

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 3rd December, 2014

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

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

PRAYERS

PAPERS LAID

REPORTS OF THE AUDITOR-GENERAL ON THE FINANCIAL OPERATIONS OF COUNTY GOVERNMENTS AND THEIR DEFUNCT LOCAL AUTHORITIES

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I beg to lay the following Papers on the Table:-

The Report of the Auditor-General on the Financial Operations of the County Government of Nakuru and its defunct Local Authorities for the Period 1st January, 2013 to 30th June 2013.

The Report of the Auditor-General on the Financial Operations of the County Government of Kericho and its Defunct Local Authorities for the Period 1st January 2013 to 30th June 2013.

The Report of the Auditor-General on the Financial Operations of the County Government of Narok and its Defunct Local Authorities for the Period 1st January 2013 to 30th June 2013.

The Report of the Auditor-General on the Financial Operations of the County Government of Baringo and its Defunct Local Authorities for the Period 1st January 2013 to 30th June 2013.

(Sen. (Dr.) Khalwale laid the documents on the Table)

The Speaker (Hon. Ethuro): The Chairperson of the Session Committee on Delegated Legislation, you are listed to lay a Paper on Inter-Parliamentary Union (IPU).

REPORTS OF THE KENYA DELEGATION TO THE 131ST, 130TH AND 129TH
ASSEMBLIES OF THE INTER-PARLIAMENTARY UNION (IPU) AND
RELATED MEETINGS HELD IN GENEVA, SWITZERLAND.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to lay the following Paper on the Table:-

The Reports of the Kenya Delegation to the 131st, 130th and 129th Assemblies of the Inter-Parliamentary Union (IPU) and Related Meetings Held in Geneva, Switzerland from 12th to 16th October 2014, 16th to 20th March 2014 and 7th to 9th October 2013.

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

The Speaker (Hon. Ethuro): Next order.

Sen. Billow - although I have neither seen your request nor you being listed and that is why I could not recognize you - but proceed.

PUBLIC FINANCE MANAGEMENT AFFIRMATIVE ACTION,
SOCIAL DEVELOPMENT FUND REGULATIONS 2014.

Sen. Billow: Mr. Speaker, Sir, my apologies. I thought it was forwarded to your office. However, I beg to lay the following Paper on the Table:-

The Public Finance Management Affirmative Action, Social Development Fund Regulations 2014.

(Sen. Billow laid the document on the Table)

The Speaker (Hon. Ethuro): Next order.

NOTICE OF MOTION

ADOPTION OF THE REPORTS OF KENYA DELEGATION TO THE
131ST, 130TH AND 129TH OF THE INTER-PARLIAMENTARY
UNION IPU AND RELATED MEETINGS IN GENEVA, SWITZERLAND

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir. I beg to give notice of the following Motion:-

THAT, this House adopts the reports of the Kenya Delegation to the 131st, 130th and 129th of the Inter-Parliamentary Union IPU and related meetings held in Geneva, Switzerland from 12th to 16th October 2014, 16th to 20th March 2014 and 7th to 9th October 2013, laid on the Table of the House today, Wednesday, 3rd December 2014.

STATEMENTS

PROPOSED ALLOCATION OF LAND AT KANYANYOONI TO
THE NATIONAL INTELLIGENCE SERVICE IN KITUI COUNTY

The Speaker (Hon. Ethuro): Sen. Kivuti, you had done your bit on that Statement. I guess the remainder was from the one who had sought the Statement.

Sen. Kivuti: Yes, Mr. Speaker, Sir. I had already finished reading the Statement yesterday. We were waiting for Sen. Musila to intervene.

The Speaker (Hon. Ethuro): Sen. Kivuti, if you are in agreement, you just nod. You will save our time.

Sen. Musila.

(Laughter)

Sen. Musila: Thank you, Mr. Speaker, Sir. First and foremost, allow me to thank the Standing Committee on Land and Natural Resources for carrying out an investigation as requested. Through this House, I received the report by the Committee and I want to seek a few clarifications.

First, the Committee concluded that this land was irregularly or illegally allocated to the National Intelligence Service (NIS). Our own co-operative society is using the land and has cattle on it. It is unprecedented for NIS to take 400 acres.

My issue is that despite the fact that the Committee acknowledges that this land is irregularly allocated, it has just made recommendations, one of which is simply that no further transactions should be undertaken by the NIS, when we know that a letter of allotment has already been issued. I thought we could go further, through the Chair, to demand that this land reverts to the community of Kitui. Under the Constitution, this is community land and the community was not consulted. Therefore, this recommendation, in fact, is not clear as to the way forward on this land. If we are not careful, sooner than later, we will find this land occupied by NIS unless this House acts decisively.

I am asking, through you, whether there is anything that this House can do to stop our land – Kanyanyooni Ranch, which is occupied by Kanyanyooni Co-operative Society – from being grabbed by the Government through the NIS.

Sen. Billow: Mr. Speaker, Sir, I have three Statements that were sought---

The Speaker (Hon. Ethuro): Order! We are still on Sen. Kivuti's Statement.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, further to what the distinguished Senator for Kitui has sought, I want the Chairman of the Committee to explain to the House why the observations are at total variance with their recommendations. You cannot find that the allocation was irregular and then simply recommend that no further transaction should take place. If the allocation was irregular, then the entire transaction is void *ab initio*. Therefore, there should be no transactions whatsoever on this land.

More importantly, this land was trust land which was vested in the county council to hold in the interest of the people of Kitui. What is the Committee's recommendation

on the people who irregularly and unlawfully purported to allocate the land to the NIS because they were committing a fraud?

Lastly, he should explain whether the NIS needs 400 acres of land in the heart of Kitui to build a small college.

Sen. Ntutu: Mr. Speaker, Sir, I am rising on a point of order.

The Speaker (Hon. Ethuro): What is your point of order? Is it related to this?

Sen. Ntutu: No, Mr. Speaker Sir.

The Speaker (Hon. Ethuro): Then hold your horses. I will come back to you.

Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. According to Article 67(2)(e) of the Constitution of Kenya, the National Land Commission (NLC) is directed:-

“To initiate investigation, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.”

Could the Chairperson tell us why his Committee refused to make that recommendation to the NLC so that you give them an opportunity to comply with this particular Article and eventually return this land to the people of Kitui?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, in fact, beyond Article 67, the NLC Act Sections 14(1), (2), (3), (4) and (5) are very clear. What the Committee needs to do is cite those recommendations; that if they have found that the title deed or the land was irregularly granted under Section 14(6) of the NLC Act, the NLC can move to revoke the title. It is straight forward.

The Speaker (Hon. Ethuro): Yes, Chairperson of the Committee on Land and Natural Resources.

Sen. Kivuti: Mr. Speaker, Sir, commenting on Sen. Musilas’s queries, it is true there was an irregularity and our report clearly states as such. The irregularity may not necessarily be an illegality. What happened is that there was an omission in the procedure of dealing with the land in as far as the Trust Land Act is concerned. The Constitution envisages a situation whereby in the new dispensation we should have enacted the Community Land Act. As we know, it is in this House and not yet ready. We did not lose sight of that and that is why in our second recommendation we observed that the Community Land Bill needs to be enacted quickly.

Regarding the issue raised by Sen. Musila about stopping any activity by the NIS, actually that is contained in our third recommendation where we say we resolve that no further transaction should be taken by NIS. Needless to say, because the other Senators have raised this, there is no title deed issued to the NIS, at the moment. The Committee decided that it should not be issued.

Coming to Sen. Wetangula’s comments about trust land and irregularity, it is envisaged that from the submissions which were given by the NIS and the County Government of Kitui, the County Government was not saying: “No, we can never have a Government institution in Kitui.” They actually queried why NIS needs 400 acres. It was felt that was too much land. Part of our recommendation is based on the fact that, maybe, they do not need that much land.

Thirdly, Mr. Temporary Speaker, Sir, the intervention of the county government in this matter means that when we have the Community Land Act which should be coming shortly, then the NIS will deal with the NLC through the Community Land Act with the full concurrence of the stake holder who is the county government.

Lastly, an issue was raised about the NLC to initiate investigation and also the NLC Act. The irregularity which occurred on this matter was caused by the NLC, because it issued a letter of allotment. It is because of that letter that Sen. Musila brought the matter up in the Senate. In the Committee, we decided that it should be stayed.

Thank you, Mr. Speaker, Sir.

Sen. Musila: Thank you, Mr. Speaker, Sir. You realise that this is a very a serious matter. Ordinarily, the report by the Committee should come to the Senate in form of a Motion, so that we can approve or not. It looks to me that we will not have that opportunity. In view of the gravity of this matter and the fact that we know that the title deed is under preparation, will I be in order to ask you, using your authority as the Speaker, to ensure through communication to the Ministry of Lands, Housing and Urban Development that this matter holds until the Senate makes a decision on the Motion that is to come? If we leave it like this, I am afraid and I have information that the title deed to this land is under preparation and may be issued any time now.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. In trying to fortify what Sen. Musila is saying, did you notice – if you have this Report – that what the Chairperson says and his conclusions are totally unrelated? He says in his observations that the allocation of the land by the county council did not comply with procedure. Then, he goes to say that the county council did not comply with procedure and the allocation was unprocedural. Then, he stands up and says that the complication came because the NLC issued a letter of allotment; totally contradictory. If he does not have the facts to back what he saying, it would be good if he went back to look for more material. You cannot risk dispossessing the people of Kitui 400 acres of prime land that is in the hands of a cooperative that is earning a living on it.

Sen. Kivuti: Thank you, Mr. Speaker, Sir. My friend, Sen. Wetangula, is not reading between the lines. He says what is contained in our observations; that is, there is an irregularity.

The Speaker (Hon. Ethuro): Order, Sen. Kivuti! You gave a document which has lines. I suppose they are supposed to read the lines. What is there to be read between the lines?

(Laughter)

Sen. Kivuti: Mr. Speaker, Sir, our observations are very clear about irregularity. Because of this irregularity, we stop NIS from proceeding to obtain a title deed. That is the basic point of it. Until and unless that irregularity is addressed, then a title deed should not be issued.

The Speaker (Hon. Ethuro): Order Senators! I am reading the Chairperson loud and clear. That recommendation agrees with the proposal by Sen. Musila that no title

deed should be issued until that matter is sorted out. As requested by Sen. Musila, my office will also endorse that recommendation.

What was your point of order, Sen. Ntutu?

POINT OF ORDER

DISCUSSION OF A PETITION PENDING BEFORE A SENATE COMMITTEE IN A PUBLIC RALLY

Sen. Ntutu: On a point of order, Mr. Speaker, Sir. You remember very well last week, there was a petition from Narok by one Joseph ole Karia, concerning the mismanagement of the finances of Narok County Government. To my surprise, over the weekend, the Senate Majority Leader, Sen. (Prof.) Kindiki, went to a public *baraza* in my county and addressed some of the issues which are before the Floor of this House. He said that he will support the governor because he is innocent. I do not know how he came to reach that conclusion.

Could my good friend, Sen. (Prof.) Kindiki, declare his interest in Narok, because Narok residents are suffering from the corruption which is going on in the county? Could he also be a beneficiary of some of the issues in Narok? My only plea is that we should save the residents of Narok County from these hungry scavengers because we are fed up.

The Speaker (Hon. Ethuro): Sen. (Prof.) Kindiki, do you have anything to say?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Yes, Mr. Speaker, Sir. I have walked in when Sen. Ntutu was on his feet. However, I have heard the substratum of his point of order. Two things: One, it is true that I was in Narok on Sunday, 30th November, 2014. I was invited there for a function. It is also true that there are some remarks that I made and Sen. Ntutu has been in touch with me after that. When we were going for the function in question, I tried to get him, but I could not reach him. Sen. Ntutu and I are already discussing because some of the remarks that I made were not appropriate to him. We are in the process of discussing that.

Regarding the second issue of interest, I have no interest at all in Narok County and I can say that with a straight face. I hold no brief for anybody. I have no interest at all and I can say this with a lot of confidence. However, in terms of personal relationship between Sen. Ntutu and I, are managing that. I think that is work in progress.

Thank you, Mr. Speaker, Sir.

(Several hon. Senators requested to speak)

The Speaker (Hon. Ethuro): Order Senators! Do you really want to discuss this in plenary?

(Laughter)

I will allow, but be prepared to be ruled out of order if I feel that you are going beyond what is expected.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I read the comments that were made by the Senate Majority Leader in Narok. I thought that, perhaps, the comments were out of order to the extent that there was a petition here. However, my concern is: In an attempt to make this Senate look relevant, people have petitioned this Senate severally. There are several petitions that were discussed even this morning. If we are going to discuss their petitions out there in rallies, we are soon going to have no relevance. Alternatively, the public is going to lose confidence in the fact that we have no capacity to deal with their petitions. That is my concern and not the relations that the Senate Majority Leader has with one of his colleagues.

The Speaker (Hon. Ethuro): That is a legitimate issue. If you operate along those lines, remove the personalities and deal with the issues that emanate from that kind of issue.

Please, proceed Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. One cannot just limit this matter to the issue of the petition. You will recall that Sen. Ntutu had actually directed a request for a Statement to the Committee on County Public Account and Investments. We have been working on it, the Statement is ready and today, I will be issuing it with your permission. When the Senate Majority Leader goes to the field and makes the kinds of remarks that he made; it not only offends me, who has been working very hard to get the answer, but it also forces me to remember what happened in the case of Kericho, when there was an attempt to remove Governor Chepkwony. The same Senate Majority Leader found himself in a similar situation. This House had an opportunity to make cautionary remarks against him. I am, therefore, at a loss. We might soon be dismissed when we start visiting offices asking for answers when they know that we shall be talked to. Since Sen. Ntutu has used the word “corruption,” some of us, fear that tag being hung on our necks. It is important that the Senate Majority Leader then clarifies to this House exactly what he said, if the newspapers misquoted him. We are offended.

