

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 9th July, 2014

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

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

PRAYERS

COMMUNICATION FROM THE CHAIR

INVITATION OF THE SENATE TO A CONSULTATIVE WORKSHOP ON DEVOLUTION

The Speaker (Hon. Ethuro): Hon. Senators, I have a communication to make.

Distinguished Senators, you may recall that in April this year, a consultative meeting between Senators and Governors was held in Eldoret during which a number of issues of common interest were discussed. I am therefore pleased to inform you that a follow up meeting for the entire Senate has been organized from 30th July to 1st August, 2014. The meeting will focus mainly on the state of play of devolution and the relations between the various institutions, among others. Other details relating to the actual programme and the logistical arrangements will be communicated to you in due course.

Hon. Senators, it is in the interest of the Senate as the protector and promoter of counties and their governments that we take time to reflect on the progress we have made so far in the process of making devolution a reality and to continue to engage all the other key players. We all must therefore continue to work together and take keen interest on the welfare of counties. Consequently, I take this early opportunity therefore to invite you, hon. Senators, to this very important workshop and urge you to attend. Please mark your calendar.

Thank you.

STATEMENTS

The Speaker (Hon. Ethuro): Any Statements due? Sen. Mositet, do you have a Statement from the Committee on Finance, Commerce and Budget?

ESCALATING BANK INTEREST RATES

STATUS REPORT OF THE ECONOMIC STIMULUS PROGRAMME

Sen. Mositet: Yes, Mr. Speaker, Sir. We have two Statements in response to requests from Sen. Kembi-Gitura and Sen. (Prof.) Lonyangapuo. I notice that these two Senators are not in the House.

The Speaker (Hon. Ethuro): I thought you agreed with them yesterday that you would issue your Statement next week. I think that was the agreement you had entered into yesterday.

Sen. Mositet: Mr. Speaker, Sir, I can see it had already been indicated on the Order Paper.

The Speaker (Hon. Ethuro): It is true. I think they did not listen to the Chair yesterday. I had actually disposed of all of them.

Sen. Mositet: Thank you, Mr. Speaker, Sir.

(Statements deferred)

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

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

Sen. (Dr.) Machage: Mr. Speaker, Sir, would I be in order to inform you that I am privy to information that Sen. (Prof.) Lonyangapuo is bereaved? He lost his father and that is why he is not in the House today.

The Speaker (Hon. Ethuro): Thank you, Sen. (Dr.) Machage for the information, but that is what informed the decision to defer the matter to next week. What was the status on the Committee on Roads and Transportation?

The Chairperson of Committee on Lands and Natural Resources was actually very ready with the Statement yesterday. I see the Member who sought it here and we agreed that it be issued today.

Sen. Karaba: Mr. Speaker, Sir, last year, I sought a Statement from the Chairman of the Committee on Roads and Transportation and it was like something happened. He has not communicated to me or otherwise. Now, do I have to remind him that I need the Statement now?

The Speaker (Hon. Ethuro): He issued a Statement last year?

Sen. Karaba: Yes, Sir.

The Speaker (Hon. Ethuro): Then?

Sen. Karaba: Mr. Speaker, Sir, I was promised by the Committee that they will come visiting my county to inspect the status of the road and we are now into the following year and they have not come. Now I am worried that I will continue sitting here and not getting any communication from the Chairman. That is the Kutus-Karatina Road.

The Speaker (Hon. Ethuro): Order, Senator. You know better that all the business of last year elapsed last year at the end of the Session. This is another Session and so you need to revisit the matter afresh if you wish to continue with it.

Sen. Karaba: Can I do it now, Sir?

The Speaker (Hon. Ethuro): You cannot. There is a procedure in which we operate in this House.

Next Order!

MOTION

ADOPTION OF REPORT OF MEDIATION COMMITTEE ON
THE COUNTY GOVERNMENTS (AMENDMENT)
(NO.2) BILL (SENATE BILL NO.4 OF 2013)

Sen. Sang: Mr. Speaker, Sir, I rise to move the following Motion:-

THAT, the Senate approves the Report of the Mediation Committee on the County Governments (Amendment) (No.2) Bill (Senate Bill No.4 of 2013) laid on the Table of the Senate on Tuesday, 1st April, 2014.

Mr. Speaker, Sir, this is a Report of the Mediation Committee relating to the amendment to the County Governments (Amendment) Bill No.2, seeking to amend the County Governments Act to provide for the establishment of County Development Boards in our counties. You will remember that this is an amendment Bill that was moved in this House, the Senate approved the Bill as provided for under the Constitution, and the Bill was forwarded to the National Assembly for its consideration.

The National Assembly rejected the Bill and as provided again by the Constitution, the Bill was subjected to a Mediation Committee. The Mediation Committee comprised of Sen. Amos Wako, Hon. Samuel Chepkong'a, Sen. Kiraitu Murungi, Hon. Katoo ole Metito, Hon. (Dr.) David Eseli Simiyu and myself. We sat down as a Committee and I want to take this opportunity to appreciate the support and the contribution by the various Members of the Mediation Committee. We had issues that were raised by the Members of the National Assembly. You will remember that this Amendment Bill had provided for the establishment of development forums or consultative forums across the county level, the sub-county level and the ward level.

The Members of the National Assembly raised valid concerns on the existence of the proposed Ward Development Boards and Sub-county Development Boards. At the Sub-county level, the Sub-county Development Boards would almost mirror what the CDF are doing in the constituencies and in one way or the other, they may appear to be competing in terms of responsibilities with the CDF group. We agreed as a team that that may not be necessary. The same applies to a Ward Development Board. Therefore, as Members of Senate sent to this Mediation Committee, we all agreed.

Mr. Speaker, Sir, it is also important to note that many issues contained in this Bill have been misunderstood. I want to raise an issue that Members of the Council of Governors over the weekend put a paid up advert in all our daily newspapers indicating their objection to the provisions of this Bill. One of the shocking issues is that the Council of Governors referred to certain provisions that do not exist in this Bill. They still raised objection to the existence of Sub-county Development Boards. That is something that we have addressed and no longer exists in this Amendment Bill. They raised issues with the existence of Ward Development Boards which do not exist within the Bill.

Therefore, it is quite unfortunate that the Council of Governors would go ahead and present issues that are not contained in this Amendment Bill and present as if they are.

The other misconception that has been continually perpetuated is the notion that the County Development Boards have executive powers. If you look at the agreed version of the Bill, we are very categorical that the function of these Boards in our counties is to provide for a forum for all the county leadership as provided for in this amendment for leaders to meet, discuss and agree on issues affecting their counties. Therefore, it is unfortunate that leaders within the counties will continue to mislead Kenyans that the functions of this Boards are executive when, in fact, as provided for as you can read, they are advisory.

We need to be very honest with Kenyans. Most of our counties have faced a lot of challenges in the recent past; challenges ranging from the impeachment Motions that have been discussed in our counties, insecurity that continues to face our counties, conflicts among leaders in a county, issues of prioritization of development projects within the counties, issues of ensuring that we have balanced development and equitable distribution of projects by county governments across the counties. We are hearing issues of exclusion of certain constituencies and certain communities within counties and some of these things can only be addressed if you have a forum where leaders sit down together, discuss and iron them out.

Mr. Speaker, Sir, it is really dishonest to see leaders continually using county resources to put paid up advertisements which are misleading Kenyans on the contents of this Bill. This means that some of them have even not read the Amendment Bill. Therefore, I want to call upon all the stakeholders involved, that let us be honest with ourselves, look at the provisions of the Bill and the intention which is not to take up constitutional powers given to Governors or county assemblies. We are just providing a forum and a platform for county leadership to sit down on a round table and address issues affecting their counties.

Therefore, in terms of the composition, when we sat down, we looked at the composition of the County Development Board. In the original Bill, we had provided for nominated Members of the Senate and the National Assembly to be part and parcel of the Board, but an issue was raised and we discussed. We know that Nominated Senators and Nominated Members of the National Assembly are nominated to represent specific national interests yet the issues that are going to be discussed in the County Development Boards are local issues. If a Senator is nominated to represent the youth, for example, and that Senator comes from Kisii County or Kakamega County, if he or she sits in the Board of their respective county, that gives that county undue advantage over other counties where issues of youth must be addressed across the nation.

Therefore, it will be unfortunate to pick a Nominated Senator to represent a national constituency and confine them to deliberate on very local issues at the county level. I beg the Nominated Members of the Senate and the National Assembly to appreciate that our intention was not to lock out any Member from being part and parcel of the deliberations at the county level. We recognise their constitutional constituency which is a national constituency. Therefore, we are not locking out anybody. I hope that the Members will be able to appreciate that, so that we understand where we are coming from.

Mr. Speaker, Sir, the other issue that had created a lot of contention was on who should be the secretary to the Board. Initially, this House had considered the conventional wisdom whereby the Chief Executive Officer (CEO) of any institution or organization is always the secretary of an advisory board within that institution. That conventional wisdom was faulted by the governors and we agreed and acceded to their request that we have the County Secretary who will provide the services as the secretary to the Board. In the new draft, we also agreed that the governors would be the Vice Chairs of the Boards.

Those are the issues that are different from what was contained in the earlier version of the Bill that was passed by this House. This is the first Bill that has gone through the entire constitutional procedure and provisions in terms of handling Bills. I wish the Senate and the National Assembly would carry out their businesses in the manner we have carried out our business with regard to this Bill. This is where you, Mr. Speaker, and the Speaker of the National Assembly sat down and agreed that this is a Bill affecting counties. That was unanimously agreed on.

The Bill was tabled in the Senate, deliberations were undertaken and the Bill was finally passed and forwarded to the National Assembly for their concurrence. When the National Assembly had issues with the Bill, they raised their concerns, rejected the Bill as provided for by the Constitution and we subjected the Bill to a mediation process. The National Assembly nominated three Members. Likewise, the Senate nominated three Members. I was fortunate to be part of the mediation team from the Senate. We sat down, addressed the issues, looked at the concerns raised by Members of the National Assembly, the issues and intentions of the Senate in passing the Bill and came down to an agreeable version of the County Governments (Amendment) (No.2) Bill.

Once the mediation was over, we did a report. This report was tabled in the National Assembly, it was debated and approved. We are sitting down today to debate the same report. I urge the Members of this House to pass this Motion.

This is the procedure contemplated in the Constitution in terms of how the two Houses of Parliament should engage. It is very unfortunate that we have had several Bills, some which obviously affect counties and the other House has operated as if those Bills do not affect counties. One of the other Bills that I would have expected that we would have had the same procedure is that by Sen. (Dr.) Khalwale on the National Flags, Emblems and Flags (Amendment) Bill. It was quite shameful that the National Assembly, on receiving our Bill, went ahead and developed a similar Bill, tabled it and passed it. The Bill was forwarded to the President for assent yet the Bill affects counties. We need to be honest because if we have already set a precedent in the way we have handled this Bill, why did we not follow the same procedure in handling any other Bill?

As I speak, on the issue of the National Flags, Emblems and Flags (Amendment) Bill, the Governors are already in court. My advice is that, that law that was passed by the National Assembly and assented to by the President does not have the force of law. They do not even need to go to court because the constitutional process was not followed. The Governors should continue flying the flags until such a time when this House will sit down and pass a resolution or Bill to that effect.

We hope that the precedent that has been set in handling this Bill will apply to any other Bill. The Public Finance Management Act was amended. Some of the key provisions affect this House and they were not brought to this House. We, as a country,

need to be honest with each other. If the national Executive sides with one House of Parliament, we are creating a constitutional crisis. If we are not careful, we will also be passing Bills disregarding the other House and presenting them to the President for his assent. In such a situation, a House that is supposed to provide law and order will, at the end of the day, be a House of confusion. I do not think that is the direction that we need to go as a House.

Mr. Speaker, Sir, these are issues that we are raising as a House. But collectively, it will be unfortunate if this Chamber is relegated while we are here sitting and we continually discuss Motions and Bills and when we pass them, some of the Members in the Lower House then copy and paste the same Bills, introduce them as if they are original ideas and pass them and they go to the President for assent. That will be quite unfortunate. I hope that the precedent that has been set on this Bill will be applicable to all the other Bills. Today, we will be voting on a very crucial Bill; the County Governments (Amendment) (No.2) by Sen. Wangari on the issue of Members of County Assemblies (MCAs). That is a very crucial Bill. We hope that when the Bill goes to the National Assembly, they will accord it the same importance and consideration that this Bill has been subjected to.

As the Member who came up with this Bill, I want to appreciate the support that I have received in this House in thinking through and considering some of these issues. I want to assure the Governors and the county governments that this House will look at Bills that will help and facilitate the governance at the county level, which will be able to move devolution forward in a manner that will ensure the gains that we have made are protected. It will be unfortunate for any MCA to imagine that the Senate will at one point sit down and draft a Bill that will work negatively against counties. That cannot be the work of this House. We will always ensure that we draft, consider and pass Bills that are constitutional and that help facilitate governance at the county level.

