

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 16th November 2021

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

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

PRAYER

PETITION

REPORT ON PETITION: BOUNDARY DISPUTE BETWEEN
KISUMU, SIAYA AND VIHIGA COUNTIES
AROUND MASENO AREA

The Speaker (Hon Lusaka): Sen. M. Kajwang is not available to give the report on the petition. Therefore, the Petition is deferred.

(Report on petition deferred)

Let us proceed to the next Order. Majority Leader please lay the papers.

PAPERS LAID

Sen. Dullo: Mr. Speaker, Sir, I beg to lay the following papers on the table of the Senate today, Tuesday, 16th November 2021-

THE CAJ BI-ANNUAL REPORT FOR JANUARY
TO JUNE, 2021

The Commission on Administrative Justice Bi-Annual Report for the period between January to June, 2021.

REPORTS ON THE FINANCIAL STATEMENTS
OF VARIOUS COUNTY FUNDS

Report of the Auditor -General on the Taita/Taveta County Assembly Car Loan Scheme Fund for the year ended 30th June, 2019.

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Report of the Auditor-General on the Mombasa County Elimu Fund for the year ended 30th June, 2019.

Report of the Auditor -General on the Meru County Revenue Board for the year ended 30th June, 2019.

Report of the Auditor-General on the Meru County Investment and Development Corporation for the year ended 30th June, 2019.

Report of the Auditor-General on the Meru County Assembly Staff Car and Housing Scheme Fund for the year ended 30th June, 2019.

Report of the Auditor-General on the Marsabit County Executive Committee Members Car Loan Scheme Fund for the year ended 30th June, 2019.

Report of the Auditor -General on the Marsabit County Assembly Car and Mortgage Scheme Fund for the year ended 30th June, 2019.

Report of the Auditor-General on the Marsabit County Executive Mortgage Scheme Fund for the year ended 30th June, 2019.

Report of the Auditor-General on the Marsabit County Education Fund for the year ended 30th June, 2019.

Report of the Auditor-General on the Marsabit County Enterprise Fund for the year ended 30th June, 2019.

Report of the Auditor-General on the Meru County Executive Staff Housing Fund for the year ended 30th June, 2019.

Report of the Auditor-General on the Meru County Assembly Staff Car and Housing Scheme Fund for the year ended 30th June, 2019.

Report of the Auditor-General on the Embu County Education Support Fund for the year ended 30th June, 2019.

Report of the Auditor-General on the Embu County Youth Trust Fund for the year ended 30th June, 2019.

Report of the Auditor-General on the Embu County Assembly Members Car Loan and Mortgage Scheme Fund for the 18 months' period ended 30th June, 2019.

(Sen. Dullo laid the documents on the Table)

The Speaker (Hon. Lusaka): Sen. Olekina, what is your point of intervention?

POINT OF ORDER

IMPLICATIONS OF THE HIGH COURT JUDGEMENT LIMITING THE OVERSIGHT MANDATE OF THE SENATE

Sen. Olekina: On a point of order, Mr. Speaker, Sir. I would like to seek some clarification on the reports which are being tabled in the House, having in mind the decision of the High Court in terms of what we, in the Senate, can oversight. The Auditor-General's reports have been tabled here and a few things are not quite clear. Section 35 of the Public Audit Act stipulates what should be tabled in Parliament and what should not. However, it would be proper to get some clarity on whether those funds were funded by the national Government revenue or county government revenue. On the conflict that

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we have between the Council of Governors (CoG) and the Senate in terms of oversight, we are currently in court having been stopped from over sighting the funds that come under conditional grants.

When I listened clearly to the Deputy Majority Leader tabling those reports, one thing is not clear and I would like to get clarity whether those funds were from the county own-source revenue or the national Government. If we get that clarity, it will help us understand this. There is no point of us receiving documents just for formality yet we cannot interrogate those audit reports.

I thank you.

The Speaker (Hon. Lusaka): We will establish and furnish you with a report later. Deputy Senate Majority Leader, do you want to respond?

Sen. Dullo: Mr. Speaker, Sir, we can verify that from the secretariat and the Directorate of Legal Services. I think majority of those funds are from the national Government to the county governments, but we will look at it critically and give feedback at some stage.

The Speaker (Hon. Lusaka): You look at it.
Proceed, Sen. Wambua.

Sen. Wambua: Thank you, Mr. Speaker, Sir. On that matter raised by Sen. Olekina, you have given a partial ruling on it. It should not just be for purposes of these papers that have been laid today. I think a more reasoned decision and guidance from you would be important to this House, so that a decision is made on not only how to treat these papers that have been laid, but even future grants that will be given to county governments in relation to the oversight role of the Senate. That would be important, so that we are clear on whether these are things that we can touch or not.

The Speaker (Hon. Lusaka): Like I said, the legal team and all the relevant parties will look at it then we will give a detailed ruling or information at a later date.

(Sen. Omogeni stood up in his place)

Sen. Omogeni, I have a communication to make.

(Sen. Omogeni sat at his place)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM KILIFI COUNTY ASSEMBLY

The Speaker (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting staff from the County Assembly of Kilifi. The delegation is at the Senate for a four-day benchmarking visit with their counterpart Serjeant-at-Arms of the Senate.

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

1. Mr. Ibrahim Tembo
2. Mrs. Martha Zawadi

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3. Mr. Edison Yawa
4. Ms. Clara Dama
5. Mr. Kassim Mwachenda
6. Ms. Eunice Kibibi

Hon. Senators, in our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

I thank you.

(Applause)

Let us move on to the next Order.

PAPER LAID

REPORT ON THE START-UP BILL (SENATE BILLS NO.1 OF 2021)

Sen. Dullo: Mr. Speaker, Sir, I beg to lay the following paper on the Table of the Senate, today, Tuesday, 16th November, 2021-

Report of the Standing Committee on Trade, Tourism and Industrialization on the Start-up Bill (Senate Bills No.1 of 2021).

I thank you.

(Sen. Dullo laid the document on the Table)

The Speaker (Hon. Lusaka): Let us move on to the next Order.

STATEMENTS

The Speaker (Hon. Lusaka): Sen. Kwamboka is not around. Do we have Sen. Omanga virtual? If she is not, we will proceed to have the Statement by the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries.

ACTIVITIES OF THE COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES

Sen. Wambua: Mr. Speaker, Sir, the Committee on Agriculture, Livestock and Fisheries is represented by the Vice-Chair.

Mr. Speaker, Sir, with your permission, I rise pursuant to Standing Order No.51(1)(b) to make a Statement on the activities of the Senate Standing Committee on Agriculture, Livestock and Fisheries for the period commencing 1st July to 12th November, 2021.

During the period under review, the committee had a total of 17 sittings. We considered four Bills, one Petition and five Statements. The committee also conducted public participation and held a report writing retreat.

In respect of the Bills above mentioned, the following were considered-

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- (1) The Coffee Bill (Senate Bills No.22 of 2020).
- (2) The Coconut Industrial Development Bill (Senate Bills No.24 of 2021).
- (3) The Draft Cotton Industry Development Bill.
- (4) The Irrigation Amendment Bill (National Assembly Bills No.12 of 2021).

On the Coffee Bill (Senate Bills No.22 of 2020) whose principal objective is to provide for the development and regulation of the coffee industry in Kenya, the committee had a report writing retreat between 15th and 19th July, 2021 where we concluded the report. The Bill was passed by the Senate on 5th August, 2021, and was thereafter sent to the National Assembly for consideration.

With regard to the Coconut Industrial Development Bill (Senate Bills No.24 of 2021) which was read a First Time on Tuesday, 6th July, 2021, the Committee had public participation fora in Mombasa and Kwale counties on 10th, 11th and 12th August, 2021, where we meet various stakeholders who presented their views on the Bill. The committee also received written submissions from various stakeholders.

On 10th September, 2021, the committee considered the stakeholders' submissions received on the Bill. A key submission was that the Bill ought to be amended to include all nuts and crops and not just make provision for the coconut and the coconut industry. Thereafter, the Committee had a meeting on 20th September, 2021. The committee noted that the proposed amendment of the Bill would change it significantly from the one that had been published.

The committee also noted that public participation had only been done on the Bill affecting the coconut industry and, therefore, some players in the nut and oil crops sector may feel shortchanged if they are not involved in the enactment of a Bill affecting their industry. Therefore, the committee resolved that the Bill be amended to include all nuts and crops and republished to ensure that public participation is conducted on the relevant draft legislation.

Mr. Speaker, Sir, the committee has also developed the Draft Cotton Industry Development Bill, which seeks to provide for the regulation, development and promotion of the cotton industry. The Committee has approved the Bill for publication.

The Irrigation Amendment Bill (National Assembly Bills No.12 of 2021) was read a First Time in the Senate on Wednesday, 3rd November, 2021, and thereafter committed to our committee for consideration. The committee is carrying out public participation on the Bill and is scheduled to hold meetings with various stakeholders, including the Ministry of Water, Sanitation and Irrigation, the National Irrigation Authority (NIA) and the Council of Governors (CoG) to receive their submissions and views on the Bill.

Mr. Speaker, Sir, regarding Statements pursuant to Standing Order No.48(1), four Statements were referred to the committee. A Statement on the establishment of a disease-free zone was sought by Sen. (Eng.) Hargura, MP, on 6th July, 2021. The committee received a response to the Statement from the Ministry of Agriculture, Livestock, Fisheries and Cooperatives and that response has been shared with the Senator.

The committee is also considering the following Statements-

- (1) Statement on the operationalization of the Isinya Tannery sought by Sen. Seneta, MP, on Thursday, 21st October, 2021;

(2) Statement on the price of fertilizer in the country sought by Sen. Cherargei, MP, on Wednesday, 3rd November, 2021, and;

(3) Statement on the sale of uncertified seeds to farmers in Bomet, parts of Kericho and Narok counties sought by Sen. (Dr.) Langat, MP, on Wednesday, 10th November, 2021.

The committee is awaiting responses from the Ministry on the above listed Statements. Once those responses are received, they will be shared with the Senators that sought the Statements and the processing of the responses will be done by the committee.

The committee is also handling a Statement on the state of Mumias Sugar Company Limited and its impending takeover or resuscitation sought by Sen. Malalah of Kakamega on 2nd July, 2021. We issued a Statement on the progress made by the committee's consideration of the Statement on 7th July, 2021.

The committee met with the receiver manager on Monday, 27th September, 2021, and advised him to comply with the court orders issued on 30th August, 2021, and 23rd September, 2021 in Civil Suit No. E697 of 2021; Gakwamba Farmers' Co-operative Society Limited Versus Ponangipalli Venkata Ramana Rao and others as follows-

(a) Opening of bids made in respect to the leasing of Mumias Sugar Company Limited be carried out on Thursday, 30th September, 2021, in the presence of the bidders.

(b) Financial information contained in the bids be shared with the bidders and be made available to the public.

(c) An invitation be extended to the committee to attend the bid opening.

The bid opening did not take place on Thursday, 30th September, 2021 as directed, but took place on 6th October, 2021. A total of eight bidders placed their bids and the financial information contained in the bids was made public. The committee shall continue to oversight the bidding process as it proceeds to the evaluation stage until its logical end.

Mr. Speaker, Sir, with regard to petitions, the committee has considered one petition concerning the plight of seed farmers in Trans Nzoia County, which was committed to the committee on 22nd September, 2020. The committee met the petitioners and the Kenya Seed Company Limited in November 2020 and also received a response from the Ministry.

The committee considered its report on the petition and resolved to undertake a county visit to Trans Nzoia County to meet with the seed farmers prior to the committee's adoption of the report. I want to report to the House that the visit is scheduled to be held this week from Thursday to Saturday.

The committee intends to carry out the following key activities during the next quarter-

(1) Amendment and republication of the Coconut Industry Development Bill (Senate Bills No.24 of 2021) to include all nuts and oil crops.

(2) Consideration and publication of additional Bills to amend the Crops Act, 2013, so as to unbundle the regulation and management of major crops that fall within the ambit of the Agriculture and Food Authority (AFA) and establish stand-alone agencies for their regulation. The draft Pyrethrum Industry Development Bill is currently undergoing drafting.

Mr. Speaker, Sir, allow me to note that on this issue, the committee is very keen to ensure that we seriously unbundle the mandate and responsibilities of the AFA to ensure that we have proper focus on each of the food and cash crops along all the value chains in agriculture.

(3) A county visit to Kitale, Trans Nzoia County, to meet with seed farmers with regard to the petition concerning the plight of seed farmers in Trans Nzoia County.

(4) A report writing retreat on the Irrigation (Amendment) Bill (National Assembly Bills No.12 of 2021).

Lastly, Mr. Speaker, Sir, on that Bill that has been brought to the committee, I want to assure this House and this country that this is the future of irrigation farming. The committee will look into this Bill to make sure that whatever we do, we put the farmer at the centre of the conversations.

I thank you.

The Speaker (Hon. Lusaka): Proceed, Sen. Malalah.

Sen. Malalah: Mr. Speaker, Sir, I take this opportunity to thank Members of the Committee on Agriculture, Livestock and Fisheries for the good work that they have done. It is work in progress, but I must report here that when I raised the Statement on Mumias Sugar Company Limited leasing process, after the Committee on Agriculture, Livestock and Fisheries took up the matter, it was very evident that the initial process had been done in a shambolic way.

When we were adjudicating that matter in the Committee on Agriculture, Livestock and Fisheries, we realized that they had awarded directly to an individual without doing evaluation and competitive bidding. They had awarded a company to take over Mumias Sugar Company Limited at a very low price. When the committee insisted that they must do public bidding, they made an advertisement which attracted almost eight companies.

Initially, they had awarded a company to take over Mumias Sugar Company Limited at around Kshs5 billion. When they advertised and we had different companies showing interest, the lowest company that bided was Kshs8.7 billion. We even had a company that bided at Kshs27.7 billion. Therefore, this is a gain for the people of Kakamega.

I am alive to the fact that this matter at the moment is before the court and they have stopped the evaluation process until the matter is heard and determined. We are patient knowing that at least Mumias Sugar Company Limited is going to be taken at the correct price.

I, therefore, take this opportunity to encourage my colleagues in the Committee on Agriculture, Livestock and Fisheries to continue adjudicating and playing their oversight role on this matter until we reach a conclusion that is valuable for our people.

I want to speak to the people of Kakamega who elected me to represent them here. I will not tire saying that the matter of Mumias Sugar Company Limited is at the epicenter of my heart. We are going to ensure that we get a strategic investor to take over Mumias Sugar Company Limited, so that the people of Kakamega start getting the benefits they used to get from the company.

At the moment, when you go to Shibale Market, you will never imagine there used to be a giant miller a hundred metres away. Pupils are not going to school because

that giant miller collapsed. We have seen abject poverty spreading into the villages of Mumias East and Mumias West.

We have seen people losing their lives out of depression because of the collapse of Mumias Sugar Company Limited. Therefore, it is my sole responsibility as the leader of Kakamega County to ensure that we do the right thing. Many a times when we approach elections, people in the Government always say that they will help to revive Mumias Sugar Company Limited. They use it as a political tool to ensure that they get into Government and move on. In 2013, the Government promised Kshs2 billion. In fact, it disbursed Kshs1 billion on the eve of the elections. Nothing has been done since then.

As we speak right now, Mumias Sugar Company is still in its current situation, it is not working. It has collapsed and nothing is moving on. Therefore, we take this opportunity to remind His Excellency President Uhuru Kenyatta that he promised the people of Kakamega that when he comes to Western Region, he will revive the industries.

As we speak right now, as a region, there is no single industry that is working. For example, Nzoia Sugar Company and Pan Paper Industry collapsed while Mudete Tea Factory is struggling. Therefore, it is important for us to remind His Excellency President Uhuru Kenyatta, that before he finishes his tenure, he made a promise to the people of Western Region to revive Mumias Sugar Company and pump money into Nzoia Sugar Company.

The President set up the Gov. Oparanya and Hon. Kiunjuri led taskforce, which came up with a report that he has not implemented. Therefore, it is my sole responsibility to remind you of your debt with the people of Western Region.

Mr. Speaker, Sir, if we have the Government's goodwill, Mumias Sugar Company will be revived tomorrow. What Mumias Sugar Company requires is money. We require the Government of Kenya (GoK) to waive all the Kenya Revenue Authority (KRA) debts of Mumias Sugar Company.

We require the Government, through its goodwill, to talk to Kenya Power to scrap off all the pending bills of Mumias Sugar Company. We require the Government to talk to the National Hospital Insurance Fund (NHIF) and the National Social Security Fund (NSSF) to ensure that we curb all the statutory deductions they are claiming from Mumias Sugar Company. Therefore, our solution lies with the Government. Mumias Sugar Company is at its lowest because the Government has refused to help us.