Sen. Orendo: Mr. Speaker, Sir, the point that is being made by the Senator for Narok is very important, not in terms of what was said, but the rules of debate of the House to protect its dignity and ensure that its authority is maintained. The habit of Senators, including myself, and I am, probably, attracted to behave that way because there is impunity to this fundamental principle; that any matter that is pending before the House cannot be taken out there. We must all wait until it is resolved by the House one way or the other.

Now that the Senate Majority Leader is the one who is involved, can the Chair take exceptional measures, not in terms of content, but in terms of disobeying a cardinal rule, that whatever is before the House should never be a matter of debate? If you punish him, you are more likely to get compliance from my part, being a lesser being in this House. However, the moment he can go say these things and get away with it, in somebody's county particularly, he is also undermining the authority of the Senator for that area.

Although I would expect some to mitigate on behalf of the Senate Majority Leader, knowing him, but on this matter, if he were in the House of Martin Shikuku, he

would have been thrown out immediately. This because he has already pleaded guilty as a sign of ensuring that no debate takes place on a matter that is before the House.

Sen. (Dr.) Machage: Thank you, Mr. Speaker, Sir. Standing Order No.110(1) on Disorderly Conduct states:-

“Conduct is grossly disorderly if the Senator concerned –

- (i) acts in any other way to the serious detriment of the dignity or orderly procedure of the Senate”

Would I be in order to request that you rule the Senate Majority Leader disorderly?

The Speaker (Hon. Ethuro): Order, Sen. Machage! Read Standing Order No.110.

(Laughter)

Sen. Musila: Mr. Speaker, Sir, first, I have tremendous respect for the Senate Majority Leader. He is my very good neighbour and friend. However, on this one, I want to be very clear that previously, we have discussed this matter of Senators taking matters of the House outside. I remember during the case of the impeachment of the Governor for Kericho, certain Senators, including the Senate Majority Leader, went and declared support for that governor, thus making our work look like we are coming to rubber stamp what they had decided out there.

Now, the good Senate Majority Leader says that they are patching up with Sen. Ntutu. However, he has not offended Sen. Ntutu. In this case, he has offended the whole House. The least that you can do is to demand an apology from the Senate Majority Leader to the House and ask him to refrain and make sure that if he does it again, further disciplinary action will be taken.

Sen. Billow: Thank you, Mr. Speaker, Sir. Our Committee on Finance, Commerce and Budget was in Narok following the petition which was referred to our Committee. We met Sen. Ntutu on Monday, 1st December, 2014, who was obviously very visibly annoyed and raised this issue with the Committee; that we had gone to investigate a petition whose matter has been publicly decided by the Senate Majority Leader. We had to plead with him as a matter of fact to let us continue with our work. We told him that if there were some clips or something to support the allegations, then we would manage the same. However, he agreed with us, and was kind enough to allow us to continue with our work.

Obviously, this is a matter he had raised when we met him on Monday morning. As the Senator for the county, he was not very amused. He eventually allowed us to continue. We are actually investigating this matter and we would appreciate if Members could as much as possible continue to refrain from discussions of the matter until it is concluded.

Thank you.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, you have once spoken from where you sit against any Member of this House going out there, and purporting to speak for and on behalf of the Senate. I appreciate that the distinguished Senator for Tharaka-Nithi has owned up that he made inappropriate statements in Narok

and that he went there without the courtesy of involving the area Senator. Indeed, Sen. Ntutu yesterday spoke to several of us. He was visibly agitated and rightly so. We are a very small House, we are like a family. Even where I do not agree with any of my colleagues, I cannot imagine a situation where I can go to Nyeri without informing the distinguished Senator for Nyeri County, even if he does not come with me. Courtesy just requires that we do so.

More importantly, Mr. Speaker, Sir, without prejudging anything, because any matter that comes before us, we have to hear it fairly, impartially and make a rational decision as a respected House, so, anyone of us who goes out there and says or appears to give a conclusion on a matter that has not even been dealt with, is irregular and unprocedural. I do not know what you want to rule, but the distinguished Senate Majority Leader owes the House a clear and conditional apology. Some of us who have the habit of transgressing in a similar manner, I think the Chair should issue a very clear direction, if not warning, that this kind of irregularity in conduct is unbecoming of a distinguished Senator.

The Speaker (Hon. Ethuro): Sen. (Prof.) Kindiki, after listening to all those remarks.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I want to concur with all those who have spoken to a large extent. Except that I want to clarify two things. One, it is not true that I had information that there is a Petition before any Committee of this House. I did not have this information by Sunday morning. If I had that information, I would be the last person to even allude to, leave alone speaking, to anything that touches on a matter that is before this House. I am an obedient and proud Member of this Senate. I respect and give this House the dignity that it is supposed to be given.

Secondly, it is also not true that we went to Narok without informing our colleague. That is not the position. I tried to reach him, I could not reach him and I have evidence of trying to reach him. That is part of the discussion we were having.

Finally, because I do not know which way you will rule, even in the context of Sen. Ntutu's displeasure, at no time have I said anything that touches on merits of any matter, even if as I have said on the first point, I did not know there was a Petition live before a Committee of this House. Even with that ignorance, I did not utter anything that touched on the merits of anything.

Mr. Speaker, Sir, let me take this opportunity to reiterate that I have respect for colleagues and for this House. In the circumstances and totality of that matter, I am at the mercy of the Chair.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale. There is really no matter for debate here. You have already said your piece and others have assisted you. Let me not go beyond that.

Hon. Members have spoken and Sen. (Prof.) Kindiki has appreciated that, one, matters that are active before the House should not be interrogated in some other fora.

Secondly, being Majority Leader should not be confused with the majoritarian view of the Senate. The Senate has a way of deciding by the majority of the membership.

Thirdly, he has agreed that he was not aware, he did not have any ill will neither to the Senator from Narok County, and whom he has actively engaged - I am aware, in the presence of quite a number of witnesses. He has also confirmed to the rest of the membership that he respects each one of you.

Fourthly, Sen. Orendo cannot also get away with the fact that because he believes that if the Senate Majority Leader can do it, he will also do it. He has also conceded to be guilty of the same transgressions he accuses the Senate Majority Leader of.

Under those circumstances, I am strongly persuaded by the contribution of Sen. Musila that let the Senate Majority Leader be warned that the temptations of a public that wants to be addressed does not make him disobey our Standing Orders. Two, let him apologise to the House. Let the House also appreciate that when a man or a woman of that stature acknowledges, we all know in this House you can say whatever you wish to say, but if you withdraw and apologise, we always accept. That apology will be accepted by the House with a warning that in the future, the consequences contemplated and sought by the Senator of Migori County might apply and the Chair will not hesitate to enforce the Standing Orders more robustly with that kind of warning.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir, for your ruling. In the circumstances, thank you also for your leniency. I take this opportunity to apologise to the Senate of the Republic of Kenya and confirm that I believe in the dignity of this House and that it should not be repeated again.

(Applause)

The Speaker (Hon. Ethuro): Sen. Ntutu, as the one who bears most---

Sen. Ntutu: Mr. Speaker, Sir, since he has apologized, the people of Narok County will be a bit comfortable. They will have some confidence with the Senate. I have no objection.

(Applause)

The Speaker (Hon. Ethuro): Next Order.

STATUS OF REVENUE COLLECTIONS IN MARA
TRIANGLE AND MAASAI MARA GAME RESERVES

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I had a statement request and a statement to issue on the issue of Narok, as requested by Sen. Ntutu.

Sen. Billow: On a point of order, Mr. Speaker, Sir. On the same issue of the Statement, I want your guidance on this issue. There is the Petition that has sought to address the same issues as the Statement which was requested. When we were there on Monday, the officers of the county government where we were trying to get the information were equally perplexed because there is a Statement and a Petition. I thought that if there is a Petition, it is better to execute the Petition rather than, again, issue a Statement on the same thing. What is the guidance?

The Speaker (Hon. Ethuro): What I will do is that Sen. (Dr.) Khalwale will defer that Statement for today. We will consult in my Chambers and then we will give directions on which way to proceed on this matter.

(Statement deferred)

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, can I ask for the Statement now?

The Speaker (Hon. Ethuro): You may wish to do so.

DIRECTIVE BY THE MINISTRY OF LAND, HOUSING AND
URBAN DEVELOPMENT TO MOVE LAND DOCUMENTS
FROM KAKAMEGA, MERU AND MACHAKOS COUNTIES

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I rise to request for a Statement from the Chairman of the Standing Committee on Agriculture, Lands and Natural Resources. This is in respect of the following:-

On 28th November, 2014, trucks arrived at the headquarters of the lands office in Kakamega to collect lands documents and transfer them to Nairobi on the verbal orders of Charity Ngilu, the Cabinet Secretary for Land, Housing and Urban Development. There was serious commotion that occasioned me to intervene. When I intervened, the trucks were stopped from lifting the documents. As we stand now, we do not know the way forward.

When I was intervening, I talked to one Kahuhia and the Land Registrar. He told me that such instructions had not only been given verbally by Ngilu to Kakamega, but they had also given them to Meru and Machakos counties.

The Speaker (Hon. Ethuro): Order, Senator! Who is Ngilu?

Sen. (Dr.) Khalwale: The Cabinet Secretary for Land, Housing and Urban Development. I had defined her at the beginning of my conversation. In view of that, I seek for the following clarifications:-

(1) Has the Cabinet Secretary for Land, Housing and Urban Development, Ms. Charity Ngiulu, indeed, issued a directive that all these documents be moved to Nairobi?

(2) When the documents were moved from Meru and Machakos counties, what exact documents were involved and to what benefit?

(3) What reasons have necessitated this unprecedented action to be taken by the Cabinet Secretary?

(4) Could the Chairperson clarify the fact that given that the local leaders and members of the public, including the Senator for Kakamega himself objected to this exercise in Kakamega County, when the trucks came from Nairobi to ferry those documents, has the exercise been abandoned?

(5) Is there any relationship between the land scandals that are currently being reported in the Ministry with this movement of documents because the same seems to have happened in Nairobi, Lamu and Kwale, but has been confirmed by Mr. Kahuhia that, indeed, it has happened in Meru and Machakos?

Sen. Murungi: On a point of order, Mr. Speaker, Sir. It is quite proper for the Senator for Kakamega County to raise issues regarding his county. However, I will be happy if he could expunge Meru County from his list because the Cabinet Secretary, Charity Ngilu visited Meru County when I was there. She explained to us the purpose of this circular. Indeed, we, as the Meru leaders, had no problems with her collecting the documents from the land registry in Meru because it is an exercise which was intended to benefit us by modernizing and digitizing the registry and also sorting out the perennial problem of documents disappearing in that registry.

We commended the Cabinet Secretary for accelerating the issuance of title deeds which have been pending in Meru since Independence. So, I would like the name “Meru” to be deleted from the Statement that the Senator for Kakamega County is requesting.

The Speaker (Hon. Ethuro): Order, Senator, Meru County! I am afraid I will not grant your wish. Just because you represent Meru County does not give you the monopoly of issues and interests around Meru County. You would have done well to make that kind of contribution to the Chairperson of the Committee who will report to the House that Meru County is happy with that exercise.

Secondly, Sen. (Dr.) Khalwale has a right to raise any concern, anywhere in the Republic. The fact that Sen. Murungi is happy about what the Cabinet Secretary did in his county does not necessarily make the other one happier. These issues are being sought, it is not that they were making statements with finality, they were just asking. I am sure that kind of answer, about your happiness, will still have come through the Chairperson when the Statement will be responded to.

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

The Speaker (Hon. Ethuro): Sen. Murungi, who has granted you a point of order?

Sen. Murungi: I thought you were looking at me favourably.

The Speaker (Hon. Ethuro): Actually, you are the one looking at me with pleading eyes, so I will allow you.

Sen. Murungi: Mr. Speaker, Sir, as you know I am a very obedient Senator. I will abide by your ruling. However, as framed, there can really be no answer given to the Senator for Kakamega because it is addressed to a non-existent Committee of this House. Let him read his statement again.

Sen. Obure: On a point of order, Mr. Speaker, Sir. The observation made by the Senator for Meru County is precisely what I was about to raise. Sen. (Dr.) Khalwale has actually addressed his concerns to the Chairperson of the Agriculture, Lands and Natural Resources Committee. I was wondering if this Senate has any such Standing Committee.

The Speaker (Hon. Ethuro): Order, hon. Members! It really amazes me how you split hairs. Even our Constitution is absolutely clear that technicalities should not stop us from proceeding on the substantive business. Whether Sen. (Dr.) Khalwale decided to operate on the older format – and I appreciate why Sen. Murungi is making that distinction – because he fears that he may have lost the job again.

(Laughter)

He was wondering whether the agricultural docket has gone back to where it came from for him to become Chairperson. Anyway, Sen. (Dr.) Khalwale, you know the Standing Orders have all these provisions. You should have got the right Committee. However, since you did not, that should be a case for the Committee on Land and Natural Resources, whose Chairperson was not listening. Sen. Kivuti, this is your matter. When are you going to respond?

Hon. Senators, before I forget, I want to make this observation because I really believe in this. We have spent about 30 minutes asserting and affirming the dignity of this House and of Senators and asking some of us to conduct ourselves in a manner that demonstrates that dignity. I will also not preside over a House that does not extend that dignity to other members of society. A Cabinet Secretary is not just “Ngilu”; she must be given her appropriate title. If you are making reference to any other member of our society, it is either Mr. or whatever qualification a member has. I will enforce that seriously. Sen. (Dr.) Khalwale, be advised.

Sen. Billow Kerrow.