I want to call upon the Governors, that when a Bill is being drafted and considered, we have several opportunities for any stakeholder to make their contributions. We invited Governors and MCAs to give their input on this Bill. A lot of their input has been considered. I want to persuade my brothers; the Governors, that if they do not agree with something, they do not have to reject it. There are several things that we make compromises on, so that we are able to have a win-win situation in every endeavor that we consider in this House. Therefore, I hope that even as they consider going to court, like they have indicated, that they look at the law, the Constitution and the Bill. They need to look at the actual provisions. The Sub-county Development Boards and the Ward Development Boards are not there. The Board is a forum for engagement and not an executive body.

The powers and the roles given to the County Development Board are purely advisory. Any Governor who feels that the advice coming from the County Development Board is of no value, they have no obligation to take it. If they agree with it, they can take it. If they do not, they can reject or ignore it. We want to tell them that this is an advisory Board. This is a Board that will give us an opportunity to discuss issues affecting our counties. We know that Members of this Senate have been undertaking those responsibilities of bringing together leaders within their counties.

I will single out Sen. Mutula Kilonzo Jnr. When his county had an issue and the Governor was on the verge of resigning, it took the intervention of Sen. Mutula Kilonzo Jnr. to discuss with Members of the County Assembly together with members of the County Executive and there was a resolution on the issues that had been raised. He did that informally. We are now providing a legal framework for such kind of engagement. I know of many other Senators who have done the same.

I sat in the Special Committee looking into the issues of the impeachment of the Governor of Kericho County. The Chairperson of that Committee, Sen. Obure, is here. When we discussed the issues, we realized that some of the issues that found their way through the impeachment Motion could have been addressed at the county level if there existed a forum at the county level where leaders could sit down together. One of the recommendations of our report, if you can remember, was that we mandated the Senator for Kericho, Sen. Keter, to spearhead reconciliation efforts between the Governor and the MCAs. I can confirm that, that has been done. Already, the leadership in Kericho County is moving forward in the right direction. These are interventions that Senators have been making on their own volition. We are providing a legal framework for such a forum.

I know in Wajir, Marsabit and Lamu counties, they have challenges of insecurity. Whereas that is a function of the national Government, a lot can be avoided if we all have the leadership sitting down and discussing these issues. That is why, as part of the functions of this Board, we gave it the latitude to discuss and consider any issues that they consider to be of importance to the county. They can discuss them and resolve them. This is a noble platform for leaders to engage at the county level.

Mr. Speaker, Sir, the need for national dialogue is an important thing. We cannot wish away the need to dialogue, whether at the national or county levels or at whatever level of leadership. It is, therefore, important that each and every dialogue is done within a legal framework.

(Applause)

That is why, when some of us appreciated the calls for dialogue by our friends, we said let us use the existing legal framework. If we have to deal with issues of high cost of living, Members of the National Assembly can address some of those issues. On issues of devolution, this is the right House to deal with those issues. This Bill is one such Bill that seeks to address issues and challenges affecting devolution.

The Speaker (Hon. Ethuro): Sen. Billow, do I take it that you have a point of order?

Sen. Billow: Yes, Mr. Speaker, Sir. Is the hon. Senator in order to continue talking about the need for national dialogue when the promoters of that programme have since publicly announced that they have called it off and they are no longer interested?

(Laughter)

The Speaker (Hon. Ethuro): Order, Sen. Billow! I do not think that is really a point of order. You cannot stop somebody from having similar ideas to another one. So, he is perfectly in order to give us his opinion.

Proceed, Sen. Sang.

Sen. Sang: Mr. Speaker, Sir, the basis of this Bill is to provide a platform for dialogue at the county level. The challenge that we have had before is where you have dialogue in an uncoordinated manner; where myself and my governor have had to make consultations over funerals and weddings. We are just providing a legal framework to provide an opportunity to dialogue. This is the same thing that our friends in CORD have been raising, the need to have dialogue. All of us agree on that.

Mr. Speaker, Sir, I want to conclude by appreciating that this is the first Bill, other than the Division of Revenue Bill and the County Allocation of Revenue Bill and one of the key enactments that this Senate will have undertaken. I want to plead with the leadership of the entire Parliament, that let this be a precedent that we will need to engage through while dealing with Bills that are supposed to be handled in both Houses. If we are to have good manners in the way we handle the businesses of both Houses, the necessity to think along the lines of having a constitutional amendment – some of us still think that there might be need to have an amendment of our Constitution to provide for the classical Senate and National Assembly anywhere else in the world, so that we do not have to continue arguing over whether a Bill affects counties or not. If we cannot use our good sense of judgment and appreciate the intention, letter and spirit of the Constitution and handle our businesses in the manner provided by the law, we will have to think about other means of ensuring that both Houses in this country are able to exercise their legislative mandate in a manner that is not curtailed by the other House.

It would be unfortunate if one House relegates the other House into oblivion under a Constitutional dispensation and our watch. Therefore, we hope that this sets as a precedent that for all the other Bills whose provisions Members of the National Assembly do not agree with, they will be able to reject or make amendments and then we subject them to mediation and the constitutionally provided means of dealing with this.

Mr. Speaker, Sir, with those remarks, I beg to move and ask Sen. (Dr.) Khalwale to second the Motion.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. I did not want to interrupt Sen. Khalwale's seconding at this point, but the Chair yesterday ruled that Prof. Anyang'-Nyong'o, the Senator for Kisumu, was required to substantiate something that he said in the House this afternoon. I am not saying that he should substantiate now, but I was requesting your kind permission and indulgence, so that you can schedule what time he is going to do so.

The Speaker (Hon. Ethuro): Order, Sen. Murkomen! I thought that you were following the Mover of the Motion. He said that our good sense of judgement should follow on certain things. It should also follow when we raise points of order. That is valid, but let us allow this Motion to flow. The Standing Orders allow the one who is to substantiate the second day. The second day is yet to end. So, you will have plenty of opportunities in the course of our business to raise that matter. Let us dispose of this one first. I am fully seized of the matter.

Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I rise to second the Report of the Mediation Committee on the County Governments (Amendment) Bill (Bill No.2) (Senate Bill No. 4 of 2013), pursuant to Article 113 of the Constitution of Kenya.

Mr. Speaker, Sir, before I make any specific references to this Mediation Report, I want to justify my seconding this Motion, by my realization that, indeed, what this board is going to end up doing is that it will allow this particular amendment to flow from Articles 6, 10 and 174 of the Constitution. Specifically, Article 6 (2) of the Constitution reads:-

“The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and co-operation.”

Mr. Speaker, Sir, when you read this Report, you will find that the very first function that the Board has been given is to create a forum where the consultation and co-operation that is being referred to in Article 6 (2) of the Constitution is referring to. For this reason, it is important that we allow the amendment Bill to give effect even in clearer terms to Article 6 (2) of the Constitution of Kenya.

Mr. Speaker, Sir, as far as Article 10 is concerned, I find that Article 10 (2), which refers to the national values and principles of governance, including patriotism and sharing of resources, indeed, will be the purpose of this Board. This is because the Board will remain vigilant to the need to ensure that development is shared equitably across the entire county.

Mr. Speaker, Sir, finally, Article 10 (2) (b) refers to the need to have equity, social justice and inclusiveness. It is quite possible that unless some form of guidance is given to the Governors plus the County Executive Committees (CEC), they can run rogue and lock out one part of the county or communities that exist in the county. This is not in theory. If you go to Siaya County which neighbours Kakamega County, you will find that in Siaya, there is a ward called Bukhuyi. In Bukhuyi, there are members of the minority community in Siaya called the Abaluhya.

So, unless you have a forum, those people can very easily be locked out of development in the entire five years and they will have nowhere to go to. But when the sitting Member of Parliament sits in this Board that is chaired by the Senator, then the local ward representative, through either the leader of the minority or leader of the majority, will send their agenda and complaints; that such and such a project should be considered in their particular ward. This also applies to a section in Kakamega, mainly Luanda-Doho and Luanda-Dudi, where we also have the minority Luo community leaving in Kakamega County, and they need this kind of protection.

Mr. Speaker, Sir, referring to the Constitution again, I find that this amendment flows out of Article 174, which refers to the objects of devolution. It says that the objects of the devolution of government are, amongst other things, to promote democratic and accountable exercise of power. We would like this forum to ensure that when we are seated, we are convinced that the Governor and his CEC is actually exercising power democratically and in an accountable way.

It is also supposed to foster national unity by recognizing diversity. It is only through this forum that the Senator will insist that the diversity within a county is recognized by ensuring that every group is also enjoying the development that will be drawn from the resources that go to our counties. Thirdly, it is an object of devolution to recognize the right of communities to manage their own affairs and further their development. In an area where clanism or ethnicity was a factor during the campaigns

and where a particular Governor who comes from the majority community got an overwhelming win, it is quite possible that a Governor of this type can choose to completely ignore the other minority communities. Therefore, this will force such a Governor to ensure that the agenda of his office also encompasses the interests of the other minority communities.

Mr. Speaker, Sir, allow me now to make reference to the findings of the Committee. If the Senators have looked at the recommendations and observations of this Committee, there are proposed compromise amendments. Allow me to go to page 3 of the Bill, where we are talking about the composition of the Board. I would like the House to be aware that amongst the people who are supposed to be there, I am not opposing it, but I would like it to be a record of this House--- In “(1)”, we are saying that the County Commissioner has been included as an *ex-officio* member. I am not opposed to this, but want this House to be aware that the High Court pronounced – and this pronouncement is yet to be vacated – that the position of County Commissioner is unconstitutional. So, as we allow it to go through, we should be alive to the fact that there is that remote possibility that some busybody can then move to court and wish to declare that this Act is unconstitutional for that very reason that the same finding was found.

I see that Sen. Murkomen is agitated, but even the Attorney-General, the chief Government legal adviser, has also made the same deduction.

Mr. Speaker, Sir, my second comment is as far as---

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. My friend, Sen. Khalwale has made very serious allegations about the constitutionality and legality of the office of a County Commissioner. He even went further to say that it was ruled by the High Court. Could he tell us whether that ruling came before or after the National Co-ordination Act came into place? Is he in order to mislead this House that the court said that it is unconstitutional?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, indeed, there is no way that I can mislead this House. I am not the Registrar of the Judiciary to know which Act or pronouncement came before which one. But I am aware that Justice Mumbi, sitting in the High Court of Kenya, found that the position of County Commissioner is unconstitutional. I am also aware that the Attorney-General, Prof. Githu Muigai, for the interest of Sen. Murkomen and others who might be in doubt, was a Member of the Parliament when this statute was being discussed in this very Chamber. He has gone ahead and also advised that he finds it unconstitutional that anybody should contemplate appointing the so-called County Commissioners.

(Sen. Mutula Kilonzo Jnr stood up in his place)

The Speaker (Hon. Ethuro): Order, Sen. Mutula Kilonzo Jnr.! I was about to allow you, but I have not seen your name in the system. I thought that you have no excuse.

Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: On a point of information, Mr. Speaker, Sir. I would like to inform the distinguished Senator from Kakamega that the ruling of Justice Mumbi was, in fact, vacated by the Court of Appeal.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, my second comment on this amendment Bill is on page 4 on the functions of this particular Board, specifically “(c).” The Committee found that the Board should consider and give input on county annual budgets before they are tabled in the county assembly for consideration. I want to give the example of Kakamega.

The Speaker (Hon. Ethuro): Order, Sen. Boni! You have been challenged and informed.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I am forever grateful for the information. I had earlier on indicated that I am not a Registrar at the High Court to know what comes first. So, I am very grateful for the information.

The Speaker (Hon. Ethuro): Saying that you are not the Registrar does not show your gratitude. So, you need to do it the way you have done now.

(Laughter)

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. It is so nice that Sen. Mutula Kilonzo Jnr., who Sen. Wetangula and I have been vigorously training on how to debate, has now gotten up and is up to it. Thank you so much.

Mr. Speaker, Sir, on page 4, section “c” of the Report, one of the functions is to consider and give input on county annual budgets before they are tabled in the county assembly for consideration. I wanted to remind the Members, using my example of Kakamega County, on the day when the public is supposed to do what they call public participation in the budget, an announcement is made through an advertisement in the national newspapers. As you know, the majority of Kenyans do not read newspapers. They are read by a minority.

So, whenever we have such a day in Kakamega County, usually at the Kakamega Social Hall, you will find a very small section of people going to that hall. They are lost and do not even know how to critique the budget. Therefore, the Governor or his representative simply walks in or then out without having received any critique whatsoever, positive or negative, from the intended public participation. With this Board in place, it will give us an opportunity to allow, through the elected leaders – Members of the National Assembly, leader of the majority and leader of the minority, the Senator and Woman Representative – to represent those people and ensure that they critique the budget for purposes of enriching it.