I want to speak to the President of the Republic of Kenya. We depend on you, do not leave office next year when Mumias Sugar Company has not been revived, Nzoia Sugar Company and Pan Paper are not working. We are reminding you as our duty as the elected leaders of Western Region.

We have seen you do developments in other regions. We have seen you pump money in Nyanza Region to a tune of Kshs22 billion. Mumias Sugar Company does not require Kshs22 billion, it only requires only Kshs2 billion.

I call upon your friends in the Government. People who we voted for as a region to represent us. As Western Region, we voted for the National Super Alliance (NASA) Coalition led by right Hon. Raila Amollo Odinga, who at the moment, sits with the President Uhuru Kenyatta. We ask you, through Rt. Hon. Raila Amollo Odinga, to kindly ensure that you fulfil your pledges of making sure that the economy of Western Region

has been revived. Therefore, we are asking and watching. We are headed to the next election. We shall not listen to any other narrative. We shall not be duped again to vote otherwise if our economy is languishing.

The Speaker (Hon. Lusaka): There is a point of intervention.

Proceed, Sen. Olekina.

Sen. Olekina: Thank you, Mr. Speaker, Sir. I rise on a point of order to seek clarity and ask whether the distinguished Senator from Kakamega is in order by suggesting that we should promote issues of misappropriation of funds. I have heard him say that the KRA should waive all the statutory deductions, which were due to have been submitted by Mumias Sugar Company and that NHIF to do the same.

Is the Senator in order to suggest that we suspend the operations of Article 226(5) of the Constitution, which calls for accountability and responsibility?

Mr. Speaker, Sir, we have to be very careful. When we are in this House, we must promote proper accountability. We cannot justify when certain unscrupulous individuals take over State corporations and run them the way they want, bring down corporations and then we come here, speak to the gallery and say that we want to revive our industries and call for a total disregard of the rule of law.

We have to be very careful because this is the same problem which is now happening with Kenya Medical Supplies Authority (KEMSA) where the board is now coming up with a new story disregarding where the problem is. We cannot allow that to happen. We will not be running a Government; this will be in a banana republic.

Section 27 of the State Corporations Act sets up a State Corporation Committee which they should look at. When a State corporation is to be dissolved, they have to do the investigation and give recommendations to the President. Therefore, we have to be careful when we come out here to make an argument.

Mr. Speaker, Sir, is the distinguished Senator in order to suggest that we should not call for accountability in this country and that we should ask the Government to waive all statutory deductions that are supposed to be submitted? That is a point of order.

The Speaker (Hon. Lusaka): Proceed, Sen. Wambua.

Sen. Wambua: Mr. Speaker, Sir, I have a substantive point of order because this Statement belongs to the Committee on Agriculture, Livestock and Fisheries.

I heard the Senator for Kakamega making a plea to the former Prime Minister on the issue of the revival of the collapsed industries in Western Kenya. I am not sure of the role we shall attach to the former Prime Minister when we will be doing that report on the collapse of Mumias Sugar Company.

The Speaker (Hon. Lusaka): Sen. Malalah, we need to wind up. I know whom you are addressing, but please try to wind up so that others can also have an opportunity. You are now on the Floor.

Sen. Malalah: Thank you, Mr. Speaker, Sir. Sen. Olekina has no feelings for the people of Kakamega. We have seen in this country debts from coffee farmers being written off. All we are asking is for---

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

The Speaker (Hon. Lusaka): There is another point of order from, Sen. Olekina.

Sen. Olekina: Mr. Speaker, Sir, this House will bear me witness that when I was designated to become the Senate Deputy Minority Leader, I gave it to the people of Kakamega.

It is hypocritical for my friend, the distinguish Senator for Kakamega, to suggest and lie to the public that I do not care about the people of Kakamega. If I did not care about them would I have given up such a lucrative position and be given a state vehicle? Let us be honest here. *Ero!*

The Speaker (Hon. Lusaka): There is another point of order from Sen. Abdul Haji.

Sen. Abdul Haji: Mr. Speaker, Sir, I rise on a point or order. I think Sen. Olekina misunderstood Sen. Malalah. He did not say you do not care about the people of Kakamega. He was wondering whether you have feelings for the people of Kakamega. Please clarify.

The Speaker (Hon. Lusaka): Sen. Malalah, you need to wind up because you are now using the Floor of the House to do other things for your people in Kakamega. Please, wind up.

Sen. Malalah: Thank you, Mr. Speaker, Sir. I agree with my good Senator from Narok. It is true he stepped down in my favor after realizing that he only had one vote from Sen. Kajwang’

(Laughter)

He had no other option but to step down.

As I conclude---

Sen. M. Kajwang’: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): there is a point of order from Sen. M. Kajwang.

Sen. M. Kajwang’: Mr. Speaker, Sir, Sen. Malalah was doing very well for the people of Kakamega until he mentioned the name of Sen. Kajwang’.

It is on record that Sen. Olekina had many votes. In fact, it was only out of mercy for Sen. Malalah that he withdrew from becoming the Deputy Senate Minority Leader.

Is Sen. Malalah in order to mention the position of Deputy Senate Minority Leader which he enjoyed when he was in NASA and which when it was taken away from him, suddenly NASA, Raila Odinga and ODM became bad?

When he sat here as Deputy Senate Minority Leader, including when he led the coup against Sen. Wetangula, that time, NASA, ODM and Raila Odinga were good. He was riding in Government vehicles. He was sitting in the Senate Business Committee (SBC). When it was taken away, he headed to a funeral in his village and started scandalizing everyone including the people upon whose backs he had ridden for the last two years. Is he in order to forget the past?

The Speaker (Hon. Lusaka): Senators, you are now dragging political party issues here. Let us reduce that.

Sen. Malalah: I do not want to lose my thought process on the issue of Mumias Sugar Company. However, I am alive to the fact that I am a young politician who has come to this game recently. I have learned from my *gurus*. We have seen respectable leaders of this Republic demonstrating and barricading roads and later on going into ‘Handshake’ and saying that this is the best Government ever. I am not the first one to

make an about turn in politics. I am just a good student of those people who came before me.

Mr. Speaker Sir, as I finish, I request the Government to ensure that as they wind up their tenure, to revive the economy of the Western Region.

We have many young people who have finished university and colleges and have no jobs. The only way to empower our youth and create jobs in this country is by pumping money into the manufacturing sector.

Mr. Speaker Sir, we do not want to subject our youth to the principle of tokenism. This is where our youth only depend on people coming with money and giving them free things. We have recently seen in political rallies people giving out money for the youth and they are scrambling for it because they are desperate and do not have jobs.

We have seen people promising the young people that they will be given Kshs6,000 for free when they get into power. We do not want to encourage a culture of tokenism in this country.

The only way to help our young people in this Republic of Kenya is by expanding the manufacturing industry. That is why I request the President of the Republic of Kenya, as he finishes his tenure, not to go home when Mumias Sugar is at the grave side, Nzoia Sugar is not operating and Pan Paper has not started milling. We want to revive our economy and it is our sole responsibility as leaders from Western Region to defend our people.

The Speaker (Hon. Lusaka): Proceed, Sen. Moses Wetangula.

Sen. Wetangula: Thank you, Mr. Speaker Sir. After that comic relief, we can now get back to serious business.

I want to acknowledge the report of the Committee on Agriculture, Livestock and Fisheries as presented by the distinguished Senator for Kitui. In doing so, I inform my distinguished colleague from Narok that, in fact, in 2012, the Cabinet and subsequent Parliament waived all debts owed to sugar factories that are public in Kenya. The Cabinet passed it, Hon Njeru Githae, the then Minister for Finance brought a Motion to the House. It was seconded by yours truly and all the debts were waived.

Unfortunately, and strangely, after that those debts are still reflecting in the books of accounts of these factories and accumulating more and more interest and making the factories valueless in case they are put up for sale.

Mr. Speaker Sir, I encourage Sen. Wambua and his Committee to pay attention and look at the HANSARD of 2012 in the National Assembly. Their Committee should revive the waiver of debts in a legal manner by the Cabinet and Parliament on the sugar factories. That is the only way that anybody or any corporate can be forgiven payment of taxes. No single individual, not even the President, has authority to forgive any individual or corporate tax payment except by Parliament and it was done by Parliament.

Mr. Speaker, Sir, last week following the President's Speech in Wang'uru International Stadium in Kirinyaga, payment of Kshs500million was delivered to Nzoia Sugar Company. We acknowledge and thank him for that. However, that is not enough. In fact, that money is not enough to pay outstanding debts and salary arrears. To put a brand new mill in Nzoia Sugar Company that will start generating sugar and income for farmers requires about Kshs5billion.

We encourage the Government, that as they focus on coffee, cotton and other crops, the sugar industry in this country sustains the lives of more than 22 million people in the entire Nyanza and Western belt, now extending up to Trans Nzoia.

The Committee has rightly said, and I agree and salute it because without it, and the Statement brought here by the distinguished Senator for Kakamega, Mumias Sugar Company had been pawned away in the most opaque and unaccountable manner.

Following the Statement that came here and the debate that ensued, they went back to the drawing board. The bids that we are now seeing being put forward for privatizing the management of Mumias Sugar Company look attractive and real. I just hope that they will choose a company or an individual with proper expertise and access to finance and capital that can revive Mumias Sugar Company.

Mr. Speaker, Sir, you come from the Western Sugar Belt and you know the pain farmers go through. Sometimes, they keep their cane that is supposed to be harvested in 24 months on their farms for up to 48 months. Others decide to sell their cane at a throw away price to jiggery operators.

I want the Committee, over and above what they have done to take a step further and interrogate the Cabinet Secretary for Agriculture. This is because we must appreciate that while agriculture is a devolved function, over 90 per cent of its money is kept in Nairobi. While water and health are devolved functions, over 90 per cent of the resources in these sectors are in Nairobi. We want this House to come up with clear oversight responsibilities to ensure that resources follow functions. That if agriculture is devolved, there is no point of holding money for cotton in Nairobi and being used now as tokens to cotton growers in the country.

Mr. Speaker, Sir, I urge the Government that the sugar factories running from Nzoia, Mumias, Chemilil, Muhoroni, Sony and all those other public sugar companies must be supported.

Recently, the Sugar Act was revived bringing back the Sugar Development Levy that used to support the maintenance and supply chain activities to the factories. I hope that this Bill once it is passed, will be implemented to the letter and change the fortunes of farmers. We salute the Committee on Agriculture, Livestock and Fisheries, but the Committee should go beyond the report they have brought and do a follow up.

Mr. Speaker, Sir, lastly, you told us that you have ordered the revival of the Committee on Implementation. To date, we do not know where that lies. This is because it is that Committee that will pick these reports and do routine follow ups fortnightly, monthly, bi-monthly or quarterly basis to ensure that decisions of this House are not made in vain.

Mr. Speaker, Sir, I finish by joining you in welcoming our visitors from Kilifi. We hope they will learn from what we do here. I urge them to salute my Forum for the Restoration of Democracy-Kenya (Ford-K) Members of County Assembly (MCAs) that are in their Assembly when they go back. They should tell them that *Simba iko imara kama kawaida*.

Sen. Olekina: Thank you, Mr. Speaker Sir. Let me join my colleagues in appreciating the work that has been done by the Committee on Agriculture, Livestock and Fisheries. I used to think that the future of this country lies in the agricultural sector especially now that it is a devolved function, but I am worried of what is happening in the

country. Climate change is one of my worries. Drought is dimming the future of agriculture in this country. I encourage the Committee to look at other sectors. They should encourage county governments to be creative in their budgeting.

When I was young, we had many field officers visiting the villages. The veterinary officers would come and support the agricultural sector. Today, people are completely confused. I agree with the distinguished Senator for Bungoma County when he says that all the money, just like in the health sector, is left with the national Government yet agriculture, livestock and fisheries is a devolved function. How can we improve?

There is the issue of the Agriculture Development Corporation (ADC). The other day, I saw that ADC had imported bulls worth Kshs10 million that are to be used to improve breeds. If I did not know much, I would actually be clapping and congratulating them with the hope of getting good breeds in this country. The truth of the matter is that the poor people do not benefit from such projects. It is only a cartel of rich fellows; the bourgeoisies of this country, who benefit. I hope that the Committee on Agriculture, Livestock and Fisheries will look further into that issue. In fact, when they see such an interesting activity happening at ADC, they should follow it up and table quarterly reports in this House to show how those bulls ended up supporting the small economies.

I expect and hope that we will not only focus on pyrethrum and the sugar cane sector. What I have heard here today is that we kill state corporations then look for money to revive them. What if we support the local farmers who are in the dairy sector? The dairy sector thrives in Europe. The county governments should look at how they can add value to the dairy sector. The Kenya Meat Commission (KMC) was revived. Right now, pastoralists are suffering because of drought; their cows are dying. Why not come up with a programme that will support farmers when there is drought? The farmers can be given an opportunity to sell all their animals at a good price. The meat can then be sold overseas or it can be grounded and used to feed the military. When we were young, we used to enjoy when the military came to our place because they would give us canned food.

The agricultural sector is vibrant in this economy. It can take this economy very far. The problem is that the policy makers spend most of their time going to conferences rather than sitting down with the county governments and coming up with unique ideas on how to support the local farmers. What worries me a lot is that all legislations that come here are focused on developing boards that end up coming up with policies that disadvantage and disenfranchise the local farmers. One of those sectors is the dairy sector. We know that the dairy sector is run by cartels. Instead of having track loads of vehicles moving from one county to another ferrying milk, why not encourage the farmers in those areas to have their own small mini plants that they can use to add value to their milk?

As the Committee of Agriculture, Livestock and Fisheries thinks of getting into the second quarter, it will be good for them to carry out certain activities independently. They can decide to look at, examine and support a particular sector. We do not have to wait for Statements to be brought here. As a Committee, we are here to support our farmers. Agriculture can do well if we fully invest in it. The county governments should put a huge percentage to it. If you look at most of the budgets, you will find that health

takes up about 30 per cent yet agriculture is probably given about five per cent. Most of the money goes into recurrent expenditure.

It is about time that we start becoming creative for us to be independent and self-sustainable. Narok is a rich County, but we have cartels who influence the prices of fertilizers and commodities every year. It behooves us, as Senators and particularly this Committee on Agriculture, Livestock and Fisheries, to take time and look at all these policies. We should examine things that no longer fit in this environment and come up with new ideas. We should ensure that those ideas align with the local governments and national Government legislations in terms of promoting agriculture.

I hope to see better results from this Committee in the next quarter.

The Speaker (Hon. Lusaka): The next Statement is by Sen. Omanga.

IRREGULAR OWNERSHIP AND USE OF LAND NO. LR 336/64,
ORIGINALLY LAND NO. LR 336/12 IN BABA DOGO

Sen. Omanga: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.48(1), to seek for a Statement from the Standing Committee on Health on the status of operations of a public health clinic situated in Parklands, Nairobi City County on LR. No. 209/19441. In the Statement, the Committee should-

(1) Investigate claims that a public health clinic on LR. No. 209/19441 has been allocated to a private developer, putting in disarray the operations of the clinic.

(2) State whether relevant stake holders were involved through public participation before the property was allocated to the private developer.

(3) State whether Nairobi Metropolitan Services (NMS) and the Nairobi City County Government were involved in the transfer of the facility into private hands.

(4) Apprise the Senate on land ownership status of all county public health clinics, tabling evidence of the copies of title deeds and/or lease agreements.

The Speaker (Hon. Lusaka): The next Statement is by the Chairperson of the Standing Committee on Devolution and Intergovernmental Relations.

ACTIVITIES OF THE COMMITTEE ON DEVOLUTION
AND INTERGOVERNMENTAL RELATIONS

Sen. M. Kajwang': Mr. Speaker Sir, I rise pursuant to Standing Order No.51(1)(b) to make a Statement on the activities of the Standing Committee on Devolution and Intergovernmental Relations for the period commencing 1st July to 12th November, 2021.

The Committee on Devolution and Intergovernmental Relations faced a myriad of challenges, especially in terms of raising quorum so as to transact committee business. During the 12th Parliament, the Committee lost three dedicated Members namely, Sen. (Dr.) Kabaka, Sen. Prengei and Sen. (Dr.) Mwaura. The Committee was, therefore, under capacity and consequently had no meetings for the period of 1st July to 6th October, 2021.

Following a *Kamukunji* that was held in the Senate on 7th October, 2021, and the subsequent resolutions of the Senate leadership and plenary, the Committee was reconstituted and three additional Members were appointed to the Committee namely,

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Sen. Abdul M. Haji, Sen. Kavindu Muthama and Sen. Ngugi. I am pleased to report that the three Senators have been invaluable cogs in the Committee and have made great contribution.

They have been very dedicated and their zeal has helped to fast-track the business that was pending before the Committee.

