

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Thursday, 27<sup>th</sup> November, 2014

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

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

#### PRAYERS

#### PETITION

#### FREEZING OF MAKUENI COUNTY ASSEMBLY'S BANK ACCOUNTS

**The Speaker** (Hon. Ethuro): Hon. Senators, I have a Petition made to the Senate by the Members of the Makueni County Assembly. The Petition is as follows:-

We, the undersigned citizens of the Republic of Kenya, residents of Makueni County and Members of the County Assembly (MCAs) of Makueni draw the attention of the Senate to the following:-

(1) THAT, there has been a continuous financial frustration of the Makueni County Assembly by the County Executive that have brought operational risks due to the insufficient and unpredictable flow of funds necessary to run the Assembly to perform its constitutional mandate.

(2) THAT, the County Assembly is forced on numerous occasions to beg to the County Executive to submit its requisition for funds to the Controller of Budget as the Controller of Budget does not recognise direct requisition of funds from the County Assembly. This has greatly affected operational autonomy of the County Assembly.

(3) THAT, on anticipating that the Appropriations Bill, 2014 would not be passed on time, that is by 30<sup>th</sup> June, 2014, the County Assembly passed the Vote on Account as required by Section 134 of the Public Finance Management Act, 2014.

(4) THAT, the County Assembly received an Appropriations Bill, 2014 from the County Executive Committee Member for Finance on 25<sup>th</sup> July, 2014 and proceeded to pass it and submitted the same to the Governor for assent.

(5) THAT, on 12<sup>th</sup> November, 2014, the Clerk of the Makueni County Assembly received a letter from the Executive Committee Member for Finance indicating that he had directed the Assembly's Bank to freeze the Makueni County Assembly bank accounts. The grounds stated were that the Assembly had exceeded its budgetary allocation for foreign travel and that the Assembly had not given its books of accounts to the Executive Committee Member for Finance for inspection.

(6) THAT, the Assembly Clerk wrote to the Executive Committee Member for Finance explaining that they had not exceeded their budget for foreign travel and that the books of accounts of the County Assembly are not supposed to be inspected by the Executive Committee Member for Finance, but by the Auditor-General and the same has been done.

(7) THAT, the County Assembly of Makueni has installed an IFMIS system for financial management and opened an operational account at the Central Bank of Kenya (CBK) to try to gain financial autonomy, but the two are not operational due to limitations of the Public Finance Management Act and have, therefore, to depend on the County Executive for the above services.

(8) THAT, although Article 176 establishes the County Assembly as an arm of the County Government and Article 185 provides that the two arms should respect the principle of separation of powers, the independence of Makueni County Assembly and all other county assemblies in Kenya is, indeed, threatened and the oversight role cannot be performed effectively because of lack of financial autonomy.

(9) THAT, Makueni County Assembly, like all county assemblies in Kenya, therefore, operate under the mercies of the County Executive on issues of finances thus compromising their ability to discharge their mandate.

(10) THAT, given the separation of powers between the Executive and the Assembly, the Assembly is supposed to oversight the Executive and it is accountable to the Auditor-General's office and the Office of the Controller of Budget.

(11) THAT, we have tried to the best of our ability to have this matter conclusively addressed by the relevant authorities among them the Cabinet Secretary, National Treasury, the Controller of Budget and the Transition Authority, but our efforts have not yielded results.

(12) THAT, save for the matters under paragraphs (6) and (7), which are before the court for interpretation of the law regarding the legality of the action by the Executive Committee Member for Finance to freeze the Assembly bank accounts, none of the other issues in this Petition are pending before any court of law.

WHEREFORE, your humble petitioners pray that the Senate:-

(1) Intervenes and calls upon the Cabinet Secretary for the National Treasury to:-

(a) Urgently ensure that the county assemblies in Kenya should have their own independent financial systems.

(b) Take measures to ensure that funds of county assemblies are wired directly to independent county assembly bank accounts and not through the County Treasury.

(2) Amend Section 119 of the Public Finance Management Act by:-

(a) Introducing a new sub-clause (1)(a) to read thus:-

(b) The County Assembly Service Board established Section 12 of the County Governments Act shall be responsible for opening and operating of bank accounts of the County Assembly.

(c) Amend Section 109(4)(a) of the Public Finance Management Act to allow county assemblies to operate their own Central Bank account or any other bank account separate from that of the Executive under the Executive Committee Member for Finance.