Mr. Speaker, Sir, my third point on this Report which I support is on New Clause 91 (c), on page 5. This new clause talks about the measure of offence of obstructing the county development board. It is my belief that given the resistance that you are seeing right at the beginning, where Governors are now taking public funds and putting up advertisements to oppose this Bill, it, therefore, means that even after His Excellency the President will have assented to this Bill, they will refuse to implement it. This particular amendment Bill contemplates a situation where funds will be made available from the budget of the county government for purposes of funding the functions of the Board.

Mr. Speaker, Sir, it also contemplates that the secretary of the Board will be the secretary of the county government. It is quite possible that a mischievous Governor or some other busybody can be tempted to either stall or curtail the functions of this Board

altogether. So, I want to thank the Mediation Committee that they found reason to put a punishment. Therefore, in support of the concerns of the Mover of the Motion, do not be worried about the antics of the Governors; that they are trying to oppose and make a lot of noise. This is because, one, they do not have the power to make law. If they have any issues, they should have communicated them to us or the National Assembly. Secondly, do not be worried if any Governor will be tempted to defy this law, because New Clause 91 (c) will catch up with him. Since the public sometimes follows our debates, it will be good for me to read out to the public, so that they know what will befall their Governor if he fails to adhere to the provisions of this Bill.

Article 19(c) says:-

“Anybody who unlawfully obstructs, hinders, undermines or prevents the county government development board from discharging its functions under this Act, that person commits an offence and is liable on conviction to a punishment by a fine not exceeding Kshs1million or imprisonment/jail for a term not exceeding one year or both.”

It must not be lost to Kenyans that if their governor will be jailed for a period----
With those few remarks, I second.

(Question proposed)

Sen. Wangari: On a point of order, Mr. Speaker, Sir. It is not my wish to interrupt the debate but I rise to seek your indulgence on a matter that took place on 25th June, 2014 on the County Governments (Amendment) (No.2) Bill (Senate Bill No. 2 of 2014) that I had sponsored to the Senate. The Speaker then ruled clearly that the voting will be done today, 9th July, 2014 according to the HANSARD. I want to quote:-
“The Deputy Speaker (Sen. Kembi-Gitura): We shall have the Division on 9th July, 2014. It is so ordered.”

I am therefore seeking your guidance and petitioning you on the same.

The Speaker (Hon. Ethuro): As expressed, Senators, it is so ordered. Today, 9th July, 2014 between Order No.9 and Order No.10, we will vote.

Sen. Njoroge, are you on a point of order? If you are not, it is okay.

Hon. Members, I want to believe this is a very popular Motion. So, try to limit your contributions so that as many Senators as possible may participate.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, thank you for giving me an opportunity to support the Report as laid on the Table of the House. This is a milestone in our short history as a Senate. The process that culminates in this report today puts to shame doomsday believers that have been saying that bicameral system in this country cannot work. For the first time, a mediation process as provided for in the law has brought fruits to the Table. This Bill was supported by the whole House. Indeed, at the operationalisation of this Bill, there might be one or two hitches but it is very fundamental that Senators have an opportunity to participate in what goes on in counties.

There are some governors who are good, there are some who are not so good and some who are very bad. We need to bring our entire devolution house to order. I want to encourage governors not to see this as an intrusion into their work because there is no governor who has a title deed to any county neither is there any governor who has

exclusive right under any law to do what they wish in any county. Indeed, I am sure there will also be some Senators who may use this process to exceed their authority and lord it over the governors; again, that would be wrong.

I encourage that we have an approach that helps counties. Indeed, we have seen of late that certain governors are conducting their affairs in a very poor manner and they need somebody to put them to order. You find a governor who embarks on misusing resources allocated to a county in a populist stand to carry out functions that are exclusive to the national Government. When you find a Governor engaging in populist activities like buying 120 police vehicles when it is not the duty of a county government to buy vehicles for the police, how is he accounting for that money? Even when he is summoned to come and explain, he does not show up. Then we have other governors who know very well that certain functions are not within their domain but they are budgeting money for them, contrary to the law.

Senators are the only elected representatives given the legal and constitutional responsibility as the defender, upholder and protectors of counties and devolution. In doing so, we expect that Senators will be like a balancing act. I have received and read mail from certain counties where some governors who have a hold on county assemblies are denying certain sections of their own counties development activities and focusing only on areas they think they enjoy political support. This is what Senators must come to correct. We also have some governors who are engaged in activities that are an affront to the law. We know of governors who are themselves contractors while others are suppliers. It is not all of them but there are some bad apples that I encourage Senators to take responsibility seriously, sit with governors, not in competition but in complementing the support that we need to give to ordinary people.

Mr. Speaker, Sir, I have said this before; that there are some counties in this country, and I am very fond of pointing at Wajir as an example, where my distinguished friend and my able deputy chair in the Finance, Commerce and Budget Committee comes from. In Wajir, 50 years after Independence, children still read about tarmac roads in books, children still read about piped water in books. Devolution has come to correct this imbalance. Devolution has come to bring new things to disadvantaged and neglected areas. This ray of hope should not be left to the whim of one person who goes around purporting to dish out goodies that he does not have, because there is no governor who owns money. The money belongs to the people of Kenya, and it is voted for by this House. In sitting with them to make sure that this money is put to good use, the Senate will not be in any way undermining the authority of the Governor.

Mr. Speaker, Sir, I also want to encourage that this process, and I salute our representatives in the Mediation Committee, Sen. Sang, Sen. Wako and the King of Meru, Nchuri Ncheke. They did a wonderful job and to bring our colleagues in the Lower House to order to reach where we are, we salute them because we have some extremely irresponsible Members in that House, especially a man called Hon. Duale, who is permanently rattling about nothing. They went and sat in an orderly fashion, agreed and have brought us this product. I salute them.

Mr. Speaker, Sir, let this be a beginning of a long positive direction that we are taking. I agree with Sen. Sang that the Bills that concern counties---

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. I did not intend to interrupt the Senate Minority Leader because he was making very weighty submissions except that sometimes he deviates to areas that you have warned about. As much as we may disagree with the manner in which the National Assembly runs its affairs, we have been very careful not to debate other people in this House. It is your ruling and it is on record. We agreed that even if we have our differences with the National Assembly, one of us has to take the higher moral ground in terms of utterances and approach.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I am not debating any individual from the Lower House, I just commented that when a Member talks inaudibly, recklessly and without any due regard to other people's feelings, he is rattling and I will leave it there. I am not saying anything more.

The Speaker (Hon. Ethuro): Order, Sen. Wetangula. First, that was a bit out of way on this particular matter. Secondly, you did not acknowledge the contribution by Members of that House to this particular one. That way, we would see a balanced view.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I was rudely interrupted by the distinguished Senator for Elgeyo-Marakwet. I was acknowledging the mediation team and charity begins at home. I have to acknowledge our Members from here, then move on to Members from the other House. That is why I brought in a man, who if he sat in that Committee, probably, we would not have reached these results. I salute the team from the Lower House for seeing the direction that the Constitution, the law, the common man and the country desire. We cannot and we shall not, as a country, engage in endless unhelpful turf wars between the National Assembly and the Senate.

Indeed, those of us who are asking this country to start auditing the Constitution and take the country through a process of change that would make the Constitution even better, we must start thinking as a House; how we can restore and bring the Senate to a level where Senates in other comparable jurisdictions are. The Senate in any jurisdiction, except Kenya, is an appellate House. The Senate deals with Bills from the Lower House. Matters start from there and come to the Senate. It is only in Kenya where the distinguished Speaker for the Senate is taken for granted by the Speaker of the Lower House, even when the Constitution says that you must meet and look at things together.

That is why I dare say that just as you led us to go for an advisory opinion, it is incumbent upon you, as the first Speaker of this Senate - of course, there was the earlier Senate that was abolished - as the first Speaker of the Senate under the new Constitution, it is incumbent upon you to lead us again without fear or favour or even prejudice to go to the Supreme Court again and demand an opinion and a ruling that all those Bills that have been assented to in error are not laws of this country because they have been unprocedurally arrived at and assented to. It is only by doing this that sanity and order will be brought to our legislative processes.

I have no doubt whatsoever because I have worked with President Uhuru before; it is those who advice him, and in this case, the blame goes to one office because I know in our successive regimes in this country, the President never assents to a Bill unless the Attorney-General is there telling him that he has read through and dutifully and constitutionally advises the President to sign.

Mr. Speaker, Sir, if the Attorney-General is giving this unconstitutional, illegal and defective advice, then a time is coming when even this House must take a position on

that office holder. When the Constitution is clear, the law is clear, it defeats common sense for the principal legal advisor of the Government for whom we pay from the taxpayers' money to encourage the flouting of the Constitution. If the Parliamentary Service Commission will deny you the money to go to court, I encourage these Senators to forfeit a portion of their salaries for us to go to court and challenge the constitutionality of those Bills.

It is only then that this Senate will be taken seriously, will be reckoned with and will be respected. If we become cry babies, fold our hands, just sit there, look overpowered or helpless, then we will never be respected by anybody. We will end up constantly looking like amateurish politicians who know nothing about what we are doing.

I also agree with Sen. Sang from their mediation that our distinguished colleagues who are nominated to this House, it is not that they are any less important but the Constitution itself says that each county has one Senator. So, where we have a county like Nairobi with about six nominated Senators, the aggregate is that Nairobi has one Senator. If we go to Trans Nzoia where my distinguished lady comes from, that is, Sen. Kittony and Sen. Ndiema, Trans Nzoia has one Senator. So, it is only one Senator who will be the Chair of the Board. Our distinguished nominated colleagues on this one, you just have to bite the bullet and acknowledge that it is sufficient privilege for you to be nominated in this House and that where you are dealing with elected offices, let the elected offices handle those issues.

Sen. Wangari: On a point of order, Mr. Speaker, Sir. I have much respect for the Senate Minority Leader but is it in order for him to mislead this House and the whole country that the Constitution is clear that every county has one Senator whereas the membership of the Senate is clear in Article 98? It says that Senate consists of 47 Members---

The Speaker (Hon. Ethuro): Order! You are both right. So nobody is contradicting the other. If there is somebody out of order, it is you. Sen. Wetangula talked about delegations per county but you are talking about the composition of the Senate. Those are two different things and you are both right.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Speaker, Sir. My distinguished friend and good lady here knows that in the presence of Sen. Kembi-Gitura, she has no vote here unless she is delegated to vote.

Sen. Kembi-Gitura: Mr. Speaker, Sir, it is just for clarity.

The Speaker (Hon. Ethuro): Okay.

Sen. Kembi-Gitura: Mr. Speaker, Sir, Sen. Martha Wangari who is my good friend is not part of a delegation from Murang'a County. She is part of delegation from Nairobi County. That should be made very clear.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I am, in fact, told that she is from the Nakuru delegation.

(Laughter)

Sen. Kembi-Gitura: Mr. Speaker, Sir, I gave you information that you did not solicit, but that is the position I got.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, in fact, I am told that she is from the Nakuru delegation. But be that as it may, votes in this Senate Chamber are by delegations. Each delegation has one vote. When we say that Nyeri County will have the Senator chairing the board, it will be one chair and one delegation; and so is everywhere else.

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Senators! This is a matter we have disposed of before.

(Sen. Elachi stood up in her place)

What is it, Sen. Elachi? This will be the last one.

Sen. Elachi: Mr. Speaker, Sir, I rise on a point of order. Is the Senate Minority Leader in order to say that it is a privilege to be nominated in this House while he knows very well that the Constitution says that there will be party lists? If they nominated people on privilege, I do not know because I was nominated on merit.

(Applause)

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, obviously, English language is a foreign language and our levels of understanding it are quite different.

The Speaker (Hon. Ethuro): Order! Order! But once we have made it an official language in the Constitution, it is no longer foreign.

(Laughter)

It must be used properly. I think the point Sen. Elachi is contesting is nomination based on the word "privilege." Hon. Wetangula is using it in the normal way because when you go to meetings, you say "I am privileged." Does that mean you are not there by merit?

Hon. Senators: No!

The Speaker (Hon. Ethuro): Proceed, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, even privileges confer rights.

(Laughter)

Mr. Speaker, Sir, let me say my last two points so that others can also contribute. I saw in the media that the Council of Governors (CoGs), which is chaired by a very distinguished and respected Governor for Bomet County, put up an advertisement attempting to indict this Bill. I want to ask the Committee on Finance, Commerce and

Budget and the Public Accounts and Investments Committee (PAIC) to find out whose money they are using to fight an unjust cause.

(Applause)

This money is from public funds. Nobody has the right to take public funds to take out paid advertisements costing about Kshs1 million just to defend an indefensible position both in law and fact. These Committees should look at the accounts and find out where that money is coming from. If it is being taken from the money we allocate to counties, then they have to be held to account because every shilling counts.