Sen. Billow: Mr. Speaker, Sir, I want to appeal to the Senator for Kakamega to expand his request because this similar exercise was carried out in Nairobi and Mombasa and there have been questions raised about the effectiveness of the registries after that exercise was carried out. He should include an audit on the registries that have already been modernized or digitalized in Mombasa and Nairobi to see whether there was actually an impact because the public who have been going there and lining up have been complaining in the media that they have not seen any significant change.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, further to what Sen. (Dr.) Khalwale has raised, I want the Chairperson of the Committee in responding to this Statement to tell us whether you need to send trucks to a registry far away in Kakamega or wherever to lift documents to Nairobi or wherever to reorganize the registry.

Why was a similar exercise not carried out in Lamu, Malindi and Mombasa? Just to reinforce the point of Sen. Billow, what is the efficacy of this exercise when we saw right in Parliament, that when the Minister appeared before the Committee on the current land saga her answer was that despite the exercise, she could not raise the file to come to Parliament to answer questions? So what is the efficacy of this exercise?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, there is a requirement that every registry has a strong room. There is a reason because the public needs to have confidence that their documents are being kept well. Now if documents are being moved, I would like the Chairperson to clarify the security measures that are being employed because if it is a truck as Sen. (Dr.) Khalwale has mentioned, it means that it is the way you drop sucks in a canter. That simply suggests that, that is not a truck that would have, for example, safety locks or something like that so that we can know that, in fact, the files of Kenyans in respect of their lands are safe.

Lastly, Sen. Murungi raised a very important issue which I think we have all forgotten; that there is, indeed, a circular issued by the Ministry of Lands, Housing and Urban Development concerning movement of documents. Would I be in order to suggest that even that circular should be produced because this issue concerning lands is

something that is bothering all Kenyans? This morning we had a meeting with the Cabinet Secretary in charge of finance and the Governor of Central Bank and the issue of land transaction is affecting the economy. Therefore, this is a very important issue.

The Speaker (Hon. Ethuro): I have seven requests. This is just a Statement being sought, but you want to turn it into a debate. I want to conclude it there because I do not think that there is anything more useful that anybody could add that is not known. You have talked about it being expanded to the rest of the country, the security of the documents and whether that should be done the way it is done. In my view, that should cover all the issues.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, listening to all the contributions, would it be in order to conclude these discussions by asking the Minister herself to appear before the relevant Committee or a Committee of the Whole and address herself to these questions rather than for us to go through this long route of tasking my dear friend, Sen. Kivuti to go and get information, bring it here and some more questions will be asked, I think we would rather get the word from the horse's mouth.

Sen. Kivuti: Mr. Speaker, Sir, as we all know, since the new dispensation came, Chairpersons have been doing a very tedious job of being messengers. You ask questions which are very relevant to the welfare of Kenyans, you go and bring an answer here and it is not quite conclusive. I am very convinced that since this matter is quite urgent, it may make a lot of sense if either we got the Cabinet Secretary to appear before the Committee and we invite all Senators who are interested to be present or we make a Committee of the Whole. In fact, when we were dealing with the matters of Konza City, we had Senators coming to the meetings. When we were dealing with the matter of land in Trans Nzoia, we also had Senators attending. Whichever way you rule, I think it is relevant.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. You had guided me on the issue of decorum on how I refer to the Cabinet Secretary. I am sorry to remind you that the time I pronounced her name first, that time you were consulting. I never referred to her in any degrading manner. I would like to confirm to Sen. Murungi that, lucky him, that they were consulted and informed in Meru. However, as far as Kakamega is concerned, not the Governor, the Senator, the Members of Parliament, the Members of the County Assemblies (MCAs) or the *liguru*; village elder was consulted.

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, on both you are dead wrong. On the first one, it does not matter because the name of a person or a title is not like you have a long name and then you abbreviate it. In subsequent utilization of that, you use abbreviation because you abbreviated it, in the first instance. You do not abbreviate people's names or titles. In any case, the only time maybe you want to use the shorter one is now when you use the surname and that will also have a Mr. a Mrs. or some title. However, in your subsequent one, you referred to her as Ngilu. You used one name and you know very well that there are many Ngilu's from Ukambani and elsewhere in the Republic. I did not want you to confuse the good Senators from Machakos, Makueni and Kitui wondering which one of theirs is lucky to have been there. I still maintain what I said and that is really important.

On the second bit, I had figured that out myself and I thought it was too obvious to repeat because that would be the best reason on which you are requesting the Statement. If you had been consulted, you would not have come to the plenary. The question you should be asking is why the Cabinet Secretary should be consulting one Senator in another county and not in another county. That should be the relevant question.

In order to dispose of this matter, I think there is sufficient interest and I think it is an issue that is really very important for all the reasons that you have stated, that you as the Chairperson, you can convene a Committee of the Whole so that all the Senators can come and participate.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I requested for a Statement from the Chairperson of the Committee on Education. It is in relation to the failure of the Cabinet Secretary for Education to set up a Universities Fund in accordance with the Universities Act. I do not see the Chairman here. I do not know if there are any Members of the Committee here because the Statement is expected today.

The Speaker (Hon. Ethuro): Vice Chairperson or any other Member!

Sen.(Eng.) Muriuki: Mr. Speaker, Sir, I have a number of Statements pending. There is a particular one regarding the recruitment of the Kenya Defence Forces in Nyandarua County which is still urgent. It is overdue. Can we hear from the Chairperson?

The Speaker (Hon. Ethuro): Order, Members! Sen. Wetangula had sought one.

Sen (Prof.) Lesan: Mr. Speaker, Sir, I thank you. Indeed, I am a Member of this Committee. However, I am afraid I have not consulted and have no information, first, on the whereabouts of the Chairperson and, secondly, on the item which is being discussed. However, let me undertake to look for the Chairperson and inform him of the necessity to give this answer in the next sitting.

The Speaker (Hon. Ethuro): Now that you are here, can you get it delivered tomorrow, either by your Chairperson, or in his absence, you will take the responsibility?

Sen (Prof.) Lesan: Thank you, Mr. speaker, Sir, I will try to do that knowing that he was aware that he was supposed to give this answer. The answer should be somewhere. I will attempt to get him to know that the answer is required in the House.

The Speaker (Hon. Ethuro): Sen. (Prof.) Lesan, the word “tomorrow” is important to us.

Sen (Prof.) Lesan: Mr. Speaker, Sir, it is Thursday, afternoon.

Sen. Haji: Mr. Speaker, Sir, I thank you. I am sorry to say again that this Statement has not reached us up to now despite the fact that we have requested them to hurry up.

The Speaker (Hon. Ethuro): Hon. Senators, our Chairpersons are feeling frustrated and I share in that. Last week, we had many of those Statements not being responded to. I wrote to all the Cabinet Secretaries to ensure that all the outstanding Statements are availed to the House. We are stuck and I do not see the Senate Majority Leader here.

The Deputy Senate Majority Leader, what is the position in Government about the failure by Cabinet Secretaries to cooperate with Chairpersons of Committees?

Sen. Keter: Mr. Speaker, Sir, I thought they have been cooperating, but I will undertake to find out why in this case they have not delivered some of the Statements. Tomorrow, we will report back.

The Speaker (Hon. Ethuro): Please, do it tomorrow.

Sen. Sang: Mr. Speaker, Sir, as the Deputy Senate Majority Leader confirms tomorrow to this House, can he also give a reasonable explanation why the Chairpersons in the “Lower House” seem not to have problems with the Cabinet Secretaries while Chairpersons in this House seem to have the challenge? Is it a problem directed to this House or is it generally the entire Parliament?

Sen. Billow: Thank you, Mr. Speaker, Sir. Mine is to emphasize. I had on yesterday’s Order Paper, six Statements that are pending from my Committee. Three of them are ready for issue. However, I do not see the three Members who requested them. However, for three of them, we have not gotten a response, in particular the ones by Sen. (Dr.) Zani, Sen. Mutula Kilonzo Jnr. and Sen. Gwendo. They are all very critical and the deadline is tomorrow. I request that I also pass this specific request to the Senate Deputy Majority Leader so that he can talk to the specific people to give us an answer before the end of tomorrow’s session.

Sen. (Eng.) Muriuki: Mr. Speaker, Sir, you kindly ordered that the lists of the Statements which are pending be printed and it was done in the last sitting. It was very useful. On it, certain Ministries were, obviously, quite notorious for not bringing any. A case in point is the Ministry of Defence. I would request further that whereas and when that list is published or printed, could we also have the dates when the Statement was requested. This is because, at some stage, it would also be useful to organize a round table with the Cabinet Secretaries so that they are also aware that some of these Statements are long overdue and whatever issues Members had are still pending.

The Speaker (Hon. Ethuro): We have all that information. It is just that we did not put it with the rest of team. We have what we call a Statements tracker which gives details such as requested by, from, date requested and request for deferment. We follow all of them. There is a booklet which we will avail to the Deputy Senate Majority Leader.

What is it Sen. Obure.

Sen. Obure: Mr. Speaker, Sir, I have two responses to make on behalf of the Chairperson of the Standing Committee on Roads and Transportation.

The Speaker (Hon. Ethuro): What we had agreed as the Rules and Business Committee (RBC), for this session, we will regulate the Statements. Unless your Statement appears on the Order Paper, then you have no business bringing it to the plenary. You need to consult me then I will fast track because we must prioritise given the time constraints.

Two, if the Members are not there, just forget, do not even mention them.

Sen. Obure: Mr. Speaker, Sir it was there yesterday, but unfortunately, you made the ruling that we proceed with other business.

Sen. Keter: Mr. Speaker, Sir, in line with your ruling, perhaps, it will be useful for me to follow it up with the Senate Majority Leader if we can even go beyond the

tracker by knowing which Statements are still pending in the Ministries. It will be easier for us to zero-in on those Ministries which are not able to provide us with answers.

The Speaker (Hon. Ethuro): Order, Sen. Keter! I think you and your leader need to appreciate how we work in this House. In yesterday's Order Paper, we listed all outstanding Statements as requested by Members last week.

Two, we have something called HANSARD which should help you anywhere in the world even when you are away. I do not want to use the other famous terminology. For both of you to come here and say that you did not know what transpired in the House is no excuse whatsoever, completely none. However, we will assist you because the documents are ready. It is just for you to pick each and every one of them, including when it was sought, when it was supposed to be here, when it was deferred and how many times, including the specific dates.

Members, come ready to interrogate the Senate Majority Leader and his deputy. Let us terminate this business and move on to the next order.

BILLS

First Readings

THE NATIONAL DROUGHT MANAGEMENT AUTHORITY BILL
(NATIONAL ASSEMBLY BILL NO.42 OF 2013)

THE INTERGOVERNMENTAL RELATIONS (AMENDMENT)
BILL (SENATE BILL NO.36 OF 2014)

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

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

Second Reading

THE FERTILIZERS AND ANIMAL FOODSTUFFS (AMENDMENT)
BILL (NATIONAL ASSEMBLY BILL NO.36 OF 2013)

(By Sen. (Prof.) Kindiki on 27.11.2014)

(Resumption of Debate interrupted on 27.11.2014)

The Speaker (Hon. Ethuro): Who was on the Floor? Hon. Senators, the Floor is open. The Question had been proposed.

Let me recognize Sen. Muriuki.

Sen. (Eng.) Muriuki: Thank you, Mr. Speaker, Sir, for giving me a chance to say a few words in support of this important Bill.

Mr. Speaker, Sir, the essence of this Bill, among other things, is to create the board which will mind the affairs of fertilizers on behalf of farmers. Those of us – and I think we are the majority – from agricultural areas have major problems in the production of crops. If you consider most of the crops and the statistics of production per acre, you will find that most of the production per acre or hectare has been going down over the years. Part of the reason for this is that supply of fertilizer has been very haphazard, in terms of actual availability, quality and type. Very often, farmers do not even know which fertilizer to apply where. The moment you talk about fertilizer, farmers will rush and buy whichever is being sold. Because of lack of an organization whose function is principally to guide and mind the affairs of fertilizers, you will find very often that farmers will go for maybe what they can afford. In the absence of any guidance, you will find that, that fertilizer does not work or do not work as intended and the production goes down.

The end result is that farmers have a very hard time getting returns out of their sweat. Many of them give up. Worse still sometimes farmers give up on some crops thinking that they have no returns. They move to another crop and face the same circle of frustration. Eventually, farming becomes a very risky business, especially for people who come from outside the farming sector and want to invest in it.

Mr. Speaker, Sir, the Bill touches on animal feeds and it is the same circle of frustrations again. At the moment, very many investors are now attempting to go into farming, because it is slightly better off than it has been in the past years. This is because the country is opening up in terms of roads, water and so on.

In Nyandarua where I come from, the main activity other than potato farming, is dairy farming. Dairy farming is very frustrating when it comes to animal feeds because there is no one to guide farmers. The expertise which reaches the farmers as to what kind of animal feeds they need to feed particular animals for a particular kind of production is absent. Every farmer then tends to end up doing their own experiment on which animal feed to use, without any guidance. What is missing as far as the animal feeds are concerned are the standards. You do not know which standard is good for what level of production. Therefore, farmers quite often are duped to pay more, thinking that the one which has come recently is better than the earlier one. After a few months or seasons, they will find that, that is not the case. They give up. The end result is a circle of frustrations by the new investors in the farming world. The poor Kenyans have no choice because they do not have money to invest. They maintain the same circle with dwindling returns.

The Bill also touches on pesticides which we use to deal with pests and so on. Again, it is the same circle as the fertilizers and animal feeds. It is easy to identify some pesticides. However, it is very difficult to know which one to use. Most farmers go for what others are using. The board in this Bill will only deal with fertilizer. However, in my view, it would have been very useful if it would be made in such a way to encompass all the three principle components of the farming inputs, so that farmers are well catered for.

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

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

Mr. Temporary Speaker, Sir, having said that, I still would support the formation of the board as is it as a starting point. Depending on how it will perform, in future, others can be brought on board. But it is very crucial. We are discussing some of the crops that I am familiar with. For example, I have a passion for potatoes and it is a major crop where I come from. We are already 20 or 30 per cent below the production per acre that we had ten years ago, because of inputs. You are not sure which fertilizer or pesticides to use. Of course, there are a few other underlying issues. If I will have a chance to move the Bill today, I will elaborate on that. In summary, the functions that this kind of board is supposed to do are long overdue.