(d) Amend Section 109(4)(b) to vest in the Clerk of the County Assembly the authority to authorize money to be paid from the above created independent bank account.

Amend Section 109(5) and (6) for the Clerk of the county assembly to limit any chance of overdrawing the County Assembly accounts and the Clerk of the Assembly to obtain written approval of the Controller of Budget before withdrawing money from the created independent county assembly account.

The Petition is signed by:-

1. Hon. Francis Mutuku
2. Hon. Cosmas Kaleli
3. Hon Sammy Maseka
4. Hon. John. M. Kilonzo
5. Hon. Mwenga Mwangangi
6. Hon. Schola M. Raymond
7. Hon. Cosmas Nzilili
8. Hon. Peninah Musyoka
9. Hon. Elizabeth Muasya
10. Hon. Stephen Masaku
11. Hon. Jackson Ngovi
12. Hon. Paul Malinda
13. Hon. Julius Mwalali
14. Hon. Jonathan Ndungi
15. Hon. Francis Mutungi

Hon. Senators, since there are no interventions, I will commit the Petition to the Standing Committee on Finance, Commerce and Budget.

Next Order.

## STATEMENTS

### INVASION OF ELEPHANTS IN MAKUENI COUNTY

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I rise to seek a Statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget regarding the invasion of elephants in Makueni County. In the Statement, the Chairperson should state the following:-

(1) How many Kenya Wildlife Service (KWS) officers/rangers have been deployed in Makueni County?

(2) How many KWS vehicles are available for patrol and response during emergencies of wildlife invasions?

(3) The reasons there are no KWS offices anywhere along the Nairobi-Mombasa Highway for quick response to emergencies when under wild animal invasion.

(4) The reasons compensation of people killed, injured and crops destroyed takes too long.

(5) The measures the KWS is taking to ensure that elephants and other wild animals crossing in inhabited areas is stopped and/or curbed.

(6) State whether the Cabinet Secretary in charge of East Affairs, Commerce and Tourism has caused to be set up of the County Wildlife Conservation and Compensation Committee under Section 18 of the Wildlife, Conservation and Management Act, 2013, and the Chairperson thereof?

**The Speaker** (Hon. Ethuro): Is the Chairperson of the Committee here?

**Sen. Billow:** Mr. Speaker, Sir, this is a very important Statement that the hon. Senator has requested. I seek your guidance because we are only here for next week. It is highly unlikely that within the next week, we will be able to get the answer. However, we will by Thursday try to see if we can get a response from the KWS and communicate to the House in the last day of the session.

**The Speaker** (Hon. Ethuro): Okay, let us have the Statement on Thursday, next week.

Sen. Musila.

INTENDED ALLOCATION OF LAND AT  
KANYANYOONI IN KITUI COUNTY

**Sen. Musila:** Mr. Speaker, Sir, I stand on a point of order. On 24<sup>th</sup> July, 2014, I requested for a Statement in connection with land in Kitui. This is 400 acres which was grabbed by the National Security Intelligence (NSI), a Government agency. You ordered the Committee on Lands and Natural Resources to look into the matter. In August, the Senate went on recess. However, on 2<sup>nd</sup> October, 2014, the Governor of Kitui County and myself appeared before the Committee to give evidence on that matter that we had complained about. So far, the Committee has not reported to this House on their findings.

Last week on Tuesday, I raised the matter and two Members of the Committee, Sen. Khaniri and Sen. Obure, promised the Chair that this Thursday, that is today, they would bring a comprehensive report. I have been looking around, I do not see any of them nor do I see the Chairperson of the Committee. This is a serious matter. Our community land is being taken by a Government agency. We were asking for assurance that during the period that investigations were going on, our land would remain intact. However, we are seeing activities on the land, giving an impression that nothing is happening on the side of the Committee and that our land is likely to be taken while we sit here and wait. May I request that you prevail on this Committee to give us a report, possibly on Tuesday, so that we are able to know what is happening? This is a long time, from July till now waiting to get directions of the Committee.

**The Speaker** (Hon. Ethuro): Any Member of the Committee to respond to this?

**Sen. Ndiema:** Mr. Speaker, Sir, I am aware that this issue is pending. In fact, we stopped any further transactions on that land until we get the final answer. I promise that by Tuesday we should be able to give an answer.

**The Speaker** (Hon. Ethuro): Let us have the answer on Tuesday, next week. Impress upon the Committee to see the sense of urgency the Member has just expressed.