Mr. Speaker, Sir, I have been seeing some situations where people are spending money as if we have some pit somewhere where we are just drawing out money from, and yet when you go to some counties, people are dying of hunger, thirst and many other things. I want us, in our Mombasa meeting, to have a closed session and talk candidly with each other with our brothers, the governors so that we can also bring ourselves to order. This will also ensure that we do not continue shouting at each other and speaking at each other instead of speaking with each other.

Lastly, Mr. Speaker, Sir, I want to encourage Senators that once this Bill is assented to and it becomes law, for heavens' sake, do not start running these boards by proxy; constantly giving excuses and asking somebody else to chair them. That will be very wrong. Do not also, as distinguished Senators, go to those boards as if you are bosses because you are not. We are going there to sit with elected representatives in the counties to do things right. We want to make sure there is equity in development, fairness in the allocation of resources and accountability in our counties.

I know that one of the issues which are being raised out there is that Senators are over-sighting counties. We need to allay those fears. How do we go there, sit in those boards and then come back to oversight? I see no conflict at all because when you sit in those boards, all you need to do is to go to Narok, for example, sit with the Governor and designated officers and agree on what development projects to be implemented. We only need to say: "There shall be a road to Mulot and another one to Sekenani." There shall be a bridge on Sand River and so on. There shall be reforestation of Mau Forest if you come from those counties that house this forest and then you leave them to do the rest. That does not create any conflict. You can still go back later and ask them "how did you spend this money?" and "Account for this money." There is no Senator who will be an implementer or a budgeting agent of any county.

Mr. Speaker, Sir, we want to allay fears among the Governors that we are not creating any positions of conflict in the management of the boards. All we are doing is to tell the distinguished Senator for Baringo County, for example, there must be some projects to benefit the Njemps community. All we are doing is to tell the distinguished Senator for Kiambu County that there is a place called Ruthigiti that looks like Kenya in the 1940s, when there is total opulence in the other side of Kiambu; go and help them. We are not asking them to go to dig trenches and put water. These are the contradictions in this country. When you look at Kiambu, everybody talks of Kiambu as one of the most developed counties. I have friends from a place called Ruthigiti; when you go there, you feel embarrassed that it is in Kenya and, more so, in Kiambu. A county that has produced

two Presidents has a place where people live like they are in the Stone Age. It is a shame. I have been there many times because I have friends who come from there, and they live very badly. I can see the distinguished Senator is agreeing with me.

Finally, Mr. Speaker, Sir, I want to thank the distinguished Senator for Nandi County, young Sen. Sang, for the industry he put in this; for bringing a good Bill to the House, for arguing eloquently this afternoon and for coming of age. You have really done well and we salute you. Keep it up. Keep off from the bad company of hecklers and you will go places.

(Laughter)

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

Sen. Murungi: Mr. Speaker, Sir, I want to thank you---

(Sen. Kagwe stood up in his place)

The Speaker (Hon. Ethuro): What is your point of order, Sen. Kagwe?

(Sen. Kagwe spoke off record)

The Speaker (Hon. Ethuro): You should press the gadgets---

Sen. Kagwe: Should I sit or should I stand?

The Speaker (Hon. Ethuro): You should sit.

(Laughter)

(Several Senators stood up in their places)

Sen. Kagwe: So, Mr. Speaker, Sir, why, then, are we all standing?

The Speaker (Hon. Ethuro): Because some habits die slowly.

Sen. Kagwe: I am much obliged, Mr. Speaker, Sir.

(Laughter)

(Sen. Kagwe resumed his seat)

The Speaker (Hon. Ethuro): Proceed, Sen. Kiraitu.

Sen. Murungi: Mr. Speaker, Sir, I want to thank you. Allow me to do the unusual and thank the last speaker; the Senate Minority Leader, especially for the last comments that he made regarding the Mover of this Motion, Sen. Sang. This Motion touches at the very heart of the Senate. That is why it has tremendous support from both sides of the House.

Mr. Speaker, Sir, I wish to commend Sen. Sang most sincerely for the passion---

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Senators! I can see that there is immense interest in this Motion and we have three Motions to vote on. Could I suggest that we take five minutes each? It is so ordered; five minutes per contributor.

Proceed, Sen. Kiraitu.

Sen. Murungi: Mr. Speaker, Sir, I was already on my feet when you introduced that new rule and I hope it does not apply retrospectively---

The Speaker (Hon. Ethuro): Order, Sen. Kiraitu! In fact, it applies and you are still advantaged because what you have contributed so far, is not counted. So, start counting your five minutes now.

Sen. Murungi: Thank you, Mr. Speaker, Sir. I was commending Sen. Sang and the other Members of the Mediation Committee. The Mediation Committee had very distinguished Members from both Houses, led by the former Attorney-General *Emeritus*, Sen. Wako, Sen. Sang and myself, who are distinguished lawyers from this House. We had hon. Chepkonga and other lawyers from the other House. I must commend all the colleagues because we worked very well as brothers. However, there was no sister in the team. I recommend the spirit within which we arrived at this Report. Every issue was agreed on by consensus. We have been bad neighbours with our brothers and sisters from the National Assembly. But now that we are in the same building, I would urge my colleagues to improve our relationship with our brothers in the other House.

Mr. Speaker, Sir, we already passed the original version of this Bill on 28th of November, 2013. Very slight amendments have been made and those amendments are to remove the sub-county development boards, the ward development boards to make Governors the Vice Chairpersons of the County Development Boards. We also made different provisions for the women Members, which I will highlight as I take you through the Bill.

Mr. Speaker, Sir, Article 96 of the Constitution gives us two roles; first, to protect and promote the interests of the counties. Secondly, is oversight the national resources that go into the counties. The question is: What are those interests? A Senator represents a huge geographical area with varied, opposing and sometimes contradictory interests. It is necessary for us to have a forum where those interests can be mediated. We are not only talking about the funds that go to the county governments, but we are also talking about the national Government funds from those units which are not devolved and which find their way into our counties. There is a need for us to make sure that there is no overlap and misuse of funds either from the national Government or the county governments. So, we cannot represent interests that we do not know about.

Mr. Speaker, Sir, there is a very real possibility that a Senator can be alienated or a Senator can be a stranger in the very county that he or she represents. This Bill creates a connection between a Senator and the county. We all know that the Senator is the senior politician in the county. It is his duty to bring all the political forces together and to listen to them in order to get those interests articulated so that he can be informed as he represents those interests before this Senate. What is greater interest than development interest? *Wananchi* are not interested in the beautiful language that we use. They are not interested in some of the issues that arise out there. They are only interested in tangible

issues of development. If a Senator does not address those issues, then he fails in his cardinal duty of representing the county in this Assembly.

Mr. Speaker, Sir, we considered a lot of issues. All the issues that were raised are on page 8 of the Report. I want to highlight some of them. For instance, one of the issues was whether the establishment of the sub-county development and ward boards will create competition with the Constituencies Development Fund (CDF). We saw that there was a bit of a grey area there and that is why we agreed to remove the ward development committees and the sub-county development committees. Two, whether the existing structures as obtains in the County Governments Act and the Inter-Governmental Relations Act should be strengthened or supplemented with new structures. To that one, we said "yes". That is how we allowed the County Development Board to come in and supplement the existing structures because they were not adequate. There was no forum where the Senator, Governor and the Members of National Assembly and representatives of the wards ever sat together in any county. So, this is unique in that respect.

Mr. Speaker, Sir, we also considered whether the composition of the board was appropriate and the issue about the nominated MPs. We said that because the nominated Members do not represent interests of the county - the nominated Members represent national interests. These interests could be the interests of the disabled or they could be the interests of gender, but they are national. We decided that since the board was just to consider county interests, then it will not be appropriate for Members who represent other interests to sit in the CDB. It is on that logic that our sisters; the nominated Senators and MPs from the other gender, were not included in these boards because the county interests are represented by the elected county members. Those other members represent other interests, but we have provided for them. If you look at the Bill---

The Speaker (Hon. Ethuro): Order, Sen. Kiraitu! Your time is up, but I will give you one more minute to conclude.

Sen. Murungi: Thank you, Mr. Speaker, Sir. I urge all the Members to fully support this Bill because of the new spirit that we have. The National Assembly has passed it. Therefore, it will be ridiculous for the Senate which originated this Bill, not to pass it.

I thank you, Mr. Speaker, Sir.

Sen. Billow: Thank you, Mr. Speaker, Sir. I rise to support this Motion and, indeed, to thank the Senator for Nandi County for coming up with this very important Bill. I also want to take the opportunity to thank the Mediation Committee for a job well done. This is the first mediation between the two Houses on a matter that initially proved to be divisive. They have managed to find a common ground.

The essence of this Bill is to create a forum for the leaders who were elected from the counties to come together and share ideas on how to develop a county. There is nothing sinister about this Bill as it is being spread by other quarters, particularly by the Council of Governors. There is nothing sinister. This Bill does not, in any way, usurp the powers of the Governors nor does it in any way undermine the principles of separation of powers. It does not confer any executive powers to Senators. All it does is to create a forum to exchange ideas on issues of development. This is the most important thing that has happened since we started off devolution. It does not, in any way, compromise the oversight role of Senators.

This is one of the complaints that the Council of Governors raised. It is important to note that before this Bill was prepared to this format, it was discussed with the Commission on the Implementation of the Constitution (CIC), Committee of Legal Affairs and Human Rights with the Law Society of Kenya (LSK) and other institutions and it was clear that it does not, in any way, confer any executive powers on Senators or Members of that Board. The Bill aims at strengthening the existing structures. It does not eliminate any of the structures which are there. It is not superfluous, in any way, and does not undermine any of the existing structures, or legislative authority of the county assemblies.

One of the key issues of this Bill is to provide a forum; you will find this in Section 2, for consultations and coordination. How does anyone interpret, particularly a Governor of a county, that a forum that provides for consultation and coordination amounts to usurping the powers of the county government or giving Senators executive role? That is farfetched. Section 2 clearly provides for a forum for consultation and coordination between the two levels of Government. This is only with regard to development and projects. We will not discuss how they spend their money, recruit their staff, or how they will run their issues. This is about looking at the development paradigms of the county. Where are the priorities? Where should we put our money? That is all. This is something that is essential for all the leaders to get involved in.

The second aspect on Section 2(b) gives our input as elected leaders on the development plans of the counties. Again, that is vital. You will remember the concern that was expressed in the memorandum of the Bill. We have different devolved Funds in the counties. We have the CDF and many other Funds which are there. This will give us an opportunity. There is the national Government funding for development. This will give us an opportunity to sit on a table, all the players in the county to discuss where the county money should go. If it is a borehole, probably, the county government has already provided for funding for it in the Ministry of Water estimates or the CDF has already provided for it. In fact, this gives the county an opportunity to limit its programme to areas that have not been covered by the other development institutions.

Thirdly, this gives us an opportunity to give our input on the annual budgets of the counties. Again, this is a critical area. Budgets represent the plans.

With those few remarks, I beg to support.

Sen. Elachi: On a point of order, Mr. Speaker, Sir. Would I be in order, while I know that this is a Bill that many Senators want to contribute on, to use Standing Order No.98 to bring the debate to closure so that we vote on the same?

Sen. Muthama: On a point of order, Mr. Speaker, Sir. I want to concur with Sen. Elachi. All of us, at the end of the day, will stand to support the Bill. We are all heading to say the same thing. It is important for us to close it, pass it and move on to another business. What we are saying is a repeat of what has been said once and again.

The Speaker (Hon. Ethuro): Order, hon. Senators! I am inclined to agree with that, given this is a Bill that has already gone through the Motions. Given the fact that I am also alive to the requests on my screen, I will allow four more interventions; two from each side and reduce the time to three minutes each. I hope that is sufficiently democratic.

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir. With a lot of respect to you as the Speaker, we have moved from 15 minutes to 10 minutes to five minutes and now three minutes. With respect, we may as well have a reply because I do not know what one can say in three minutes to such an important Bill. This Bill affects all of us and is very important. We were hoping we could contribute. However, if you find it fit that the Mover should be called upon to reply, then we will comply. However, three minutes is not adequate.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. With a lot of respect to the House, I have my personal reservations in the manner in which we at times curtail very important Bills. Sometimes we sit here for a whole afternoon looking for serious business to debate. When we now have serious business to debate, which every Member wants to debate, we instead want to curtail it.

We, as a House, need to be candid with ourselves. There is nothing wrong by saying that we vote on the Bills that were waiting voting. However, this important business can continue and we vote on it tomorrow. I think a Bill of such magnitude and considering its success in terms of bicameral legislature, needs a lot from Members to go on record. Rushing it like this will not encourage anyone in future when you have serious business in the House.

