the calm and quiet in Makueni County Government has solved the problem, these things have just gone into another level of cold war. We have not solved the problems. The people of Makueni County do not know whether their pleas were heard and, therefore, the country was left hanging. No solution, waste of public funds, the report is lying somewhere either in the attorney-General's or the President's office and no way forward was given by the Senate. Yet, this was a tremendous opportunity for this Senate to pronounce itself on these disturbances in county governments. This should not happen again.

While the Act provides that we can terminate a suspension, ask yourself, how were we supposed to terminate that suspension within 90 days, what was supposed to inform our decision, who was supposed to move the Motion, on what basis do we suspend and who do we ask? Yet, at that time, once you recommend a suspension, there is supposed to be an Interim County Board that is running the county. How do you navigate that? The New Clause 129(1) and (2) now provides for the termination of the suspension where a Member of the Senate will move by Motion. A notice will be given to the Speaker under sub-clause 3, a committee will be formed and it will report to the Senate within 10 days. In consideration, under sub-clause 5, the Senate shall invite presentations from the members of the public.

We have invoked public participation. It is possible that at that time that we are lifting the suspension, you will have provided an opportunity to the members of that county to come to the Senate and make their presentations. In sub-clause 5, we have provided an opportunity for the Interim County Management Board that is sitting – in this case, it would have sat in Makueni County and assuming there was financial pilferage, stealing, wastage of funds and abuse of office – to come back to us through this process and make presentations.

Very serious recommendations were made by the Nyaoga Commission. Two senior members of Makueni County had been found unfit to hold public office. This is in the report. That report is what would inform the decisions of the Senate. What do you do

when a commission like that makes such a serious finding about elected officials who should not hold public office for having violated Chapter 6 of the Constitution in their work?

Clause 6 provides for a Motion; how it is to be tabled and who will table it. Under (7)(4) is the process.

“Upon termination of the suspension of the county government – the Interim County Management Board appointed under Section 126 shall stand dissolved.”

Again, that was not provided for – a legal lacuna that would have given us a crisis had the President submitted the report to us. That is the only good part about the report not coming to us because we did not have a process.

In (b), it says:-

“the governor, the deputy governor, Members of the County Executive Committee (CEC), the speaker and Members of the County Assembly shall resume their functions ---”

In the previous regime, it says that on suspension, you go home and you will be on half pay. That is it. It does not say anything else. Therefore, that is the reason that we have provided for this. The ideal situation, of course, is that you never get into a position like the one Makueni County went through. It should not happen that MCAs are pitted against one another by competing forces in the same county, people fighting; a quarrel that has no good results ensues because that was an internal rift as opposed to suspension of a county because of the external aggression. The county was suspended because of internal rifts and that is something that should not even be contemplated in law. However, since we have contemplated and given the rights to citizens to exercise their will under Article 1, we must give them that same right to send their county government packing if they cannot fulfill their mandate. That is there.

Mr. Temporary Speaker, Sir, it is a bad position but since the public can recall their Senators and the Members of the National Assembly, similarly we must provide for that. It is an untidy situation because I do not like any county to undergo the suffering that I witnessed in Makueni County as a result of the tug of war between the County Assembly and the County of Government of Makueni. Therefore, this Bill will provide a formula. Although we have not provided for a retrospective action of this Bill, I would like the Senate through the Office of the Speaker to find a way for that report to be tabled in the Senate so that one of the Committees - either the Committee on Devolution or the Committee on Implementation or a conglomeration of the two committees which can legislate these issues.

We are holding elections soon and we have not put in place an arbitration method between a county executive and the county assembly when there is a dispute. Since we have not provided for a formula of the election of a county assembly speaker, going by what I have seen, it is possible that we may elect *mafias* as speakers. As it is, there is no process. The members of the county assembly sit in a room and determine who they will elect. So, we have another figurehead not elected by the people sitting at the high echelons of leadership in the counties.

Mr. Temporary Speaker, Sir, it is an untidy situation. We have not amended the law on the qualifications and how they will be appointed. They are direct nominees of the County Assembly Members. In one case, we invited a speaker and he put his legs on the

table and chewed without listening to us. That is the sort of situation I am talking about. It is an untidy situation. Therefore, it is unfortunate that we have not amended the law to provide a formula for electing a speaker who understands that his mandate is not equivalent as that of a governor. He is not a governor but a speaker of a county assembly elected by the county assembly Members. Since we have not provided for a formula, I would like the Speaker to use his office to have the Report tabled in the House so that we can make some amendments to the law to provide for an intra-dispute mechanism to stop these quarrels about budgets. The county assemblies are amending budgets, blackmailing governors and impeaching them left, right and centre. I want the Senators who will be governors in future to be protected by law that we created here.

I beg to move and request Sen. Sang to Second.

Sen. Sang: Mr. Temporary Speaker, Sir, may I take this opportunity to second this important Bill. This amendment was muted after the events that took place in Makueni County.

This is a straight forward amendment that seeks to ensure that we have a complete process in handling the provisions of the County Governments Act with regard to the suspension of the counties. I believe that the various provisions of the County Governments Act and the Constitution that gives us the opportunity to address a number of the challenges in the counties have provided several mechanisms including but not limited to impeachment processes and the committees of this House undertaking various mediation processes within our counties.

Mr. Temporary Speaker, Sir, the suspension of a county, in my view, has been given some negative connotation. If you look at the County Governments Act, there is one other opportunity that we have within the Act to address certain challenges within the counties.

The threshold for the suspension of the county government should not be raised too high because it is a legal process. The impeachment process and censure Motions against Cabinet Secretaries and the Principal Secretaries are mechanisms and opportunities to address issues within our counties and the Government. We should not attach negative connotations. Looking at the issues that were happening in Makueni County, I think the threshold taken by the President was a little bit too high. The threshold was raised high and the President disagreed with the Commission which gave a detailed report. Unfortunately we did not understand and no reasons were provided to this House why the President took the position that he took.

Mr. Temporary Speaker, Sir, this House is left to discuss on the basis of what we saw through the Commission. As the members of the public and responsible citizens, we keenly followed the processes undertaken by the Commission that ended up recommending the suspension of the county. When the report came out, as provided for by the law, the President had a different opinion. This House had no opportunity to understand what was contained in the report and the basis under which the President disagreed with the Commission.