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

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Peter Anyang' Nyong'o

Sen. (Prof) Anyang- Nyong'o: Thank you, Mr. Temporary Speaker, Sir. I stand really not to support the Bill, but to support the aim of the Bill, for very good reasons. One, I understand that the Government is in the process of rationalization of parastatals. The original objective of the rationalization of parastatals, if I understand it, was to make fewer parastatals, so that they are run more efficiently and cost effectively. However, the exercise has not really meant the objectives, so, we are in kind of quodrum where by the exercise of rationalization of parastatals seems to stand in limbo and it is really hurting privatization.

If I remember from our days of the economic recovery strategy for wealth and employment creation, our idea was to make sure that the State works to stimulate investments in the economy, both by the State and the private sector.

Looking back into history, the era in which parastatals blossomed in this country, was in 1960s, soon after Independence. They blossomed on the fact that they were aimed at doing two things, one, was to make it possible for the Kenyan State at Independence time to intervene effectively in the economy so as to promote investments and Africanization. When the State corporations were first established in the 1960s and quite to some extent into the 1970s, they were very effective and efficient. They stimulated this economy quite a bit and the era of very fast economic growth in this country was really between the 1963, 1972 and quite a bit of the 1970s. I say 1972 because in 1973, we had the oil crisis and that affected the growth of this economy quite substantially, indeed, the growth most of third world economies.

Mr. Temporary Speaker, Sir, what is important about parastatals, during the first ten years of Independence and, indeed, the civil service, was their efficiency. They were professionally run and they met their objectives. The development of agriculture in this country could not have occurred without the intervention of such bodies, like the Agricultural Finance Corporation (AFC) and the Agricultural Investment Bank (AIB).

The moment parastatals started to be mismanaged and to serve individual interests, then, they started going down. When I was the Chairman of Public Investment

Committee (PIC), for example, in Parliament, a parastatal that was doing very well, the National Housing Corporation (NHC), which built many houses for low income and middle income Kenyans, and those houses are still there up to this very day, performed because it was professionally run by people like S.G Anyang.

The time that AFC was working very well, they had things like the Guaranteed Minimum Returns (GMR), which guaranteed farmers returns for their investment in agriculture, even when there was drought and they lost their crops and their animals. So, we cannot say that public corporations are, by their very nature, inefficient, they are not. Under proper governance regime, public corporations can perform wonders in terms of capital investment, growth in productivity and expansion of the economy. Subsequent, up to 1978 and, unfortunately, these years coincide with the regime of Daniel Arap Moi, parastatals started to do very badly, precisely because they lost the original management skills, professional management, honesty and efficiency and they became avenues for primitive of accumulation, personal aggrandizement, rooting, corruption and so on.

Therefore, subsequently, there was a move particularly, by the World Bank and development partners to recommend that parastatals be wound up for purposes of privatization. Now, we live in a kind of funny state of affairs, whereby, we have not really effectively supported privatization completely in the whole economy, but nonetheless, we still need certain parastatals. However, this is not the time to invent in new parastatals. This is the time to use existing parastatals, re-tool them and make sure that they perform their original mission better. Everything written here in this Bill can be done by the AFC. If you look at the Fertilizer Board of Kenya, membership of that Board is more or less reflective of the membership of AFC. The Bill states that;

“3.The principal Act is amended by inserting the following new section immediately after section 2-

2A (1) There is established a body to be known as the Fertilizer Board of Kenya

(2) The board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of”

The membership in 2(c) is-;

“The board shall consists shall consists of the following persons appointed by the Cabinet Secretary

(a) the Chairperson competitively sourced and appointed by the Cabinet Secretary;

(b) the Principal Secretary in the Ministry for the time being responsible for Agriculture or his designated alternated not being below the level of Deputy Secretary;

(c) the Principal Secretary in the Ministry for the time being responsible for finance” .

All these entire Principal Secretaries (PS) and government representatives, you will find them in the AFC Board. So, why do you create a board where the people going to do the work already exist in a board in the same sector and all we could do is create a strong department or directorate in the AFC and let this work of dealing with fertilizers be done at AFC? Let us efficiently run the AFC as it was run in the 1960s and it produced very good results.

I remember a time in the 1960s and 1970s, when you could go to AFC, borrow money, at very affordable interest rates, go and invest in your farm, perform, return that money and AFC did very well. AFC only broke down when the big fish started to get money from AFC and not pay back. When the big fish got the guaranteed minimum returns and never performed. In fact, the guaranteed minimum returns were actually for sometime got by the big fish when they were not farming at all. They just got the money, supposedly, for some wheat that has failed somewhere in Narok or somewhere like that. We really never went down and found out if that man had those ten, twenty or fifteen hectares of wheat. It was not there, it was all corruption.

I see a possibility unless we deal with corruption effectively in parastatals where we shall establish this board and before we clean up parastatals effectively or supposed that this exercise is going on, we shall be creating yet another source of primitive accumulation in this nation. I am very worried about this because, in as much as I agree with the goal of making sure that we get fertilizers to farmers, through State help, at a price they can afford and make sure that, that fertilizer is available when it is necessary, it will be appropriate that it will go to the right sector. I have a fear that creating a bureaucracy like this one, when the ones existing were ruined and when we are still trying to re-tool them and we have not seen the result of that re-tooling, I would be rather hesitant.

In fact, I would think that if this Fertilizer Board already exists. We are just amending the law. Rather than amend this law piece meal when the exercise of rationalization is going on, I would rather see in this Senate, a report of that rationalization that is going on before we take further action. I am quite worried about that exercise itself. How far it is affecting privatization? Why do I link privatization with this issue of fertilizer? We know that in the 1960s too, we had this initiative of establishing the Ken-Ren Fertilizer Plant (KFP) which went hay wire.

We are still paying money for loans we borrowed to establish that Ken-Ren Fertilizer Plant, no explanation has been given and we are again setting up another parastatal to deal with fertilisers when money has gone down the drain for the same exercise. We should be taken seriously. Let us, first of all, get an explanation why Ken-Ren Fertiliser Plant failed, who was responsible and has the money been paid back. Is it really fair to ask the Kenyan taxpayer to continue paying this money for some other people to benefit from it? As I speak today, the importation of fertilisers in this country is one of the biggest sources of scandals in our economy. Fertilisers are expensive to farmers and sometimes not available because of the manipulation of the fertiliser market by the big fish. I do not think that the creation or the amendment of the existing Bill of fertiliser board will change much unless the whole regime of importing and selling fertiliser is changed.

Mr. Temporary Speaker, Sir, we have what it takes to have a domestic fertiliser production plant. First, we do import petroleum products, some of which can be used for making fertilisers. We have a big sugar cane industry which can also be used for making fertiliser. There is a substance that comes out of processing sugar which is usually dumped in sugar cane processing industries. It is a kind of mud that can be a very good source of fertiliser. If that is used as the base of processing fertiliser in the sugar industry,

we can get enough domestic supply of fertilisers. If, indeed, our aim as a government was to make sure that we develop a domestic fertiliser industry which will stop us from importing fertiliser from abroad and, therefore, cushion us from using the rare foreign exchange for importing fertiliser, I would definitely be very happy.

Today, we were meeting the Cabinet Secretary in charge of Treasury and the Governor of Central Bank of Kenya (CBK), my colleague Prof. Njuguna, as a Committee of Finance and Budget. One of the questions we were raising is: How do we, as a country, ensure that when our shilling depreciates, it helps exporters. Exporters will earn more shillings when they sell our exports abroad. How does this turn around to help our consumers who consume imported goods? The response they gave us is that as the shilling depreciates and exporters from here benefit, we should invest more in the domestic economy to stimulate domestic production for consumer products like household goods and factor inputs like fertilisers to farmers.

It is time that, as we pass Bills, we see how they fit into the overall framework of the economy as a whole. Let us not pass them piecemeal looking at one sector and not realizing how that will affect the macro-economy in our nation. I do believe that my fears will be answered when we ask two questions: First, if, indeed, there is an existing fertiliser board for which we are amending the law, what has so far been the balance sheet of the Government's intervention in the domestic production of fertilisers? The results are very poor.

Sen. Murungi: Mr. Temporary Speaker, Sir, thank you for giving me this opportunity to contribute to this important Bill. I want to take this opportunity to thank our deputy Chairperson, Sen. Ndiema, who moved it on behalf of our Committee. I also want to thank all the contributors to the Motion, including my friend, Sen. Anyang'-Nyong'o of Kisumu County. Allow me also finally thank the National Assembly for complying with Article 110(3) of the Constitution which requires that all Bills which concern counties be brought to this House after they are debated in the National Assembly for our debate and concurrence. There has been a serious tug of war between the National Assembly and this House as to what Bills concern counties and which ones do not. I think that debate is now being dissolved and I was very happy to read in the press the Speaker of the National Assembly calling for dialogue between the National Assembly and the Senate.

He talked of creation of a technical committee which will be looking at the Bills to determine which ones concern counties and which ones do not so that it is not a personal confrontational between our Speaker and himself. That is a very welcome move. The technical committee of experts between our House and the National should be set up as quickly as possible to solve all the issues. I want to welcome that initiative and also welcome the message from the Speaker of the National Assembly. I believe that our own Speaker will have a cup of tea with him so that we do not go back to where we were last year.

Mr. Temporary Speaker, Sir, at the very outset, let me say that I support the creation of this Bill which will regulate fertilisers and animal foodstuff in this country. We do know that there is a policy by the Government to try to amalgamate and consolidate as many parastatals as possible and discouraging creation of new parastatals.

I do not think that we should be following that programme blindly. We, as Senators, should question the logic of that project and find out what we are trying to achieve through it. We might create a very huge tower of Babel comprising so many parastatals which do not talk to one another. There is still a case for specialization. In the area of input, especially fertilisers, we need a specialized agency because this is one of the areas where we have not performed very well.

Mr. Temporary Speaker, Sir, I am also happy that this board is also going to deal with animal foodstuff. In my own county, Meru County, we have done very well in aquaculture. We have many fish ponds. We are even building a fish factory in Meru. We want to be one of the leading counties in fish farming in this country. However, we are facing serious challenges in fish feed. Many of our fish farmers are feeding fish on chicken feed because fish feed is not available. Secondly, some of the feed that we get is of no nutritional value. Therefore, I think having a body to regulate and standardize animal feed in this country is very timely.

Mr. Temporary Speaker, Sir, there is the issue of fertilizer subsidy. In the past, there was only one crop which was targeted for fertilizer subsidy in the country and that was maize. In our region, we used to hear that the government is subsidizing fertilizers for maize. We have seen recent movement by the Government to try to cover other crops as well. I think the highest consumption of fertilizer in this country is in our region; that is, tea farming. However, the tea farmers have not benefited from Government's fertilizer subsidy since it was established. There is need for us to be fair in distribution of national resources, including the fertilizer subsidy so that all the farmers of Kenya can benefit. The fertilizer subsidy should not only cover maize, but also tea, coffee, beans, potatoes and other crops that our farmers are interested in.

Mr. Temporary Speaker, Sir, we know that, as Sen. (Prof.) Anyang'-Nyong'o said, we did very well in the 1960s when Government was massively supporting agriculture in this country. We failed miserably in 1980s, when Government was misled by the World Bank and other Briton Woods Institutions to withdraw from agriculture on the basis that it was not the business of Government to involve itself in economic activities. However, the reason Kenya and, indeed, Africa has not been feeding itself is precisely that. Peasant agriculture is not a viable form of agriculture. The only way it can be made viable is for the Government to carry the farmer on its back.

Mr. Temporary Speaker, Sir, our Committee has just returned from a study tour in China and India. This logic was explained to us. In China, both the national and regional governments subsidize their farmers. They do it this way; they look at all the inputs that the farmer requires. We are talking about fertilizers, pesticides and high yielding seeds. All those are provided to a farmer at a subsidized rate, first, by the national government which gives their subsidy of 30 per cent. Then, the regional governments also give their own subsidy; sometimes at the tune of 20 per cent and 30 per cent. So, the farmer is able to access those inputs at half the cost that he should get in the market. Then, the government goes a step further; it looks at cost of those inputs plus the labour that the farmer is putting in then it puts a mark up and creates that as the minimum selling price for the crop whether it is rice or wheat. Therefore, when the produce is sold at what the

government has announced, as the minimum price, the farmer has a profit because the profit is already built in that price.

Mr. Temporary Speaker, Sir, when the farmer is given freedom to sell his produce to any buyer, but in case there are no buyers who are interested in that crop that time, then the government steps in as the buyer of last resort. It buys at minimum price which it has set. Therefore, there is no way the farmer in China can farm at a loss because the government underwrites.

Mr. Temporary Speaker, Sir, that is why I was saying, if we are to succeed, especially in ensuring food security in this country, the government has to do a little more. Indeed, agriculture is the backbone and prime mover of Kenya's economy. It is the major employer; employing about 75 per cent of Kenyans. It is the main income earner contributing about 40 per cent of our national exports. Indeed, what we do not talk about, agriculture is what provides food for the President, beggars, Members of Parliament and everybody. In terms of its contribution to this economy, agriculture supersedes all other forms, including education and health because, unless people have eaten, they cannot even understand what the teachers are talking about.

Mr. Temporary Speaker, Sir, it is a shame that this Government is not allocating adequate funds to support agriculture. Right now, we are only getting four per cent of the national budget allocated to agriculture, whereas about 30 per cent goes to security and about 25 per cent or so, to education. Agriculture should be seen as public infrastructure; just like roads or the Standard Gauge Railway. Just like we invest in energy, we should also be investing similar huge amounts in agriculture.