Mr. Speaker, Sir, since the Committee was reconstituted on 7th October, 2021, we have been able to conclude two Petitions, the first one was the Petition on the Boundary dispute in the Kisumu-Siaya-Vihiga Area.

This Petition was supposed to be laid before the House today and the Senator of Vihiga County has humbly requested that we do that tomorrow when he is present so that he can also make some comments on it.

The other Petition the Committee has considered is on the malpractices of the Governor of Wajir County. These two reports have been table and they are waiting consideration and adoption by the House.

Mr. Speaker Sir, besides the two Petitions, the Committee has also considered three (3) Bills, namely:

(a) The County Oversight and Accountability Bill (Senate Bills No. 17 of 2021). Sponsored by Sen Olekina

(b) The Intergovernmental Relations (Amendment) Bill (Senate Bills No. 37 of 2021). Sponsored by Sen. Kajwang'

(c) The County Governments (Amendment) Bill (Senate Bills No. 38 of 2021) sponsored by Kajwang'

The first two Bills have gone through the Second reading and are waiting Division while the third Bill is on the Order Paper waiting for the Second Reading.

Concerning Statements, at your direction, this Committee together with the Standing Committee on Finance and Budget undertook a joint county visit to investigate the budgetary impasse and issues that were arising in Vihiga County

The Joint Committees sat and met with the County Governor, Deputy Governor and County Assembly Speaker, together with all relevant players to confirm what was causing the impasse in the passage of the county budget.

The two Committees mediated over the issues that arose and found that the problems were deeply political and personal in nature. A Statement regarding the matter is ready and is waiting to be presented before the House so that the House can make certain resolutions that can guide the people of Vihiga County.

Just to give a synopsis; the two Committees that is Committee on Finance and Budget and Committee on Devolution and Intergovernmental Relations, having looked at the Vihiga County case in the joint Statement that has been tabled and will be issued by the two Chairpersons, observed that there was need for further and deeper mediation between the Governor and his Deputy. This is because the two were fighting and their infighting was contributing to budget impasse.

The Committee observed that the petitioners who have gone to the High Court and in good faith, the Committee was recommending that they withdraw the matters before the High Court to enable more in-depth mediation that would ensure an amicable ending to the impasse.

The two Committees observed that Senate Standing Committee on Labor and Social Welfare look into the issue of Health workers in the county who have reported not to have been paid for two years.

Mr. Speaker, Sir, the Committee has undertaken consultative meetings with the Intergovernmental Relations Technical Committee (IGTRC) the County Assemblies Forum, and the Senate Liaison Office, to receive views on the Bills before the Committee and to explore areas of collaboration that would strengthen Devolution.

In addition, the Committee through the Office of the Clerk and the Senate Liaison Office participated in the introduction of the new Kenya Devolution Programme, namely *Timiza Ugatuzi*, which is implemented by Act Change Transform (ACT), formerly the Kenya Donor Working Group.

If you allow me off the cuff to indicate that even though we are having conversations with the donor working groups at the Senate, there are those who have gone to court to oppose the role of Senate in overseeing conditional grants and grants coming from these working groups.

These Senators have a responsibility to stand firm that any monies that are appropriated through County Allocation of Revenue Act (CARA), that seek the approval of the Senate, must be overseen by the senate.

Mr. Speaker, Sir, the new ACT donor working group programme, aims to strengthen devolution through capacity building programmes for the Senators and county governments and through implementation of the much needed monitoring and evaluation programmes. This shall prove beneficial to the people of this great Republic and the Senate as a whole.

Allow me to add that through the Senate's Liaison Office, which is one of the good things that the Office of the Clerk has put in place, we could continue to consult and to lobby the donor working groups to see to it that the Senate has got an effective monitoring and evaluation framework. We will ensure that there is value for money for the finances that the donors send to our counties.

Mr. Speaker, Sir, as I conclude, the Committee intends to carry out the following key activities during the next quarter -

- (1) A meeting with the Society of Clerks at the Table (SOCATT) to consider proposals to amend the County Assembly Service Act No. 24 of 2017.
- (2) A thorough investigation into the alleged illegal payment of legal fees to out-sourced law firms by Nairobi City County (and possibly all other Counties).
- (3) A county visit to Nyandarua County to review some of the issues that are arising in the county, especially the disputes between the County Assembly and the County Executive, between the Speaker and Members of County Assembly (MCAs), and there could be a petition that is in the House regarding that matter and the Committee intends to deal with it through a county visit;
- (4) A county visit to Machakos County to investigate the declassification of the County as an Arid and Semi-Arid land, thereby robbing the county of the special concessions it receives for being classified as such.

- (5) A joint retreat with the Sessional Committee on Delegated Legislation and the Ministry of Devolution to consider proposed Regulations of the County Governments Act No. 17 of 2012 and the Intergovernmental Relations Act, No. 2 of 2012.
- (6) Regional county visits to ascertain the success of devolution as a whole and identify areas of improvement.
- (7) Consideration of Policy on the regional blocs

The Committee shall also undertake activities *Suo Motu* that have the general aim of strengthening Devolution.

I, therefore, appreciate the Office of the Speaker, the Senate Leadership and the Office of the Clerk of the Senate for the steadfast support that they have accorded this Committee.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. Wetangula.

Sen. Wetangula: Thank you, Mr. Speaker, Sir. That is a very important Statement from the Committee on Devolution and Intergovernmental Relations

With the current litigious population that we have and the attempts by our governors to avoid being oversighted, there is a judgment from court that purports to say that Senate cannot oversight, own-source revenues, and revenues coming from donors, including conditional grants.

I join Sen. M. Kajwang' in reaffirming that in terms of oversight and responsibility in the use of public resources, there is no boundary. Nobody should gag or injunct this House from demanding accountability and holding people responsible for the use of any resources that have a public nature.

Even if the money is from donors, it is for taxpayers of Europe. If the money is coming from Japan or from India or wherever, the taxpayers of those countries have sacrificed their sweat to bring it to help us develop. It will be extremely dangerous if not irresponsible for anybody to say that such resources cannot be oversighted.

We, as a House, have a duty to ensure that every shilling and cent that is meant for public use is accounted for. The National Assembly's Public Accounts and Public Investment Committees do not look at the accounts of counties at all.

If anybody says that we ring-fence certain resources away from this House's oversight, it amounts to condoning and rubberstamping corrupt practices. Every cent that is meant for good use in public must be accounted for that good use. Chances are the money has been put to good use, but the moral and legal satisfaction of the population of Kenya is desirable from the conduct of oversight by this House.

Mr. Speaker, Sir, I urge Sen. M. Kajwang' and his Committee to take extra steps and look for the judgement that I have just cited. This is the judgement that was taken to a court by the Council of Governors (COG) - who are afraid of being oversighted - so that we pursue it to a higher court. We can then vacate that dangerous decision because it is an affront to accountability and our duty as an oversight organ.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. Wambua, proceed.

Sen. Wambua: Thank you, Mr. Speaker, Sir. I thank the Committee on Devolution and International Relations led by Sen. M. Kajwang' on that Quarterly

Report. In that report, I have heard the Committee is planning to undertake a visit to Machakos County in relation to the declassification of the region from the Arid and Semi-Arid Land (ASAL) region. As he has put it, it has a direct bearing on the earnings of civil servants and teachers working in that region.

While at it I want to draw the attention of the Committee to the fact that the same action has been taken on Kitui County. Sections of Kitui County that have for the longest time been classified ASAL are now being declassified. That has a direct bearing on the earnings of civil servants and teachers working in that region.

I received a delegation of teachers from those regions. They said that upon declassification of those areas, it means that they will stop earning monies that they were earning under ASAL. Therefore, they will be unable to service their loans which they have taken on account of the allowances that they were earning under ASAL.

Mr. Speaker, Sir, may request the Committee loop in Kitui County in that visit. If that will be impossible, I will be willing to bring a Statement to the Committee for consideration in the next quarter.

Mr. Speaker, Sir, I submit.

The Speaker (Hon. Lusaka): Sen. (Dr.) Ochillo-Ayacko.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Mr. Speaker, Sir. Thank you for the opportunity to speak to this very good report. Our function is to defend counties and to represent county governments and the people therein.

Sen. M. Kajwang's Committee is about devolution. So, the Committee encapsulates our work. I congratulate my neighbour and colleague on the good work he has been doing on our behalf. I urge him to pray and not get infected by the disease of desiring to go to Homa Bay County as a Governor. It is the same disease that is infecting most of us. His presence here is needed. This House must have senior Members and grounded legislators like Sen. Wetangula. So, I plead with Sen. Wetangula not to try a go at the presidency because we need him here.

(Loud consultations)

If he is not here, this House may lose direction and its footing and focus on matters devolution.

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

The Speaker (Hon. Lusaka): Sen. M. Kajwang, what is your point of intervention?

Sen. M. Kajwang': Mr. Speaker, Sir, is Sen. (Dr.) Ochillo-Ayacko in order to say that we need experienced legislators like Sen. M. Kajwang' and Sen. Wetangula in this House and yet we know that in terms of experience, very few come close to Sen. (Dr.) Ochillo-Ayacko?

He has been a Member of Parliament (MP), a Cabinet Secretary (CS) and in charge of nuclear agents in this country. When you speak of a rocket scientist, you think of Sen. (Dr.) Ochillo-Ayacko. He is now a Senator and yet he has decided to go back to Migori County to deal with the plight of tobacco farmers down there. Is he in order to say that some of us are more experienced to stay here and yet he is resume indicates that with his level of intellect and experience, this nation probably needs him here more.

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The Speaker (Hon. Lusaka): So, he should start with himself.

Yes, Sen. (Dr.) Ochillo-Ayacko.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Mr. Speaker, Sir. I am driven by the desire of Migori County for good governance. If you look at the exemplary work that Sen. M. Kajwang' did when he was the Chairman of the CPAIC, he discovered that Migori County is a mess and that it needed the sacrifice that I am making. I would love to stay here as a Senator, but I have got to do something about that mess in Migori County. I hope you and I succeed in our other lives.

Mr. Speaker, Sir, my point is: I do not know what kind of jurisprudence is in this decision by the court that my brother and senior, Sen. Wetangula, has spoken about, trying to clamp and limit the oversight space of the Senate or Parliament on matters that are public activities. The Senate overlooks the National Government and anything that is of public interest.

I wonder what that particular judge was thinking of. Why was he imagining that we have no skill and mandate to oversight locally generated revenue if we can interrogate matters like security, water and health that affect our people in counties? So, this are the kinds of judgment that should not be issued against an Institution of this mandate.

If this Institution is allowed its space and given it facilitation to work, this country will be better. If judges just like us who want good governance, place hurdles, bumps and other obstructive decisions on our path, I wonder whether that is in public interest. I thought judicial decisions were made in public interest. So, what public interest does it serve to say that the Senate cannot look at own generated revenue? I think that serves dark, opaque and parochial interest that is of no use to the Senate or anybody.

Just like Sen. Wetangula has encouraged Sen. M. Kajwang's Committee, this matter should not be left where it is. It should be taken to the right platform, be debated properly and all institutions encouraged and facilitated to have enough space to discharge their obligations. Kenyans expect a lot of us, as an Institution. They even wonder why we do wonderful reports like the one we are discussing and others made by other Committees, but when it comes to implementation, they are not implemented.

Mr. Speaker, Sir, I encourage the Committee on Devolution and Inter-Governmental Relations not to relent. The Senate was established to defend, represent and make devolution fruitful to ourselves and our people. They should be partner with the Committee of Justice, Legal Affairs and Human Rights and ensure that there is no encroachment on the authority and powers of the Senate and Parliament. If they do that, as a Parliament, we will become a body that we were designed to be; a body that fights on the side of liberating Kenyans from poor governance and malpractice by people whose agenda is to get rich quickly.

Mr. Speaker, Sir, devolution has worked and still has more work to do in future. It has so much work to do in future that we should pay more attention to it. We have a very bad or poor relationship between this House and our sister House, the National Assembly, on matters that would progress us to where we are supposed to be.

I hope that the Committee on Devolution and Intergovernmental Relations will find a magic wand to thaw the frozen relationship that we have between us and the National Assembly. I hear that anything that is progressive, provided there is possibility - however remote - of extrapolating the matter and claiming that it has financial

implications, is poisoned and killed by the National Assembly. That is not how to do things.

I encourage my brother, neighbour and colleague, Sen. M. Kajwang', other than being the Chairman of this Committee, he should convert himself into a legislative diplomat and conduct diplomatic activities between these House and that other House. I hope the Speaker will find resources and an environment to encourage that diplomacy between us and our sister House. It will be for the betterment of devolution and this country.

Mr. Speaker, Sir, with those many or few remarks, I congratulate the Committee on Devolution and Intergovernmental Relations and its Chairman. I am on my knees praying that he does not get bitten by the bad bug of trying to quit this House. May he get re-elected in the next Parliament and the other Parliament. Hopefully after that, he runs for presidency. He is the one in the right age as our generals and I retire, we look forward to his presidency.

The Speaker (Hon. Lusaka): Sen. Oledama--- Sen. Ledama, proceed.

Sen. Olekina: Thank you, Mr. Speaker, Sir. I like the way people butcher my name. It is not "Oledama". It is Ledama Olekina.

Mr. Speaker, Sir, I rise to support this Statement by the Committee on Devolution and Intergovernmental Relations. I come from a school of thought that believes that the guilty are always afraid. Accountability is something, which I hope this House, through its wisdom of good lawyers like Sen. (Dr.) Ochillo-Ayacko, Sen. Omogeni and Sen. Wetangula and all the senior counsels who are here, can find a way to drill some sense into this issue of oversight.

The judgement by the courts cited Articles 96(3), 189(1)(a) and 202(2). All those provisions of the Constitution call for accountability. Yes, it is true that county assemblies ought to be the first point of accountability, but is that the reality? You know when we are talking about changing the Constitution and trying to make the Senate much stronger, these are some of the things that we ought to have been looking at.

Mr. Speaker, Sir, having looked at that, I am quite happy that the Committee expedited my proposed legislation on accountability; that is the County Governments Accountability Bill. Now we can try and move away from these fights between governors and Senators and take the responsibilities to the citizens themselves. Involve the citizens in the budget making process and accountability. It is because the reality now in this country is that so long as you have a lot of money, you can corrupt your way through.

We need to be pragmatic because the law is quite clear. If you look at Article 217 of the Constitution when we are dividing revenue between the national and the county government that issue comes here. We talk about the national Government and the conditional grants. Why then should we be devolving funds if we cannot oversight on them?

I hope that the Parliamentary Service Commission (PSC) will put in some good legal brains to support this Committee on Devolution and Intergovernmental Relations and challenge that decision by the High Court. The Court of Appeal made a finding by interpreting Article 189(1)(a). However, the reality on the ground as we know is that the county assemblies, those MCAs are afraid of the governors. There is no way they can

question governors on how the money is being spent. They depend on those governors for them to either get back into office or become relevant in their wards.

Mr. Speaker, Sir, the Committee has done a tremendous job, but without the support of PSC in terms of defending this House on some really reckless decisions--- I am one of those people who entirely support the Judiciary, but certain things do not make sense.

Others talk about if you do not carry out the audit within three months, then you do not do it. If this is the reasoning that we are going to use to deny the people of Kenya the rights to services, then I do not know whether we are running a banana republic or we are serious about the work that we do in this country. That is in the three arms of Government; the Executive, Legislature and the Judiciary.

This Committee's work is very important. I hope that in future, we can expedite it. I plead with all the Senators to avail themselves. We have these legislations that are now waiting to be voted on so that they can go into the Third Reading and they can go back to the National Assembly. Some of these legislations had actually gone through this House. However, because of the sibling rivalry between the National Assembly and the Senate, we had to republish them.

Mr. Speaker, Sir, the only way to really support these Committees is by ensuring that we follow through. I support the idea of reviving the Committee on Implementation. Earlier on, I rose on a point of order to find out whether those reports that were being tabled here and focused on those funds are in line with the decision that was made by the courts. There is no reason as to why we should be receiving reports to come here for the sake of coming, yet we cannot question them.

We need to look at Section 35 of the Public Audit Act and the Constitution on the role of the auditor. We also need to support the auditors and give them more resources. Devolve these functions so that we do not lapse. That provision of three months is very important and if we see that we do not have the resources to carry out the audit within the three months, then we extend it.

Mr. Speaker, Sir, I support this Committee. I hope that in the next quarter, they will also find a way to push PSC to assign resources, not only to use the in-House lawyers. Our in-House, lawyer are overstretched. Look and see whether we can get other lawyers from outside to support in defending this House so that it can be relevant.

We were fighting for an opportunity under the Building Bridges Initiative (BBI) and we know how that went in terms of the issue of accountability. If governors out there really care about this country, the future of the people who they go to on a daily, then they should not be afraid of accountability. They should not be running to courts. They have no moral authority to do that because we know how their audit reports look like.