**Sen. Leshore:** Thank you, Mr. Speaker, Sir, for giving me this chance. I just want to inform Sen. Mutula Kilonzo Jnr. that elephants are a blessing. If he does not want those elephants in Makueni County, he should take them to Turkana where you have opened nine conservancies or bring them to my county where I have more than ten conservancies.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order, Sen. Leshore! That Statement was not addressed to you. Secondly, you are also misrepresenting the issues being raised. I do not think the Senator for Makueni County for a moment said that the elephants are not wanted. He just wants the elephants to be managed.

#### STATUS OF BADASA DAM IN MARSABIT COUNTY

**Sen. Hargura:** Mr. Speaker, Sir, I would like to request for a Statement from the Chairperson of the Standing Committee on Land and Natural Resources concerning the incomplete Badasa Dam in Marsabit County which started in 2009. In the Statement, the Chairperson should address the following issues concerning the Badasa Dam:-

(1) What is the implementation status of the project?

(2) What was the contract sum of the project? How much has been paid to date? Whether there is any outstanding claim by the contractor and if so, how much?

(3) What is the cost of the stalling of the project and when will it be completed?

**The Speaker** (Hon. Ethuro): Chairperson of the Committee?

**Sen. Ndiema:** Mr. Speaker, Sir, we shall respond in two weeks.

**The Speaker** (Hon. Ethuro): Okay, we get the answer in two weeks' time.

**Sen. Hargura:** Mr. Speaker, Sir, we only have one week to go. Two weeks will be during the recess.

**The Speaker** (Hon. Ethuro): There are many ways of responding. It is not the fault of the Committee that you brought the Statement one week to go. Two weeks is usually the standard period in which any matter can be interrogated. Just bear with us on that one.

**Sen. Hargura:** Mr. Speaker, Sir, I have another request for a Statement.

**The Speaker** (Hon. Ethuro): Okay, you may proceed.

#### STATUS OF THE LAKE TURKANA WIND POWER PROJECT

**Sen. Hargura:** Mr. Speaker, Sir, I wish to seek a Statement from the Chairperson of the Standing Committee on Energy concerning the Lake Turkana Wind Power Project which is in Marsabit County and has been publicized as the single largest clean energy project in Africa expected to generate 300 megawatts. In view of its magnitude and the fact that all the power produced will be purchased and distributed by the Kenya Power(KP), in the Statement, I would like the Chairperson to:-

(1) Explain why the World Bank declined to provide partial risk guarantee for the project?

(2) Table the power purchase agreement documents between the Lake Turkana Wind Power Limited and the Government of Kenya.

(3) Table the letter of comfort issued by the Government of Kenya to Lake Turkana Wind Power Project.

**The Speaker** (Hon. Ethuro): Is there Chairperson here? Any Member of the Committee present? Senate Majority, can you comment on the Statement on Lake Turkana Wind Power Project.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, unfortunately, I do not seem to be aware of that Statement. Maybe it was requested while I was not in.

**Hon. Senators:** It is a new one.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I have not had the benefit of listening to the nature of the question, but given that we are here up to 4<sup>th</sup> December, 2014, I will make every endeavour through the relevant Chairperson and facilitate an answer by Thursday, next week.

**Sen. Hargura:** Mr. Speaker, Sir, next week is okay because I am just asking for existing documents, but not any other further information.

**The Speaker** (Hon. Ethuro): Senate Majority Leader, you may now issue your Statement.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 2<sup>ND</sup> DECEMBER, 2014

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I will be brief.

I rise under Standing Order No.45 to issue a Statement on the business of the Senate for next week, the week commencing 2<sup>nd</sup> December, 2014.

On Tuesday, as usual, we will have our Rules and Business Committee (RBC) at 12 noon. Subject to that meeting and its directions, the Senate will continue with the business that will not be exhausted in today's Order Paper.

On Wednesday, we will continue with business that will not be concluded on Tuesday and consider any other business that will be scheduled by the RBC. This includes the following Motions:

Resumption of Debate on the Motion by Sen. Billow on Legislative and other Measures to Deal With Terrorism and Other Criminal Activities in the Country; Motion by the Chairperson of the *Ad hoc* Committee on Adoption of a Report on Legislation on *Harambees*; Motion by the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries on the Status of Food Security in Baringo County; Motion by Sen. Daniel Karaba on Development of Policy Guidelines on Accreditation of Institutions of Higher Learning; Motion by Sen. Joy Gwendu on Construction of Wheelchair Accessible Foot Bridges on Major County Roads and, Motion by Sen. Mutula Kilonzo Jnr. on Initiation of Legislation to Provide for the Establishment of an Independent Commission to Enquire into the Boundaries of Counties.