Mr. Temporary Speaker, Sir, if we have this massive form of investment, then we can talk of adequate subsidy of fertilizers and foodstuff to our farmers and we can feed this country. There is no magic in this. Bingu wa Mutharika defied the World Bank and those other foreign ideologies and decided to subsidize agriculture. In a short while, Malawi was able to export food to this country. Therefore, what we need is political will, political commitment and the people to drive this agenda, so that the farmer's voice is heard. We need to adequately motivate the farmer to produce for this country.

Mr. Temporary Speaker, Sir, Sen. (Prof.) Anyang'-Nyong'o talked about Ken-Ren Fertilizer Plant. There was a vision in the 1960s and 1970s to have a fertilizer factory in this country. Almost 40 years later, we are still talking about it, but that dream has not been realised. The question is: Are we really serious? Were we really out to set up a factory or not? Even if the American stole some money which was meant to set up Ken Ren, did he also steal our dream?

Mr. Temporary Speaker, Sir, I was with Sen. (Prof.) Anyang'-Nyong'o in the Parliamentary Select Committee on Anti-Corruption in the 1990s. We investigated Ken-Ren Fertilizer Plant as well. I think time has come for us to stop crying. Time has come for us to do something about it. I am happy that the new Cabinet Secretary for Agriculture, Livestock and Fisheries has decided to support the establishment of a fertilizer plant somewhere in Rift Valley. Our hope is that this is not going to be another Ken-Ren Fertilizer and this time round, we are going to have a fertilizer factory.

Mr. Temporary Speaker, Sir, regarding the board which is being created, I think we have not yet internalized the facts that we are in a devolved system of government.

So, we are having a board being created by the Cabinet Secretary, but without any reference at all to the county structures of government.

Therefore, we, as a Committee, have proposed some amendments so that in addition to the creation of the Board at the national level, we also have county committees to supervise the distribution and standardisation of both foodstuffs and fertilisers in this country.

Sen. Obure: Thank you, Mr. Temporary Speaker, Sir, for this opportunity. One of the greatest challenges to crop agriculture in this country since Independence is the availability and supply of fertiliser to farmers. I, therefore, thank the Mover of this Bill and the Senator who seconded it. It is my hope that the amendments being proposed will go some way in providing a solution to the big fertiliser question which, unfortunately, no successive regime since the 1960s has resolved.

The size of high potential productive and arable land in Kenya is limited. This also applies to areas which receive reasonable amounts of rainfall. Available arable land is, therefore, put into production repeatedly every planting season. In my county, Kisii County, the little portion of arable land available is the only option available for the survival of families. This is their livelihood. Inevitably, therefore, every piece of arable land is put into use at every planting season.

In a situation such as ours, Kisii County, application of fertiliser is therefore a compelling necessity. However, what is the experience of farmers at that level? At every planting season, farmers go out there looking for fertiliser and every important ingredient for farming considering our situation. That fertiliser is not available at the beginning of the planting season. When some forms of fertiliser are available at some point, the recommended variety is not available. The right variety finally surfaces too late and long after the planting season. Fertiliser in this country is associated with scarcity, poor distribution, high and unaffordable prices, misrepresentation of brands and outright cheating. The farmer is cheated, at times, by middlemen and by suppliers. All these have contributed to low productivity, poor yields and perpetual frustration to farmers. Lack of fertiliser or inability to obtain it at the right time has also contributed to the country's record of food scarcity and insufficiency at family level. This has in many ways undermined efforts being made at achieving food security nationally.

Failure to supply fertiliser to farmers at the right time and at affordable price is a major cause of increasing levels of poverty in this country. Let us look at the tea industry which we have been talking about lately. One of the reasons why tea farmers around the country, particularly small-scale tea farmers are frustrated is because of the cost of fertiliser and availability of the ingredient. The prices are far too high and many times, this leaves farmers badly positioned.

If you look at what is going on today, in the small scale tea buying areas, you will see that some fertiliser was supplied in advance to farmers in the hope that when they are ultimately paid their bonuses or second payments, they would repay. They cannot pay because their earnings were far too low. Therefore, the cost of fertiliser should be a matter of great concern to all of us.

Some of the functions of the proposed Board are to advise the Cabinet Secretary in matters related to fertiliser and the relative priority. This is okay. We are giving them a

further mandate to facilitate the development and establishment of fertiliser manufacturing factories in Kenya. I do not know precisely what instruments we are giving to the Board to facilitate the development of fertiliser manufacturing factories. It also says that the Boards will encourage and empower Kenyans to invest locally. I do not know how this will be achieved. However, of greater concern is this function which we are allocating to the proposed board to manage the importation and distribution of fertiliser.

I thought this is exactly what the country was trying to run away from; managing the importation of important products such as fertiliser. I do not know whether we are moving in the right direction in this respect. However, I have strong reservations about giving this Board such a function. Overall, the amendments proposed here are an expression of the desire to do something about the whole issue of fertiliser. As somebody has said, we should not be lamenting and crying out. Let us proceed and do something for the sake of our farmers for food security and for the welfare of our own people.

For that reason, I conclude my remarks by supporting this Bill.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker Sir, thank you for giving me the opportunity to contribute to this Bill. This is a Bill from the “Lower House” and it is coming to this Chamber for concurrence. I did not listen to the Chairman of the Committee on Agriculture, Livestock and Fisheries speak because I got in at the tail end. I hope that he will do some clean up at the Committee Stage especially on the composition of the members of the Board and the representations.

In this country, the farmer competes very closely with the policemen and teachers as the most neglected segment of our society. The farmer toils and moils from morning to evening and at the end of the day when the farmer has a bumper harvest, there is no market. When the crops fail, farmers cannot afford food. One may remember that the African Union (AU) in the Maputo Declaration obligated African Governments to dedicate a minimum of 10 per cent of their aggregate national budgets to agriculture. Only one country has achieved that, during the time of President Bingu wa Mutharika in Malawi. In many countries, we have become captives of the World Bank, International Monetary Fund (IMF) and all those financial institutions that keep on telling us; no subsidies to the farmer or free market economy.

Mr. Temporary Speaker, Sir, most capitalist countries in the world that spread the gospel of free market economy like America subsidize their farmers heavily. In the European Union (EU), some farmers are paid money not to till a portion of their land in one season. It is dangerous for African countries to continue swallowing the poison pill from the World Bank, IMF and other institutions. This is because Mwalimu Nyerere once said “look at these Chinese, that are a billion plus, if they can feed themselves and give us some food, then there is something to learn from them.” Very simple but very fundamental.

We can feed Kenya. Kenya has for a long time been priding itself as an agricultural country. However, an agricultural country without any sound agricultural policy is very bad for any country. In the colonial days running up to the days when governments of the day destroyed public institutions, farmers used to have availability of services from the Kenya Farmers Association (KFA), the National Cereals and Produce

Board (NCPB) and the Agricultural Finance Corporation (AFC). A farmer who did not even have money could go and pledge his credit at the KFA and get fertiliser. He or she would harvest his crops and in good faith deliver it to the NCPB. The NCPB would already have your credit notes from KFA; they will pay off your liability and give you your net.

Today, those of us who come from farming counties, sympathize with the plight of the farmer. There is no research back-up even as we have the Kenya Agricultural Research Institute (KARI) and other research institutions; the farmer is left to himself. Even crooks that come with concoctions that are not fertiliser still label them and sell to farmers as fertiliser. A farmer will just go and buy something labeled DAP without knowing whether it is DAP or not.

Mr. Temporary Speaker, Sir, in many countries in America and Europe and all over, the Government helps the farmer by constantly carrying out research and even advising the farmer on the components of the fertiliser that he or she should use on his or her particular parcel of land because of the alkaline content, the rain pattern and so on. The Kenyan farmer has no such facility. Even when the last Government started a knee jerk programme of subsidizing the farmer with fertiliser, it was completely rotten with corruption and mismanagement. Fertiliser that is meant to be given to the poor of the poor is in fact given to the rich of the rich. The poor of the poor remain there. Fertiliser is imported by the Government meant for the one and two acre land holders but you find that fertiliser in the shops of big traders being sold when the Government has said that the subsidy will retail it at Kshs1,500. Corrupt Government officials sell the whole of it or a large portion to traders who then sell to the intended recipients of that fertiliser at Kshs2,500 which is the market price.

Therefore, the farmer is caught in a wave that is so vicious and yet these are the people who feed our rapidly growing population. Even as there is excitement in this country of the recent discoveries of extractive materials, what now the World Bank calls the extractive industry, oil and other precious and non-precious minerals, we must not forget that Kenya and Kenyans must remain committed to the ability and the capacity to feed themselves. We should not go the direction of our brothers in Nigeria who upon discovery of oil; a country that was a vibrant farming country started importing tomatoes from Israel which is a desert. We should never go that way. We can only do this if there is a clear properly defined and managed policy on how to empower the farmer.

Mr. Temporary Speaker, Sir, fertiliser input is not locally produced although there is a company called Athi River Mining that is now attempting to produce a popular fertiliser brand called *Mavuno* which I am told is doing pretty well in terms of countering the alkalinity in the soil that has all along been accumulated by DAP and UREA. Be that as it may, we must have a structured way involving stakeholders as the Bill suggests on when and how to import, retail and distribute fertiliser to the farmer. This is because we have noticed even when the little subsidy that we talk about comes, sometimes it arrives at the end of the rainy season. Then it is handed over to the farmer who will have very little to do with it. By talking about fertiliser, we are not limiting ourselves to food crops like maize, although that is very fundamental because that is what feeds the nation. We have other crops that also consume fertilisers; sugar, tea and coffee, all these must be

properly coordinated. This is because you will find the fertiliser that is relevant and appropriate for tea is not necessarily the same that is appropriate for maize or rice and *vice versa*.

Therefore, this Board should be backed up by a very good technical team. Research is critical. Good fertiliser for the Arid and Semi Arid Areas (ASAL) of eastern and north eastern parts of the country may not be necessarily be the same fertiliser that is necessary for high rain areas of Uasin Gishu, Meru, Trans Nzoia and other counties.

Again, you will find that what fertiliser brings in, there is little differentiation in terms of the needs of particular areas. If you look and read agricultural literature – the Chairman of the Committee on Agriculture can bear me out – in the 1960s up to 1970s an acre of land was producing up to 45 bags of maize. The seeds were good, the fertiliser was relevant and potent, but now you will be lucky to get ten bags of maize on an acre. Hand in hand with fertiliser is the question of quality seeds for maize farmers. You will be horrified to hear that at planting season, there are crooked traders who will get maize from maize granaries, mix it with Blue Omo, make it look like it is treated seed and sell it to unsuspecting farmers.

Sen. Murungi: Read Wambora!

The Temporary Speaker (Sen. (Dr.) Machage): Order!

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, the distinguished Senator for Meru is reminding me of the Wambora case which had a germination of 5 per cent after pumping in Kshs100 million.

The Temporary Speaker (Sen. (Dr.) Machage): He reminded you in an unorthodox manner!

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, we need to take care of the protection of the farmer against these crooked traders. The problem with Kenyan traders and the majority of them is that they are very keen to make quick bucks and they will go to any length. It is not even the traders; it is actually the Kenyan psyche to the extent that if you get involved in an accident on the highway, there are good Samaritans who come to help you out of the accident and there are crooks who come to strip you even when you are dying. They inspect your pockets while you are bleeding profusely.

With devolution, I think and I want to encourage the distinguished Senator for Meru who is privileged to chair the Committee of Agriculture, Livestock and Fisheries that I believe this is one of the most critical committees on devolution. If counties cannot feed themselves, they are unlikely to go anywhere. I would want the Committee to even advise the counties that if a county, for example, Trans Nzoia that produces a third of the maize cereal of this country, can be able to enter into arrangements and agreements with counties with serious food deficits like Turkana, Wajir and Mandera, so that when they harvest their crop, instead of those with food deficits wasting money paying three to four times the market value of food, they should engage with Trans Nzoia and request to be given, for example, as Turkana, 20,000 bags of maize. Then they budget for it and they harvest, deliver it to Turkana and they pay them.

Mr. Temporary Speaker, Sir, this will happen if the farmer is helped to produce. Kenyans should never fall in the trap called “*Soko Huru*”. *Soko Huru* is what has

destroyed this country. We must provide support services and subsidies to our farmers. Hand in hand with subsidies are the extension services. In the old days, there will be field extension officers for coffee, tea, maize and whatever crop. Again, we were doing so well until the World Bank arrived and told us that the Government has no business in managing cattle dips, agricultural officers, providing artificial insemination services (AI) and down the drain went every support service to the farmer.

If you are a dairy farmer, you will find semen for inseminating a cow shot up from Kshs100 that the Government was charging nominally to a farmer to Kshs2, 500. What does the farmer do? He or she gets *shenzi* bulls in the villages to help themselves on grade cattle and produce very poor quality animals and at the end of the day---

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Wetangula, on a light note, can you stop being vulgar in your language? You can proceed.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I thought the Chair was appreciating what I was saying because it is a fact; that you have a pedigree cow and you cannot afford AI.

The Temporary Speaker (Sen. (Dr.) Machage): The bulls do not help themselves on cows. It is only humans that can do that.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Temporary Speaker, Sir. The Government must come back to help and support the farmer.

Looking at the functions of the Board, they include: Advice the Cabinet Secretary on matters relating to fertiliser and advice on the relative priorities to be given to the implementation of specific measures. It also includes managing importation. What the Bill does not say is whether the Board will import or only formulate policies for importation.

Mr. Temporary Speaker, Sir, it also says that the Board will ensure that there are adequate retail outlets. This is very important. Even if you have mega importers like Mea Limited and so on, then you can obligate them to make sure that there are retail outlets in Migori, Laikipia and everywhere else so that when the farmer needs fertiliser, they can access it and it is affordable. Again, I would like to inform the Chairman of the Committee, who I believe will be probably bringing some amendments to the Bill, that we need a provision for rules to be formulated so that when there is a subsidy, it does not turn into a windfall.