If this Senate cannot be allowed to oversight conditional grants, I call upon the donors who are giving that money to thoroughly audit those funds. Let those donors make it conditional that unless you go through the process thoroughly, account for every single penny and submit a report to Parliament, no more funds for you. You will see them become a little bit accountable.

Finally, Mr. Speaker, Sir, I really want to remind the county assemblies that they are the first point of oversight. Please, do your job. MCAs should not just clap for the governors and follow them wherever they go. They should ask them questions. That is

why they were given mandate by the people. They should not be get there, then get confused by power. If they do their job properly, the people will have them back there.

The House is empty today because everybody is out there looking for votes. They could be out there looking for votes or drumming support for somebody else, but the truth of the matter is that we should separate that.

Kenyans ought to see what their legislatures are doing. When you are given a job, go out there and do it. Let us run away from the culture of campaigning from the day you are elected into office to the day when you are going to the ballot box.

The Independent and Electoral Boundaries Commission (IEBC) has not even declared the campaign period, but as you can see, we are campaigning. I want to ask the people in the 47 counties to fear those who are fast in campaigning. They should be doing their work.

In the Senate, we have a lot of Bills that we need to pass. We have Committees that come up with legislation. Those Bills go through public participation. The laws that are supposed to support and help the citizens sometimes end up being time barred and they cannot be passed by Parliament.

A case in point is the Bill by the distinguished Senator for Busia County, Sen. Wako. Sen. Wako came up with the Bill on public participation and it did not pass in the last Parliament because of our dilly dallying nature and lack of interest on issues of accountability and having the public involved in legislative process. I am sure that it will suffer the same fate even in this Parliament.

I support this Statement and pray that we have some sense on the debate on oversight.

Sen. Omogeni: Mr. Speaker, Sir, I thank the Chairperson of the Committee on Devolution and Intergovernmental Relations for the Statement that he has read this afternoon. I congratulate him and his Members for the good work they are doing in that Committee.

I also want to join the Senators who have spoken before me to register my concern on the lackluster manner in which we handle suits that are filed against the work that is being done by the Senate.

When we had a *Kamkunji* last week, I said that it will be useful if this House took note of the fact that we will either be buried or resurrected in our courts of law. That is where the tip for this House will come. Let us accept it. I never went to Naivasha, but those who went to Naivasha and are in this House know what they did to this Senate. The functions of this House were mutilated in Naivasha. Were it not for the decision that we got from the Supreme Court; Supreme Court Decision No.2 of 2013, this House would be toothless.

It is good to be honest and candid. We should accept that in all jurisdictions, with time, people realize that there are some gaps that become evident as they continue to apply their Constitution. One of the most respected constitutions; the Constitution of the United States of America (USA), has been amended continuously. In fact, the Senate of the USA would not be as powerful as it is today if Americans did not realize that it was not wise to leave Senators to be elected by the State Parliament. That is why they amended the Constitution in 1916 to give the Senators direct mandate from the people.

Let us be candid and honest. We should accept, as Senators, that the functions of this Senate were poorly drafted in this Constitution. Unless we retreat as Senators, deliberate on the amendments that this country needs to undertake to empower this Senate, we will be crybabies.

As we sit, we are all praying that the decision that will come from the Supreme Court will be favourable to the kind of jurisprudence that is coming from the High Court and the Court of Appeal. Woe unto us if the Supreme Court upholds the views that have been expressed by the High Court and the Court of Appeal. If that is to happen, then the only recourse that we have is to push for Kenyans to relook at the Constitution of Kenya, 2010, *vis-a-vis* the functions and powers that were given to this House.

If you go to other jurisdictions like Australia and get a Senate that gets its mandate directly from the people in that they are elected directly by the people and not picked, or selected like House of Lords in the United Kingdom, then the Lower House cannot have a more enhanced mandate than the Upper House.

The Senator for Kakamega County gets elected by 11 constituencies. With that, he gets direct mandate from the people. I am told that they are 12 not even 11 constituencies. If you divide the votes that Sen. Wetangula garnered as a Senator for Bungoma County, you will realise that he can bring to the House all the Members of Parliament. That is the reality yet the National Assembly is deemed to be the one that should carry more functions than this Senate. We are living a lie. We must tell Kenyans that it is high time for us to go back to chapters 93, 94, 95 and 96 of the Constitution and make this a proper Upper House.

I give credit to the jurisprudence that has come from the High Court. You remember the case that we handled with Sen. Orengo and Mutula Kilonzo Jnr. and Petition No. E284 that was that was championed by my good friend, former Chairperson of the Committee on Justice, Legal Affairs and Human Rights, Sen. Cherargei. We got a very good decision.

Mr. Speaker, Sir, I am sure that the National Assembly now consults you and they have now recognized your office. They have accorded your office the respect that it deserves. Let us applaud the good work that the courts have done in affirming the good work that is being done by this Senate.

I have a lot faith in the counsel who was entrusted with the appeals that we filed in the Supreme Court. I want to report to the House that after the judgment that we got from the High Court last week, I consulted the counsel who is on record for Senate, Counsel Kioko Kilukumi, and he confirmed that they have already concluded submissions. He said that we are now waiting for the judgment that will be issued by the Supreme Court.

I hope that in the fullness of time, when that judgement comes, it will affirm what has come from the Supreme Court before that this House has got the mandate under Article 96 of the Constitution to look at almost every piece of legislation. Every legislation that passes through this House, in one way or another, affects the counties.

I want to appeal to the Judiciary. If they let these governors on the loose and send the message that they are not accountable or subject to oversight by the Senate, then that will be the end of devolution. We know what governors are capable of doing with State resources; the money we send to counties. Unless there is a strong oversight, not the one

done by the county assemblies, we know what happens with them. The proper House that should have checks and balances on our governors is this House.

Mr. Speaker, Sir, I do not want to influence the Judiciary, but I hope that when they retreat to consider these cases, they will put the interest of the common *mwananchi* who must receive services. When we fight very hard to send money to our counties; when the money goes to Nyamira, Nandi, Bungoma and the other counties, it is the hope and wish of every Senator that that money will go to offer services to the people. The money we allocate the counties is meant to provide for them medicine, share their good roads, provide for them water and other amenities.

We do not want to create 47 billionaires through the money that we send to counties. We want to see the lives of the people who have elected us to serve in the Senate having their lives transformed so that the dream of devolution can become a reality.

I thank Sen. Kajwang' for the good work he is doing. However, as Senators question the legal fees, take note that if you do not invest in good lawyers as PSC and pay them well so that they are motivated to do more research for you, you will continue getting bad jurisprudence. Some of these decisions go against us because we are overloading our legal officers. There is one lady, Ms. Mercy Thanji, who is over worked. I hope that when the PSC retreats to handle promotions, it will be fair to this young girl.

Mr. Speaker, Sir, we have so many suits against the Senate and everything is just thrown to Ms. Mercy Thanji's way. She is handling so many cases. I hope that when the PSC evaluates its staff, we can single out that young girl who has done a lot of good work in defending the Senate in the many suits that have come up in court.

Mr. Speaker, Sir, with those few remarks, I thank Sen. M. Kajwang' for the good work he is doing as the Chairman of the Committee on Devolution and Intergovernmental Relations. I urge him to continue being a champion of devolution so that people in the countryside can truly see the fruits of devolution.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon Lusaka): Sen Lang'at, we are eating into your time. The Statement Hour is almost over. You can read your statement now.

[The Speaker, (Hon. Lusaka), left the Chair]

[The Deputy Speaker, (Sen. (Prof) Kamar) in the Chair]

INCREASE OF FEES IN INSTITUTIONS OF HIGHER LEARNING

Sen (Dr.) Langat: Madam Deputy Speaker, I rise pursuant to Standing Order No.48(1) to seek a Statement Standing Order from the Standing Committee on Education concerning increase of fees in institutions of higher learning.

In the statement the Committee should -

(1) Explain why public universities have been increasing their tuition and related fees for academic programmes at random thereby affecting students and more specifically those from disadvantaged backgrounds, some of whom have had to

discontinue their studies; we have also seen several strikes following the same hence disrupting academic programmes.

(2) Explain the policy informing the criteria used by the universities to review tuition fees for various courses, stating how stakeholders are involved in the same process.

(3) State the amount of Government capitation *vis-à-vis* student enrolment, disbursed to institutions of higher learning in the last 24 months.

(4) Cause the Ministry of Education, Science and Technology to investigate the financial records of public universities to ascertain prudence in utilization of funds allocated to the universities in compliance with the law; this is because there is a lot of money given to the universities and also we have seen a lot of allegations on corruption concerning the same.

(5) Provide the data of all the students who have dropped out of the institutions of higher learning due to the hike in fees in the last 24 months, outlining measures in place to subsidize university education for these students.

That is my statement Madam Deputy Speaker. I hope you can allow me a minute to add something.

The Deputy Speaker (Sen. (Prof) Kamar): When you give a statement, normally you do not add anything because it is going to be investigated on your behalf. Unless you have a very critical thing that you missed out.

Sen. (Dr.) Lang'at: Madam Deputy Speaker, I want to add that the strikes in our universities as a result of fees increment is alarming.

The Deputy Speaker (Sen. (Prof) Kamar): I will give two Members a chance to contribute; Sen. Ole kina and Sen. Cherargei.

Sen. Olekina: Madam Deputy Speaker, I will go second.

The Deputy Speaker (Sen.(Prof) Kamar): Proceed, Sen. Cherargei.

Sen. Cherargei: Madam Deputy Speaker, I did not know Sen. Olekina can be this humble.

I rise to support this Statement by Sen. (Dr.) Lang'at. The arbitrary increase of fees in the universities is a cause of alarm. Madam Deputy Speaker, you were a principal of a constituent college and a lecturer in university. I am sure you appreciate the fact that most parents are struggling with these hard economic times. If there is fee increment, it will always affect the accessibility to education. The cardinal rule is the right of every Kenyan to access higher education, which should always be affordable and accessible.

This Senate passed a Bill that every county should have a university across the nation. It was the intention of this House to ensure that everybody within Kenya can access higher learning.

The increment on fees has affected many people. Some of the students in the higher learning institutions also hustle through here and there. They do other jobs; others are professionals or civil servants who despite heavy workload want to advance their education. Many people have benefited through such structures.

The increment in fees will affect all of us. It will affect parents and many Kenyans who either work in the private or public sectors who in the evening after five spare a few coins to access higher education. The key issue here is that most of the

universities are facing financial crisis. The Auditor-General has flagged out Kenyatta University (KU) and the University of Nairobi over a Kshs4.2 billion losses.

Most of the universities including Egerton and Moi university are in the red because of the debt they owe to debtors. The Ministry of Education, Science and Technology should call for a consensus on how we can ensure that our universities are not debt riddled.

Even as the Ministry of Education calls for a consensus on how we can ensure that our universities are not debt ridden, they should also be innovative on how they can generate their own income in one way or another. They should even use other means to ensure self-reliance because you have seen how most lecturers and workers within the university are going on strike. Egerton University is on strike. We have seen so many notices of strike by the institutions of higher learning.

Madam Deputy Speaker, I really want to plead that the Ministry of Education apart from addressing this issue of arbitrary fees increment to our students, they must also relook at how universities can be sustainable. I know the issue of Privately Sponsored Students Programme (PSSP) was restructured. This affected the income that used to come to universities. This is foul play and we need to be careful.

As I conclude, when the private universities were allowed to take the students under the regular programme so that they can get Higher Education Loans Board (HELB) loans, billions of shillings go to private universities. It looks like there is a collusion between the Ministry of Education and the Kenya Universities and Colleges Central Placement Service (KUCCPS). They are in an unholy alliance or a satanic move by ensuring that priority is given to private universities as opposed to public universities.

Madam Deputy Speaker, when that money is being given to universities, most of it goes to the private universities yet we have our very good public universities. You are a product of a public university. Sen. (Dr.) Langat is a product of public university. All of us are products of public universities. Why should the government not be careful so that public universities select their students first, then the private universities come second? However, if you say anybody can take it, we know private universities will take advantage. When that issue comes up, we must address issues of placement of students across the country.

I thank you, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator. Sen. Olekina.

Sen. Olekina: Madam Deputy Speaker, thank you. Let me begin by thanking the distinguished Senator for Bomet for bringing this Statement on these universities. The cost of learning in this country has sky rocketed. During this era, it beats the purpose of having a public university that receives a lot of State funding yet the leaders in these universities never think or contemplate a situation where they have to start creating endowments.

When we were growing up, though I did not get an opportunity to go to a local university, those who went used to be given 'boom' by the Government. However, now because of the demand for education by more students going to universities due to the rising need for financial aid, many universities here are not able to sustain themselves.

Today I was speaking to a leader in one of the universities in Narok. We were talking about a student who has applied to go to that university. This is a very needy

student. I was quite happy to hear that some universities have some little scholarships that they give to those needy bright students. It is about time for us now to look at this. Are we increasing college tuition fees so that we can be able to set up endowments or are we increasing them because of the bloated administrative cost?

Madam Deputy Speaker, I wish the Committee on Education would interrogate all public universities to see whether any of those universities, including the Kenya School of Law have any endowments. Universities in other developed nations and other African countries have endowments which they invest in stocks. They use the profits that they get to run the institution and charge little amount in terms of tuition.

This is an opportunity for this country and for the Cabinet Secretary, who is very fast in saying that the students should bear the cost whenever there is a riot instead of investigating the reason as to why there are riots in those universities. Find out, what is the problem?

Yesterday we were meeting with the Kenya Medical Supplies Authority (KEMSA) board to try and understand why they are taking these drastic moves. One of the presenters, a board member, said that when they were doing a Human Resource (HR) audit, they found out that store keepers had a Degree in Biochemistry or a Masters Degree in Education, but they were asking themselves, why is it that this people are doing that job instead of seeking better opportunities? The answer is not quantum physics, but it is that there are no opportunities. Maybe that student has not even paid off their student's loan that they get from this university.

Madam Deputy Speaker, it would be very important for the Committee on Education - and I know the distinguished nominated Senator from Bomet who is the Chairperson - can investigate this further because she is a professor.

Sen. Cherargei: On a point of order, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): What is your point of order, Sen. Cherargei?

Sen. Cherargei: Is it in order for Sen. Olekina to say Sen. (Dr.) Langat is the Chairperson yet we know he is not the Chairperson?

The Deputy Speaker (Sen. (Prof.) Kamar): I thought he said former Chairperson? Anyway, I think ---

Sen. Olekina: Madam Deputy Speaker, you know it beats me sometimes when we rise on points of orders. The distinguished Senator from Nandi ought to have listened to my submissions. I said the Chairperson is a nominated Senator from Bomet. I was not referring to Sen. (Dr.) Lang'at because then, it would beat the purpose as to why he would bring a statement for his own Committee.

(Laughter)

You know, very interesting, but---

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, just wind up please.

Sen. Olekina: Madam Deputy Speaker, let me wind up. Of course, I had to laugh.

(Laughter)

But finally---

The Deputy Speaker (Sen. (Prof.) Kamar): But your laughter is attracting another point of order from Sen. M. Kajwang’.

Sen. Olekina: It is okay. Let it attract but you cannot---

(Laughter)

Sen. M. Kajwang’: Madam Deputy Speaker, everything we say in this House needs to be transcribed on the HANSARD. Could Sen. Olekina give directions on how that laughter shall be captured in the HANSARD? Otherwise, it should be struck off completely.

The Deputy Speaker (Sen. (Prof.) Kamar): I think he was winding up. I do not know Sen. Olekina, can you wind up please?

Sen. Olekina: Madam Deputy Speaker, when a point of order is raised, the person who raises the point of order expects to be given a response. My response is very simple. It will be written there, “*laughter*”. You know, and that matter proceeds.

In conclusion, I hope that the Committee will go further and request a statement of all funds which are given by the Ministry of Education to all public universities. On top of that, it will also be important and of interest to this House for us to receive a statement of how much public money has been given to the private universities which has now accepted public students.

Madam Deputy Speaker, I support.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator. Just to give you information, the University of Eldoret is the first one to start an endowment fund. I have been privileged to be part of the members of the Board of Trustees, courtesy of Chancellor Professor Bahemuka.

Lastly, Sen. Kasanga.

Sen. Kasanga: Thank you, Madam Deputy Speaker. Allow me to congratulate and thank Sen. (Dr.) Lang’at for that Statement. As we deliberate, and as the Committee on Education will deliberate on the issue of raising school fees for students in the university, it will also be very prudent that we begin to look at the workings of these universities.

As the other Senators have said, it is true that the Auditor -General has flagged quite a number of struggling public universities. Some of them we were proud to have been associated with, we went to school there. We are who we are because of those universities and so they have to tell us really what is happening.