This amendment is an opportunity and in the event there is a recommendation for the suspension of the county government and if the President has a different opinion, the decision of the President shall be debated in the House and the report of the Commission tabled too. As a Senate, we will interrogate and identify a relevant Committee of the

House to undertake some of the recommendations. If the buck stops at the presidency, then what happens to the various recommendations that were proposed? We have the Sessional Committee on Devolution, Standing Committee on Legal Affairs and Human Rights and the Committee on Finance, Commerce and Budget. Some of the conflicts manifested themselves in this county leading to a tug of war because of the passage of the budget. The Committee on Finance, Commerce and Budget can step in and address a number of issues. However, since the report did not find its way to this House, we had no opportunity to address those issues.

Mr. Temporary Speaker, one of the Bills that we have just dispensed with in this House today was the Assumption of the Office of Governors Bill. That Bill was conceived after looking at what happened in the last elections in terms of the swearing in of the various governors. This particular Bill was conceived out of the issues surrounding Makueni County. The other Bills would have been conceived after we had addressed ourselves to the report if it found its way here. We are living in an age where we have right to information. However, it does not make sense to me to have a commission come up with a report and yet, we, as the Senate, do not discuss it. The residents of Makueni County, and indeed, this Senate have a constitutional right to discuss any report that touches on public issues.

I wonder how members of Makueni County who petitioned for the suspension of their county feel. It is a pity that they presented their issues and appeared before the Commission, but the end product, is not known to them. They do not understand what happened or what became of the process. This particular Bill is very critical.

My position is clear that we need to lower the thresholds of suspension or impeachment of the governor. How we can suspend a county? How it is managed under suspension and how to terminate it? These are legal questions. Therefore, we should not be very hysterical if that happens to a county because that is not the end of the world. It is a legal process which will provide us with an opportunity. You will be shocked to see the kind of pride exhibited by the governors running our counties. The grand standing in our counties is because people are working within the comfort of their offices. They are happy the way they are protected by their bodyguards and they earn their salaries at the end of the month. They do not care what happens to ordinary wananchi their counties. Assuming we were to take away some of these benefits from them, I believe most of them will regain their senses and realise counties are more important than themselves. So, these processes about suspension of a county, we should not set the threshold so high. I have a feeling that the President of the Republic of Kenya set the standards very high. The county has continued to be dysfunctional on the basis that some of the real issues were never addressed in the first place. Therefore, even as we provide for clarity in the process of ensuring that that report gets to the Senate, it is incumbent upon all of us to play our role.

Mr. Temporary Speaker, Sir, we, as a Senate, have had several impeachment processes coming to the House. The last one was related to Nyeri County. The Senators, including myself, made a verdict that the threshold to impeach the governor had not been met. A few weeks after, two of the county staff were found guilty to have violated various provisions of the law and some were jailed or fined.

We need to ask ourselves as a Senate: Is it that we are setting the bar very high to the extent that we only have one governor who was impeached? However, the Gov. Wambora is still serving courtesy of an injunction from the courts. Is it that we raised the threshold too high so that the kind of messes that are happening in Nandi County and other counties, are continuing? Some governors are feeling comfortable saying that in any case theirs is not as serious as the one of Kericho County or Nyeri County who was left off the hook.

We need to rethink about the threshold so that we have to use some of these processes as a deterrent. Then people can appreciate that some of these provisions of the law can be applied to any county at any time. These legal provisions can happen to you just like it happened to Makueni and Embu and they can be applicable anywhere. My point is that we need to ensure that threshold is not set too high that we end up defeating the very purpose why those provisions were there. I saw a situation where there were shoot-outs in Makueni which were very serious situations. If that did not warrant a suspension, we are left wondering when these provisions will ever be invoked.

It is important we ensure the process is provided for within the law. It would be difficult to convince anybody that a commission has been appointed and is made up of reputable Kenyans with the necessary experience and expertise, but failed to convince the Executive of this country. They sit down on a matter, they work through the process and after they come up with a conclusion, it is just dismissed because they did not agree with them. There has to be reasons. Within the law, there are processes in terms of the appointing authority before nominees are forwarded to the appointing authority. If he dismisses their report, he must give reasons. Those reasons then have to revert back to the nominating authority for them to relook at them, discuss and forward them. If that is the general practice with regard to appointments, many other decisions should apply with regard to the suspension of a county. This will help us understand the reason why the President made this decision was on the basis of “x”, “y” and “z” and maybe he would be able to convince us.

We always discuss Bills in this House and pass them for the President’s assent. If he has a problem with the law, he sends them back with a memorandum. That is the concept. We have always agreed with the memorandum in many cases by the President. We look at it, appreciate that this is where the President is coming from and amend it to suit the issues raised by him. In this particular case, I suspect most likely the position of the President was that some of these issues could be addressed through “x”, “y” and “z” means. However, the report did not come to this House. Therefore, we were unable to tell what the President was thinking in terms of how to address this particular matter. It is important that some of these issues are canvassed in this House. If that report did not find its way to the Senate and the county assembly and members of the public in Makueni County, why then did he jumpstart the process of suspending this County Government of Makueni, in the first place? It is important that we are able to address all these things.

With those remarks, I beg to second.

(Question proposed)

Sen. Hassan: Thank you, Mr. Temporary Speaker, Sir, for this opportunity. First and foremost, I want to appreciate the characteristic wisdom of my brother, for having sought to cure a lacuna. As we tend to improve on devolution, amendments would arise from time to time that tend to plug in some of the deficits in law. This Bill seeks to plug in the deficit in law based on practical experience.

This Bill states that no discretion in this country must be absolute, especially if it is being exercised after an extremely elaborate process of fact-finding. How is absolute discretion exercised when a process has recommended to the contrary? Through this Bill, we are trying to cure the politicization of this process. We all had focused our energy on the President on whether or not it will be practical for him to dissolve Makueni County and face a by-election. Had we thought at that point in time that there was a probability of the party or the coalition that has Makueni County win or lose the election, then a suspension would have been recommended.