(Sen. Muthama stood up in his place)

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Muthama! The rules of the House dictate that only one Member can be on his feet at any particular time.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Temporary Speaker, Sir. This is so that the benefits of subsidy do not become cash cows for traders. If there is a subsidy, it must be a true subsidy. We will be encouraging the importers to benefit from the economies of scale so that you do not have briefcase carriers walking and roaming from office to office pretending to be selling fertiliser when, in fact, they have no fertiliser to sell.

Secondly and very fundamentally, we need to encourage the country whether through private enterprise or State arrangement, that 50 years after Independence, we must have a fertiliser factory in this country. We are not going to have a fertiliser factory from the way I am seeing each county governor signing an MOU with some briefcase trader from some country that they will set up a factory.

In a country like Kenya, where only 23 per cent of our land mass, is, in fact, arable and for high potential farming, how many factories of fertilisers can we have? This is where there is failing of the national Government in guiding policy, because industry is a shared responsibility between the national Government and the county governments. If the country really wants to have a mega fertiliser factory, like the dream of Ken-Ren - I agree with Sen. Kiraitu that Ken-Ren may have died at the hands and at the heart of corruption, but the dream of Ken-Ren was not buried with Ken-Ren. The dream remains that, Kenya requires a good fertiliser plant. Now that we have this news that we have oil and we are likely to have oil in commercial quantities, petrol and chemical productions are what produces fertiliser. If we are able to have a fertiliser plant in this country, it will be able to not only serve our farmers at very affordable rates, but it will also be able to bring in foreign exchange by exporting fertiliser to our neighbours.

Out there, every single villager- there is a programme, run by some American Non-Governmental Organization (NGO) or some British NGO called One Acre Fund. This programme is phenomenal and the Chairman of the Agriculture, Livestock and Fisheries Committee will be interested to hear that this One Acre Fund Programme, has actually helped some farmers produce up to 40 bags of maize on an acre, just by applying very simple common sense, not even technology. Like the population of the crop on an acre, the spacing, the amount of quantum of fertiliser to be applied and so forth. I remember when we were growing up, there used to be villagers, I said on the Floor here called *Karakacha*, who used to come to our villages. They would come and tell us that we need to have a straight line and a hole after a foot and put this amount of quantum. We used teaspoons to put fertiliser in those holes to plant. These days, you see somebody with oxen making a farrow, somebody following with fertiliser and spreading without knowing the amount of quantum. There, there is somebody throwing seeds of maize and at the end of the day, some seeds are falling where there is no fertiliser. At the end of the day, there is no crop.

We need technical knowledge and information to be given to the farmer. We want also to encourage that the Maputo Declaration that I mentioned that obligates African Governments to put a minimum of 10 per cent of their Gross National Budget to agriculture, be encouraged to cascade down to counties. Of course, we cannot say one shoe fits every size, because what is good for Nakuru County may not necessarily be the same for Marsabit County.

Their priorities may be different, but where a county is agricultural in its activities, we should obligate them as well to adhere to the Maputo Protocol of 10 per cent of their gross budget going into agriculture. As we do this, there is always the potent monster lurking around called corruption; budgets are made for subsidy, they end up subsidising individuals. Budgets are meant to help the farmers and they end up helping non-farmers. Budgets are meant to help the dispossessed, they end up helping the

possessed. We must constantly guard against this. That is why, even as I reluctantly appreciate the creation of this Board, the history of boards in this country has not been very good.

You know the stories of the Pyrethrum Board of Kenya, the Coffee Marketing Board and all manner of boards. Men and women sat here on the Coffee Marketing Board leaking the cream of the poor farmer in the village, who spends the whole day toiling and mulling on a coffee plantation. At the end of the day, you find a man in Nairobi with a big stomach who has never planted coffee and who calls himself a coffee entrepreneur. He does not even call himself a farmer. You ask him what he does and he cannot explain but he has millions of shillings from the sweat of the farmer. We must avoid this.

Even when you look at the crop farmers in this country, look at the mess that is the tea industry today, because fertiliser will go to tea as well and the politicization to the tea industry. How do you explain the bonus of tea in some section of the country, they are paying Kshs25 per kilogramme and in other sections they are paying Ksh8 per kilogramme and it is the same tea. This is called politicization of our economy and marginalization of regions of this country, because the tea of this country is tea of this country. How do you explain that at Nyansiongo Tea Factory, the farmer is getting bonus of Kshs8 per kilogramme and another farmer in another factory elsewhere is getting Kshs26 kilogramme? What morale are we giving to the farmer? You will find the Kshs8 bonus per kilogramme, then they start screening off, administration, fertiliser that was advanced and the farmer ends up getting nothing.

Sen. (Dr.) Boni Khalwale and I represent sugar cane growers. There is nobody abused in this country more than the sugar cane farmer. In fact, today if you go to the sugar-belt, even a person who has never gone to school knows something called “DR,” because you plant your cane, you weed, re-weed, you eventually harvest and take it to the factory; when you go there to earn your money, they tell you, in fact, you owe us this much, your account is “DR”, debit. So, in the village, when we are at home, every morning there are a hundred people at your door, saying “*mheshimiwa*, I took my sugar cane to the factory and I got “DR”. What are we doing to the farmers? You find people who have never grown sugar cane are the ones who are licking the sucrose content from the farmer.

One day, the farmers of this country will wake up and it will be very unpleasant to these fat cats because you can cheat some people sometimes, but you cannot cheat all the people all the time. The farmers will stand up and say enough is enough. If we have proper policies, how do you explain a farmer planting and harvesting maize, the maize is brought to Nairobi, milled, packaged and it is taken back and he/she buys a packet of unga at ten times the cost of his/her maize. If you go to Europe, the people who play golf, go to clubs and who enjoy life are farmers because the State cares about farmers. It is time that we, as a country, started caring about farmers. Perhaps, this is a good start, there is room for improvement but let us at least give the farmers the basic ingredient of farming which is fertiliser. I hope that at some point, the Committees will come up with the question of the quality and the prices of seeds and crops that the farmers will be using with the fertiliser.

Let me give room for others to contribute, I beg to support.

Sen. Mungai: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to this particular Bill.

Mr. Temporary Speaker, Sir, I come from Nakuru County where agriculture is the main activity. I am also a farmer. Therefore, as I contribute to this Bill, I will give it my best shot. Issues touching on fertiliser in this country and their implications to farmers are very well known. It is very well known that any late harvests in this country are normally attributed to late supply of fertiliser. Currently, in Kitale, there are serious issues touching on farmers' harvests. These issues are also in Nakuru but we all know that Kitale is our breadbasket. Today, a bag of maize is going for Kshs1,000. This Board should have been formed a long time ago. All along, most farmers in Kenya, including me, thought that there was a board in the Ministry that was handling issues touching on fertiliser. The fact that the National Cereals and Produce Board (NCPB) was left alone to manage issues touching on fertiliser is in itself a challenge to the Board itself. It is known that there is not a single year that fertiliser has been supplied to farmers on time.

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

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

Mr. Temporary Speaker, Sir, this morning, I was discussing with some farmers who told me that it is raining and they do not know what to do, because their maize is in the fields. They are now being forced to sell maize at throwaway prices. This is attributed to the late supply of fertiliser. Next year very few farmers will afford fertiliser even if it will be subsidized. This is because the fertiliser that was imported before was rumoured to be the source of the disease that maize has been suffering from. This has affected farmers a lot. The Ministry of Agriculture, Livestock and Fisheries has taken time to address this particular disease. Therefore, the fact that the Senate Majority Leader came up with this Bill, means that someone was sleeping on his or her job.

Madam Temporary Speaker, Sir, I would, therefore, request the Ministry of Agriculture, Livestock and Fisheries directs the NCPB to open its depots immediately and give prices that can cushion our farmers against the losses that they are now incurring.

We also discussed issues touching on the harvesting of maize. At this particular time of the year, being the harvesting period of maize in the breadbasket and many other areas of this country, farmers have been suffering. The Government is supposed to approach developed countries, like Germany, so that they can give us machines that can harvest maize very fast during the rainy season. This will ensure that farmers do not incur losses. Today, farmers are sitting in their houses and watching their produce destroyed by rain. It is important to know that anytime we import maize into this country, it is a challenge to us, leaders. We have fertile land, but managing whatever is happening on that land is a challenge that we should be ready to overcome.

The fact that this Bill originated from the National Assembly, we should look at it very critically. We can amend the Bill, so that the Board does not deal only with fertiliser. We can add seeds, like the Senate Minority Leader has said here, and other

items or products, so that we ensure that Kenya becomes food-sufficient. It is a challenge that Eritrea, which is a very small country, sustains herself on matters touching on food. If you drive from Nairobi all the way to Busia, you will see large tracts of land that have not been tilled. This year, where I come from, almost 40 per cent of the land was not tilled because farmers feared that they were going to lose their crop to the maize disease. So, this Bill is very urgent.

I, therefore, urge that this Bill be passed with amendments, to include other inputs. It is important for us to also note that as much as we talk about fertilizer, planting is seasonal. We cannot have a board that will be active for only a few months in a year.

Madam Temporary Speaker, many Kenyans depend on agriculture. In my county, pyrethrum, potatoes, maize and other cereals are the main cash crops that our farmers depend on for their living. In Nakuru, pyrethrum is a dead industry. A lot of efforts and money has been put to revive the industry. I, therefore, urge the Ministry to realise that the farmers are looking at us and they will make a decision in 2017. Their decision would apparently be based on whatever we are doing for them now. I, therefore, ask the Ministry to take the issue of pyrethrum in Nakuru County very seriously. It is two years down the line and nothing has happened.

Madam Temporary Speaker, the other day, the weight of potatoes was standardized but the enforcement of that policy has become a big challenge. Kenya is not an island. If it is 50 kilogrammes, the people who are supposed to ensure that potatoes are packaged in 50 kilogramme bags should ensure that, it is fully enforced.

Madam Temporary Speaker, with those few remarks, I conclude my contribution with a request for amendments to this particular Bill.

Sen. Ong'era: Madam Temporary Speaker, I rise to oppose this Bill. When I look at the contents of this Bill, it does not support devolution. At this time in this country, we want to decentralize our operations and empower the counties with enough power so that they can run their affairs. We now want to centralize these operations by creating a board.

Madam Temporary Speaker, when I look at the Fourth Schedule of the Constitution, it is very clear, that the counties have been given the functions of agriculture. I know that the control of fertiliser is one of those functions. I do not see why we should take the work of the counties, where they are supposed to be controlling the management of agriculture and then create another board which is in turn going to control, regulate and distribute fertiliser. Is this not another way of corruption being brought back to the door? Is this not another way of the fat cats, who we know are many in the fertiliser business, who now want to find another way to create cartels by creating another board?

Madam Temporary Speaker, I am just wondering. In this country, how many boards will we create for us to become efficient? Instead of reducing the number of boards in this country, we now want to create another board and give it a lot of power. It actually horrifies me when I look at Section 2(d) which has been proposed here, and I want to quote it. It says:

“This Board will manage the importation and the distribution of fertiliser.”

Then, what work will the governors be doing in the counties? This proposed Bill further says in 2(e):

“This Board shall ensure that there are adequate retail outlets in all counties where farmers can access fertiliser.”

Madam Temporary Speaker, this is the work of county governments but not the work of boards which are being created at the national level.

Madam Temporary Speaker, the issue that this Board will deal with policy and research can easily be done by the Ministry---

(Loud Consultations)

The Temporary Speaker (Sen. Ongoro): Order, hon. Senators. Can we, please, listen to Sen. Ong’era in some kind of silence?

Sen. Ong’era: Thank you, Madam Temporary Speaker. I am sure that hon. Members will be very pleased to know that devolution is being supported and not allowing us back to horrible days of centralization of services in this country.

(Applause)

Madam Temporary Speaker, as I was saying, research and policy matters should be run by the national Government. It is not matters that require a board to be established so that it can determine how fertiliser can be distributed.

Madam Temporary Speaker, this is the age of free economies in this country. We need to give the county governments free wings to fly. We need to give them enough time for them to know how they can source for fertiliser. If they need to develop fertiliser factories in their own counties according to their situations, then they can determine that. This fact that we want, all the time, to control and regulate them, we will not give them sufficient wings to develop new policies.

With those few remarks, I oppose.

Sen. Muthama: Madam Temporary Speaker, I stand here to oppose this Bill. I have very good reasons to do so. Some of us have a great and long experience on certain operations in this country. When I look at this Bill, it is taking us back to where we are coming from. We had parastatals which were a bottomless hole for sacking and squandering public funds. The international community, to be able to assist this country, had to force this country to privatize some of the parastatals.

Madam Temporary Speaker, in my county, I have farmers who grow coffee. There was a board known as Coffee Board of Kenya. Today, it exists by name but it has never benefited any Kenyan in all areas of this country where coffee is grown. What it did at the end of the day is to use the powers conferred to that board to license straight dealers and thieves who started, not only buying the coffee from the farmers, but by sending and recruiting thieves in the villages to harvest coffee at night and sell to them in the morning. With that, coffee does not count at any given time in the areas where it is grown.

Madam Temporary Speaker, the Coffee Board of Kenya still borrows money, it is still funded by the Government but there are no returns. We had the Tea Board of Kenya. The Senate Minority Leader has spoken volumes on what happened with the Tea Board of Kenya. This is not a laughing matter. We have the National Cereals and Produce Board (NCPB).

Madam Temporary Speaker, I was with you in the Tenth Parliament. We found out that the NCPB not only lacks the capacity to sustain Kenya in terms of maize but also how to store and control what has already been produced. The Governments of Kenya, including the previous ones, have been giving contracts to private operators to import maize at exorbitant prices. The same NCPB waits to buy the same maize at that exorbitant price and to give it to Kenyans.