Sen. Wamatangi: Thank you, Mr. Speaker, Sir. I also concur with the enthusiasm aired by my colleagues that we all have to contribute to this Bill. I am also heavily inclined to remind my colleagues to remember that this is a Bill that concerns counties. As we debate the Bill, we need to be mindful that most Senators are in, but may be going out. At voting time, we need the requisite number of Senators. So, we need to balance the two so that at voting time, we have enough Members present to vote and pass this Bill. We have the numbers now. Probably, we need to think along those lines.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Speaker, Sir. I am concerned and want to concur with hon. Members who suggested that we vote quickly. However, I am of a different view, that we need to pass the Bill so that we take it down to the county considering that the budget for this Board must be prepared by the County Governors. I am aware that budgets are almost done. Therefore, it is urgent that we vote now.

Sen. Kajwang: Thank you, Mr. Speaker, Sir. I was waiting with a lot of anticipation to debate this Bill. I was not in the Mediation Committee. This is the first Bill of serious magnitude that this House is dealing with. In fact, hon. Murungi was right to say that the Bill is at the heart of this Senate.

Some of us will be reading the history of this Senate to see when we had the first Bill that defined our relevance with regard to matters that govern this country, we rushed because budgets were being completed by tomorrow. We still have two and a half hours to complete this. I think we should allow some few minutes.

Mr. Speaker, Sir, you had even ruled on this and we were almost comfortable with five minutes each. You have now narrowed it to three minutes.

COMMUNICATION FROM THE CHAIR

ADJOURNMENT OF DEBATE UNDER STANDING

ORDER No.99

The Speaker (Hon. Ethuro): Order, Senators! I must confess that I am equally enjoying the debate. I am persuaded by my able Temporary Speaker, Sen. Murkomen and all the Senators who wish that the debate continues. First and foremost, this is primarily a debating Chamber. I think any true democracy worth its name will appreciate that we would rather debate rather than make quick resolutions that have not been exhausted. Otherwise, we will be rendering ourselves irrelevant, anyway.

The Homa Bay Senator has agreed with Sen. Murkomen and Sen. Kembi-Gitura that we need to be on record. Our people have sent us here for a purpose. It is important that in future when people are looking at these things, they can confirm that the Head of Delegation from a certain county had these views on this important matter.

With regard to the concern by Sen. Mutula Kilonzo Jnr. that we need to do it like yesterday, doing it tomorrow or even at the end of the day today will not take away the sense of urgency. This will still take into account your worries. I think I have married many of the views.

Therefore, I propose that we adjourn this debate so that we vote on Orders Nos.9 and 10 and dispose of the matter of the substantiation of the allegations and then we can go back to item 8 which is this Motion. We will exhaust it until the end of the day, then we put the Question.

It is so ordered.

The Senate Minority Leader (Sen. Wetangula): On a point order, Mr. Speaker, Sir. I do not intend to challenge your ruling and, indeed, I cannot. However, the general temptation is that after we vote and go back to this very critical Bill, by the time we reach the end and put the question, we may not have the requisite delegations to vote. Therefore, I want to implore you to vary your order, so that you let the debate to go on and then we vote on all the three Bills at once at the end. That will also be a deterrent to some of our colleagues who may be tempted to run to other things which are legitimate. However, duty calls that we have to be here. That will help us finish these matters conclusively and positively today.

The Speaker (Hon. Ethuro): Sen. Wetangula, we are reading from the same script. Do you want to deal with the balance of probabilities or do you want to be assured of, at least, two votes? The third one, even if we do not get it today, there is another day given that this has just started today. Others have been pending, including the reminder by Sen. Wangari, that there was a communication to that effect.

You will appreciate that I take into consideration a lot of opinions. But I am afraid on this one; let us proceed the way I have suggested. Let us take the vote and proceed with the debate later. The spirit is to allow as many people as possible to contribute.

Sen. Wangari: On a point of order, Mr. Speaker, Sir. I beg to move:-

THAT, pursuant to Standing Order No.99 we now adjourn the debate as directed. I move that the debate be adjourned to allow us to vote on Motion No.9 and Bill No.10 under Standing Order No.99.

(Question put and agreed to)

*(Debate on the Motion on Adoption of Report of Mediation
Committee on the County Governments (Amendment)
(No.2) Bill (Senate Bill No.4 of 2013) was adjourned)*

The Speaker (Hon. Ethuro): Next Order!

MOTION

RESTRUCTURING AND EXPANDING OF KURA MANDATE TO COVER COUNTY HEADQUARTERS

THAT, aware that the Kenya Urban Roads Authority (KURA) is vested with the responsibility of developing roads in cities and former municipalities; noting that a number of county headquarters are located within areas formerly known as county councils and therefore road maintenance within such county headquarters would not be the responsibility of KURA; concerned that this arrangement gives undue advantage to county headquarters located within cities and former municipalities compared to those located within the former county council areas; the Senate calls upon the national Government to restructure KURA and expand its mandate to cover road infrastructure in all the forty-seven county headquarters.

(Sen. Mositet on 2.7.2014)

(Resumption of Debate interrupted on 2.7.2014)

The Speaker (Hon. Ethuro): We are scheduled for a division on this Motion.

Hon. Senators, according to Standing Order No.74, any Division shall be by electronic voting. I, therefore, order the Division Bell to be rung. Since we have just adjourned for the purposes of voting, I will order that the Division Bell be rung for one minute.

(The Division Bell was rung)

Hon. Members, if you are representing a delegation, let us know. That matter was raised last week and we agreed that we are addressing it administratively. The purpose of the Bell is to make some notification and I think it serves that purpose even better.

Hon. Senators, we will take two votes; Order No.9 first and then we will separately do Order No.10. We will vote in one minute.

DIVISION

ELECTRONIC VOTING

(Question put and the Senate proceeded to vote)

(Error detected in the results of the electronic voting)

The Speaker (Hon. Ethuro): Order Senators! We will have to do a second round. Apparently some people are abstaining without wanting to indicate so. That is not allowed. You either vote “yes”, “no” or you abstain. There are many ways of knowing, but I want to give you a second chance. If you have forgotten your card, then you need to notify the Clerks-at-the-Table and register. We will give you an oral vote after the other voting has taken place. I will give those ones without cards one minute to register. There is nothing to be embarrassed about it.

You should make sure you have logged in and every Senator should be their neighbour’s keeper. I will now give you one minute to vote. Press whichever button that you are interested in once, while leaving the card logged in.

(The Senators proceeded to vote)

DIVISION

ELETRONIC VOTING

(Question put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang’-Nyong’o, Kisumu County; Sen. Chelule, Nakuru County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. Kembu-Gitura, Murang’a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County, Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Okong’o, Nyamira County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

NOES: Nil

The Speaker (Hon. Ethuro): Hon. Senators, I said that the voting will take one minute and it took one minute. That is why on the screens there is “end of voting.” I did not say that the entire process will take one minute.

Order, Senators! The results of the Division are as follows:-

AYES: 27

NOES: Nil

ABSTENTIONS: Nil.

The "Ayes" have it.

(Question carried by 27 votes to nil)

As per the Standing Orders, you are absolutely out of order if present and voting and unable to vote. I want to take it for now that maybe your gadget was malfunctioning.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. The distinguished Senator for Wajir had his instrument malfunctioning. We requested the Clerks-at-the-Table to give him an opportunity to vote manually. We are 28 Delegations and that is why we are recording 27 votes. It is Sen. Hassan Abdirahman who was unable to vote.

Sen. Okong'o: On a point of order, Mr. Speaker, Sir. I was also wondering if the electronic voting shows either the names of the counties or the names of the Senators for purposes of record.

Hon. Senators: It does!

(Sen. Kajwang stood up in his place)

The Speaker (Hon. Ethuro): Sen. Kajwang, unless you confirm that you are not digitally compliant, I will not allow you.

Sen. Kajwang: Mr. Speaker, Sir, I am quite digital.

The Speaker (Hon. Ethuro): Then you know what to do.

(Sen. Kajwang placed a request to speak)

Sen. Kajwang: Mr. Speaker, Sir, on the improvement of the technology, I think that we should be having on the screen the name of the person voting and the county, so that we can see those who press their button twice. We will see their names disappearing and coming back, and then deal with them. Just as an improvement of this technology, I think that they can work on it. This is something which has been developed in Kenya, because we have very brilliant technologists. They can improve on it as we go along. Since the names appear on the screen of the Speaker and the script that is published later, they can as well appear on the screens.

The Speaker (Hon. Ethuro): Order, Senators! I think we have said that the system is working quite well. It may have challenges which have not denied us the ability to vote. Whatever recommendations that are being solicited will, definitely, be taken into account as part of the improvement. However, for now, it is serving us well.

The only thing that we are concerned about is the malfunctioning of the gadget, as pointed out in the case of the Senator for Wajir. If you are present and voting and you did not vote, then it is considered disorderly. The fact that the Senate Minority Leader made presentation to that effect that one Member may have had that problem, is when I have given the excuse that maybe it applies across. The only reason I did not want to go to the

bottom of it is the time it takes time to confirm whether it was actually malfunctioning, he had actually voted or he logged in after the voting had been concluded. That should be for another day. For now, I am satisfied to proceed as we have done so far.

Before the next vote, Sen. Abdirahman, you need to check your gadget.

Sen. Abdirahman: Mr. Speaker, Sir, I have reset it now, hoping that it works.

The Speaker (Hon. Ethuro): I think that, that might be the problem.

Order, Senators! We will now go to the vote on Order No.10, which is The County Governments (Amendment) (No.2) Bill (Senate Bills No.2 of 2014).

BILL

Second Reading

THE COUNTY GOVERNMENTS (AMENDMENT) (NO.2) BILL (SENATE BILL NO. 2 OF 2014)

(Sen. Wangari on 19.6.2014)

(Resumption of Debate interrupted on 19.6.2014)

The Speaker (Hon. Ethuro): Hon. Senators, this is not Sen. Sang's Bill. This is Sen. Wangari's Bill. Therefore, I wish to put the Question. We will assume the Division Bell was for everything. It is now time for voting.

Is each and every Senator voting logged in? This is a matter affecting counties so we will take one minute to vote.

Hon. Senators, I am told that it is being fed into the system first before we do the voting. So, bear with us.

(Consultations)

I hear murmurs that they do not know what the Bill is all about. You actually debated it. I want to invite Sen. Wangari for a minute to explain to the House, to refresh the memory of distinguished Senators on what the Bill is all about.

Sen. Wangari: Mr. Speaker, Sir, this Bill was a very simple amendment. It was basically on how the county assemblies were constituted. To refresh the memories of hon. Members, when we were sworn in, the county assembly members were also sworn in, in March. However, the nominated Members, including women, youth and people living with disabilities were not sworn in together with the elected Members of the county assemblies.

They were actually coming on board as late as July of that year. That means they missed out on very critical decisions that were made by the counties including the constitution of committees. You will find that in many of the committees you will not find a woman, a young person or a person living with disabilities who is a chairperson. That was challenged. It was really unconstitutional because the constitution of the county assemblies is very clear in the Constitution under Article 177.

This Bill, therefore, was correcting that wrong, that the first sitting of the county assemblies takes on board every Member of the county assembly. That means that the Independent Electoral and Boundaries Commission (IEBC) should be compelled to do the gazettelement in time and the swearing in of the Members.

The Speaker (Hon. Ethuro): What was it, Sen. Murkomen? I want to use this issue to confirm about the issue of where Sen. Wangari belongs in terms of delegations. I can confirm from the original county as stated by the Deputy Speaker that she actually belongs to Nairobi County delegation.

Sen. Murkomen: Mr. Speaker, Sir, I think my point of order has been overtaken by events. I am just saying that such a procedure re-opens debate and creates a mechanism not anticipated in the Standing Orders.

The Speaker (Hon. Ethuro): That possibility is there, but as you can see it was just information. The Chair is competent enough to deal with contributors who would wish to contribute beyond the limit. What we have also done, just to confirm that you are all on, is that during the voting, we will be showing the map of the sitting arrangement so that as you vote, you can see. The results can come at the end of the voting so that everybody can be sure that they are being reflected. That also means if you are not being reflected, it will show.

Hon. Senators, let us proceed with the vote. First, make sure you have logged in. Is everybody logged in? Then let us take the vote.

DIVISION

ELECTRONIC VOTING

*(Question put and the Senate proceeded
to vote by County Delegations)*

AYES: Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'Nyong'o, Kisumu County; Sen. Chelule, Nakuru County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kembi-Gitura, Murang'a County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; Sen. Wamatangi, Kiambu County; and, Sen. Wetangula, Bungoma County.

NOES: Sen. Kivuti, Embu County;

The Speaker (Hon. Ethuro): Order, Senators! The Standing Orders do not disqualify you or find you out of order or disorderly for abstaining, for voting negative or positive; whichever way you vote, that is your right. I, therefore, wish to announce the results of the Division. They are as follows.

AYES: 27

NOES: 1

ABSTENTIONS: Nil

So, the “Ayes” have it.

(Applause)

(Question carried by 27 votes to 1)

(The Bill was read a Second Time and committed to a Committee of the Whole tomorrow)

The Speaker (Hon. Ethuro): You may now draw the bar and open the door.