Mr. Temporary Speaker, Sir, how can we defeat the collective wisdom of five or six panelists sitting in a commission and have recommended that they went to Makueni County, interrogated witnesses and everybody else that they should have interrogated and returned a verdict of suspension and then we torpedo the same suspension? The only people who can torpedo that type of a process can only be a House that is representative in the sovereign expression of the will of the people, and that can only be the Senate. Therefore, we lost an extraordinary opportunity. The President must also be cost-effective. If he had already pre-determined what he would do in terms of using his discretion not to suspend Makueni County, then, he should not, in the first place, have appointed that Commission. It was a total waste of time and a process that subjected the people of Makueni to unnecessary scrutiny. We, who have a specific focus in Makueni County - I have twin brothers there and we have a base as a party - are aware that the problems of Makueni County are still alive and real. Therefore, the President missed an extraordinary opportunity to help the people of Makueni County settle those problems once and for all, either through an election or whatever other process that this Senate would have determined.

Mr. Temporary Speaker, Sir, with the level of corruption in this country, it is important that representative Houses of this nature and any other public official must now lower the threshold. We now have one scandal after another. An amount of Kshs5 billion has become pocket change. People are stealing hundreds of millions of shillings through audacious transfers into accounts. For example, in the case of the Youth Fund, somebody audaciously transferred over Kshs100 million. There is corruption that is so reckless and shameless. During President Moi's time, the infrastructure that the Ministry of Finance and other collaborators put to steal the Goldenberg billions was so elaborate that you could realise that there was a little bit of discipline even in their theft. Today, we have theft that is reckless, audacious and shameless.

Whichever President or Senate that does not impeach on mere allegations must lower the threshold fundamentally, because this high threshold is what has made people escape the wheels of justice. Look at the number of people going to court to stop processes. In retrospect, the Senate might have erred in setting such a high threshold; these things are very casual. There was a standoff in Makueni because the county assembly wanted to loot the public treasury. We also know of certain other allegations

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about the governor's office that were contained in that report. Even if I had come and interrogated that report, because I was able to get a copy, it would be hearsay.

This Senate must never have hearsay; it must be the custodian of every official record. The President must be under obligation, whatever the recommendation from this Senate, to speak to that report. We are improving our processes and want to set thresholds. In fact, if we set the thresholds low enough, there would be no County Public Accounts and Investments Committee (CPAIC) that has to summon every governor. If you do not meet a certain threshold, you will go home. At a time when we have such reckless theft, we must punish corruption by death, if necessary. Corruption is a common plan to kill men and economy and ruin the future of a country. Therefore, corrupt people must be treated as criminals or people who commit crimes against humanity. That is what corruption is doing to this country.

Mr. Temporary Speaker, Sir, I have found this opportunity to speak to some of these issues largely because I feel fairly slighted as a Kenyan when a process can be ignored with discretion and taxpayers have put in their money. I sat as a Member of the Committee on Devolved Government to vet that panel and wasted my time. Do not waste my time when you have a pre-determined outcome. I was paid allowances for it; we do not sit for free in this Senate. We went for retreats to approve and bring a report, which was debated here in a Special Sitting and adopted. The process was commenced, people were sworn in, a secretariat was set up, money was allocated, witnesses and experts were called. Members of the panel were paid allowances; Kshs20,000 for the Chairman and Kshs15,000 for the members. After that, the President said that he exercised discretion. This discretion must never be absolute. That is why the wisdom of this Bill tends to cure this discretion.

Look at the lost opportunity for Makueni County. Marauding Members of the County Assembly (MCAs) are as much of a problem to devolution as are governors. There are extremities in some counties, mine being one of them. There is the extremity of Makueni where they oppose everything and Mombasa County, where they oppose nothing. I am told by Sen. Musila that Kitui County falls under the same category; a rubberstamp bunch of old men and women who cannot stand up for the people they represent, because of cowardice and capacity issues. That is why I am happy that there is a robust discussion about the capacity of the MCAs to deliver. I believe that a degree on its own is not a gauge of integrity. Almost all thieves in this country are graduates. Integrity does not come from a degree. Almost all thieves have degrees; the internal auditors and lawyers. Therefore, a degree itself is not a measure of integrity, but it enhances capacity. If you have integrity and a degree, you are a good legislator.

You do not find quite a number of us here sometimes because we are busy knocking doors in public offices looking for contracts. That is why I have some incline to embrace the values of the *Opus Dei* and live in a hostel, like the Governor of Central Bank of Kenya, and contribute money to justifiable courses, so that we do not have a conflict of interest. That is why he has no business and has not bought a piece of land; he has no conflict of interest at all. But some of us have gotten into the narrative of politics that they must give people money. Some people are distributing free food with their photos on them. These are irritating peasant politics; a group of people that is constantly manipulating the feelings of people they have deliberately dispossessed.

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Instead of building hospitals and good schools, you steal their money and take to them lunch boxes from their own money. Shame on you! All of us here are printing cards bearing our photos and sending them to high schools and primary schools to wish them success. A parent has been feeding his child for 14 years and you now come and feed him with a portion of an apple and *maharagwe* to show the magnanimity, as a politician, during the time of examinations. We must now protect these institutions. Sorry for diverting, but they are interrelated because we are setting standards and thresholds. We are trying to mitigate discretion and have wisdom into our politics and remove the peasant mentality, where people think that a leader is a person who takes care of their basic needs. We have had *harambees* in this nation. If *harambees* could build a nation, this country would not have problems today. We bastardised our own slogan ‘*Harambee*’ and made it appear like it is fundraising. As much as African philanthropy is about helping one another, the abuse of that notion of African philanthropy has led this country to a desperate need because leadership is not about quality; it is about what you give.

I want to thank the Senator for Makueni County for this extraordinary wisdom. In particular, I make reference to the New Clause 14 which says that when the Commission does not recommend the suspension of a county government or the President is not satisfied that justifiable grounds exist for suspension of a county, the Senate may consider any other recommendations of the Commission relating to whether or not the county should be suspended. It gives us discretion as the defenders of devolution and the expression of the popular will and as a collegiate to speak to this report and not allow political and whatever other considerations. It is not an act of magnanimity; it must be a due process.