This country has the Sugar Board of Kenya. The Sugar Board of Kenya has never helped this country. The Senate Minority Leader has articulated, in detail, how farmers who grow sugar cane continue to suffer in this country today. So, if we say that we establish a Board that will control issues of fertiliser in this country and help this country, it is a total lie.

I oppose it by saying that this is another bottomless hole to squander public funds on the basis of the issues that have been conferred to it. Paragraph 3(2)(b) is a laughing matter. It says that the Board will collect a small group of people and give them powers to purchase, acquire, hoard, charge, and dispose all kind of movable and immovable properties. This is a replica of what has previously been used to steal public funds.

Secondly, I was a Committee Member of the Public Investments Committee of the Tenth Parliament. Forget all the Boards that we have examined, not even 0.1 per cent that was found to be safeguarding public funds. The Boards had stolen and squandered the money. The answers we were getting from those who came before us were that the issues occurred before they were appointed and that was what everybody used to say.

The biggest Government's Budget today is being spent to service loans that were secured by boards. This Board has been given powers to borrow money and to make investments. How can a Board which is part of the Government go into investments? What should it invest in apart from buying train wagons which are not useful? They will be coming to tell us that they are setting up a factory somewhere. Money will be given out and stolen. At the end of the day, we will be told that a factory was to be set somewhere. I talked to the "Lion King", Senator for Meru, who was a Minister in the Tenth Government.

I challenged him that the experience we have is that this Board will just squander public funds. He told me that we should remove certain clauses and amend them. If we want to move away from allowing people to squander public funds, we must oppose this. There is no way you will pick a person who has never done any business, appoint him to be the Chief Executive Officer of this Board and give him powers to borrow money. Public money will disappear there.

Clause 2(b) talks about advising the Cabinet Secretary on matters related to fertiliser and on the relative priorities to be given to the implementation of specific measures. If this Board will be there to advice through the Cabinet Secretary, what will be the use of the Ministry of Agriculture, Livestock and Fisheries? Where are the experts

in that Ministry? We want to leave those experts without any work to do so that they come here as we create a Board to bring other experts who will again be sent to the Ministry to duplicate the same work. At the end of the day, you will find that we have a cartel because the Board wants a “cut” on what will be approved. Those who work at the Ministry also ask for a “cut” with regard of what is being procured. Therefore, at the end of the day, we have about 100 people online waiting for a “cut” and the money is stolen. Until thieves are jailed in this country, there is no way people will stop stealing. Let us just have three stealing enough, each Kshs10 million than have 100 people who will disappear with Kshs100 million at one go.

We do not need advisers to go and advise the Ministry. If the Cabinet Secretary has no advisers, then the Ministry should be disbanded. Kenyans do not want to have a shell-like Ministry which cannot operate. The same Board is being given powers to facilitate the development and establishment of fertiliser manufacturing factories in Kenya. This is on record. This country has lost billions. During Moi’s and Kibaki’s administrations, it was said that a fertiliser factory would be set up in this country. We know that debate took place in the Ninth Parliament regarding billions of shillings that were paid to those who were to set up the factories. At the end of the day, there was absolutely no factory set up. When you ask those who were in charge, they will tell you that this was to be set up in Thika or even Kitengela. These people had even hired a helicopter to survey the area where the factory would be put up.

It is not right to say that this Board will facilitate development of a fertiliser manufacturing factory. That is not the work of the Board. That is the work of the Minister for Agriculture and the Ministry of Devolution and Planning. They should source and encourage investors to come and invest in this country. How do you appoint a Board that sits at the twelfth floor of one of the buildings here to share the little money that is available and also bring investors in this country? That is a big joke.

Clause (c) talks about encouraging and empowering Kenyans to invest and to establish local fertiliser production. Here, there is great contradiction. The Board is investing and looking for investors and at the same time, turning to Kenyans to advise them on what to invest in. If there is any advice to be given, we want the Ministry to come and tell us that the Government of Kenya has approved a fertiliser factory to be set up in this country and that it is focusing on having either two or five of them so that applicants can apply. After the applications have been made, assessments should be done and licences given to set up factories. Why should we have a Board that sits somewhere to have lunch, some roasted meat, wine and beer and then come out to decide on what to share after which they look for investors and sit somewhere and encourage Kenyans to invest?

Part (d) says “manage the importation and distribution of fertilisers”. I think this is a laughable clause in this Bill. The board to supervise the importation of fertiliser in this country--- My goodness, these are the same people who were in the Independent Electoral and Boundaries Commission (IEBC) and asked for “*kuku*”. They did not even ask for tyres for their cars but they asked for “*kuku*”. A whole chairman of IEBC gets into a plane to go to the United Kingdom (UK) to be given £30,000. Now these are the people who are going to be tasked with the importation of fertilisers. Those who are

verifying the quality are the same people and they are not responsible to anybody but to themselves. They carry the money and purchase fertiliser to bring it here, regardless of whether it is good quality or not.

How can someone sit down and draw such a Bill with the experience we have? We want work to be done by the Ministry. We now want the private sector to get involved. Let us not forget when we used to have control of the hard currency. It was impossible to see a dollar at the Central Bank of Kenya (CBK). When it was set free, you can walk to a bank and write a cheque of US\$100,000 and you will be paid at the counter. When the controls were there, you could not even withdraw US\$3,000 to make a trip to the United Kingdom.

Mr. Temporary Speaker, Sir, the Board is supposed to ensure that there are adequate retail outlets in all counties where farmers can access fertiliser. Who is going to supply fertilizer to distributors within villages and small markets? Is it going to be the same board, the same sugar board or the same coffee board? You will find that those who are being financed are agents of the same fat cats. Those who do not have connections do not have an idea on how to steal. They would apply for their licence and spend all the money they have but at the end of the day, they will have no license.

This Bill says that there would be collaboration with agricultural research institutions, universities and other stakeholders. So, what is the business of this board? Again, they are going back to well established institutions to ask them to do the work that they are already doing then they want to be given resources. This same board is supposed to go to the counties and advice them. We want devolution to succeed.

With those few remarks, I oppose.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, Sir, I thank you for this chance. I want to start by thanking the Speaker of the National Assembly for finally confirming that bicameralism in legislation can work. I also want to thank hon. Chris Wamalwa who is the brainchild of this Bill. However, I now want to confirm that I am rising to oppose the Bill. Maybe because hon. Chris Wamalwa was not there in the last Parliament, he might not be knowing the history of fertiliser in this country. In 2009, I had an opportunity to move a censure Motion against a Cabinet Minister on matters of National Cereals and Produce Board (NCPB) and one of the players was the abuse of the importation of fertiliser.

I would not be surprised if some of the mandarins I pursued at that time might be coming back wearing a wolf's skin telling us that they are sheep. Since hon. Chris Wamalwa was not there in the last Parliament, he would be forgiven for not knowing that what he is doing is creating another parastatal. We departed from this in the last Parliament when we created this Act that was signed by President Kibaki in January, 2013. It was one of the Acts he actually signed into law. This was the Agriculture, Fisheries and Foods Authority Act.

Madam Temporary Speaker, allow me to take the House to what that Act said. It said that this authority shall be the successor to the institutions established by the Act that had been repealed namely; the Crops Act, the Livestock Act and the Fisheries Act. What these Acts had done is that they had created all manner of boards; Kenya Sugar Board, Coffee Board of Kenya, Cotton Board of Kenya and so on. All these boards were in the

red apart from the Kenya Sugar Board. Now this law swept them away. Having succeeded, we now want again to start forming parastatals. We should advise hon. Chris Wamalwa that this is a good effort. In fact, for this effort he has received grade A but for intention, he should go slowly and we will know how to grade him.

Madam Temporary Speaker, this thing is so serious that I am forced to take the House to the Fourth Schedule of our Constitution. In the Fourth Schedule, Part XXIX – the functions of the national government - We are told that one of the functions retained at the national function is agricultural policy. When you look at the functions that this board is being given, amongst other things, is speaking to the issue of policy. That can very well be taken care of by the Cabinet Secretary together with his or her technocrats at the Ministry. When you look at Part 33, it talks about the issue of public investment. The investment of a factory that this Bill is speaking to will be sorted out by the national government in terms of provisions of Part 33 of the functions that are retained at the national government. We do not need to create special legislation to speak to the issue of public investments.

Sen. Orendo and Sen. Wako are here and must be remembering that once upon a time in this country, we had the Kenya National Trading Corporation (KNTC) but it went. If it was still there, it would be dealing with some of these things but because of forward movement in the thinking and practice of governance in this country, it became necessary to think otherwise.

This Bill is retrogressive and it is taking us back. We should reject it and invite hon. Chris Wamalwa in amending the AFA Act so that if there is anything that he sees in the AFA Act that has amalgamated these parastatals, then we do it through this particular Act. When you go to the Bill, speaking to the functions of the Board, they tell us that the Board is supposed to facilitate the development and the establishment of fertiliser manufacturing factories in Kenya. That is public investment which is going to be decided by technocrats at the Ministry of Agriculture, Livestock and Fisheries in Nairobi.

Madam Temporary Speaker, they are telling us that this Board is supposed to encourage and empower Kenyans to invest and establish local fertiliser plants. We cannot go that way. In fact, if we want to have the big picture of a country called Kenya, we are thinking about putting up a serious factory in an agreed area which can then specialize in providing fertiliser to all our counties. This is the big picture. They are telling us that this is supposed to manage the importation and distribution of fertiliser. When I was moving this Motion that I have referred to, we even discovered that some of those jokers had actually purchased gunny bags using their companies from Europe. They imported gunny bags worth millions of shillings and said that those gunny bags were supposed to carry the fertiliser. The same was done to maize.

If you allow these guys to continue doing this kind of thing, we will be here helpless waiting for Edward Ouko to go and report them to the Public Accounts Committee which will be looked at after five years, and after five years, it will take another five years before implementation and after that many of them will be retired, dead or jailed.

Madam Temporary Speaker, they are saying that the Board is supposed to ensure that there are adequate retail outlets in all counties where farmers can access fertilisers.

Once, for example, Mumias Sugar Factory has produced its sugar, it knows how to take that sugar to that outlet and how that sugar will then be sold. If a factory is built, why would it require a board to do marketing for it? This is a joke because all you require is a marketing manager for that fertiliser factory. The Board is supposed to facilitate the provision of fertiliser in a timely manner. In fact, the word “facilitation” is an opportunity to line people’s pockets.

May I now move away from this joke of functions and go to membership. This is now a clever move again by some so-called “educated Kenyans” who want to create parastatals and jobs for themselves. They are saying, in the membership of the Board, that you should have two persons of either gender representing prescribed farmers’ association, competitively nominated and one person of either gender from the Fertiliser Association of Kenya and that these persons should have a minimum of a degree. This means that the sugar cane farmers of Kakamega and Migori will all be locked out of this Board because they do not have degrees.

You do not need to have a degree to be the owner of two acres of tea or a rice farmer from Ahero. What is worse is that there are no recognized farmers associations in Kenya. If you are talking about a workers association, probably you are talking about COTU. If you are talking about a teachers association, you would talk about KNUT and lawyers, the LSK. How about farmers? They even want to go ahead and form a new association after they have created the law, called the Fertiliser Association of Kenya. Which one is this? Is this fertiliser that is gotten from cow dung or chemically? I do not understand. We must oppose this.

Madam Temporary Speaker, may I move on and look at the remuneration of Board members. They are saying that the Board shall pay its members such allowances as it may determine upon the advice of the body responsible for matters relating to remuneration. This is exactly how board members have fleeced Mumias Sugar Company and Chemelil Sugar Company. They sit and pay themselves astronomical allowances which have brought these companies to their knees. If these members had just been a little bit hard working, they would have seen that in the current reports of the Committee on Agriculture in the National Assembly, they have indicted current and former managers of Mumias Sugar Company for exactly this reason. This thing must fall.

As I conclude my presentation, I want to appeal to colleague Senators, that this Bill is meant to perpetuate corruption and nothing else. It is an opportunity for some well placed characters in this country to have an opportunity to justify abuse of public funds through trips abroad to, for example, China to go and visit a fertiliser processing plant so as to see whether they can duplicate it in this country; the so-called “benchmarking”. They want to line their pockets. How I wish that some of their children would pay for these sins so that the children of the poor can have a break in life. We cannot legislate something that will open up floodgates for corruption. I, therefore, oppose and request hon. Chris Wamalwa who is my kid brother to bear with me because we have to move the country forward.

I oppose.

Sen. Hassan: Thank you Madam Temporary Speaker for this opportunity. I also stand to oppose this Bill. I associate myself with comments, particularly of the previous

speaker. I have not been in Government for too long, but I have been hearing a bit of vibes here and there particularly within the agricultural sector.

Those who understand it very well will realize that the area of fertiliser is an area that offers enormous opportunity in terms of wealth creation. I am aware of several people from various countries including Turkey who are interested in opening fertiliser factories in this country. My own view, the way to go in Kenya is to liberalize the market rather than to try and control it so that we get competitive rates for the farmers and the best deals for the Kenyan people.

I also associate with the views expressed by Sen. (Dr.) Khalwale where this Senate has the obligation to protect devolution. Agriculture as a function has been devolved. That being the case, the Board will retain a level of control on matters agriculture at the national level. I know that the national Government at this point in time is really struggling not to debunk some of the functions that are inherent in it, but I think even as Hon. Chris Wamalwa proposes this kind of legislation, he must take into cognizance of the fact that the Constitution has devolved certain functions in total. Therefore, it would be a travesty for Parliament, either through the National Assembly or the Senate, to propose a legislation that then tends to still retain some level of control at the national level.

Madam Temporary Speaker, what I find unfortunate is to try in this country to create boards, agencies or authorities for every little thing. I am saying that a board to handle matters fertiliser is not important. But let us give county governments that leeway to determine with respect to part of the demands and opportunities that are offered, on how they can encourage investment in areas of fertiliser factories and importation of fertiliser. We do not need a national agency or regulatory authority at the national level. This is because we have already seen in this country, everytime we centralize issues and create agencies of these nature, they open doors for corruption and create monopolistic tendencies. They also open doors for barons.