World over, universities are the ones that set the pace for economics and development for the future of young people. They are the ones who set the pace for research and development. I am wondering and I keep asking myself, where are these endeavours? Where do we see these endeavors coming from our universities? Because if our universities really did what they are supposed to do in research and development, then they would be able to also attract a lot of funds that can help with their capitations, such that they are not just reliant on the students’ school fees, especially, for those who are government sponsored.

So, Sen. (Dr.) Lang’at, as you engage with the Committee on Education, we are curious also to know what is going in our universities. Why are they having all these

financial challenges? As Sen. (Dr.) Langat engages with the Committee on Education, we are also curious to know what is going on in our universities. Why are they having all these financial challenges? What is the issue? What is wrong with the curriculum? We want to know because we are interested.

Madam Deputy Speaker, we have a population of very young people that needs to be accorded the future they deserve. Young people are now more attracted to study in private universities because their programmes seem to have what they need to get into the job market. What is happening to our public universities? We need to interrogate the programmes that they have.

One of the Senators mentioned something about private and public universities and the allocation of students in the Kenya Universities and Colleges Central Placement Service (KUCCPS). I am a bit privy to this. I know what private universities receive from the Government is in line with the number of students that they have been allocated in the KUCCPS. The spirit of allocating some students to private universities was not to compete with the public universities. I think it was a way to accord access to education to all out students, so that they can get a feel of what is in the private universities. It is not a bad idea; it is something that we need to celebrate and understand. It did not come from a bad place when it was initiated.

The Government has now put a cap on the number of universities because we need to look more into the Technical, Industrial, Vocational and Entrepreneurship Training (TIVET) as opposed to just graduates. We need to expand our TIVET education, so that we can get a more skilled workforce out there.

Madam Deputy Speaker, I thank Sen. (Dr.) Langat for this. We look forward to seeing the deliberations of the Committee and what they come up with.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): The next Statement is pursuant to Standing Order No.51(1)(b).

Proceed, Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries.

*(The Deputy Speaker (Sen. (Prof.) Kamar)
consulted the Clerk-at-the-Table)*

Hon. Senators, I have been informed that Statement was cleared. Let us move on to the next Order.

BILLS

First Reading

THE MATERNAL NEWBORN AND CHILD HEALTH BILL
(SENATE BILLS NO. 52 OF 2021)

*(Order for First Reading read – Read the First Time
and ordered to be referred to the relevant Senate Committee)*

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, for the convenience of the House, I defer Orders No.9, 10 and 11 which are divisions.

Second Reading

THE HERITAGE AND MUSEUM BILL
(SENATE BILLS NO. 22 OF 2021)

(Bill deferred)

Second Reading

THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL
(SENATE BILLS NO. 17 OF 2021)

(Bill deferred)

Second Reading

THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL
(SENATE BILLS NO. 37 OF 2021)

(Bill deferred)

The Deputy Speaker (Sen. (Prof.) Kamar): I would also like to rearrange the Order of business and go to Order No.15. Please, read the Order. Proceed, Sen. M. Kajwang’.

Second Reading

THE COUNTY GOVERNMENTS (AMENDMENT) BILL
(SENATE BILLS NO. 38 OF 2021)

Sen. M. Kajwang’: Madam Deputy Speaker, I beg to move that the County Governments (Amendment) Bill (Senate Bills No.38 of 2021) be now read a second time.

The amendment to this Act is quite familiar to this House. In the last Parliament, this House came up with Section 91(a) to the County Governments Act and established the County Development Board (CDB).

The CDB has been referred to as the Sang Board. The Bill that brought effect to it was brought by Sen. Sang, who was a very vibrant Member of this House. His vibrancy has been inherited and added on by Sen. Cherargei, who also comes from Nandi County.

Madam Deputy Speaker, when the President signed the amendment to the Bill and made it law, the Council of Governors (CoG) rushed to court saying that the CDBs were unconstitutional. As a result, Section 91(a) of the County Governments Act was struck out and declared unconstitutional.

The role of the Senate is to represent the interests of counties and their governments yet we do not have a forum for a Senator to understand and discuss with the county governments what their interests are. This amendment seeks to cure the issues that were raised by the court on the CDB and to put in place a better framework that shall enable elected leaders from a county to sit, reason, think and plan together.

Madam Deputy Speaker before I get into details on how that would be effected, there are two other objectives that we have of this amendment. The second objective is to enhance the corporate governance of County Assembly Service Boards (CASBs). This Senate established the CASBs to provide overall administrative and human resource direction to county assemblies. They were modeled on the Parliamentary Service Commission (PSC). We have 47 CASBs, and they are chaired by the speaker, just like the PSC is chaired by the Speaker. Each of these CASBs have a vice-chair, just like in the PSC.

Madam Deputy Speaker, there has been a curious occurrence. Whenever the speaker of a county assembly is kicked out of office for whatever reason, the house very quickly puts an acting speaker who then chairs the CASB. The first thing that the acting speaker and acting chair of the CASB does is to sack the employees who are perceived to be loyal to the speaker who has been kicked out of office. This happened very recently in Nyandarua. The speaker was impeached and the next day the deputy speaker, who was not seeing eye to eye with the speaker, convened a meeting of the CASB. The clerk was fired, and all staff who were deemed to be sympathetic to the impeached speaker were kicked out.

Madam Deputy Speaker, the CASB should mirror the PSC in that where the chair of the CASB is not there for whatever reason, the acting chair shall be the vice-chair, not the deputy speaker. It would be quite ridiculous if we said that in the absence of Speaker Muturi, my friend, Hon. Moses Cheboi, should chair the PSC. It should be the vice-chair.

That lacuna has been there in the law and some county assemblies have abused it. This legislative amendment found a lot of favour in the County Assemblies Forum (CAF) because they thought that gap has been exploited for the wrong reason in the past.

Besides enhancing corporate governance of the CASBs, the third objective of this amendment is to mandate county governments to submit an annual performance report to the Senate. The annual performance report is not a new creation; it is there in Section 47 of the County Governments Act. It is just that the Act was so loose. It said that the Executive shall submit the annual performance report to the Assembly. There were no timelines and no prescription on action to be taken.

The annual performance report must be seen to be as important as the financial performance report.

Madam Deputy Speaker, right now, every county government does a financial report which is then looked at by the Auditor-General and a report comes to the Senate and the county assembly. It only looks at the financial perspective. What about the other perspectives like the human resource, the county stakeholders, projects and the Overall County Integrated Development Plan?

If the county governments are required to submit annual performance reports within three months of the closure of the financial year, just the same way they do with the financial reports, would then be laid before the county assembly and the Senate. That

means that instead of the Senator for Narok County looking at a report that says how procurement was done, how many pencils and envelopes were bought, he also gets to look at another report that tells him what the performance objective was, what the performance target was and to what extent that was achieved.

Madam Deputy Speaker, I believe that if the Senate does financial oversight hand in hand with performance oversight, we will get better outcomes from our county governments.

The amendment in this case is that within three months, the County Executive shall submit the annual performance report to the county assembly and to the Senate for consideration. What I foresee is that when this becomes law, we might want to establish a standing Committee of this House whose sole purpose will be to look at the annual performance reports coming from the Counties. The same way we have the CPAIC looking at the annual financial reports coming out of the counties. That would be a good building block for the proactive oversight that we wish the Senate would undertake.

Madam Deputy Speaker, allow me to spend time on the first objective – the establishment of the County Leaders Forum (CLF). This amendment seeks to introduce Section 91(a) because the current Section 91(a) was declared unconstitutional. This section was establishing County Development Boards what I called the Sang Bill.

Article 96 on the role of the Senate, the very first role of the Senate is to represent the counties, to represent their interests and the interests of their Governments. People think that the Senate's role is purely oversight just like any legislature. Oversight is our fourth role. The first role is representation. The second one is participation in law making. I had an interesting conversation with Members of the National Assembly about the manner in which Article 92 is crafted, that we only participate in law making and that then makes us the 'lower' House. If you look at Article 95, it says the National Assembly enacts legislation. It looks like we just come in at some point. We do not have originality in law making, but that is for another day.

Madam Deputy Speaker, the third role is to determine allocation of revenue. As I said, the fourth role is oversight. We have spent a lot of time strengthening our oversight tools. However, we have not done much to strengthen our tools of representation. How does the Senator of Uasin Gishu County get a brief from the County Government of Uasin Gishu? If maize and fertilizer as well as agriculture are the most important things in Uasin Gishu, how does the Senator get a brief so that when she goes to the Senate, she gets to address those issues?

There are counties that have developed a fairly good framework of consultation. Unfortunately, most of them arise out of interpersonal relations. It depends whether the governor and the Senator are friends, or from the same political party. Even though we know that such friendships rarely last long.

In many of our counties, we second gaze we say that as a Senator, I have got my own networks so I understand the needs of my people. Sometimes we bring an agenda before the Senate which is inconsistent with the priorities of the county government yet our first role is to represent the counties, their interests and of their governments.

Madam Deputy Speaker, we are proposing that every county establishes a CLF. Hon. Sang proposed it and called it a County Development Board. However, it was struck out as unconstitutional for many reasons. Firstly, he proposed that the Board shall

be chaired by the Senator and the Governor shall be the secretary to it. The governors, in their imperial nature, said they were being reduced to clerks. In Kiswahili we call them *makarani*. Not knowing that the secretary to a Committee is a very powerful person because they can doctor the minutes if they wanted to engage in mischief. They said they could not be clerks yet they were flying flags.

The second issue that they had with the CDB was on the issue of the mandate. They felt that the CDB were straying into their exclusive domains of approving the County Integrated Development Plans. It was their view that such a forum should not be focussed on development, but on consultation and information sharing.

I know that some of these matters are still being canvassed in court. However, why should we wait forever for the learned fellows to tell us what to do yet this is the House that enacts legislation? When Governor Wambora was elected the Chairperson of the Council of Governors (CoG), we had a meeting here. He came with all the Committee Chairpersons from the CoG, including Governor (Prof.) Anyang'-Nyong'o.

If the House recalls, the first Senator who attempted to Chair a County Development Board meeting was the then Sen. (Prof.) Anyang'-Nyong'o. He went to Kisumu and called for a meeting, but he was met with violence both verbal and physical. He was told to go back to Nairobi. He was told we elected you to sit in Nairobi, but not to come here to chair a development meeting.

Madam Deputy Speaker, when Governor (Prof.) Anyang'-Nyong'o was before us, we asked him how best we could restructure the law to ensure that there was a framework for consultation at the county level. The governors were unanimous that if we could strike out what they felt was offensive provisions of that legislation, they would have no problem convening a stakeholders' forum at the county level. They cited the issue of leadership of the Board as well as the issue of the agenda of the Board and we have attempted to address that.

Madam Deputy Speaker, we are proposing that the CLF shall comprise of the governor who shall be the chairperson and not the clerk. The Senator shall be the vice chairperson. When we were coming up with this amendment, there was a lot of thinking on whether we should make the governor and the Senator co-chairs. That invites a lot of problems.

Madam Deputy Speaker, if you put two people who are elected separately at the same level, you may never be able to convene a meeting. I want to convince the House that even with a governor as the chairperson and a Senator as vice chairperson, we would still be able to achieve the objectives we want of ensuring that we have got a framework for consultation.

The CLF shall also have all Members of the National Assembly from the county, including the Women Representative. It shall also have from the County Assembly the Speaker and the leadership of the assembly. In our feedback from public participation, the County Assemblies Forum (CAF) indicated that we should not include the chairs of finance and budget committees in the county assemblies because each county assembly has got a different configuration.

Madam Deputy Speaker, that makes sense and that is an amendment we can allow. This forum will have the Chair of the County Public Service Board, the County Commissioner and the County Secretary as the secretary. The reason we have this

cocktail of membership is that the county is the theatre for all development. Be it the National Government Constituencies Development Fund (NG-CDF), the County Revenue Fund (CRF) and the Consolidated Fund.

Today the CRF holds about 15 per cent of national revenues. The NG-CDF and the National Government Affirmative Action Fund collectively and probably hold three to four per cent whereas the Consolidated Fund remains with the 80 per cent.

We had the President recently give a directive that Level Four Hospitals be established across the country, yet this is a purely county function. How then does the County Commissioner of Homa Bay County go round identifying where to build those hospitals without involving the governor? The agenda of the County Leaders Forum will be to ensure that we get rid of those overlaps.

The first agenda is to determine issues of engagement between the national and county governments and propose a common legislative and development agenda. I have given the example of the health facilities. Any governor who allows someone from Afya House in Nairobi to build a hospital in their county without concurrence, consultation and inter-governmental agreements will be a weakling because the lines and responsibilities are clearly drawn.

If the President wants hospitals to be built, even if it is post-COVID-19 reaction or response plan, he must follow the law, which is Article 187, and ensure that there is an inter-governmental agreement or should come to the Senate and ensure that there is a conditional grant to the counties to undertake that.

In the counties, Members of the National Assembly, Women Representatives and governors issue bursaries. The national Government also issues bursaries. What happens in many cases is that you will find the same person benefiting from all these Funds, because we have got people who have become experts at gaining the system. They know how to make applications and go online. We need to make sure that we synergize if we are doing bursaries in the counties. That way, we will reach a much larger population.

I see the National Government Affirmative Action Fund (NGAAF) being used to build markets in my County of Homa Bay, yet ideally, that is an exclusive mandate of the county government. Why should the women representative build a market on my doorstep when the county government is planning to build another market behind my house? We have those kind of duplications that can be sorted out through this.

Another issue is school infrastructure. Many county governors are now putting money in primary and secondary school infrastructure. If you ask them, they are complaining because they are not seeing where the National Government Constituencies Development Fund (NG-CDF) goes.

This has been a case in Kajiado County because I have dealt with it in the County Public Accounts and Investments Committee (CPAIC). This has also been a case in Kakamega County among others. I do not know whether it happens in Narok but governors claim that they do not see what Members of the National Assembly are doing with the funds that have been given to them.

What if leaders of a county with eight constituencies say that in a certain financial year, each will get Kshs110 million which adds up to Kshs880 million? The money can only do 50 per cent of schools and the governor should bring in an additional Kshs200

million. That way, they will do things that make sense, rather than things that only enhance our political positions.

Another one is roads. We know that the Kenya Rural Roads Authority (KeRRA) does roads in our counties. It is the KeRRA roads that the county governments sometimes claim to have done. This is the sole reason why governors went to court when the Senate said it wanted accountability on the Road Maintenance Levy Fund (RMLF) because they are doing a lot of monkey games there. Can we sit down and mark our roads, so that we know the roads that will be handled by governors, Members of the National Assembly and the county governments through the county commissioners?

The other agenda will be to consider and advise on issues of concern that may require cooperation, consultation and coordination between the two levels of government.

I have always reflected on some of the battles that we put up in this House. We spent a lot of energy on the revenue formula. You will find Senators fighting for their counties, yet governors sit clueless and just watch. Many a times, we come here to fight for additional revenue for county governments but the governors just sit back and wait to see whether we are going to be successful.

Today, governors are demanding Kshs700 billion. They expect the Senate will join the bandwagon and say let us give governors Kshs700 billion. Without consulting us, they go to the Intergovernmental Budget and Economic Council (IBEC) and make those demands then they come and expect that Senators are robots that are just going to support them to get Kshs700 billion. That becomes a forum for a Senator to get a brief from their governor, so that by the time we come here, we all have the same view.

I wish the Senator for Nyamira was here. I think he is still around. Nyamira County deserves a proper county headquarters. When we gave money as conditional grants to Tharaka Nithi, Isiolo, Lamu and a few other counties, Nyamira was in the "Class B" or the second tier counties that were supposed to benefit from an allocation for county headquarters but that has not happened.

Sen. Omogeni has been pushing this agenda solely. He does not seem to have the backing of his county government because they county government prefers to build the county headquarters. That way, there is a better margin for something to go into the pocket.

I do recall back then, the Senator for Tharaka Nithi, Sen. (Prof.) Kindiki, made a spirited fight to ensure that they got county headquarters. Today, when you go to oversight the buildings and the progress, you are slapped with a court order telling you that it is not Senate's business to oversight conditional grants, yet we are the ones who fought for allocation of those funds.

That is shameful! It is shifting goalposts because when the counties need money, they need the Senate and when the Senate requires an answer on how the money has been utilized, they run to court to get court orders.

I am glad because I can see the Senator for Samburu here. When we arrived at the marginalization policy that we have, which the Senator for Nairobi City disagrees with and he has all the right, but did he sit with Hon. Sonko? Did Hon. Sonko conceptualize and understand that this marginalization policy is not taking care of pockets of marginalization within Nairobi? Probably it was beyond his pay grade.

We expect a situation where when you talk of a marginalization policy, equalization policy or a Fund, when we stand here, we speak on the authority of our county governments. This is because our mandate number one is to represent the counties.

I think we have said that the counties are made of people. We have extended and said that 0.1 represents the people and 1 represents the counties but in truth, what the Constitution says is that we represent counties.