Mr. Temporary Speaker, Sir, as devolution evolves, we must continue to cure the gaps and bear the policy and direction for this country. The Senate must distinguish its role. It is likely that I will not be in the next Senate, but we must allow enough material for the next Senate to discharge its functions with distinction. That is why I shall support any recommendation to make this not only the apex House, but the House of veto against any other house in this country because we need a House of 47 wise men and women who can provide direction to this country on all matters that require direction and---

Sen. Ong’era: On a point of order, Mr. Temporary Speaker, Sir. Did you hear the distinguished Senator for Mombasa say that there are only 47 Senators in this august House? Is he in order when we know we are 67 Senators and the Speaker, making 68?

The Temporary Speaker (Sen. Mositet): He talked about 47 elected men and women.

Sen. Hassan: Mr. Temporary Speaker, Sir, on that point of order, if you listened to my speech, I am anticipating the election of women Senators. I said ‘47 elected Senators.’ I am anticipating the election of women Senators. Even if the report had been brought here by the President, the women Senators would have spoken to it in debate, but not vote. Sen. Ong’era would not have voted on it. Sen. Ong’era will come to the next Senate as an elected Senator from where she comes from; I know that. Your point of order is in order because I foresee greatness for all of us.

(Sen. Hassan’s microphone went off)

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The Temporary Speaker (Sen. Mositet): Sen. Hassan, you can now relax your high emotions. You did well.

Sen. Musila: Thank you, Mr. Temporary Speaker, Sir. You should excuse my Secretary General because he articulated what our party stands for, and I want to applaud him for the manner in which he has executed---

The Temporary Speaker (Sen. Mositet): Order, Senator! Do not applaud party matters in this Chamber. Go straight to the subject.

Sen. Musila: Mr. Temporary Speaker, Sir, we are all party members of some sort and I think it is in order for the Chair of a party to congratulate his Secretary General when he does a good job, just like I am about to congratulate my Vice Chair for ably preparing this Bill and the manner in which he has moved it. This is a day for Wiper Party because the Vice Chair moved the Bill, the Secretary General did what he did and the Chair is about to make a contribution.

Mr. Temporary Speaker, Sir, I support this timely Bill that comes from experience. The County Governments Act has certain issues and problems that can only come to light when we put it to test. I am happy that following the issue of Makueni County Government, the Senator for the county discovered and saw the need for an amendment. This arose as a result of a lacuna existing in the law, where the President appoints a commission, which submits the report to him. The President then takes a decision without referring the matter to the Senate, notwithstanding the fact that the Senate, by Constitution, is the defender of county governments. Therefore, in any decision of such magnitude, the Senate must have an input. That is why I support this amendment and applaud Sen. Mutula Kilonzo Jnr. for bringing it.

Mr. Temporary Speaker, Sir, the case of Makueni County was cited as an example, where the President appointed a commission. You have heard from Sen. Hassan the elaborate measures that were taken to appoint the commission through the Senate committees; vetting and swearing in members. The assumption is that these members were chosen because of their integrity, knowledge and ability. The Commission submitted its report to the President that the Makueni County Government be dissolved. The shocker was that the President went against that recommendation. That was okay because he has the discretion. This Bill wants to close that loophole in a reasonable manner. The Senate having been given the mandate by the Constitution to be the protector of counties should have been given that report to deliberate on. As it stands now, we even do not know what discretion the President used. There was no memorandum because there is nothing in the law that provides for that. Therefore, the President went ahead and gave the County Government of Makueni a lifeline.

Mr. Temporary Speaker, Sir, this is a government that is known and the assembly habitually does not pass the budgets. There is a quarrel every time. As I speak, there is a quarrel. I did not support the abolition of the county government because I found it strange for a government to recommend itself to be dissolved.

I am sure the framers of this Constitution anticipated that the public will have a problem, feel that this county government should go and they will, therefore, petition. Although they petitioned in this case, that petitioning and rounding up of the public to petition was financed by the county government. I found it very strange that Makueni

County Government financed wananchi to be moved from point “a” to “b” to present petitions because it was in support of its dissolution. I would have expected that to come from another quarter, but not the county government itself. The framers of the Constitution did not expect a county government to demand to be dissolved like in the case of Makueni County Government. Be that as it may, it is, probably, because of the seriousness of the situation as it were because even violence was experienced, people were being killed and so on.

Mr. Temporary Speaker, Sir, the point I am making is that the Commission, having been appointed and given a verdict that this county government is rotten and should go, the President, in his wisdom, went ahead and differed substantially with the Commission’s recommendations. He said that he could not agree and he did not give any reasons for the position he took. That is why I support the amendment that in such a case, the President ought to have reported to the Senate that this is the recommendation of the Commission that I appointed. We would have deliberated on this and then made a decision. If it was negative as the Bill proposes, then the Senate would have recommended other measures and said okay, it is not dissolution, but this is what should be done. Therefore, the Senate would have played its rightful constitutional role in ensuring that County Government of Makueni, or any other county government, for that matter, has now played a role.

As it is now, if you are asked by mwananchi from Makueni County, why the President failed to agree with the Commission’s recommendation, he will tell you he does not know. He will then tell you that you are the Senator and the Constitution allows you to get involved in the welfare of that county.

Hon. Members who have contributed to this important Bill have referred to impeachment of governors. This is one area where this Senate, either through amendments of the existing law, must think carefully about how we should go ahead in impeaching or not impeaching a governor. I remember the last time when there was a Motion to impeach the Governor for Nyeri County, the House resolved to hear the complaints and take a decision. It was unanimous; the House resolved that the Governor for Nyeri County could not be impeached reason being we, as a House, were unable to have enough evidence to condemn him into impeachment.

We have had a similar case of Kericho County where, again, a Committee of this House felt that the Governor did not deserve to be impeached because the threshold that had been set was too high. In the case of the County Government of Makueni, the Committee that I chaired made certain recommendations. Currently, there is an issue of a plot that was bought. This matter came to the Committee and we did not acquit anyone on the matter that was at hand. It rather recommended that further investigations be made in order to establish the truth. This is because you will accept or agree that a Committee handling this matter in two days will not have enough time to probe unless we have investigators to go into the field. This House will need to sit down and look at the impeachment law, so that we set the perimeters and not look like those county council leaders where every now and then they would throw chairs to each other.