Mr. Speaker, Sir, Hon. Senators, on Thursday 4<sup>th</sup> December, 2014, the Senate will continue with the business not concluded on Tuesday and Wednesday. In particular, we will debate Bills that are at Second Reading and Committee Stages and any other business scheduled by the RBC.

I take this opportunity to remind Senators that in accordance with our calendar, the Senate is scheduled to proceed on Christmas and New Year recess on Thursday, 4<sup>th</sup> December, 2014. In that connection, I will restrain myself from wishing people a happy Christmas because that would be premature. However, I emphasise the need for us to attend next week's sessions, especially considering we have a number of Bills which we

must pass before we break for recess on 4<sup>th</sup> December, 2014. It will be good that we conclude the business that we have generated this year so that we end the year in style.

There are also a few other Bills that have come from the “lower House” which we must also discuss and dispense with before we break for recess. I cannot over-emphasise this enough. Please, Hon. Senators, let us attend Tuesday, Wednesday and Thursday sessions. After that, we will be on our recess and we can connect with whatever other businesses in our counties and elsewhere, that may be of importance before we break for Christmas.

With those remarks, I thank everybody and I, hereby, lay this Statement on the Table of the Senate.

*(The Senate Majority Leader laid the document on the Table)*

*(Applause)*

**The Speaker** (Hon. Ethuro): Order, Senators! I just want to reiterate what the Senate Majority Leader has said about participation next week. I cannot really over-emphasise what he has said. We have a lot of business which would be important to dispense with before you go on recess.

Thank you.

GOVERNMENT ACTION ON IMPENDING  
FOOD SHORTAGE IN THE NORTH RIFT

**Sen. Melly:** Mr. Speaker, Sir, two weeks ago I sought a Statement from the Chairperson of the Committee on Agriculture, Livestock and Fisheries, regarding the opening of the National Cereals and Produce Board (NCPB) silos across the country. It is due today, but I have not seen it in the Order Paper. It was an urgent issue and we all agreed that it did not only affect my county, but the rest of the counties in the country.

**The Speaker** (Hon. Ethuro): Where is the Chairperson of the Committee on Agriculture, Livestock and Fisheries or the Vice Chairperson?

**Sen. Ndiema:** Mr. Speaker, Sir, we are still waiting for the report from the Ministry of Agriculture, Livestock and Fisheries. This is really a matter of concern even to me. We have written severally to the Ministry and they have been promising a response. Unfortunately, to date, they have not responded and yet farmers continue to suffer because of lack of market for their maize. So, we will continue pursuing and we may even have to summon them.

**The Speaker** (Hon. Ethuro): Summoning should not just be an option at this rate. This is quite an important matter. You may actually wish to consider doing so next week so that we get an answer, at least, before we go on recess.

**Sen. Ndiema:** Mr. Speaker, Sir, we shall comply.

FLAWED KENYA DEFENCE FORCES RECRUITMENT  
IN NYANDARUA-WEST SUB-COUNTY

**Sen. (Eng) Muriuki:** Mr. Speaker, Sir, I requested for a Statement to what was very urgent about two weeks back, regarding the fraud of Kenya Defence Forces (KDF) recruitment in Nyandarua-West Sub-County. I am still waiting for that answer.

**The Speaker** (Hon. Ethuro): Where is the Chairperson, Vice Chairperson or Member of the National Security and Foreign Relations Committee? Yes, Senate Majority Leader. This is on Sen. (Eng.) Muriuki's Statement on the KDF recruitment on his County?

**The Senate Majority Leader** (Sen. (Prof) Kindiki): Mr. Speaker, Sir, I am sorry. I was consulting Sen. No.1. However, if it is a fresh Statement, I can still---

**The Speaker** (Hon. Ethuro): It is a follow-up.

**The Senate Majority Leader** (Sen. (Prof) Kindiki): The Chairperson of the Committee on National Security and Foreign Relations was here just now, but he has left. However, I can undertake to inform him today so that by Tuesday, he can respond to that question. I will inform him today.