Hon. Senators, before we proceed to continue the debate on Order No.9, there was a matter of substantiation which had been raised by Sen. Murkomen. Sen. (Prof.) Anyang’Nyong’o, what do you have to say?

POINT OF ORDER

SUBSTANTIATION OF ALLEGATIONS MADE AGAINST MR. MATIANG’I AND GEN. KARANGI

Sen. (Prof.) Anyang’Nyong’o: Mr. Speaker, Sir, yesterday during the Motion on Adjournment on a matter of national importance, which I had requested for, I was, indeed, asked to substantiate on a matter regarding the attendance of a meeting at Serena Hotel on Wednesday last week, the 2nd of July, 2014. I would like to really clarify because it must be relevant to that meeting. This meeting was organized by the Media Council of Kenya (MCK) and the invitations were sent to selected officials of the media, particularly editors and officials of the Kenya Editors Guild (KEG). The invitations stated, among other things that:-

“Kenya has, in recent months, experienced a host of happenings bordering on national security and freedom of expression. The media is a very trusted institution in Kenya. It is for this reason that people have touted the role of the media in reporting national security issues and political contestations now going on in the country. It is for this reason that the MCK has organized a dialogue session for media owners, editors and various arms of the Government and Parliament that deal with security and communication matters.”

The closed door meeting was held on Wednesday last week, as I said, at Serena Hotel beginning 7.00 a.m. in the Hibiscus Room. In attendance were the following: Mr. Sam Shollei, Media Owners Association (MOA) Chairman; Madam Farida Keroney from *Citizen*, Mr. Davit Ohito, Vice Chairman of the Kenya Editors Guild (KEG); Mr. Samuel Maina, Acting Editor in Chief of Kenya Broadcasting Corporation (KBC); Mr. Michael Mumo, Director of *Capital FM*; Mr. Macharia Gaitho, Chair of the KEG---

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Anyang’Nyong’o! Do you have a copy of that?

Sen. (Prof.) Anyang’Nyong’o: Yes, I do.

The Speaker (Hon. Ethuro): Do you only have one copy?

Sen. (Prof.) Anyang’Nyong’o: No, no; I have carried a copy for you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): It would have been good to follow as you also proceed.

Sen. (Prof.) Anyang’Nyong’o: Okay, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): You can get your neighbour to bring it to me.

Sen. (Prof.) Anyang’Nyong’o: Can you pass it over?

(Sen. (Prof.) Anyang’Nyong’o passed over a copy of the document to the Speaker)

Mr. Wellington Nyongesa, *Radio Maisha*; Mr. Linus Kaikai, NTV; Mr. Mwenda Njoka, Director for Communications in the Ministry of Interior and Co-ordination of National Government; the convenor, Dr. Harun Mwangi, CEO and Secretary of the MCK. There is a name that is missing from that list, Mr. Paul Illado, Group Political Editor at *The Star*.

Mr. Speaker, Sir, from the Government were the following: Mr. Masoud Mwinyi, Police Spokesman from the Administration Police (AP); Gen. Muthethe, representing Gen. Julius Karangi; Mr. Joseph Tiampati, the Principal Secretary (PS) representing the Cabinet Secretary (CS) in the Ministry of Information; the Inspector-General of Police, Mr. Kimaiyo; Mr. Mutea Iringo, the PS of the Ministry of Interior and Co-ordination of National Government and Mr. ole Lenku, CS of the Ministry of Interior and Co-ordination of National Government. From Parliament were Members of Parliament as follows: hon. Ndung’u Githenji and hon. Jamleck Kamau.

The core subject was insecurity and a worrying *Al Shabaab* hype in the media.

Mr. Speaker, Sir, I want to apologize to the Senate that Gen. Karangi, who is my friend, and CS Matiangi, who is equally my friend, did not attend this meeting personally, but sent their representatives.

(Applause)

In the case of Gen. Karangi, it was Gen. Mwithethe. In the case of the CS, it was the PS, Joseph Tiampati. So, I will render my sincere apologies to the two gentlemen; both in person and in writing. I render my apologies to the Senate for mentioning those names because they were not personally represented in those meetings. As I said, they were represented by their representatives.

I thank you, Mr. Speaker, Sir.

(Applause)

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

The Speaker (Hon. Ethuro): But let me also make it very clear, Sen. (Dr.) Khalwale, so that we really do not take this matter beyond what it was intended to be.

There are two issues; you either substantiate or failure to do so, you apologize. I think the Senator has done one of the two. Our Standing Orders are very clear; the matter should rest there.

So, Sen. (Dr.) Khalwale, with that understanding, what is it?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, indeed, I am alive to that. But there is something which is worrying me and for which I would like you to guide the House. The Senator has just substantiated that senior officers in charge of security in the country did what they did.

Mr. Speaker, Sir, if you will bear with me, in 1972 in the United States of America (USA) exactly the same thing took place. In that case, President Richard Nixon and his close aides ordered harassment of political activists, political groups and political figures using the Federal Bureau of Investigations (FBI) the Criminal Investigations Agency (CIA) and the Internal Revenue Service (IRS). As a result of that parallel, Richard Nixon was impeached.

Mr. Speaker, Sir, in view of this seriousness, I would like you to consider that since we want to discourage our military from walking into the arena of politics, a Committee be formed so that people who have passed this information to the Opposition can enjoy the Witness Protection Act and on oath, give us the details, so that we get to know why, on a purely political issue, the Opposition is being harassed; activists are being harassed and the media is being gagged against the provisions of the Constitution.

(Applause)

The Speaker (Hon. Ethuro): Let me take the last intervention from Sen. Mutahi Kagwe in terms of a point of order. Let me say this: The way we are moving, it is very clear in my mind. I will not entertain more and will pronounce myself on this matter decisively.

Sen. Kagwe: Thank you, Mr. Speaker, Sir. I am, indeed, the person who raised this matter yesterday. First and foremost, I want to thank the Senator for Kisumu, Prof. Anyang'-Nyong'o for being a gentleman. He is not only a professor, but a professor and a gentleman. That is the spirit in which we can take the statement. I want to clarify one small thing.

As Sen. (Prof.) Anyang'-Nyong'o has rightly said, this meeting was called by the Media Council and not by the Security Council to discuss a matter that is of important to the nation. Sen. (Dr.) Khalwale has quoted 1970s in America. I want to say that I was in America when the Gulf War was declared. I am quite aware that the security apparatus in the States were also engaging the media to tell them that when there is an external threat, there has to be responsibility. That is why, despite the war in the Gulf, you would not find a picture of a dead American soldier in any of the American media stations or newspapers. This is pure nationalism and responsibility. There comes a time to engage all stakeholders when you have an external threat which is precisely what happened in this case.

I thank you and, once again, I want to thank Sen. (Prof.) Anyang'-Nyong'o.

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

The Speaker (Hon. Ethuro): Order, hon. Senators! It is in your own interest, Senators, that you hear me first. We have to be fair to each other. When Sen. Khalwale went on and on, I heard you urging him to proceed. When a contrary view has been elicited, you are now agitated for closure. Let me put it this way. One, both Sen. (Dr.) Khalwale and Sen. Mutahi Kagwe are out of order.

The Senate Minority Leader (Sen. Wetangula): No, Mr. Speaker, Sir, I do not think so.

The Speaker (Hon. Ethuro): Order, Sen. Wetangula! You are a Minority Leader and I would hate to do the needful. I can only say that Sen. Kagwe's response was uninvited. He had an interest because he is the one who had put a question to Sen. (Prof.) Anyang'-Nyong'o on whether he can substantiate.

The HANSARD is very clear on what the issue was. Senator Mutahi Kagwe asked Sen. (Prof.) Anyang'-Nyong'o to substantiate the assertion that the two gentlemen were present in a meeting. Sen. (Prof.) Anyang'-Nyong'o has come and clarified that position. They were not present at the meeting. He has tendered an apology and even gone further. An apology to the House would be sufficient enough. He has gone further and said that he will write to the two gentlemen. Now, do you wish to flog a dead horse? Even if it is dead, you may want to consider the words of the Attorney-General, lately, about who is a mortician and who is a surgeon. Let us leave that one that way. The only honourable thing to do is that when you fail to substantiate, you apologise and withdraw. That has been done. I will not entertain debate.

Sen. (Dr.) Khalwale, you are out of order because you are making reference to a point that we all know about President Richard Nixon. He actually ordered. Such an order was not given by the President of the Republic Kenya. You can see why I am saying it is safer that we leave it this way. Let us proceed, hon. Senators.

Let us go back to Sen. Sang's Bill.

MOTION

ADOPTION OF REPORT OF MEDIATION COMMITTEE ON THE COUNTY GOVERNMENTS (AMENDMENT) (NO.2) BILL (SENATE BILL NO.4 OF 2013)

THAT, the Senate approves the Report of the Mediation Committee on the County Governments (Amendment) No.2) Bill, (Senate Bills No.4 of 2013) laid on the Table of the Senate on Tuesday, 1st April, 2014.

(Sen. Sang on 9.7.2014)

(Resumption of Debate adjourned on 9.7.2014)

Sen. Muthama: Mr. Speaker, Sir, I want to ask my colleagues here that we go straight into voting. We are going through Ramadhan. Sen. Billow has already left. Sen.

Hassan also wants to leave. I am requesting that we go straight into voting. I will get two more Senators from outside and we will have the numbers.

The Speaker (Hon. Ethuro): That ruling was as a result of the mood of the House. The mood of the House has drastically changed.

Sen. Sang: Mr. Speaker, Sir, as the Mover of the Motion, looking at this House, we do not even have the numbers. You gave directions, earlier, that we continue with debate. My feeling is that we continue with debate, exhaust it and I will reply. As we have always done traditionally, the voting can be scheduled for tomorrow since we do not have the numbers. It would be dangerous for us to imagine that we can get two or three Senators from out there.

The Speaker (Hon. Ethuro): order Senators! Let us proceed with debate. If we get the requisite numbers, we still have up to 6.30 p.m. to conclude the matter. You can always petition the Chairperson to call for the vote. You know the requisite Standing Orders. So, if we will not have the numbers, we will proceed as we had decided earlier.

I plead with the Whips and the leadership; the Senate Majority Leader and the Senate Minority Leader that we must conclude this matter, at least, by tomorrow. This is our Bill. It has already gone through a mediation process. The National Assembly has already voted on it. It will not be kind to ourselves and to them if we appear to be the ones procrastinating on the Bill.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. I request that you direct this to be the first business of the day tomorrow knowing that on a Thursday many Members will want to go to their constituencies. We will vote on it and those who want to take the liberty to leave can leave.

The Speaker (Hon. Ethuro): I will direct so if you assure me by the commencement of business we will have the requisite numbers. So, do we have a deal? Let us proceed. Sen. Muthama, by the way, it is a directive. You do not need to respond to it.

Sen. Muthama: Mr. Speaker, Sir, it is just to make the Chair aware of what should be expected tomorrow. Thursdays have turned out to be the most difficult days to get Members in this House. We have even discussed this issue in the Rules and Business Committee. On Thursdays, we have been sending messages to Senators to request them to be in the Chamber in order to attend to the business of the day. So, tomorrow could be extremely difficult to raise the numbers. We can allow the debate to go on as we try to mobilize the Members. Once we raise enough Members, we will discontinue the debate and go straight to voting.

The Speaker (Hon. Ethuro): Sen. Muthama, until the words come from your mouth is when they make sense. I had said as much until your leader talked of tomorrow. I gave both options that you can actually continue debate. The moment you raise the requisite numbers, you can always call for the vote because the Standing Orders enable you. If you do not, there is a tomorrow. The only disclaimer I put was that by tomorrow, we must dispose of the matter.

Let us proceed now. Who wishes to contribute? Sen. Murkomen, for no other reason, but in particular for being compliant today.

Sen. Murkomen: Thank you, Mr. Speaker, Sir. First of all, I would like to appreciate the work done by Sen. Sang and the Mediation Committee in ensuring that this

Bill finally goes through the constitutional procedures that are required by our constitution. You can see the benefit and the fruit of the processes contemplated by the Constitution, particularly when we talk about processes.

(The amber light at the table was switched on)

Mr. Speaker, Sir, I am concerned that the amber light has been switched on and yet I still have 15 minutes.

An hon. Senator: No. You have ten minutes.

Sen. Murkomen: That order has not been given.

The Speaker (Hon. Ethuro): We had agreed five minutes. However, it is up to you, if you want us to increase the time.

Sen. Murkomen: Mr. Speaker, Sir, I thought that order was in regard to the initial issue. I do not want to argue with you.

The Speaker (Hon. Ethuro): The order that we did not pass was the three minutes, but the five minutes had been carried.

Sen. Murkomen: Let me begin now, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): We will allow you to begin now. You have five minutes.