At the same time, I support Sen. Hassan’s sentiments that there is so much corruption in Kenya today in the national Government which has been devolved to county governments. For that, even impeachment will not be enough. Why is it that in

this country, there is so much theft and corruption and not a single Government official has been imprisoned even for a day when other countries are imprisoning people and even condemning others to death for theft of public resources?

If you listened to one Ms. Kabura yesterday, money was transported in bags from the Treasury to somewhere in a shamba. This is not little money, but billions of shillings. This is happening when the people of Kenya are languishing in poverty and have no medicine.

Sen. Hassan: Shame! Shame!

Sen. Musila: Mr. Temporary Speaker, Sir, have you noticed that in your village, people are dying more than they used to? They are dying because there is no medical facility existing in these counties when the funds have been devolved. We have voted money to these counties, but it is being stolen. The worst is that people who have been elected by wananchi to oversight those funds are now the ones who are stealing. They are the contractors and recipients of fake allowances from governors. Something is happening. The other day in Kitui Level 5 Hospital, patients in their beds were being given Kshs500 each and they were told it was a gift from the governor.

Sen. Hassan: Shame! Shame!

Sen. Musila: Mind you, that patient has not had medicine because there is no money to buy medicine and yet he is being given that money as a gift.

The Senate Minority Leader (Sen. Wetangula): A gift for what?

Sen. Musila: I think for being sick and as a favour so that when you recover – if you do by the mercy of God and not because you are being treated – you will remember that governor and vote for him. We have sunk that low. This is why you go to hospitals and you find huge gates, but no fence because that is where the money is being taken from. You just construct the gate, get the money. When you go to the hospital, patients are sharing beds. They are sleeping in twos. It is a pity there is no medicine, nurses or doctors, but you have a gate worth Kshs14 million.

Many county governments are rotten. It is high time that this House lowered the threshold for impeachment. It also time that the national Government and the Judiciary ensured that we set examples by jailing all these people who are stealing public funds so that, at least, our children can see that we are taking corruption seriously. Otherwise, this will go on like this and this country will be no more.

Mr. Temporary Speaker, Sir, as we celebrate devolution, let us ensure that we only devolve the good and not the bad things. I applaud Nigeria today because they have now started jailing governors who stole public funds. I look forward to the day when the current governors will face jail for the theft of public funds that they are conducting now. It is across the board that the majority of counties have stolen public funds.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, thank you for the opportunity to contribute to this Bill. One of the cardinal principles of constitutionalism that we have is the control and prevention of arbitrary use of power and excesses. That is why we have checks and balances. Under our Constitution, there is a provision to suspend county governments. The drafters of the Constitution were conscious of the fact that the President can be vindictive and suspend a county government either because he dislikes a governor, because he is not from his party or does not support his policies.

Under Article 192, the final decision to suspend a county government lies with the Senate. Consistent with the provisions of Articles 96, this House is the defender and protector of the counties and their governments.

Mr. Temporary Speaker, Sir, law is dynamic. It grows on a regular basis depending and informed on situations. Probably, the Senator for Makueni County would not have thought of bringing this Bill if it were not for the situation that occurred in Makueni County. It is what informed the Senator and the House that there is a gap in the law. The President cannot and should not, under the Constitution and in law, exercise power to the whim of those he wants to please or at the behest of those that he wants to make happy.

The President in exercising power must act constitutionally, abide by law and the law equally must be clear on the structure, process and the intended outcome. In the sad case of Makueni County, we saw clearly how the President can abuse the process. He set up a commission in accordance with the Constitution but ignored every other step that followed and became the alpha and the omega in the process. We do not have the situation where the President is the alpha and omega on anything. He is also subject to the law. I saw the other day a petition to Parliament that urged that we return to the old days when the President was above the law and could do anything he likes. I am happy that the National Assembly summarily dismissed the petition.

Mr. Temporary Speaker, Sir, in the Makueni County case, the President correctly set up a commission of inquiry. What followed after was an abuse upon abuse. The Commission carried out their work and submitted a report recommending a suspension of the County Government of Makueni. The President was obligated to forward that report to the Speaker of the Senate. However, he did not. I do not know if our Speaker or the Speaker of the National Assembly has a courage to point out to the President using the Shakespeare's analogy to point at the king and remind him that he is naked as the little boy did when all the court chesters were wondering where the king had bought a beautiful suit of the type he was wearing when he was naked.

It is incumbent upon the Speakers of the Houses to constantly remind the President the procedure when a Motion like that is set to occur. We know the limitations our Speakers have. They throw their independence through the window and act as appendages to the Jubilee Regime. It is most unfortunate because once they are elected as Speaker, regardless of who proposed them, they must exercise some degree of independence even if it is not absolute. You saw how the former Speaker Marende conducted himself in the last Parliament despite the fact that he was an Orange Democratic Movement (ODM) nominee. He regularly made rulings that roughed and rattled those who nominated him but he made Parliament stronger, wiser and independent of the executive.

Mr. Temporary Speaker, Sir, my considered view on this is that the county governments and the national Government are governments under Article 6 of the Constitution, dependent and interdependent working in harmony. It should not arise that the head of one government can suspend the head of another government. It is an antithesis of dependence and interdependence. We have 48 governments in Kenya; the national Government and the 47 county governments.

Short of an impeachment, in future review of our Constitution, we should remove a situation where the head of the national Government can remove the head of a county government. It should not be. They are both governments. The head of the national Government can be removed through an impeachment as set out in the Constitution. The head of the county government can also be removed through an impeachment process as set out in the law. However, it does not make any legal sense for the head of one government to preside over the fate of another government in terms of legality. That notwithstanding, since the provisions exist, what Sen. Mutula Kilonzo Jnr. is trying to do, is to create some therapy to make it difficult for abuse so that we can have a process that insulates the heads of the county governments from being harassed and abused through legal processes.