**The Speaker** (Hon. Ethuro): Senate Majority Leader, there is even a more fundamental issue. When Sen. (Eng.) Muriuki requested for this Statement on Tuesday the other week, the Chairperson expressed concern that she was not getting support from the responsible officers. That is a more fundamental matter that you need to address.

Maybe before you do so, Senate Majority Leader, I can see some interventions from Members. After that, you can respond comprehensively.

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, much as the Senate Majority Leader will, perhaps, undertake to intervene where he can, nonetheless, would I be in order to suggest or request the Chair to order that this questions or requests for Statements which are pending appear in the Order Paper, so that the responsible Chairpersons of Committees are kept reminded that they are still pending?

**The Speaker** (Hon. Ethuro): It is so ordered. All pending Statements should appear on the Order Paper.

**The Senate Majority Leader** (Sen. (Prof) Kindiki): Mr. Speaker, Sir, further to what I have said, let me also say that I will retrieve that question personally, talk to the Chairperson and between the Chairperson and myself, we will talk to the Chief of Kenya Defence Forces and the Principal Secretary (PS). I assure this House that we should have an answer through the Chairperson on Tuesday, next week.

CRITERIA USED FOR SELECTION OF CONSTITUENCIES FOR  
CONSTRUCTION OF TECHNICAL TRAINING INSTITUTES

**Sen. Kittony:** Mr. Speaker, Sir, I rise on a point of order to find out about a Statement that I had sought from the Chairperson of the Standing Committee on Education, Science and Technology. I was promised the answer on Tuesday, but I have been waiting. However, up to now, there is no answer.

**The Speaker** (Hon. Ethuro): You are waiting from who?

**Sen. Kittony:** The Chairperson of the Standing Committee on Education.



**The Speaker** (Hon. Ethuro): Is Sen. Karaba here? Is there any Member of the Committee here? What is the status of that Statement?

**Sen. Kittony**: They promised to bring the answer on Tuesday.

**The Speaker** (Hon. Ethuro): Which Tuesday?

**Sen. Kittony**: Tuesday last week. I have been waiting every day.

**The Speaker** (Hon. Ethuro): Sen. Mutula Kilonzo Jnr.; are you a Member of the Committee?

**Sen. Mutula Kilonzo Jnr.**: I am not, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): I saw you gesturing in a manner to suggest so.

**Sen. Mutula Kilonzo Jnr.**: Mr. Speaker, Sir, we were trying to assist the House by looking for Members. We thought that Sen. Lesuuda is a Member, but we have corrected that impression.

**The Speaker** (Hon. Ethuro): Yes, the Senate Majority Leader.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): I will convey that to Sen. Karaba, the Chairperson for the Standing Committee on Education, Science. Sen. Kittony has made this request today and I want to request that we respond on Thursday, next week.

**The Speaker** (Hon. Ethuro): The Senate Majority Leader, this is a follow up. She had been promised the response on Tuesday, but today, is Thursday. You can take it to Tuesday, next week, because it is not a new one. For any outstanding Statement, the Clerks-at-the-Table are directed to make sure they all appear.

Next Order.

## COMMITTEE OF THE WHOLE

*(Order for the Committee read)*

**The Speaker** (Hon. Ethuro): Hon. Senators, we need sufficient voting numbers for that. So we will defer that Order and move on to the next Order.

THE GOVERNMENT PROCEEDINGS (AMENDMENT)  
BILL, (SENATE BILL NO.10 OF 2014)

*(Committee of the Whole deferred)*

*Second Reading*

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS)  
NO.2 BILL (NATIONAL ASSEMBLY BILL NO.33 OF 2013)

**The Speaker** (Hon. Ethuro): Before I call upon the Senate Majority Leader, Sen. Ndiema had a report to table.

## PAPER LAID

REPORT ON FERTILIZER AND ANIMAL FOODSTUFFS

(AMENDMENT) BILL, 2013

**Sen. Ndiema:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table:-  
Report on Fertilizer and Animal Foodstuffs (Amendment) Bill, 2013

*(Sen. Ndiema laid the document on the Table)*

*Second Reading*

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS)  
NO.2 BILL (NATIONAL ASSEMBLY BILL NO.33 OF 2013)

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to move that the Statute Law (Miscellaneous Amendments) Bill, No.2 of 2013 (National Assembly Bill No.33 of 2013 be read a Second Time.