If we represented the people in the counties, then there would be a constitutional provision for us to everyday go and sit with the people in the counties under the trees to get their views. However, we represent the counties. This will be the forum to the counties and understand what they are doing.

Transfer of functions is another example. You cannot spring a surprise on the people of Nairobi, that you want to transfer functions from an elected governor to the national Government without involving the elected representatives in that county. It was shameful.

Sen. Sakaja told me that he was consulted in private informally. Even though in private, he also said he is the one who recommended the drink that the governor should have been given to enable him sign the deed of transfer. That was informal but it came as a surprise. What kind of a leader are you! You are an elected MP in Nairobi and it surprises you also just like it surprises everybody! Things like those should be discussed in that forum.

The third agenda is to consider the views of the county governments on the Budget Policy Statement (BPS). It is at the BPS that what goes to the counties and what remains at the national level is proposed.

We come here and make very grand proposals on the BPS. I remember last time we fought so hard and said that the RMLF should remain as a conditional grant and not comingled with the equitable share. It was a lonely fight.

We said that the conditional grants to Level 5 hospitals should not be discontinued because some counties had already made plans to utilize those funds to upgrade the infrastructure and health systems. However, we were alone because we did not get that brief from our governors. We used our own intuition and concern. So, when the BPS comes and we have such proposals that certain conditional grants be converted into equitable share, the Senators coming from those respective regions must understand the rationale.

Credit should go to the Governor of Kisii, Hon. Ongwae. He is the only governor who attempted to lobby the Senators to reject that proposal which originated from the BPS, that funding for Level 5 hospitals be stopped and made a conditional grant because in the Nyanza Region, Kisii is emerging as the leader when it comes to health services provision. It was because of that allocation which has now been discontinued.

The amendment also says that the forum shall consider the views of county governments on the formula for revenue allocation. We said that the formula was unfair but our governors decided to bury their heads in the sand. That is why it took so long. This is because in the Council of Governors (CoGs), there were gainers and losers and so they did not want to take a position.

By the time I come and take a position here on behalf of the people of Homa Bay, it must be consistent with the interpretation that my governor has.

The forum shall also consider the views of the county government on the Division of Revenue Bill and County Allocation of Revenue Bill before enactment and on proposed withdrawals from the Equalization Fund.

Madam Deputy Speaker, that agenda is not developmental. It does not offend what the High Court said. It is consultative. We are consulting and harmonizing. We are making sure that what the national Government, county governments and Members of Parliament (MPs), who hold funds representing the national government do, is harmonized so that we do not have unnecessary wastage and duplication.

There would be practical challenges, for example, one, how do you get a quorum? What if the governor decides to invite only Members of Parliament (MPs) who he likes and governors who come from his political party? So, we have put a provision saying that the forum is properly constituted when the governor, Senator and at least one-third of the Members of National Assembly are present.

Madam Deputy Speaker, we cannot make the quorum a 100 per cent. We cannot just say 30 per cent. However, we need to make sure that at least the three constituencies, the governor, the Senate, the National Assembly and probably the county commissioner are seated then have a threshold to have meetings.

The other practical concern is how frequent should the meetings be. If you look at the agenda and you have things like the Budget Policy Statement (BPS), the Division of Revenue Bill and the County Allocation of Revenue Bill which are annual in nature, it means that at a minimum, this forum must meet twice because the BPS Division of Revenue Bill and County Allocation of Revenue Bill come at different frequencies.

Another problem is how to take care of administrative expenses. That is something else that the governors contested in court. They said that there is no way they will take care of the tea and water of a Senator which is taken care of by the Parliamentary Service Commission (PSC).

Madam Deputy Speaker, your heart bleeds when you think about devolution and what the intention was. It was not supposed to be competition between the people and their representatives. It was supposed to be people working together.

The court had agreed with them in case of the Gov. Sang's Bill that it was wrong for a Senator to do a meeting in the county and then it is underwritten by the county government.

We, Senators can carry our own tea and other liquids in flasks in our pockets. We do not need the county government to make this a big deal that they are now financing the activities of Parliament.

The other concern is: What if the governor decides that he is not doing it? Kenya has this *uta do* mentality. Even if we have not put it in, this is a matter that came up during public participation that we need to put a penalty. There are certain cases where in drafting the law, we have made certain offences impeachable. For example, under the Parliamentary Powers and Privileges Act, if a governor or person who is summoned is taken to court and upon conviction is found to have violated the provisions of that Act, there is a financial aspect that they will be fined. It goes further to say that the conviction shall form grounds for removal from office.

Madam Deputy Speaker, a governor who refuses to call other leaders to a consultative forum, at least, once every year, upon conviction, should find themselves impeachable.

We also want the annual performance report to come to the Senate. There are questions on how to process it. However, this should not be a big deal. This is because the annual financial report is already being processed by the relevant Committees of this House.

This could be the mandate of select or established Committees. It is important not to count the coins from counties and look at the impact. That is when we will start to do value for money oversight and representation. We will focus more on performance, objectives and outcomes of targets that have been put to achieve them rather than whether someone got a qualified or unqualified opinion.

Madam Deputy Speaker, I wish to beg that the House considers this amendment so that we can have a structured way for the Senate, National Assembly and county governments to consult, harmonize, synergize and reduce wastage and duplication that exist currently.

I beg the House to consider and approve this amendment so that we can stabilize our county assemblies and County Assembly Service Board (CASB). Also so that we expand the scope of our oversight from financial to performance and functional issues.

I beg to move and request Sen. Kasanga to second.

Sen. Kasanga: Thank you, Madam Deputy Speaker. Allow me to congratulate Sen. M. Kajwang' for these amendments which we must celebrate. This is because they look towards strengthening devolution. The spirit of our Constitution and of this House is to streamline and get devolution to be as effective as possible to serve Kenyans as a whole.

I wish that these amendments came in the first month of constituting this House. This is because they are worth celebrating.

It is a second attempt. Sen. M. Kajwang' is trying to remedy the issues that were raised by the Judiciary in the first instance when they declared the establishment of the county leader's forum unconstitutional.

As I speak to these amendments, we have seen the challenges that this House has had when it comes to oversight and effecting our mandate to be efficient.

I believe that these amendments can work towards making our work easier. In fact, I have seen in some of the counties that when leaders, regardless of which political party they come from, get together to discuss development agendas, good things happen.

It is unfortunate that we have to legislate everything. We have to put people to task to sit as leaders to discuss and synergize so that we work towards one goal which is development and address challenges that face our people. It is a bit sad but it is what it is. Let us force these synergies to happen.

As Sen. M. Kajwang' has said, there is a lot of money that is going to our counties from the national Government, county governments, Members of National Assembly and many other sources of funds. However, each of them work on their own individual way and space. So, how about we come together so that we can redirect all these things?

For example, a county budgetary plan can have the input of some of the other leaders as well because they are also representatives of people who understand what the people need. I imagine what it would be like when we have such a synergy.

Worse still is that many of the Senators are always catching up with what the governors are busy doing. So, if we have a forum where Senators are abreast with development agenda of the governor and other MPs, it will be good synergy. We must celebrate the proposal to submit the annual performance report to Senate.

Of course, this is the only place it can be brought to, being that the Senate is the one mandated to oversight counties. This annual performance report would go a long way to help set the pace, standards, targets and expectations. We will also have something that we can measure ourselves as a people on how we are moving our counties forward. I think this is a very brilliant idea. Honestly, we would love this see this came to place.

As Sen. M. Kajwang' said, there will be a standing committee whose works will then be to look at these reports and give recommendations on them. We can then push the county governments to perform when we look at the reports against each other and when we have matrices that can help us to set the standard and measure the output in these reports.

County assembly's development and County Public Services Boards, these also need to be streamlined to strengthen the working of our county governments. After all, they are the ones on the ground monitoring what the governor is doing. It is also very critical that we strengthen our County Assemblies and stabilize them as much as possible.

I commend these amendments and pray that if it were possible we can see it go through before we go to the next election. It will be a wonderful thing if the next Senate has this forum to engage the counties for oversighting and strengthening devolution.

We hope and expect that should there be any reason why this could be challenged in a court of law, for once the courts can see that they are crippling the work of Senate. In fact, this has been a conversation we were having today in our Committee on Roads and Transportation where we have been stopped from looking into some of the levy funds that are given to the governors. It is unfortunate that there can be money belonging to Kenyans yet, nobody can oversight it. It is a big oversight on the part of the Judiciary.

We hope this can be looked into significantly so that we can change how we are functioning. We will then strengthen our synergies and work towards one common goal which is a strong and effective devolution, that serves and uplifts the lives of Kenyans.

[The Deputy Speaker (Sen.) (Prof.) Kamar] left the Chair]

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

Mr. Temporary Speaker, Sir, once again I want to congratulate and thank Sen. M. Kajwang' for thinking through this. He is a champion of devolution. Of course, he is the Chair of the Committee and for that we want to celebrate him for bringing this and seeing that these gaps need to be sealed possibly before we go to another election so that we can strengthen the next House that comes.

I Second and support.

(Question proposed)

Sen. Olekina: Thank you, Mr. Temporary Speaker, Sir. I rise to support these amendments to the County Governments (Amendment) Bill. From the onset, let me congratulate the distinguished Senator for Homa Bay for having thought out these amendments which bring some sense into the development of these counties.

The biggest challenge we now have is the fight for supremacy between the governors and Senators. Our job is very simple and is defined clearly under Article 96 of the Constitution that it is to represent the interests of the counties and their governments. It beats logic as to why we should spend sleepless nights here and have 11 votes for more money to go to counties, yet the Senate cannot play a role in determining how that money should be spent.

I thank the Governor of Nandi for attempting to introduce these amendments to the County Governments Act when he was a Senator. He thought clearly of the role that the Senate should play in terms of ensuring that there is logic in the development of the County Integrated Development Plan (CIDP) and the Annual Development Plan (ADP) so that when counties are developing, this issue of inequality can become a thing of the past.

I agree entirely with Sen. M. Kajwang that it does not make sense as to why the national Government County Development Funds (NG-CDF) and governors should give bursaries. At the same time schools which are supposed to be developed by NG-CDF are also being developed by the county governments which is an illegality. These forums which are being proposed in these amendments are very important to ensure development and some form of equity in all these counties.

If we go to for example, the counties of Samburu and Narok, you will find that their county governments spend more money trying to develop the infrastructure of schools while at the same time the Members of Parliament (MPs) are bringing in money to buy buses. The county government gives bursaries and the MPs also give bursaries. As a result, some clever people end up getting double bursary. How are we able to determine the needier student or areas which require a lot of support?

There is no reason why we should be all fighting for more money to go to counties and as Sen. M. Kajwang' has said, governors are now seeking for an additional Kshs70billion. Our role has become just people who fight and use our brain here to find logic as to why money should go to counties but when money gets to the counties, they do not want to see any logic being brought by the Senators. Let them go there. They will be able to question us when they want.

When it comes to questioning and trying to oversight there are hurdles and court battles on the issue of oversight. People interpret the Constitution the way they want. I believe when we all have the same interests---

This goes back to Article 96 of the Constitution. My role here as a Senator is to defend the interests of my County of Narok and its government. I want more money to go to the county but I also want accountability. I also want us to practical. Narok County sits on vast land of almost 18,000 square kilometers. I want to make sure that the children in Loita are getting services both from the National Government and the county government.

I want to make sure the children in Kilgoris are getting services such as electricity which is a function of the National Government. Members of Parliament have that mandate where they go and sit down with the Rural Electrification Authority and they are given allocations. There is no reason why the county government should be pushing to send electricity there. We should all sit down together since two heads are better than one.

Mr. Temporary Speaker, Sir, in Maasai we have a saying - *medany' olkimojinoo lobo olashe* meaning that there is no way one brain can determine everything.

Article 179 of the Constitution vests executive authority in an executive committee which is the county governor, the deputy governor and 10 County Executive Committee Members (CECMs) who are not Members of the County Assembly (MCAs). This is all from the governor's side.

It is the governor who determines who can dance to his tune so that they are appointed as the CECM of a certain department. If they sit down, develop CIDP and from it an ADP, what tells you that the decision will be one that considers every part of the county or be inclusive?

What gives us a guarantee that when we are here fighting for the interests of the county in its entirety, county governors or the County Executive Committee (CEC), will also be doing the same?

Mr. Temporary Speaker, Sir, the current amendment into Section 47 of the County Governments Act, in terms of submitting an Annual Performance Report (APR), does not have timelines. It only says, "submit it to the County Assembly". I would like to beseech and request Sen. M. Kajwang' to further amend that. While submitting, he indicated that he would want the county governor to submit the report concurrently to their assembly and the Senate.

I see a problem there. The problem is premised on what has been happening when we try to question conditional grants. We know very well that the Senate does not oversight own source revenue. If this annual performance report is a commingle of funds both from the National Government and own source revenue, will there not be questions or issues when it comes to the Senate over sighting or the Senate looking at that report?

I appeal to Sen. M. Kajwang' and his Committee to further amend this Section 47 of the County Governments Act and set it up and say "we will submit an APR". For example, if Narok County Assembly had allocated about Kshs3 million for building and abattoir in Naroswa, within three months after that APR has gone, we do not want a situation where there is no timeline as to when we can be told that was actually done.

Mr. Temporary Speaker, Sir, I would want them to amend that Section further, to require that this annual performance Report is submitted to the assembly first. The assembly becomes the first point of oversight and examine that Report because they are the ones who pass the budget. Let them look at it and say the report on the annual performance report said we build this. After checking, let the county assembly come up with a report and submit it to the Senate.

I am arguing like that because we know that the county assembly cannot question the governor. In fact, the county assembly will go as far as questioning the County Executive Committee Members (CECMs) of each department but never the governor. So, if you want accountability and want to see the laws we pass or propose in this House

bring proper accountability of resources in this country or make sense, let it go through that step of the assembly first. From the assembly, let us have a report. Thereafter, we, in this House can now question the governor on this APR.

Mr. Temporary Speaker, Sir, I am also quite intrigued by the proposal to change this County Leaders Forum (CLF), from what the Senator for Nandi County – now the Governor – had in mind. You are bringing elected leaders together. The same people who elect a Senator and a Women Representative elect a governor. You are bringing Members of the National Assembly all together to sit down. I love the fact that the governor, who is the boss of the county government, is given the mantle to become the chair. Since the Senate is the one who pushes money to the county, then he becomes the vice-chair.

There is absolutely no reason as to why this Annual Development Plan (ADP) should end up as just something drafted on paper. Many of these County Integrated Development Plans (CIDPs) end up either not being fulfilled or the ADPs not being met because of various issues. For example, let us excise out a section of the CIDP and make it an ADP and say that Narok County will build three abattoirs, five markets and feeder roads. When I am here as a Senator, my role will be to ensure that during the Division of Revenue, I fight for more money to go to the County. I will then have more reason to even support governors to get the Kshs70 billion more that they want; because I know in that CLF where we sat, we agreed that X number of roads will be built this time and it will consume KshsX.

Earlier on, we were commenting on a Report by the Committee on Agriculture, Livestock and Fisheries. I believe agriculture is what should propel this country into a true middle income country but they are getting only 3.7 per cent of the budget. This is a devolved function. Therefore, if this money is sent to county governments, county government ought to increase money to promote agriculture. Not 3.4 per cent. What will 3.4 per cent help? Will it take care of administrative cost, imaginary benchmarking trips or will it be able to invest into the farmers and support them to develop?

Mr. Temporary Speaker, Sir, I fully support these amendments and hope that Governors will see this as another added advantage of us working together. We should work together and not see each other as enemies. We should be working towards to develop the interests of our people.

One of my pet peeves over the last five years has been going through the Auditor-General's report. I support the amendments being brought not to be looking mostly on what kind of opinion you get when an audit is done. The kind of opinion you get right now is based on your documentation. I support the idea that now the Auditor-General will be auditing those functions or the performance of that county and recommend on how they can improve on those functions on their ADPs. It will make sense.

Right now, any clever Governor can sit with the auditors and put all their paperwork together. However, are the people who elected you, getting the services they voted for you to go and fight for? Some of us are paid from their salaries. In fact, all public servants are paid by their taxes.

I would like to beseech all Senators to make time away from their busy campaign schedule and come here and make laws that will help us improve the standards of living of our people. The only way to do this is for us leaders to sit together in this Forum, share

ideas and be accountable to our people. The culture of corruption in this country is fueled by such--- When you try to refuse--- What is the word to use? I will remember it.

Let me summarise it this way; the culture of corruption is mostly fueled by us seeing thinking that people are meddling into our affairs thus try to resist change. The culture of corruption is fueled by resistance to change and being accommodative to a bigger think tank. The amendment to this Act is creating a think tank to propel development in our counties.

I beg to support.