Mr. Temporary Speaker, Sir, as we said, a good idea like devolution has been made to look bad by governors. As we speak, my county has acquired unparalleled notoriety in abuse of public resources. Last week, my governor conducted what he calls an investment conference. First, he did not consult any leader in the county. Secondly, he committed a forgery by writing and publishing a statement of support an encouragement by the Senator of Bungoma which I did not write. It is there in the brochure; "Statement from the Senator." I have even written to the CID to complain about this forgery. You will be shocked that the so called "Investment Conference" cost my county Kshs70 million which is not budgeted anywhere in the books of accounts. At the end of the so-called Investment Conference, there was not a single investor even to invest in stamping out jiggers that have invaded my county. Not even an investment to make animal feeds, not one investment and yet Kshs70 million went down the drain. Such a governor belongs to Kamiti Maximum Prison. He has no business being a Governor of Bungoma County.

There are many who are doing similar things. All these are gimmicks to hoodwink the public to appear like they are working because we are going to elections. They forget that members of the public are very clever these days. I know in your county where a governor erected a barrier to indicate: "We are now entering Nandi County." This is something that would have cost Kshs1 million. They spent Kshs27 million just to put up a steel beam on the left and the right and the cross bar and write there "WELCOME TO NANDI COUNTY."

Mr. Temporary Speaker, Sir, I hope and pray that the next generation of county assemblers in the country would be men and women of integrity who cannot be constantly in bed with governors because of money. I do not know whether any of my colleagues here sit on the Public Accounts and Investments Committee (PAIC) of the Senate. Recently, I was shocked to see my governor appearing before the PAIC accompanied by County Assembly Members (MCAs) who are supposed to oversight him in Bungoma. They were there cheering him on the thefts he has committed on the county.

This country has a long way to go. That is why the final act on dissolving a county government must lie in this House as provided under the Constitution and must be made to be respected. That is what the law says. On what basis would a President set up the Commission of Inquiry to into the petition to suspend the County Government of Makueni, then it finishes its work, recommends a dissolution, sends a report to him and

he just freezes it there. Why did he set up the Commission in the first place? The law requires that when he receives the report, he sends it to this House. This House will then give it to the relevant committee that will look into it and advise Plenary, but the final word lies with Plenary. The Committee can reject the recommendations, but this House in its full sitting, can look at the facts and decide that this is a government worth dissolution, or a government not worth dissolution. So, this law is so important that it is creating correct legal steps and procedures in arriving at whether the county government can be dissolved or not.

These safeguards in law were put there in a dispensation of, probably, in a situation in which we find ourselves in. All the institutions of governance in the country are either compromised or dead. The Ethics and Anti-Corruption Commission (EACC) acts with a lot of funfare with pictures and televisions. That is the first and last we hear of them. You just hear a governor has been invited for grilling. That is the end. I am told when they send their officers to the counties, it is an early Christmas for the governor because he has an opportunity to capture and compromise them and you will never hear of it. Have you ever heard the outcome of the investigations from the County Government of Bungoma where my governor bought a wheelbarrow worth Kshs2,000 for a Kshs109,000? There was a lot of funfare. The governor was summoned and grilled. That was the end of it. There are many others.

You have seen what I saw Sen. Kembi-Gitura in spirited arguments with his governor about the purchase of land. A similar story is in Bungoma County. A land worth hardly Kshs20 million was bought by the Governor at a Kshs172 million. I have no doubt the seller of the land must have gotten the value for which the land is worth and the rest has been diverted to others. Who will save this country? I hope that we have some men and women of integrity running our institutions of governance. The Office of the Auditor-General is completely overwhelmed, not to mention the regular undermining of the office by the Executive. You saw how the President humiliated the Auditor-General in State House after calling the so-called summit on corruption. I do not know whether the summit was meant to hail corruption or to highlight corruption. That immediately after some session, you saw the President went and greeted two people and when he reached the Auditor-General, he waved him off like a nuisance. He did not shake his hand. The Auditor-General is not supposed to be the President's friend or anybody's friend. His duty is to tell the country whether money voted for and authorised by Parliament has been put to good use or not. I like the Auditor-General when the President told him off for trying to go to the Federal Reserve Bank in the United States of America (USA) on the Eurobond investigations. He said, "It may help you, Mr. President. I may go there and find nothing and silence those who have been accusing you." That is a very good answer. You heard the President even speaking in his mother tongue, "Ngai, what is this man talking about?" We should not degenerate to this level. The moment you become a President of a country, like Jaramogi Odinga used to say whether you came in through the window, roof or backdoor, you carry some levels of responsibilities that cannot be compromised. Your integrity must be beyond reproach. You should not be seen to support things that are not supportable.

Mr. Temporary Speaker, Sir, have you noticed how the President has maintained the conspiracy of silence since members of his family; his own sister and cousins, were

busted in corrupt transactions?. He has kept quiet completely. There are some musicians, a great group Simon and Garfunkel who played a number called, “*Sound of Silence*.” We are not being treated to the sound of silence. The sound of silence can be very loud. This particular one is very loud. This country has many problems.

This country has many problems. I hope that the new Chief Justice, Justice David Maraga, whom we had an opportunity to visit yesterday as the alternative government to encourage him to act in the pursuit of justice without any fear or favour or prejudice will manage to make judicial officers work. He told us a story that two years ago, he went to Lesotho for a Conference on Administration of Justice. When the moderator of the conference was introducing him to come and speak, he said, “Here is Justice David Maraga from a country where you do not need a lawyer because you can buy a judge.” You can imagine the shame that we carry everywhere. Sen. Mutula Kilonzo Jnr. and I have practiced law for a long time and the hazards that we go through are a story to tell. We pray that one day things will happen in this country like they used to in the good old days. The Senator for Nyandarua may remember that in the 1960s, people used to get their pension cheques through the post office. People used to go to the Kenya Farmers Association (KFA) to get inputs for their farming. They would get loans from the Agricultural Finance Corporation (AFC) and deliver their produce to the National Cereals and Produce Board (NCPB). The NCPB would calculate and send the remainder of their money to their accounts at the AFC and their debit accounts at KFA.