Sen. Murkomen: Thank you, Mr. Speaker, Sir. I want to appreciate the work that has been done by the Mediation Committee. You can see that the Bill as initiated by this House has gone through various changes, including finally having a Bill that has removed the fora that were provided for in the ward and the constituency. This is the benefit of a bicameral legislature. The reason we have a bicameral legislature is to facilitate dialogue and consultation to the extent that, finally, you agree on something that both Houses think is good for the country. I want to appreciate the two Houses. I want also to appreciate the work that has been done by Sen. Sang and his team and the work that was done by Hon. Chepkonga and his team from the other House.

Mr. Speaker, Sir, I need to point out that I have never understood why we continue having quarrels about a Bill that should come to this House or the one that should go to the National Assembly. You can tell from this Bill that it is making the Bills better because there are better ideas that have been put in place. People have a second chance to review legislation. Therefore, I want to tell my brothers in the National Assembly that they should not fear the Senate of the Republic of Kenya. We are Kenyans who live in this county and we have the best interests of the nation at heart. The drafters of the Constitution believed that we, as the "Upper House", will play our role responsibly and continue to contribute to the betterment of our country. This message should also go to your counterpart in the National Assembly that there is benefit in working as a team and the benefit trickles down to the people of Kenya.

I want to dissuade those who have been imagining that the intention of Senators by participating in the County Development Board is anything, but to facilitate devolution. If you look at the functions of the Board which are actually captured by only four points, that it provides consultation and coordination between national Government and county governments on matters of development and projects. If you look at that consultation, you realize that in many counties, I have seen the allocation for CDF for

this financial year and it is a huge amount of money. If you calculate in Elgeyo-Marakwet County, you have about Kshs400 million going to CDF. About 98 per cent of that money goes to development. That means you have over Kshs350 million going for development in the county through the CDF.

If you do not have this consultation forum, how will you be able to know? The County Government itself has put in only Kshs700 million which is almost a half of the other amount. This amount of money combined, this is about Kshs1.2 million. It is more useful for the county that we sit down and agree that this road is being constructed using CDF, this project will be done by other devolved funds while this other project will be done by the county government. That consultation is important. Otherwise, we will have duplication and, in some cases, unfunded functions because of competition of who does this and the other.

Mr. Speaker, Sir, the other important point is to point out that looking at all these issues that are for development plans, the finance and the budgeting are all going to be put through the county assemblies, but the leadership of the county will feel like collective owners of development in the county. I want to inform the Council of Governors (CoGs) that none of us is interested in power. The Constitution does not talk about power. If you read Cap.6 of the Constitution, it talks about the responsibility given to us is to serve and not to lord it over the people of Kenya. So, any discussion out there about powers is missing the point because the emphasis of our new Constitution is service delivery. This is “servant-hood”.

Therefore, the objective of us coming together to discuss development of our county is so that we can be servants. Even the Senator has a Chair. I am not interested in any power. Chairing a meeting for about two hours four times a year which means eight hours in the whole year does not make you powerful. It just shows that you have sacrificed enough and are willing to assist in the coordination of functions of your county.

Lastly, Mr. Speaker, Sir, I was in a meeting with a certain Governor of a neighbouring county and he just literally misled the public. He told the public: We have come with this money to do this road; can you ask the Senator how much money he has come with?” That misleading information must not be allowed to pass. We must tell people that devolved funds are benefits of all the counties and every leader has a responsibility. Thank you.

I support.

Sen. (Dr.) Machage: Asante sana, Bw. Spika. Nikiunga Mswada huu, ningetaka kuwapongeza wale Maseneta watatu waliotuwaakilisha vizuri katika Kamati hii. Ningependa kuwapongeza kwa kazi nzuri waliotekeleza katika kikao hiki cha kuratibisha Mswada huu. Lengo la Mswada huu linadhihirika wazi wazi na haina haja tukumbushane kwa sababu tuliwahi kutoa maoni yetu kuhusu Mswada huu hapo mbeleni. Hata hivyo, Sen. Sang ambaye alipendekeza Mswada huu inafaa ajue kwamba siku huwa na alfajiri, adhuhuri na jioni. Siku njema huonekana asubuhi. Pia siasa nzuri huonekana mapema. Akiendelea hivyo, ninaona siku nzuri imeanza na imedhihirika kwa mawazo yake, katika siasa yake nzuri na mapendekezo yake yenye maana na hekima kwa Bunge hili.

Ninaamini ya kwamba Magavana watasoma Mswada huu na kuuelewa vizuri. Ni Mswada wa uwiano na kuleta watu pamoja. Unahimiza kukaa, kufikiria na kutekeleza

mapendekezo ya maendeleo mashinani vilivyo. Kulingana na desturi za Waafrika kikao kilicho na mzee kinatosha. Seneta ni mzee wa kaunti kulingana na Katiba yetu. Ni lazima apewe wajibu wake kuwa mwenyekiti wa kikao hiki na kutoa mashauri na si amri, kufuatana na mapendekezo ya viongozi wa mashinani, wakiwemo Wabunge.

Bw. Spika, pia ningependa kuwataatharisha kwamba mwisho wa Mswada huu unatoa hukumu kwa yeyote yule atakayefikiria kwamba anaweza kuhujumu kazi hii isitekelezwa kule mashinani.

Bw. Spika, naunga mkono.

Sen. Abdurahman: Thank you, Mr. Speaker, Sir, for allowing me to add my voice to this very important Bill.

Mr. Speaker, Sir, first of all, I want to appreciate the efforts that were made by Members of the Mediation Committee. I want to thank the Members from the Senate who have played their role effectively. I also want to note that the supremacy battles between the two Houses seem to be waning. It is important that we reduce those divisions, because it does not pay. It is important that both Houses agree for the interest of this nation on matters that affect our people.

Mr. Speaker, Sir, the passage of this Bill will go a long way in actually building consensus among the political leadership, irrespective of who performs an executive function and who performs a legislative function at the national level. It will also help in addressing the serious disparities in terms of development within counties. It will actually help put a stop to the fact that Governors can have unnecessary, unlimited and excessive powers which they think they can use at their whim in many counties. I get surprised by, for instance, what I saw on Sunday in both dailies; the paid advert on *The Standard* and *Daily Nation*. It was a shock and it only brought out how uninformed a number of these Governors are. If the CoGs can actually say that the Senate is usurping the powers of the Executive, it is very misleading to the Kenyans. This is because we do not intend to usurp their powers at all. We will actually be doing complementary roles.

Mr. Speaker, Sir, the one thing that they did not realize is that they are not starting afresh or anew. Development programmes in this country have been undertaken through institutions and frameworks such as the District Development Committees (DDC). The recent one was the District Steering Groups (DSGs), where we had members or departmental heads from various line Ministries and donor agencies. I will repeat and say that this is not in conflict with Section 54 of the County Governments Act. It is very misleading. In fact, that is a small forum that will have only brought together departmental heads. The flying visits that a number of our Governors do to our constituencies in the counties, in the name of collecting information and trying to say that they are going to help communities to identify projects, is not looking for development priorities. It is in a sense mischievous and actually helping communities not to realize their ultimate goals in terms of development.

Mr. Speaker, Sir, the other thing which the Governors and Kenyans must also know is that beyond development, these forums provide an opportunity for stakeholders to discuss challenges such as security, droughts and other emergencies in this country. So, it will be a forum that will look beyond the county funds. It will look at even the Constituencies Development Fund (CDF) and donor funds. Lately, a number of investors have shown interest in most of the counties. So, it is not really going to talk about monies

that have been voted for various counties alone. It is important for Kenyans who are listening to us this afternoon, to understand that devolution is a very huge concept. Unfortunately, the Governors think that when you speak about devolution, you are speaking about Governors. We are not speaking about them. When we speak about county governments, we are not speaking about Governors. They are only heads of small governments.

Mr. Speaker, Sir, when you speak about the national Government, the President sits comfortably where he is and he has actually delegated responsibility to Cabinet Secretaries and Principal Secretaries. He does not meddle in small jobs that have to be handled by people at the lower levels. Governors must take their rightful place, take charge and sober up. It is unfortunate that the people who are expected to deliver to our communities are so much engrossed in their personal and selfish greed. I will not shy off from saying this.

The Speaker (Hon. Ethuro): Senator, your time is up!

Sen. Abdirahman: Mr. Speaker, Sir, I beg to support.

Sen. Ndiema: Mr. Speaker, Sir, I want to join my colleagues in thanking Sen. Sang and the Mediation Committee for finally coming up with this Report, in which we now see light at the end of the tunnel.

Mr. Speaker, Sir, Article 1 of the Constitution says that all sovereign powers belongs to the people of Kenya and shall be exercised only in accordance with this Constitution. It goes further to say that it can be exercised through elected leaders. The Senators and Members of the National Assembly are elected leaders. By being involved in development matters in the constituencies, they are not trespassing. It is their duty. Since the Senate represents the counties, I wonder how Senators will represent the counties effectively if they have no forum with the leadership at the county level to discuss issues on which they can now effectively represent.

Mr. Speaker, Sir, the Constitution also talks about inclusivity and participation. The county government is not an exclusive place for the county assembly and the executive. The elected leaders at the national level also have a role to play. The County Development Board is a forum and does not, at the end of the day, make legal provisions that will supersede the role of the county assemblies. The county assemblies still have their power to make the final decisions.

Currently, in many counties, there are duplications. We know that in some counties they have funds allocated to wards and the CDF is there. There is no limit and there is duplication all through. This is not healthy. There is unhealthy competition that is going on and it is only fair that whenever disputes arise we sort them out. There is no organization whether we are talking about a cattle dip, a nursery school or even big private companies that can run without a board. When governors say that they want counties to run on their own without involvement of other leaders, we wonder how they will succeed. It is important that these boards be there. It will be good for the county government and the national Government.

Mr. Speaker, Sir, regarding the issue of nominated Members of this Senate, perhaps, one day we shall come back to it and look at it. It is good to consider including them as *ex officio*. I would personally feel comfortable to sit with my Senators and Members of National Assembly. Their jurisdiction should also be wide because they can

go to any county. If one is representing the youth like Sen. Kanainza, she can go to any county to articulate issues that concern the youth.

With those few remarks, I beg to support.

Sen. Kagwe: Mr. Speaker, Sir, I also rise to congratulate Sen. Sang. I also want to congratulate those who managed to mediate over this matter. Considering that the Committee on Finance, Commerce and Budget is also in the process of mediating with the National Assembly on the matter of Division of Revenue Bill, I think it is a good starting point.

Article 96(3) of the Constitution mandates Senators to oversight expenditure that has been given to them by the national Government. To me, this forum that has been created by Sen. Sang's Bill is a way of giving effect to Article 96(3) because even as governors oppose this position, there is nothing to stop a Senator from calling exactly the same forum in his role as an overseer in the county.

Mr. Speaker, Sir, therefore, all we are saying is that considering that this forum can be called at any time, all we are doing is giving it effect in law so that we are able to do so without any hindrances. Yesterday, we were informed that the National Assembly Members have been allocated some Kshs5 million through CDF for development of primary schools in various constituencies. At the same time, the county assemblies and county governors are also allocating money for primary schools. If we do not have this forum, at which forum will the Member of Parliament inform the governor or vice versa, which primary schools are using which money? It is not going to be possible.

This Bill should be looked at with the spirit in which it is meant. It is a forum to coordinate the activities so that the right hand knows what the left hand is doing within the constituency activities that will be going on at all times. This is in the interest of the governors. It beats me why anybody would oppose a forum like this that will give the governor a forum in which he can address these matters, say what his priorities are as far as development in the county is concerned, say what his challenges are, tell the Members of the National Assembly and the Senators, what challenges he can be assisted by the same Members. There is no other forum in which this can happen.

Mr. Speaker, Sir, all we are asking for is understanding and appreciation. Sometimes when you get help, blessings come in disguise. This is one of them where the governors are certainly getting support from the Senate in a manner that looks like a problem, but it is not. It is exactly what should be happening. There is an outcry right now about travel expenditure at the county legislative level. In which forum are we going to address the issue of these travels if we do not go to the counties and speak to our people informing them that such kind of expenditure is unacceptable? This is not something that should be opposed. This is something that the governors should be encouraging.

In addition to the money being given by CDF, there are also other grants from local sources and overseas which are used for development of various institutions.

(Loud consultations)

Mr. Speaker, Sir, I would appreciate it if Sen. Murkomen would give others a chance to contribute considering that he has finished his contribution.

With those few remarks, I beg to support.

Sen. Kivuti: On a point of order, Mr. Speaker, Sir. Considering that every speaker is supporting this Motion---

Hon. Senators: No! No!

The Speaker (Hon. Ethuro): Proceed, hon. Senator.

Sen. Kivuti: On a point of order, Mr. Speaker, Sir. Considering that every speaker is supporting this Motion, would I be in order to ask the Chair to request the Mover to respond?

The Speaker (Hon. Ethuro): Order, Senators! I, therefore, wish to put the Question under Standing Order No.98 – Closure of Debate.