The Temporary Speaker (Sen. Lelegwe): Proceed, Sen. (Prof.) Kamar.

Sen. (Prof.) Kamar: Mr. Temporary Speaker, Sir, I thank you for giving me the opportunity to support this Bill. I congratulate Sen. Kajwang for articulating the Bill very well. This is a Bill that was introduced to the House in the 11th Parliament but did not see the light of day because of the suspicions that came with devolution.

It was very unfortunate for governors to feel that a consultative forum is one that should be exclusive to them; they cannot only consult amongst themselves and dictate to this country. The Constitution of Kenya 2010 clearly articulated that any decision in any level of government shall be preceded by public participation. What the governors did was to reduce themselves to coming up with Bills, laws and the Integrated Development Plan of the county. The governors dictate who can attend the public participation of the integrated development plan before endorsing it but they do not implement it.

The biggest problem we have is that when governors do not implement the Integrated Development Plan of the county, the people who were in the public participation forum have no way of questioning the county executive. That has led to very many incomplete projects in the counties. Many governors are leaving very many incomplete projects as they finish their terms. We have had sessions where we have looked at the reports of the Auditor-General that highlight the many incomplete projects.

Mr. Temporary Speaker, Sir, if this forum existed, this country would not be littered with incomplete projects. In many counties, there are many foundations of buildings that were never to be. That is because there is no accountability. The kind of public participation that is done in the counties is short of accountability itself. The forum proposed by this Bill is wonderful. The governors need this Bill to be enacted more than anybody else. They need it to even hold their CEC members accountable. Right now, there are governors who are suffering because of the actions and inactions of their CEC members. All these things are happening when governors are supposed to be handing over projects, which are incomplete.

I appreciate the former Senator for Nandi County who initiated this Bill in the 11th Parliament and our very own Senator Kajwang who has actualized it. I believe that we should pass this Bill so that the next Senate will do even more. It is shocking that any governor would have opposed this Bill at that time because it is giving them the opportunity to discuss what Senators are discussing. The Senate has offered that during the proposed forum, we can discuss the budget policy statement and allow the county governments to contribute to it in the presence of their senators so that we bring their opinions directly to the Senate.

Mr. Temporary Speaker, Sir, the annual Division of Revenue Bill, which is one of the key Bills of the Senate can be discussed in the proposed forum. If we did that, we

would get more contributions to the Bill. The proposals in this Bill are an act of generosity from the Senate and it still remains generosity from the Senate to allow the county governments to discuss the annual Division of Revenue Bill. That is because we Senators believe that devolution was not supposed to bring acrimony between the county governments and the Legislature.

Devolution in itself should be self-regulating and that is why we have an accountability arm that is within the legislature, in particular, the Senate. We also have a spending unit called the Executive. If only we came to a clear understanding that devolution is not meant to create enemies but it is meant to create a harmonious way of developing our counties, then they would understand that it is very generous of the Senate to propose the forum in this Bill and take the views of the county government out of the annual Division of Revenue Bill and the County Allocation of Revenue Bill.

We proposed that so that we do not pass the annual Division of Revenue Bill and the County Allocation of Revenue Bill in this House and then governors go to the press to discuss what we have discussed and passed in this House.

This Bill is going to give county governments an opportunity to contribute on the same table where Senators sit to make laws that govern the counties. Appropriation from the Equalization Fund has caused a lot of debate and delay for a very long time because there is no forum to discuss it. The governors are busy making press statements while Senators are busy struggling to make things work. It is a very wrong understanding of what devolution was supposed to do.

Devolution was meant to decentralize our resources and give us different levels of spending money in this county. Devolution was supposed to give us an opportunity to develop according to the needs of the county. Senators and Governors serve the interests of the counties. Our governors must understand that because they serve at the same level and unit with the Senators, we must all be aware of the developments that are on-going in the counties.

Mr. Temporary Speaker, Sir, most of what we are calling stalled projects, are those that were decided unilaterally by an individual or dictated as a reward to people who voted more for the governor. As the proposer of the Bill stated, it is a pity that the Senate discussed the issue of funding Level 5 hospitals – unfortunately my county does not have a Level 5 hospital. It was not understood as a good gesture from the Senate because our governors were always wondering why we are interested in the development of specific institutions yet the Senate also serves the interest of the counties.

Our interest is to make sure that the county is developed. I therefore support and believe that when this law passes, this forum is going to turn around the development of our counties. The Senate is not trying to develop the counties in secrecy. We are not trying to develop the counties with tokenism from our governors. The money does not belong to anybody; we are all public servants and the money belongs to the county. The funds allocated to the counties are public funds.

It is therefore upon all of us to make sure that the projects are selected properly and that we adhere to the integrated development plan to make sure that we fulfill what we promise in an annual plan. Most of the annual plans are meant to cover the eyes of those who go for the public participation forums but nobody follows the county government thereafter to ensure that things are done.

If you look at the annual plans, most of them are to cover the eyes of those who go for public participation. However, thereafter, nobody follows up to ensure that things are done. That gives us a very unhealthy relationship as this Senate looks at the Auditor-Generals' report and audits some of the projects that we receive complaints from the public through Petitions. I think that this will change and solve many things.

Mr. Temporary Speaker, Sir, the other one that I am really happy about is the amendment on the county assembly. That is a very nice amendment because it will remove the bad relationship between the speaker and the assembly. This has been taken advantage of for a very long time. Many speakers have suffered, not because of themselves, but because nobody likes their members of staff. Seeing that nobody likes their members of staff, the idea has been that they remove a speaker for a day, change the structure and then take him or her back. If he or she wants to go back, he or she goes to a shell because another Kenyan has already been employed. We know what it means when a new person has been employed. You cannot sack that person because how will you sack another Kenyan from Uasin Gishu when one was removed on flimsy reasons?

Mr. Temporary Speaker, Sir, I support this Bill. I believe that it will make a difference in the way that we handle our counties. With those remarks, I support.

Thank you.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Were.

Sen. Were: Thank you Mr. Temporary Speaker Sir, for this opportunity to contribute to the County Governments (Amendment) Bill as proposed by Sen. M. Kajwang'. He also happens to be the Chairperson of the Committee on Devolution and Intergovernmental Relations. Therefore, he knows exactly what he is talking about and what is needed concerning the problems that come before his Committee.

When I see such legislative proposals, I am a happy person because as we continue to practice devolution, we see gaps. When I see such laws, I am happy because we are strengthening devolution, making sure that it works, and that the intended purpose of bringing services closer to the people is achieved. This is not just any service, but quality service.

Mr. Temporary Speaker, Sir, as we continue having devolution, we shall continue to enjoy the benefits that come with it. As a country, we are doing well. There are many developed countries with mature democracies that practice devolution. It is very commendable how far we have come. With this kind of law, it can only get better.

Therefore, we should embrace devolution further. As we continue to oversight and make laws to guide the operations of the counties and their governments, we will make devolution what it should be. People will no longer be worried about who the President at the national level is because they will have a strong base of development at the county level. We shall continue to reduce the political tensions in this country.

Mr. Temporary Speaker, Sir, what makes me exceptionally happy is the establishment of a County Leaders Forum (CLF) that is proposed in the amendment of Section 91. The CLF will consist of-

- (1) The governor, who shall be the chairperson.
- (2) The Senator of the respective county.
- (3) Members of the National Assembly.
- (4) The woman Member of Parliament (MP).

- (5) The speaker of the county.
- (6) The leader of the majority party.
- (7) The leader of the minority party.
- (8) The chairperson of the County Assembly Committee, who is responsible for budget, finance and planning.
- (9) The county attorney, an ex-officio member.

This is a group of political leaders of the county. The County Attorney will make sure that the changes that are suggested by the members of the CLF are in tune with the Constitution of Kenya and other laws. International laws are applicable. They will not work in a vacuum away from the rest of the world or the country. The presence of the county attorney is important, and I commend the Mover of this Bill for putting the county attorney into the CLF.

Mr. Temporary Speaker, Sir, the presence of the county commissioner is also important because it will act as the liaison between the national and county government. We are one country, one government. The right needs to know what the left is doing, so that we have less friction. I know that we already have the Intergovernmental Budget and Economic Council (IBEC), but it has not been able to achieve much of the liaison of good cooperation between the county and national governments. We still have the national government trying to pull functions back to the center.

We saw what happened with the Nairobi City County Government, where certain functions were brought to the national Government because the county government could not manage them. For instance, the health function, which is a devolved function and very important to our people. It was actually the backbone upon which the 2010 Constitution was overwhelmingly voted for by Kenyans.

Mr. Temporary Speaker, Sir, the county secretary will be in charge of making sure that the annual performance report of the county is presented to the Senate. The membership of the CLF is well constituted. It has taken into consideration all the political leaders of the country, so, everyone is on board.

We have seen instances where Members of the National Assembly, through the National Government Constituencies Development fund (NG-CDF) come up with a project that the county government already had in their plans. That creates a form of friction where we have many incomplete projects or others which are started and are not the priority of the people.

Mr. Temporary Speaker, Sir, in the amendment to Section 91(c), we have been told that the forum will only be properly constituted when the governor, Senator and speaker of the county assembly are present, in addition to at least a third of the rest of the members of the National Assembly. This is crucial so that people do not hold meetings at the whim of the governor, who is the chair. The most important people must be at that meeting for the deliberations to be considered crucial or binding.

I know that Sen. M. Kajwang, the Mover of this Bill, is busy. In his reply, I would like him to let us know this. I did not quite get this in his moving notes. Why is it that the deputy speaker, when acting as the speaker, cannot assume the office of the chairperson of the CPSB? What are we losing out? What is the problem with the deputy speaker chairing the board in the absence of the speaker? What is the county suffering? Could he make that clarification when he replies to this Bill?

Mr. Temporary Speaker, Sir, this Bill is a fulfillment of Article 189 of the Constitution which requires that national and county governments consult, coordinate and cooperate in the performance of their respective functions. The three crucial C's in the governor's structure, which are coordinating, cooperating and consulting are very important for the smooth sailing of development and for consideration of the legislative agenda of the county.

Where does the county meet? When the Member from the National Assembly proposes an amendment or a law in the National Assembly, the Senator of that county is aware and knows that law is something that the county needs. They can cooperate, consult and coordinate properly, not just in the legislative agenda, but also in the development agenda.

Mr. Temporary Speaker, Sir, we have been oversighting funds that go to counties. However, we need to also oversight the development that these funds facilitate. The County Development Board that is chaired by the Senate and the leadership forum will give an opportunity to Members of Parliament in the Senate and the National Assembly to do proper oversight of the funds sent to the county every year.

Sen. (Prof.) Kamar, the Senator for Uasin Gishu County talked about incomplete projects. Her Uasin Gishu County is a culprit; there are many incomplete projects. There was public participation at the beginning, people accepted those projects and they started off, but they have never been completed. Where is the public participation that is expected at the end of those projects?

Mr. Temporary Speaker, Sir, this board or the leadership forum will be one way of providing public participation at the end of projects so that we are able to vet them. Governors or the Executive at the county level will be keen to ensure that the projects they start will be completed. The issue of incomplete projects will be a thing of the past. This is because there will be some form of public participation through the representatives of the people at the completion of those projects. This will also determine when the next development project would be undertaken. There will also be a consideration of how previous projects were carried out.

As we wait for the public participation Bill and the policy that will guide proper public participation, this amendment is a welcome idea. I congratulate my friend, Sen. M. Kajwang' for this thought.

I support.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. (Eng.) Hargura.

Sen. (Eng.) Hargura: Thank you, Mr. Temporary Speaker, Sir. I support this amendment to the County Government Act mainly on two issues. However, before I do so, I would like to thank Sen. M. Kajwang' for coming up with this amendment. I have two issues to raise here to be looked at.

Mr. Temporary Speaker, Sir, the first one is on the amendment to Section 12 of the County Government Act which talks about the membership of the County Assemblies Service Boards. This amendment clarifies that in the absence of the Speaker then the Deputy Speaker cannot act as chair of the board.

The member could be coming from a particular point because in law there is no such lacuna. The Deputy Speaker is not a member of the County Assembly Service Board. The Board is complete and it has a vice chair elected by the Members. We have

been engaging county assemblies when looking at audit reports and we have been insisting as the Senate Committee on County Public Accounts (CPAIC) and Investments that the vice chair should be there in the absence of the Speaker who is the chair.

Mr. Temporary Speaker, Sir, whenever the Speaker is absent, we have been clear that the Board is not properly constituted to appear before the Committee. We have always insisted that the vice chair has to be there. Sometimes, Speakers are removed and for the operations of the House, it is the Deputy Speaker who takes over. What about the board? Maybe that is what is being addressed and it is good we make it clear.

There are cases where the Speaker is not there and has been removed by the county assembly or suspended because we have those kinds of cases, then the Deputy Speaker by virtue of running the county assembly might feel that he or she also needs to be in the Board. However, it is clearly indicated because we need to address what would happen in such a scenario where the Speaker is not there.

That would require the House to quickly get a substantive Speaker who would chair the Board. In the absence, then the vice chair would represent the Board whenever they are required. Sometimes you assume these things. This one comes not from the Board itself, but the operations of the House.

The Speaker might be removed by the Members and if that position of absence occurs in the Board by the action of the House, then there must be some way of making sure that the Deputy Speaker who is an elected MCA does not cross over to run a Board which is supposed to have a Speaker who is not an elected MCA.

Mr. Temporary Speaker, Sir, the other aspect is Section 47 of the principal Act which is amended by deleting subsection 3 and substituting it with this one which requires the governors to submit the annual performance report of the County Executive and Public Service Board to the Senate and the County Assemblies within three months of the close of the financial year for consideration.

Mr. Temporary Speaker, Sir, there is a lot of resistance from the County Executive and the governors, to even appear before this Senate where the law is very clear on the funds we have appropriated for them through the County Allocation of Revenue Act. When we request them to submit their performance reports, I am sure it will be contested by the governors. This is because already even where we are dealing with funds like the Road Maintenance Levy Fund and the conditional grants which pass through this House---

It is only this year that we removed conditional grants from the County Allocation Revenue Act (CARA). The other times they have been part of CARA. Right now, we have a case in court and a ruling as it is while awaiting final ruling from the Supreme Court is that we should not interrogate the usage of those funds, especially the Road Maintenance Levy Fund.

Mr. Temporary Speaker, Sir, this is a clear fund which has been legislated on. Kenyans are made to pay an amount of money. Last time I checked, it was Kshs9 per litre for every of fuel consumed in this country. This goes to maintain roads. During the Eleventh Parliament, this House set aside 15 per cent of the Road Maintenance Levy Fund as conditional grants by virtue of handling the county roads.

The Kenya Roads Board (KRB) administers this fund. I have looked at the budget of my county and the Governor does not segregate this fund. It is just a line item with a

given amount. Even MCAs do not have the benefit of knowing the programme and how that money is spent. The governor submits through the County Executive Committee (CEC) for Roads to KRB a list of the roads they intend to spend that money on.

Mr. Temporary Speaker, Sir, I had asked a question and I got the KRB reports for 2017/ 2018 and 2018/2019 financial years. If you look at that list, you will find that they are evenly spread within the county. However, when you check the actual performance, you find that those roads are not done as per that list. It is here we can oversight this because it has bypassed the county assembly the way it was done as a line item. When KRB has done the technical and financial audit and have raised issues, where next will they take those reports?

Mr. Temporary Speaker, Sir, where do they take that report? That is where Senate should come in and get the governors to explain why they are not following the arrangement and memoranda they have with Kenya Roads Board (KRB). In the other case of the main fund, I believe it comes to the National Assembly. That is where the relevant authorities, Kenya Rural Roads Authority (KeRRA), Kenya Urban Roads Authority (KURA) and Kenya National Highways Authority (KeNHA) can be held accountable. However, this one does not reach the end.

Therefore, if KeRRA finds there are problems with it, so what? How will it hold the counties accountable? It is only through that report coming to this House and KeRRA submitting it here. That is the only way we can get to address this issue. However, they have already gone to court. They have seriously resisted to be brought here because that was a loophole in law, which they have been exploiting.

Mr. Temporary Speaker, Sir, the county assembly is not overlooking it because they use it as a line item. They say the work plan is submitted to KRB. After that, if they do not follow the procedure then nobody holds them accountable. That is why the Senate Committee on Roads and Transportation deemed it fit to interrogate that fund and now they have gone to court.

If that is the extent they can go, I do not know whether Sen. M. Kajwang' will get the annual performance report from them. They will tell you very clearly that they are accountable to the county assembly and that is where it ends. If you can remember in the first Parliament, even having the audit reports come here for us to interrogate was a big issue. The governors went to court first. The court told them no, you have to be accountable. This one is a straightaway contested issue. I do not how we are going to go around it.