Mr. Temporary Speaker, Sir, today, you have to pay somebody to pay you what is due to you from your sweat, yet, in the National Youth Service (NYS) Scandal, you all saw the lady whose conduct is inconsistent with being a lady. In a space of less than a year, Kshs1.6 billion went through her account and we are still counting. Today, if you go to the bank to withdraw Kshs2 million, the bank will ask you to answer a lot of questions. I watched closely in horror when she confessed that she would walk into a bank and walk out with Kshs100 million in cash. Sen. (Eng.) Karue, do you know any bank that keeps Kshs100 million cash in their vault?

This is a chain of conspiracy starting from Ms. Waiguru down to the bank. I do not believe that this woman was carrying out business of her own. Typical of Kenya, after Ms. Waiguru has visited such monstrous theft on Kenyans, she is now queuing to become a governor. It is shocking. She may well be a governor and steal even more because she has a history; old habits die hard. People who have no respect for public properties and thieves are the ones being called upon to lead. It is like inviting hyenas to be gatekeepers in a goat’s pen, and we are busy cheering.

Mr. Temporary Speaker, Sir, did you see some youth, who were obviously high on some substance, singing and escorting Ms. Waiguru to the Ethics and Anti-Corruption Commission (EACC) offices and demanding to be told why she had been summoned, when everybody knows that she is a thief? This country is sick and needs salvation. We are not saying that all people in the Opposition are all angels; thieves are running in the Government and Opposition. People who were sent away, all of a sudden want to become heroes. When a Kenyan leader goes around the country every weekend donating Kshs18 million, Kshs20 million or Kshs30 million, which even the Barclays Bank cannot donate, then these are proceeds of corruption. *Harambees* feed on corruption. That is why we salute former President Kibaki, and my brother, Sen. (Eng.) Muriuki, can testify. For 10

years, we never saw the former President Kibaki in *harambees*, but the economy grew. He goes down as the best infrastructure President in this country. In the first two years, he expanded rural electrification programmes more than Kenya had ever had through *Mzee* Jomo Kenyatta and Moi regimes. You never saw him anywhere in *harambees* or standing in public and abusing leaders. Of course, occasionally in the liberty of an old man, he would say things like *mavi ya kuku* and so on. Those are things that do not hurt anybody and were not aimed at anybody. Now, we have a team that is disregarding that law, ignoring everybody and constantly abusing people. God help our country.

Mr. Temporary Speaker, Sir, I want to thank Sen. Mutula Kilonzo Jnr. for bringing this Bill, which is a step in the right direction. It will help us, the Senate, and the future Senate, to deal with situations when they arise. I have no doubt that those of you who will be here in the next Senate will meet and encounter a different crop of managers of county governments. For the Senators who have expressed their interest in becoming governors, including my brother sitting ahead of me, I wish them well. Having sat here and seen the excesses, abuses and theft being committed, I am sure they will do things differently. Today, if you go to the countryside – I do not know if it is the same in Makueni, Nandi and Nyandarua – there are inexplicable deaths of people from preventable diseases. Every weekend in the county, there are burials of up to 40 people. The other day when my governor was squandering Kshs70 million in a so-called investment conference, a man aged 60 years sat in the queue at the hospital for four hours, collapsed and died because he could not afford a piece of paper to take to a nurse to prescribe his medicine, which he then had to go and buy.

Mr. Temporary Speaker, Sir, if you look around where we come from, because we all represent rural constituencies, they are inexplicable deaths going on almost everywhere. Diseases that hardly kill people are now killing people because the health sector has collapsed. If you look at the Fourth Schedule of the Constitution, the national Government has only two things in health; policy and referral services. How many referral hospitals do we have? We only have Moi Teaching and Referral Hospital, Kenyatta National Hospital, Port Reitz for communicable diseases, the Spinal Injury on Lenana Road and the Mathari Mental Hospital in Nairobi. They are five in number. When you hear that Kshs5.3 billion is stolen overnight from the Ministry of Health - money that is meant for counties - then you know that we are headed in the wrong direction.

I want to advise my good old classmate, Dr. Cleopa Mailu, that he should not carry other people's crosses. He is busy saying that money was not stolen or we did not lose anything. The theft was discovered and made known to Kenyans by an internal audit of the Ministry; a public servant whom I must salute, just like Mr. D. G. Njoroge who was the Auditor-General for a long time. He was a fearless and honest auditor who always pointed out thefts upon thefts in the Government, but nobody did anything.

The start of the inquiry at the Ministry of Health was: Why were devolved functions being run from the Ministry of Health when they are devolved? There are bigger scandals coming. You will remember the equipment they were forcing governors to sign for; equipment that that cost Kshs11 billion was paid for by a well known crooked person - Kshs38 billion. There is a scandal coming. In the next elections, we will have a field day on this Government. I do not know where they will stand to defend this.

I beg to support.

The Temporary Speaker (Sen. Sang): Sen. (Eng.) Muriuki.

Sen. (Eng.) Muriuki: Mr. Temporary Speaker, Sir, thank you for giving me the opportunity to say one or two things with regard to this Bill. I support this Bill strongly. The gist of this Bill is on who has the final say when it comes to suspension and ultimately the dissolution of a county government.

We are happy that we have a new Constitution which we had been crying for many years, if not decades. Eventually, we got a Constitution in 2010 and it is now running into six years. However, it has now dawned on us that there are very many gaps in this Constitution which make many laws which we have had before, to require amendments because too many things are not clear.

I am sure that when Sen. Mutula Kilonzo Jnr. was generating this Bill, he had certain things in mind and certain gaps in law which required to be filled. I think the case of the County Government of Makueni must have played a bigger role of the decision to proceed with this Bill. The Constitution includes a system which is now in the County Governments Act to suspend a county. Technically, anybody can raise an issue with a county government for it to be suspended. However, when it comes to the government itself or a part of that government where the executive says: "Dissolve us, we are unable to proceed," and go on to tell the residents of that county that their government requires to be dissolved, I think they should be listened to.