Very soon with this kind of an agency or board, as much as we have sugar and oil barons, we will now have fertiliser barons. This board and its regulatory machinery will be creating certain advantages for individuals. These tiers of personalities will benefit or be facilitated to award certain contracts or incentives to some investors.

Madam Temporary Speaker, I concur with the views that have been made by previous speakers opposing this Bill, essentially on the fact that even if you look at some of the functions that have been suggested, they are extremely nebulous and unnecessary. They are functions that are trying on the overdrive to create opportunities for a cartel to preside over the fertiliser industry in the country. This is because the national Government has realized that they will be losing control very soon on certain elements that have been cash-drivers or have benefitted certain individuals enormously.

Madam Temporary Speaker, I remember once upon a time when one wanted to engage in matters of fertiliser, you had to go to an individual and seek their authority and try to get the Government to buy fertiliser at cheap rates. Then, the Government would award the tender to one person who would bring it and before you realize it, there would be a billionaire based on one fertiliser contract. We should desist from creating avenues

of control, where we know for a fact that those avenues can be susceptible to manipulation and abuse.

Madam Temporary Speaker, I would not want to doubt the intentions of our good colleague in the CORD Coalition, hon. Chris Wamalwa, but in returning this Bill to the National Assembly, we would want to tell them that they must always be guided by the Constitution and new functions as devolved. There can be no room in Parliament or legislative functions to create authorities, agencies, boards or institutions that simply do the reverse, that is, take away part of the functions that have been allocated to counties. Let the county governments, through their assemblies, pass legislation and explore how they want to develop fertiliser factories in their counties. Let counties compete and the market be liberalised. Let every man or woman be given a fair avenue for competition rather than have a handful of people control the entire arena of fertiliser at that level.

Madam Temporary Speaker, I want to conclude by saying that through devolution, we have created so many tiers of governance that are becoming so burdensome to the Kenyan people. Already, we have 418 legislators and county assemblies at the various levels which are burdening the counties. Therefore, we do not need to be constantly creating more and more agencies, boards and authorities. In fact, we need to look for ways to disband some of these organizations, so that we liberalize the field. Let counties and Kenyans compete with fair trading practices. Let the private sector take charge of the fertiliser industry, because there is a big demand for fertiliser in this country. This country and the counties should create incentives for people to invest in matters fertiliser.

Madam Temporary Speaker, I take great exception with this Senate to approve or concur with any idea or Bill that tends to retain centralist policies and tendencies of how to manage the Government or certain sectors that have already been devolved.

I beg to oppose this Bill.

Sen. Mutula Kilonzo Jnr.: Thank you, Madam Temporary Speaker, for the opportunity. I rise to oppose this Bill for varied reasons. I will not repeat what my fellow Senators have said.

In the first instance I was reluctant to even contribute because I did not understand the reasons why this amendment was brought. Fortunately, I have now in my hands the memorandum, objects and reasons which I am surprised are not part of what the Senate has been provided; to understand what hon. Chris Wamalwa had in mind.

First, the reason cited here is that the principal object of this Bill is to amend the Fertiliser and Animal Foodstuffs Act, to establish a Fertiliser Board which will be charged with the responsibility of establishing and managing fertiliser plants in Kenya, management of purchase, sale and distribution of fertiliser and farm inputs in a timely manner. The Bill is informed by the fact that the National Cereals and Produce Board (NCPB) handles distribution of fertiliser, although this is not part of the core mandate. This situation, as it prevails, has resulted in the delay and deliver of fertiliser to farmers with the attendant consequences of affecting food security in the country. That object alone is good enough for this Senate to reject this Bill in totality. This is simply because the NCPB has failed, we now create another board.

Madam Temporary Speaker, the original Bill was published on 30th July, 2013. It would be a contradiction of terms for this Senate to pass this Bill, when we have now listened to appeals from all counties on matters agriculture. Sen. Khalwale mentioned the functions of county governments, under Part II of the Fourth Schedule of the Constitution. Part 2 (1) reads:-

“The functions and powers of the county are—

1. Agriculture, including—
 - (a) crop and animal husbandry;
 - (b) livestock sale yards;
 - (c) county abattoirs;
 - (d) plant and animal disease control; and,
 - (e) fisheries.”

We have, in fact, as a country, devolved the functions of agriculture in totality to counties. What this Bill is proposing to do is return these functions to the national Government, so that then this board is charged with the responsibility of managing fertiliser plants. What would be the purpose of giving functions of agriculture to counties and then taking them away through the left hand; what we call robbing Peter to pay Paul?

I have serious fundamental issues with this Board which I will now highlight. Under Clause 3 (2L) (2), I have found something that I have not seen in legislation anywhere in this country. It reads:-

“The funds of the board and its balances at the close of each financial year shall not be paid into the Consolidated Fund, but shall be retained for the purposes of which the Board is established.”

How are we going to allow something like this? For all intentions and purposes when you read this amendment in its entirety, this is a state corporation yet the balances of the money would not be remitted to the Consolidated Fund, it would be kept by them. That is an avenue for corruption. All financial management of government funds dictate that if funds have not been utilized at the end of the financial year, they are returned to the Consolidated Fund for purposes of budgeting. This is an avenue of people lining their pockets with money.

Regarding functions under Section 2L (1) (a) it says:-

“Such sums as may be appropriated by Parliament for that purpose”

I am more interested in part (b). This board that the Senate is being asked to pass under part (b) would receive money from this, which says:-

“grants, gifts or donations that the Board may receive as a result of public and private appeal from local and; international donors or agencies for the purposes of carrying out its functions.”

This is what is called an avenue for what Sen. Hassan called fertiliser barons. This is an avenue for receiving gifts which are not defined, to receive what I call incentives or whatever it is that this corporation is tasked to do so that they can facilitate industries, they can facilitate distribution of fertiliser, so that they can advice counties and monopolize this business while this country is attempting to move from monopolistic tendencies. Somebody is thinking that we are going to engage reverse gear like the proverbial Mussolini Tank and go backwards so many days, that it would be a tragedy to

pass a Bill like this. I am surprised that some of these clauses were not deleted by the National Assembly.

Mr. Temporary Speaker, Sir, I proposed an amendment to paragraph 19. They are proposed to amend sub-section 19 to replace the words “Kshs3,000 appearing in sub-section (ii) with Kshs1,000,000. What would be the reason for creating these penalties? This is the reason; only the barons of this country can afford this money. The people who engage in agriculture in this country are the poorest. When you put a fine like this one as proposed in Section 19, it is an attempt to stifle people. It is an attempt to scare everybody to death because there is a punitive fine of Kshs1,000,000 from Kshs3,000.

If you look at the principal Act, the purpose of Section 19 was clear. The rules made hereunder may provide for penalties for breach not exceeding a fine of Kshs3,000 or imprisonment for a term of three months or both. What is the reason? In the memorandum of objects and reason, there is no reason given for why we should increase a fine from Kshs3,000 to Kshs1,000,000. Again, this is mischief.

Madam Temporary Speaker, what was the purpose of this Bill so that we attempt to amend it to create a board? The question would be whether Parliament in total would be moving away from the preamble and the object of this Act. For the record, I would read:-

“Act of Parliament to regulate the importation, manufacture and sale of agricultural fertiliser and animal foodstuffs and substances of animal origin intended for the manufacture of such fertiliser and foodstuff and to provide for matters incidental to and connected in the fore-going.”

It was not to centralize animal foodstuffs in a board created and sitting in Nairobi getting funds as proposed in this Bill where they are supposed to be paid allowances. It would be a fundamental error to do so in an era in where state corporations in Kenya have failed in total. We are attempting to create another state corporation despite that. The Government is on record that there is a crisis. In attempt to reduce the expenses and duplication of roles by parastatals, the Government is attempting to merge or scrap some of the parastatals. This Bill is attempting to create yet another parastatal called the Fertiliser Board of Kenya. The record of whatever boards; pyrethrum, coffee or tea boards is clear and I do not need to elaborate. Those boards have failed farmers and it is not a wonder that one of the reasons we now discovered in our Committee for Finance, Commerce and Budget why the shilling is going down and interests have gone up is because of tea prices. The problem with tea prices is because of the Tea Board of Kenya. It is a history that is continuous. Everybody is now contemplating cutting their coffee bushes; the reason, Coffee Board of Kenya.

These are the reasons why the shilling is suffering today. This is one of those things that should be put in a museum like the dinosaurs because going back to this sort of thing is an attempt to create poverty while this Senate is trying to create wealth in the counties. In Makueni, people are substituting their coffee for macadamia because it is paying more. Why are we trying to reinvent the wheel when it has already been invented? This is one of those Bills that we should reject as quickly as we can.

When they suggest that we should create an inter-governmental body consisting of Council of Government and people at the national level, you are just in another attempt

of creating more boards, causing more confusion, waiting for the Minister to pass policy, rules and regulations yet every county has a special policy. We have allowed counties to pass their county integrated development plans.

Sen. (Eng.) Muriuki has been complaining about a Bill which we have not debated which, in all intends and purposes, is an attempt to ensure that counties can actually set up fertiliser industries for themselves. The things that Sen. (Eng.) Muriuki has proposed of creating a board at county level managed by leaders would be reversed by clauses in this Bill.

For those reasons and the functions that have been mentioned here, which I would not elaborate on because those are the things we are talking about, devolution under the Constitution is not devolution of corruption, mismanagement of boards and bureaucracies which are synonymous with barons who make money at the expense of farmers. The reason we get poorer is because every time we sit or attend forums, we say that this is an agricultural economy. What agricultural work are we doing when we are reversing gains made by this Constitution in an attempt to ensure that farmers make money out of their sweat and the work that they have been doing? I dare say that these proposed amendments are, for that reason alone; unconstitutional to the extent that we are trying to have what we refer in common terms a claw back. You give a right and claw it back using another law. This is the real intention.

The Mover of this Bill may not have been aware but there is a reason why this Senate is here. This is where these things are supposed to be taken through a toothcomb. Since we have done so, we will say, without any fear at all that this Bill is completely anti the Constitution of Kenya 2010 and should be rejected and not amended. It should be rejected in total. The only other thing that the Mover has done is to amend areas where the word “director” appears to replace it with the term “board”. However, the sole purpose of this Bill was to create a Board.

I oppose.

Sen. Hargura: Thank you, Madam Temporary Speaker. I would like to contribute to the Debate on this Bill. I would like to state, from the outset, that I oppose the Bill as it is. Basically, this is against the spirit of devolution and liberalization of the Kenyan market. The main object of this Bill is formation of a Fertiliser Board of Kenya which is supposed to control everything that has to do with fertiliser right from production, distribution, management of importation and distribution. The Board will be establishing units at the county level.

I have also learnt from previous speaker that the object of the Bill is to cure the failure of the National Cereals and Produce Board (NCPB). However, I thought that the curing of that failure which is to delay distribution was to liberalise the whole process. The process will allow Kenyans to import and to distribute. That will be a demand driven process.

This is also against the spirit of devolution as it has been cited by other Members. The national Government only deals with agricultural policies while crop and animal husbandry is a function of the county governments. Fertiliser is an input in that production. So, they should be the ones to import and distribute it. Basically, this is a demand driven process. Once you remove the roadblocks like the boards, Kenyans will

know where to source for the fertiliser at competitive prices. If the demand, locally, increases, we will get others who will find it prudent to have a factory within the country. The location of that factory will be demand driven. It will be located where most of the customers will be.

When it comes to the management of that, I am sure that counties through county assemblies will be better placed to come up with better legislation at that level to manage the distribution of fertiliser. This Bill is coming up with a Board to regulate importation and distribution of fertiliser. According to the Act, this Board has to establish directorates or departments which will be regional centres of the Board to deal with specific matters. Establishing a new board at this time when we are moving out of the central system is not right.

The established ones like the NCPB which have outlets all over the country have failed in distribution and will spend the next few years trying to set up this kind of a board. We will employ people but there will be no benefits from it. Those will just be input costs. This will also increase our wage bill. This not only goes to devolution but also affects structuring which should ensure a lean public sector which can deliver at a minimum cost. We will only be adding costs without any inputs.

When it comes to setting up a factory using this kind of a set up, we all know that we have been arguing about the Ken-Rem which was a ghost fertiliser factory which we have been paying for. I cannot stand that kind of system where we allow a public institution to come up with a factory which will not compete with the private sector.

I oppose this Bill and say that we should assist the county governments in coming up with legislations at their own level to control the functions of crop and animal husbandry production instead of coming up with boards considering that the ones which have been more specific like the Tea Board of Kenya and the Pyrethrum Board of Kenya have failed. These boards have been dealing with specific real crops and were not created to give an input into the crop production.

I oppose the Bill as it is.

Sen. Ndiema: Thank you, Madam Temporary Speaker. I am seeking your guidance, in view of the fact that there are no more contributors to this Motion.

The Temporary Speaker (Sen. Ongoro): Senator, how did you know and yet you do not have the benefit of my screen? Anyway, it is true that there are no more requests. However, I was wondering how you got to know that since you do not have this benefit.

What is your request?

Sen. Ndiema: Madam Temporary Speaker, I do not know whether I have time to say what I intend to say since the clock is ticking.

The Temporary Speaker (Sen. Ongoro): Unfortunately, you did not manage to conclude your statement. This is a Bill and going by the interests and the number of Senators who want to contribute to the Bill, I assure you that it will be in the Order Paper tomorrow.

ADJOURNMENT

The Temporary Speaker (Sen. Ongoro): Hon. Senators, it is now time to interrupt the business of the Senate. The Senate stands adjourned until tomorrow, Thursday, 4th December, 2014, at 2.30 p.m.

The Senate rose at 6.30 p.m