Mr. Temporary Speaker, Sir, the other one is the County Leadership Forum (CLF). In the first Senate of the 11th Parliament, we had the Sen. Sang' Bill which became an Act. It has something very similar to this. It was actually called the County Development Forum and the main contention in that one was that the Senator was the chairperson. That was where the main problem was. The governors went to court after we passed the Bill and then it was declared that we are interfering with the operations of the county executives and that is how it died. This is also another point of contention they have raised. The spirit is good because we need to know what each and every leader is doing.

I can cite a few cases. For instance, in my own county the other day one of the County Executive Committee Members (CECMs) told me that when it comes to the

roads they are doing, KeRRA also does roads. The KeRRA roads are basically done by the Members of Parliament (MPs). I had the benefit of having been a regional manager so I know.

The Constituency Roads Committee which KeRRA uses to administer or manage those funds has four members from Constituency Development Fund (CDF). Then the regional manager is just a secretary to that and the four members from CDF must have a chair and a vice chair from there. Basically, they are the ones who decide what programs this money will be used for because they are the ones who are doing the planning.

The worst part is that even the procurement committee is still constituted of the same members of CDF. The procurement manager at that level is the secretary. The chair and the other members are still the CDF members. They used to add somebody from what we used to call the development officers but mainly the decision makers are the CDF members who are handpicked by the MP. Therefore, they will always end up doing the same things or what the MP wants.

You will find that there is lack of coordination. That CECM told me that the roads, which the county did last year are exactly the same roads which are now in the MP's work plan this year. So, what will happen? The MP will easily say that he has done them. If it was grading, then he will say he has graded the same road. He can easily pocket the Kshs36 million because that is what they are getting per year from 22 per cent and 10 per cent.

Mr. Temporary Speaker, Sir, there is that serious duplication if there is no kind of consultation between the leadership. It is very necessary. We need to get a way of sitting together, get the executive so that they tell us what programs they are doing especially in the overlapping areas. We need to have that so that we avoid this duplication. In fact, it was a bit interesting that at the end of the last financial year the same CECM was telling me they literally met on the road. The road they are working on is also the same road KeRRA is working on.

It has reached a point where somebody is copying what the other is doing. When he has graded and gravelled, he will easily claim this is what I have done. Since there is no joint way of checking things then somebody is taking advantage of the situation. So, what Sen. M. Kajwang' is saying is very practical and it is happening on the ground. When you have unscrupulous leaders, these things happen. However, when we sit on the same table then we can see this is your work plan and you we are doing the same thing. Can one of you change? We will have that. Unfortunately, it is a something nobody will agree to.

Mr. Temporary Speaker, Sir, as it is right now, we have a serious drought situation in parts of this country. This could be the third rain failing now. The main issue is how to manage that disaster. These are bodies, organisations, public entities like the county government, National Government, and CDF. The offices brought together here are actually the ones who are supposed to coordinate. This would be the best forum to coordinate this kind of disaster issues.

As Senators, even if we do not handle funds, we could be there and easily perform oversight and see who is doing what. We coordinate and see how we can move to the next level of government. As it is, you will find CDF has a small component of emergency. As for the county government, I will not be surprised if next month the whole

of the development budget will be suspended and be put on emergency. However, nobody knows what the other is doing. We are having serious problems.

Regarding the national Government, the other day the President instructed Kshs2 billion to be released in September for this program. We met last week as the Pastoralists Parliamentary Group. It was a problem to even trace who has received that money. A bigger component is supposed to be for food relief. I think yesterday it was in the news that one of the Principal Secretaries (PSs) was arrested because of the Kshs1.2 billion. They do not know where the money for food has gone to because the food has not reached the people.

Mr. Temporary Speaker, Sir, then there is a component which was supposed to have gone to livestock offtake of Kshs450 million. It was given to Kenya Defence Forces (KDF) because they are the ones now running Kenya Meat Commission (KMC). Nothing has been done; no offtake has been done. It was only one day the Cabinet Secretary, Finance had an occasion in his home village to start off that program. Some animals were bought and that was the end of that issue. We have not heard what happened to that Kshs450 million. The Kshs450 million went to water.

We are told that instead of doing water trapping, maintaining boreholes and maybe drilling boreholes in areas where people travel for long distances to get water, they are now giving monies to construct pans. Where do pans come in? Pans are supposed to be after the emergency. In the emergency where people need water is when you are using money to construct pans. That is how misapplied funds can be if there is no coordination.

It is very necessary that we coordinate at all levels. It is just a matter of how do we do it so that we do not get into the headwinds the way the Sen. Sang' Bill did because there will be resistance. The issues raised here, what does it do? There are very important things because the Budget Policy Statement (BPS) is necessary. We need to know what is in it for us.

Nowadays the beauty of our Constitution is that all these government policies, government papers, government programs or even Bills require public participation. If leaders can meet at that level, they will enrich the public participation coming from the ground. We will know what to bring here. We will also know how to engage through the Council of Governors (CoG). It will be good but they may not be ready to take it up.

Mr. Temporary Speaker, Sir, equalisation is an area - if you look at the Equalisation Bill which we passed - which requires these kinds of consultations and engagement. Although it has identified some committees to be created, this kind of leadership will come up quickly. This is one area that will also be very liable to duplication because the Equalisation Fund is supposed to be used for infrastructure for health, roads and water.

These are all functions, which are being done by everybody, left, right and centre. Once this money is realised, it will end up in the same thing. It will be used in duplication also unless there is this kind of a body that coordinates all the resources and planning at the county level.

Mr. Temporary Speaker, Sir, it is a very good idea. It is necessary but I do not know how it can be phrased so that it does not meet the same fate. That is of saying that the Senators who are supposed to be doing legislation, the county assembly is doing

legislation and it setting involved in executive work of planning. That was what was said the other time. Let us see how we can get these things in such a way that we avowing those kind of huddles.

We still get a forum of the county leaders coming together especially in making sure that resources are used in the right way and there is no duplication. Even in the case of what we are going through, this would have been the best approach. It should have been the best body to sit down and address disaster issues.

Mr. Temporary Speaker, Sir, due to climate change, disaster now is everywhere. I would like to appeal from the Floor of this August House to the national Government. Much as disaster is also a county function, we know very well most of the funds are at the national level and that is where it starts. We need to have a focused intervention because the rains have failed. The next rains could be in April. Right now we are losing livestock and it is now going to be human beings.

If we are not organised and we do not focus right now, then it might be too late for us even to save lives. Livestock is already gone and the offtake system is not working. That is where they need to have salvaged the livelihoods of people.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, I do not see any other requests to contribute on the amendment Bill. I therefore call upon the Mover to reply.

Sen. M. Kajwang': Mr. Temporary Speaker, Sir, I would like to thank the distinguished Senators who have contributed to this amendment Bill. Sen. Kasanga for seconding it, Sen. Olekina for passionately supporting it. Sen. (Prof.) Kamar, Sen. Were, and Sen. (Eng.) Hargura. These Senators have given useful suggestions that we shall take into account as the Bill progresses to its final consideration. I dare say, that the Senator for Samburu County has also whispered certain issues that we need to take into consideration to ensure that the County Leaders Forum (CLF) becomes practical.

Article 96 definitely cannot be read in isolation. It has to be read alongside the functions of Parliament, which should be around Article 93. There are those things that Parliament should do collectively. Parliament being the National Assembly and the Senate. There are those things that the Senate can do individually. When it comes to the things that the Senate can do on its own, it is to represent the counties to protect their interests and the interests of their governments.

Mr. Temporary Speaker, Sir, we have said that we do not have a forum or occasion for the Senator to take a brief from the county government. When a Senator comes here purporting to speak on behalf of the county government, many a times, it is on behalf of the people living in that county. You will hear me many a times speaking on behalf of the fisher folk because that is the community in which I was born.

Many a times, I will be speaking on behalf of the cotton farmers or pineapple and sweet potatoes farmers who come from Kabondo Constituency. However, the law and Constitution requires the Senator to represent the county to protect their interest and the interests of their governments.

Mr. Temporary Speaker, Sir, of course it has been said that the interest of the county government is different from the interest of a county governor. In fact, many a times, those interests collide. The interest of a county governor would be self-enrichment

whereas the interest of the county government is efficient delivery in services. It is because of that, that we have proposed that we have this County Leaders Forum.

Sen. (Eng.) Hargura having been here in the last Parliament has recalled some of the cynicism that greeted this Bill in its original form when Sen. Sang' brought it up. He has also expressed his fears that the Council of Governors (CoG) will quickly rush to court to seek to defeat this amendment.

Mr. Temporary Speaker, Sir, as somebody said, I think it was Sen. Olekina that the guilty are always afraid. Accountability is not an option. Accountability on the part of state officers and public officers is mandatory and part of the job description. Anyone who does not want accountability should perhaps go and start a private enterprise which still has to be opened up for purposes of compliance to legal provisions such as the tax code.

The county governors cannot claim that consultation on development in counties is exclusive to them. This Bill does not assign a development role to the CLF. It assigns a consultation and coordination role. What was offensive in the initial proposal was the inclusion of the County Integrated Development Plan. (CIDP); making it a requirement that the CIDP would first be considered by this board before it is taken to the assembly.

Mr. Temporary Speaker, Sir, I agree with the thinking that it is the duty of the executive to come up with the CIDP and the duty of the county assembly to approve it and approve budget. This forum is not taking that duty away from the county executive and county assembly. We are saying that once the county has its CIDP and budget and the national Government has its development plan and its budget. Let us find where there could be overlaps. Let us find ways of ensuring that those overlaps are ironed out.

Sen. (Eng.) Hargura has given an excellent example of mitigation in response to drought in Northern Kenya. You will find one government agency doing water dams and another doing cash transfers. The county government distributing beans and maize. It is duplication that is not of any benefit to the people who are supposed to accrue the dividends from the Government. Those are some of the scenarios that this CLF will help.

Mr. Temporary Speaker, Sir, each county could have its own pet subject. If you go to Murang'a County, perhaps what captures the hearts and souls of the people of Murang'a County is the dairy industry. You can see the county government of Murang'a has put a lot of effort in reviving the dairy industry.

What would be wrong if all the leaders from Murang'a County were to meet and say that our legislative agenda as a people from our region is the dairy sector? Then making sure that the dairy sector is efficient and it is paying farmers. What would be wrong is the leaders from Homa Bay County said that our business is fish. We want you Members of Parliament (MPs) from this region to ensure that relevant legislation on fisheries sector is enacted.

Mr. Temporary Speaker, Sir, what is wrong if the people at the counties of coast say that our core business is tourism or ports and logistics? We want you to have a common legislative agenda whether you are in the Senate or National Assembly. We want to ensure that the legislation that relates to logistics and ports in this country is favourable to our region. That is what this forum seeks to achieve.

The national Government tends to intervene in counties. Now the national Government has got structures where its development initiatives within a county would

be coordinated by the County Commissioner. That is why we are saying the County Commissioner should be part of this conversation. In every county, you will find the ministry responsible for water will be sinking boreholes, doing water pans, and interventions in the water sector.

Mr. Temporary Speaker, Sir, the water sector is an area that also needs to be looked at to be in line with the new constitutional dispensation. We have all these water corporations in every region. Lake Victoria South, Lake Victoria South and all these legacy corporations.

Where are the county governments who ideally should have firm control of water service provision in their regions? They are observers. You find, for example, that there is a Kshs1 billion project in Oyugis, which is in my county. Whereas we thank the national government for that, it is important that there is some coordination between that agency and the county government in its delivery.

Mr. Temporary Speaker, Sir, where county commissioners have been given the mandate on behalf of the national Government to initiate or coordinate development in a county, there must be a forum for the county commissioner, the governor and elected Members of the National Assembly to coordinate. We are not saying that forum will be for implementation. It will be for information, sharing experiences and elimination of duplication.

We have talked about the issues in the road sector particularly with the Kenya Rural Roads Authority (KeRRA). Sen. (Eng.) Hargura having been there could not have put it any better. We are losing a lot of money because what the left hand is doing the right hand does not know. Sometimes the right hand claims to have done what the left hand did.

Mr. Temporary Speaker, Sir, I once visited Marsabit County in the last term. The then governor of Marsabit County told us to my amazement - I wish the Senator for Marsabit would attest to this - that when they received funds into the County Revenue Fund (CRF), they would sit down as elected leaders and agree on a portion that would be allocated to each constituency based on an index.

They came up with an index such that if Marsabit County receives Kshs10 billion, the governor would get Kshs2 billion or Ksh3 billion for salaries, operations, *et cetera*. Another Kshs2 billion or Kshs3 billion for his legacy projects and remain with Kshs3 billion. This then would be applied across the constituencies in an equitable manner. This is something close to what we are trying to achieve with the Ward Development Fund (WDF). That arrangement was very impressive.

Despite all the science, that governor was not re-elected. I do not know whether there is an inverse relationship between too much science and chances of re-election. We need to have a situation where all elected leaders agree on priorities. When we say priorities, we are not saying that they are the ones doing the budget. Those priorities can inform decisions in future.

Mr. Temporary Speaker, Sir, Sen. Olekina has raised an issue regarding the annual performance report. Sen. (Eng.) Hargura has also raised an issue whether the governors will comply. Compliance is not an option or hobby; it is a responsibility. Once it is in the law, you have no choice but to comply.

What do we want to achieve with this annual performance report? Initially we based our audit and oversight on financial performance. Counties have mastered the game. They know how to get unqualified opinions. In Chinua Achebe's *Things Fall Apart*, Eneke the bird says that since men have learned to shoot without missing, he has learned to fly without perching.

Mr. Temporary Speaker, Sir that is what is happening in our county governments. It is a combination of accrued experience. Let me deal with the positive side. We have finance officers in our county governments who have been in those offices since the advent of devolution. They now understand better how to render their books of account. The conversation with the Senate has helped them to see the pitfalls.

The five or six years has improved the capacity of our officers at the county to comply with the Public Sector Accounting Standards (PSAS). On the other hand, they have also learnt how to collude with whoever they need to collude with to ensure that their books of accounts are clean.

Mr. Temporary Speaker, Sir, you will get a county with an unqualified opinion and yet there is a hospital that was built that was in the books complete, but it is not rendering services. We need to move from financial audit to performance audit. When I listened to the speakers, it struck me that if we built the capacity of the Auditor-General, then this performance report should then be sent to the Auditor-General.

The Auditor-General will then do a performance audit on them and send it back to the county assembly and the Senate. That way, it will be synthesized. That is a conversation that we can have so that the Senate and the county assembly do not get a raw report.

More importantly, for financial reports, we have the public sector accounting standards, which prescribe the format of a financial report. We will also have to prescribe the format of the annual performance report because it is not there. The Act only gives broad guidelines on how it should be. One county might give you a 500-page report and another one a one paged report. If the Auditor-General can help us come up with a reporting template for the annual report, it will be extremely useful. I encourage Sen. (Eng.) Hargura that once it is in the law, compliance will not be optional, but it will be mandatory.

What will be the role of the deputy governor in the County Leaders Forum (CLF)? I have heard a suggestion that we should probably incorporate the deputy governor in the CLF. That is fine as long as we do not have a situation where the governor absents himself for the deputy governor to chair. It is clear that in the absence of the substantive governor, the vice chair, who is the Senator, shall chair the CLF.

Mr. Temporary Speaker, Sir, I think that we can carry along the deputy governors. They came to the Committee on Devolution and Intergovernmental Relations saying that they want to have something substantive for them to do. This is probably a way of ensuring that we understand what is going on in the county. Sen. Were asked about why we should be so prescriptive on the issue of the deputy speaker. I think that Sen. (Eng.) Hargura said that the CPAIC is now insisting that the vice chair of the County Assembly Service Board (CASB) is the one who represents the county assembly in the absence of the speaker.

There has been this mischief of impeachment for a day, which Sen. (Prof.) Kamar talked about. The speaker is impeached for a day so that the necessary changes can be made by the deputy speaker. By the time the speaker comes back, he or she finds that the clerk, finance officers and everybody else who was seen to be favourable to them have been kicked out.

Mr. Temporary Speaker, Sir, even though the law is not explicit, the assumption is that the vice chair will take over in the absence of the substantive chair. Unfortunately, the deputy speakers have interpreted it to mean that where the speaker has been impeached, the deputy speaker acting as the speaker should, therefore, continue acting as the chair of the CASB. We just want to ensure that that ambiguity does not exist and that the CAF is in agreement with this amendment.

I thank all the Members who have made their contributions. I want to assure them that as we process this, we shall make further amendments.

Pursuant to Standing Order 61 (3), I request that the putting of the question be deferred to a later date.

Thank, you.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, I, therefore, defer the putting of the question. The County Governments (Amendment) Bill will be listed tomorrow for a Division.

(Putting of the question on the Bill deferred)

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, it is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until Wednesday 17th November, 2021, at 2.30 p.m.

The Senate rose at 6.30 p.m.