Mr. Temporary Speaker, Sir, in the case of Makueni County, we ended up in a situation where not only the Executive arm of the government asked to be dissolved, but I believe a part of the Assembly did too, other than the fear that perhaps, if it were dissolved, then they may not be re-elected. The situation obtaining in the County Government of Makueni, which I hope has changed since then, was just untenable. When we get to that stage, it is fair that the final work which is the gist of this Bill should lie with the legislature. In this case, the Senate arm of Parliament. A Commission of inquiry has to come in because we do not want to believe the governor, his team or anybody else claiming that they have enough support to ask that the county government be dissolved. The work of the commission is to go through in detail the issues which have come up so that it establishes whether the people of that county want their government dissolved or not.

When that report of the commission is given to the President, he is entitled to his views and recommendation. That is fair because he is the Head of State. It is only fair for him to give his views in the form of recommendations to the Senate. However, to have a situation where the final say then ends up being with the Executive is what we want to do away with. That way, when that report of the commission goes to the President, he will refer it legally to the Senate. It must be discussed not just by the Committee, but also the whole House so that the House, on behalf of the 47 counties, will resolve whether the county government should be resolved or not.

Mr. Temporary Speaker, Sir, we must realise that when electing Senators the counties are equal irrespective of their size and population. This means that once the Senate has said, the county has said. This is what we want to get to.

Mr. Temporary Speaker, Sir, there are many gaps in the impeachment process, although it is spelt out in the Article 181 of the Constitution. It is the same thing which Sen. Mutula Kilonzo Jnr. is trying to address through this Bill. When a Senator comes up

with a legislation to fill in these gaps, he or she must be supported. When you look at the impeachment process, the Senate looks at the facts and comes up with the conclusion on behalf of Kenyans. Some gaps in law are such that a case can stall at the Judiciary for two years with no decision. Sometimes I wonder whether the Chief Justice has conscience. The Chief Justices in this country hide and claim they do not control the work of the judges. However, the Chief Justice is the one who holds the policy of the Judiciary. Is the Chief Justice comfortable when a case of an impeachment of a governor is delayed and the electorate in county does not know who their rightful governor is? A year lapses and the Chief Justice is not disturbed.

Mr. Temporary Speaker, Sir, this morning, in our County Public Accounts and Investments Committee meeting, we resolved that the Chief Justice himself must appear before us. The judges have individual responsibilities on the cases before them but they should consider what the judicial policy is. Is it right that a case of corruption or impeachment stalls in court for almost two years? These are some of the things we want to bring to an end.

The cases coming before the County Public Accounts and Investments Committee have convinced us that the assemblies as constituted now are totally incapable of carrying out their oversight role. This is why you will see more legislations of this nature trying to tighten the governance in this country. The governors sit with some consultants and generate the County Integrated Development Plans (CIDPs) but the people are not consulted at all. The leadership in the county is also not consulted and the governor ends up doing what he wants. When some few governors do things the right way and take them to the assemblies, they find incapable county assembly members who do not know what the matters are all about.

Mr. Temporary Speaker, Sir, I heard the Member who spoke earlier talk about the various corruption cases in this country. It looks like everything is done with illiteracy. If anything, we have reached a stage where we seem to celebrate the people who have stolen more money. This must be brought to an end. At least, the Senate will do the best it can to stop the trend in the counties. We have a duty, as a Senate, to make sure that these gaps are filled.

Once again, I congratulate Sen. Mutula Kilonzo Jnr. for coming up with this piece of legislation.

The Temporary Speaker (Sen. Sang): Sen. (Dr.) Zani, what is your point of order?

Sen. (Dr.) Zani: On a point of order, Mr. Temporary Speaker, Sir. Is Sen. (Eng.) Karue in order to mislead us that this Bill has been introduced by Sen. Mutula Kilonzo Jnr. while it has been introduced by Sen. Wamatangi?

The Temporary Speaker (Sen. Sang): Which Bill are you talking about? Is it this one being discussed?

Sen. (Eng.) Muriuki: Mr. Temporary Speaker, Sir, first, presuming I am wrong, in the tradition of Parliament, I withdraw and apologise on that particular bit. On the other hand, if I am right, then Sen. (Dr.) Zani is the one to withdraw the remark and apologise.

I will confirm in a moment.

The Temporary Speaker (Sen. Sang): Sen. (Dr.) Zani, you are completely out of order to bring your confusion into this House. The Bill by Sen. Wamatangi came a little earlier and we are done with it. We are now on Sen. Mutua Kilonzo Jnr.'s Bill. I guess you are requesting to contribute to a different Motion. So, finalize your contribution.

Sen. (Eng.) Muriuki: Mr. Temporary Speaker, Sir, can I therefore go to my contribution? I will withdraw and apologise if I am wrong. If I am right could you give the opportunity to Sen. (Dr.) Zani to withdraw her point of order and apologise?

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, I oblige happily. My apologies for that point of order.

Sen. (Eng.) Muriuki: Thank you, Mr. Temporary Speaker, Sir. Mine is to congratulate Sen. Mutula Kilonzo Jnr. for this Bill.

With those few remarks, I beg to support.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, I rise to reply. I would like to thank the Senators who have ably contributed to this Bill. You have seen that all of them are agreeing on the lacuna we are trying to cure. I agree with Sen. (Eng.) Muriuki to the extent that most of the time when we generate these Bills, including his own Bill on impeachment, there is a gap that we have seen as a result of our work here on impeachments as in the case of County Government of Makueni. Therefore, I pray that this is one of those Bills that find its way into the National Assembly as quickly as possible. We are generating legislation to provide formula to help county governments. We must continue to say that county governments, although they are distinct under Article 6, cannot operate as if they are law unto themselves.

I beg to reply.

The Temporary Speaker (Sen. Sang): Sen. Mutula Kilonzo Jnr., we have no requisite numbers.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I stand under Standing Order No.54(3) to request that you defer the putting of question to tomorrow because we do not have the requisite number to vote.

The Temporary Speaker (Sen. Sang): It is so deferred.

(Putting of Question on the Bill deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Sang): Hon. Senators, it is now 6.30 p.m. The Senate stands adjourned to tomorrow, Thursday, 3rd November 2016, at 2.30 p.m.

The House rose at 6.30 p.m.