That the Mover be now called upon to reply.

*(Question, that the mover be now called upon to reply,
put and agreed to)*

Sen. Sang: Mr. Speaker, Sir, I know I have 30 minutes to reply, allow me to donate a few minutes to the Members as we also finalize. I want to donate three minutes to Sen. (Prof.) Anyang'-Nyong'o, two minutes to Sen. Hassan, two minutes to Sen. Obure, one and a half minutes to my friend Sen. Wangari and one minute to the young people represented by Sen. Kanainza. The balance, I will distribute them later on.

The Speaker (Hon. Ethuro): Sen. Sang, you may wish to extend your generosity to Sen. Njoroge.

Sen. Sang: Mr. Speaker, Sir, I also donate one and a half minutes to Sen. Njoroge.

Since it is my time, I would request that you give the first priority to Sen. Wangari, then progressively to other Senators.

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

Sen. Wangari: Thank you, Mr. Speaker, Sir. I rise to oppose this mediated report and the Bill because you will remember that when it was first moved on this Floor, I was one of the strongest proponents of the Bill. But as it is, it leaves out the women of this country; it leaves the youth and it leaves out the people living with disabilities who are sitting in office, not by favour, but by constitutional right. Even the women representatives who were recommended to be deputies were thrown out.

(Applause)

Secondly, Mr. Speaker, Sir, the composition of the Mediation Committee only had men; that means we lost this battle from the beginning. But I hope that this will not be repeated and that next time, it is considered that these women are there by right. Even if it has to be a man, then we have men living with disabilities in this House; that the two Houses can include them not by favour or by privilege, but by right.

Mr. Speaker, Sir, I beg to oppose.

(Applause)

The Speaker (Hon. Ethuro): Sen. Hassan Omar.

Sen. Hassan: Thank you, Mr. Speaker, Sir. I rise to support this Bill and, at the same time, commend the Mediation Committee for coming up with this excellent undertaking. I think what we need to do is to devise methodologies through the provisions in this Bill that will allow us to invite our colleagues who are nominated so that they can participate in these forums.

Mr. Speaker, Sir, I wanted to share what Sen. Kagwe indicated, that this Bill actually strengthens the role of consultations in decision-making and actually provides that cover for Governors to be participative and inclusive in decision making. I do not see any fears that the Governors are trying to express that this Bill in any way usurps or encroaches on the roles of the Executive. Most of these Senators here are people with distinction and who will distinguish where their boundaries are and where the boundaries they must never cross are. I think, therefore, as we pass this Bill, most of us will take that personal responsibility to ensure that we stay the course and allow the Governors to do their job while we do our jobs as Senators.

Mr. Speaker, Sir, I beg to support.

The Speaker (Hon. Ethuro): Sen. (Prof.) Anyang'Nyong'o, you have three minutes.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, as a former Minister for Planning and National Development, I would like to strongly support this Motion and this Bill.

(Applause)

I support it because, one, it is going to allow us, as Senators, to ensure that not only do we supervise and co-ordinate planning and development at the county level, but it will also open up opportunities for cross-county collaboration. This is because there are a lot of development projects that can be better implemented if counties collaborate. For example, the Lake Basin counties, which are about nine, could do a lot of things together and enhance development if there is proper co-ordination and planning.

Secondly, Mr. Speaker, Sir, it is important that the office of the Chairman, although we say that we are only going to sit four times a year for two hours, in between, it is extremely important to plan for the meetings. So, I hope that the office of the Senator will be empowered properly to ensure that the co-ordination of this work in the county and the collaboration among counties is something that we take seriously so that what we do is not just in form but in content.

So, Mr. Speaker, Sir, this is an extremely important landmark in the history of this Senate and I hope that an issue like inclusivity, particularly of the nominated Members, is reasonably covered in that sub-article that has been referred to in Article 91(a)(m), which gives room for inviting *ex-officio* persons to participate in the meetings. I think it is upon the Chairman of these meetings to ensure that we reach out to those groups of people that Sen. Wangari has referred to, including our Nominated Members.

Finally, Mr. Speaker, Sir, I think it is important that this early excitement about devolution, which has led to some excessive expenditures at the county level on recurrent expenditure be really controlled by this Committee. I do not think that it has been

something that is done out of bad manners or anything else; but I think it is an element of excitement when something begins. Once we begin planning and co-ordinating development properly, people will see the importance of having priorities and the importance of using the scarce resources that we have at the county level for effective development of the counties. So, I think that, finally, we have a forum at the county level to bring these issues together and make us work with the Governors. In any case, they are the Executive wing of the county and all we shall be doing---

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

What is it, Sen. Muthama?

Sen. Muthama: Mr. Speaker, Sir, if I may remind the Chair, your ruling and directive is that as soon as we have the numbers, we go straight to voting.

(Sen. Wetangula spoke off record)

It is not up to the Mover of the Bill to decide on the business of the House but the Chair.

(Laughter)

Mr. Speaker, Sir, Sen. Hassan, Sen. Abdirahman and others here want to break for Ramadhan, and we have to respect that. Let us go into voting.

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Senators! Order! Order, Sen. Muthama! Let me clarify to you. The Speaker directs, but my directive to the extent of the closure of the debate. The requisite Standing Order was invoked and the Mover has decided not only to exhaust the time allowed to him, but also to extend his generosity to other Senators. Sen. Muthama, I think you cannot find offense in an act of generosity. So, I think we need to persuade the Senators concerned just to indulge the House for the few minutes remaining, because the time has already started running out.

Proceed, Sen. Chris Obure.

Sen. Obure: Thank you very much, Mr. Speaker, Sir. I want to thank Sen. Sang for his generosity. I want to thank him also for the initiative, first of all, to bring this very important Bill and for participating in this mediation effort.

Secondly, Mr. Speaker, Sir, I want to try and allay the fears of Sen. Wangari, first, by informing her that the elected Women Representatives are actually Members of this Board. In addition, Senators who will be chairing these meetings will ensure that your interests are taken on board.

(Applause)

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

Sen. Njoroge: Mr. Speaker, Sir, is it in order for the Senator from Kisii to refer to women representatives at the ward as representing women in this board when for sure

they come from the National Assembly? We are also referring to the Senate and also the county assemblies. Is he in order?

Sen. Obure: Mr. Speaker, Sir, I was just trying to allay the fears by informing Sen. Wangari that the situation is not as bad as she thinks, because Members of County Assembly (MCAs) who are women will be Members of this forum.

Mr. Speaker, Sir, devolution is a new concept in this country---

An hon. Senator: On a point of information, Mr. Speaker, Sir.

Sen. Obure: No, please; I have only two minutes.

(Laughter)

An hon. Senator: Your time will be saved.

Sen. Obure: If my time will be saved, that is fine.

The Speaker (Hon. Ethuro): Order, Senators! We are not saving any time!

(Laughter)

Sen. Obure: Okay. Devolution is a new concept and a new phenomenon and in the initial period of implementation, we expect problems. Even as we go along, we expect new challenges to emerge and it is up to this Senate to respond. In this case, we are responding through this Bill by creating new forums and new structures to ensure that we address the challenges that emerge.

The Speaker (Hon. Ethuro): Order, Senator; your time is up!

Proceed, Sen. Njoroge.

Sen. Njoroge: Bw. Spika, ningependa kukushukuru kwa kunipa nafasi hii. Kwanza, ningependa kuipinga Hoja hii. Licha ya mjadala huu kuwa mzuri, kuweka kando walemavu ambao walichaguliwa kwenye kaunti ni dhuluma na ubaguzi wa hali ya juu. Bodi hii itakapokuwa inakaa, walemavu watakuwa wakiwakilishwa na kina nani? Hii ni bodi ya kaunti ambayo itakuwa ikijihusisha na mambo ya maendeleo. Ikiwa katiba ilipiganiwa na ikapita na tukapewa nafasi hizi, sielewi kwa nini Seneti na *National Assembly* zilifikiria kutunyima nafasi hizo. Ingekuwa afadhali kama tungewaweka walemavu katika Bodi hiyo badala ya kuwaacha nje.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Is the Nominated Senator, Sen. Njoroge, in order to mislead the country that in this Bill, the disabled have been locked out when it is clear that in part "m" that "the head of a department of the national Government, county government or any other person is invited?"

Forever, the disabled will be invited to the Committee meetings, as and when they apply to say that they want to attend.

Sen. Njoroge: Bw. Spika, alichosema ni jambo la kutia kidonda chumvi. Kusema mlevu atawakilishwa. Akishawakilishwa---

Sen. Mutula Kilonzo Jnr.: Thank you Mr. Speaker, Sir. I rise to support this Motion on two accounts. First, this is one of these things that we need in this country for purposes of transparency. We will help the public to understand that the idea of devolution is not just about when governors are coming to Senate to ask for money.

This is a symbiotic relationship between the Senate and the counties which is two-way. They should not just be coming to us when they need money. When they go back to the counties, they tell the public that Senators have nothing to do, have no money and they have nothing to do at the counties.

There are instances where trees have been planted and they have been referred to as “governor’s trees.” I would like to stop there because I participated in the debate and in a great deal in the drafting and the public hearings of this.

I support.

Sen. Kanainza: Thank you, Mr. Speaker, Sir. The Mediation Committee has done its part. It is very important for us to have a board that will be in charge of development.

I rise to strongly oppose this Report by the Mediation Committee. Sen. Khalwale talked about part “m” and said that some people will be attending the Board meetings on invitation. That is not right. The reason for this is that the young people of this country are not an “AOB.” We are part of the systems and our issues in terms of development must be captured. We will not leave it to some people to decide what the young people of this nation are supposed to get.

Sen. Elachi: Mr. Speaker, Sir, first, I want to thank the Mediation Committee. I want to say this. In terms of affirmative action, we have come from very far. I plead with all our Members to move in a direction where we can lobby and see things work.

We want to thank the National Assembly for what they have done. Most of us who have gone through the lobbying to ensure that the Bill goes through know that we have a long way to go. For the sake of women, we will have an amendment later. So, I plead that we pass the Bill. I will also ask the Senators to ensure that whenever there is a meeting and someone wants to attend, that you allow them to be there and take part in the discussions.

The Speaker (Hon. Ethuro): Finally, let us have Sen. Sang. Do it in three minutes.

Sen. Sang: Mr. Speaker, Sir, I do not intend to use more than three minutes. However, I must appreciate the contribution and the lobbying that Members of this House have done. We know the challenges we have had with the National Assembly were great in terms of the other Bills we have had. However, I know that most Senators have taken their time to talk to Members of the National Assembly from their counties.

Mr. Speaker, Sir, I want to single you out. On several occasions, on national television and several programmes, you have been very vocal and have taken it personally to talk to your counterparts at the National Assembly.

I want to appreciate the collective responsibility that this House has shown in ensuring that this Bill succeeds. I note the concern raised by the Nominated Senators and Nominated Members of the National Assembly. I want to agree with them. Sen. Khalwale talked about Section “m” that gives the Chairman of the Board an opportunity to invite. We agreed that Nominated Senators and Members of the National Assembly will be invited as *ex-officio* Members. So, we did not lock out anybody. This was in the spirit of give and take. We negotiated and agreed.

The Chairman of the Mediation Committee, Sen. Amos Wako, the Attorney-General *Emeritus* is not here. However, he did a lot of work in negotiating with Members

of the National Assembly. We used his expertise as a certified arbitrator. We worked together jointly. I want to thank him, in absentia, for a job well done.

With those remarks, I beg to reply.

The Speaker (Hon. Ethuro): I order that the Division Bell to be rung for 30 seconds. Hon. Senators, take this opportunity to inform us if you have been delegated to vote. Let us know so that we activate your card. Make sure your cards are not malfunctioning.

(The Division Bell was rung)

DIVISION

ELECTRONIC VOTING

(Question put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County, Sen. Murungi, Meru County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Njoroge, Nakuru County; Sen. Ntutu, Narok County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

NOES: Nil

The Speaker (Hon. Ethuro): Order, Senators! The results of the Division are as follows:-

AYES: 24

NOES: Nil

ABSTENTIONS: Nil.

So, the "Ayes" have it.

(Question carried by 24 votes to nil)

Draw the Bar and open the door.

(The Bar was drawn and the door opened)

Order, Senators! I notice that we have about ten minutes to the end of time. I want to appreciate the good work that you have done this afternoon. So, I will reward you by giving you that remaining balance. So, we will end our business now and push the rest of the business to tomorrow.

As I said yesterday, we have a *Kamukunji* slated for tomorrow morning at 10.00 a.m., in this Chamber. It is extremely important for all Members to attend. So, you need to go and prepare for that.

ADJOURNMENT

The Speaker (Hon. Ethuro): Order, Senators! It is now time to adjourn the sitting of the House. The Senate stands adjourned until tomorrow, Thursday, 10th July, 2014, at 2.30 p.m.

The House rose at 6.20 p.m.