Mr. Speaker, Sir, this Miscellaneous Amendments Bill is quite short yet it makes amendments that are critical to devolution. As I move the Second Reading of this Bill, I hope that this will be a good opportunity for the hon. Senators to look at the issues that the proposed amendments raise with a view to adding value and bringing out some of the underlying implications on devolution. This is a Bill that has come to this House from the National Assembly in accordance with the Constitution. This Bill amends, in a minor way, about six Acts of Parliament. It amends the Land Adjudication Act, Cap.284 of the Laws of Kenya, the Urban Areas and Cities Act, 2011, the Transition to Devolved Government Act, 2012, the County Governments Act, 2012, the Agriculture, Fisheries and Food Authority Act, 2013, the Kenya Agricultural and Livestock Research Act, 2013 and the Crops Act, 2013.

Mr. Speaker, Sir, basically, this Bill is connected with those seven legislations which I have highlighted. With regard to the Land Adjudication Act, this Bill does three things: First, it makes an amendment to recognise the movement from the terminology of trust land to the terminology of community land. As you know, before the advent of the Constitution of Kenya - we keep on calling it "the new Constitution," but I think it is now old. There used to be a regime of law among the various land related laws which used to be called the Trust Land Act, Cap.288. This Trust Land Act covered or provided the legal provisions relating to the management, control, disposal and dealing with land that belongs to the public, but under the trusteeship and the custodianship of the former local authorities. When the Constitution of 2010 came into being, land was reclassified into three categories, namely, public land, private land and community land.

Mr. Speaker, Sir, under the new Constitution, Article 63, refers to land which was formerly known as trust land which was formerly vested in local authorities or county councils. Under the current Constitution and the current land laws, trust land is vested in county governments. Therefore, in a nutshell, this Miscellaneous Amendments Bill proposes to amend Cap. 284 to be in line with the constitutional regime of community land as opposed to trust land which term has been abandoned by virtue of the new Constitution.

Mr. Speaker, Sir, secondly, very simple amendment, just to replace the word "Minister" in that Act with "Cabinet Secretary," and finally, replacing the term "County

Council or Local Authority with the term “County Government.” Those are very simple amendments. However, they are useful to accord Cap.284 with the Constitution and the new land legislation that is operational. Hon. Members know that in 2012, all the previous land laws were consolidated into new land legislation.

Mr. Speaker, Sir, the other legislation which is amended by this Miscellaneous Amendments Bill is the Urban Areas and Cities Act of 2011. This Act is amended in three main ways: First, it is amended to adjust the population criteria for conferment of city, municipality and town status. Under the current Urban Areas and Cities Act, in terms of population, you require 500,000 people as a qualification for conferment to city status. For municipalities, the corresponding figure is 250, 000 people. For towns, it is 10,000 people. What these amendments are seeking to provide is to reduce those numbers so that in the case of city status, to reduce from 500,000 to 250,000 people. With regard to municipalities, the Bill seeks to reduce the number from 250,000 to not less than 70,000 and not more than 249,000 people. Finally, for a town status is to reduce from 10,000 to 2,000 people.

Mr. Speaker, Sir, secondly, on this Urban Areas and Cities Act of 2011, it is proposed through this Bill to amend the Act to empower a county governor to confer a status of special municipality to the headquarters of a county. In many counties, the headquarters of a county is a city. In some counties, going by this definition, the headquarters of a county is a municipality. However, in some counties, including Tharaka Nithi, Nyandarua and Laikipia, where Senator No.1 represents, the headquarters are in some place which may not meet this criterion of population and other factors that are required by the Cities and Urban Areas Act to qualify as a municipality. Therefore, what this Bill tries to do is to ensure that as soon as an urban area has been declared a county headquarters that should empower the county government or the county governor in particular, to designate such an area as a special municipality. This would aid many things among them growth, faster development and assist the county government to raise some revenue through rates and charges because municipalities come with commensurate charges, rates and taxes.

Mr. Speaker, Sir, thirdly, the Bill seeks to amend the Urban Areas and Cities Act to empower urban areas and cities to impose rates and charges for the time being in force until a new law in that regard is enacted.

The Constitution of Kenya of 2010, in particular Article 210(1) provides that county governments may not impose any taxes, including rates and charges unless there is national legislation allowing such imposition. Up to now, there is no such legislation yet counties and county governments require to impose rates and charges in their urban areas. Therefore, what this Miscellaneous Amendments Bill is trying to do, is to give legitimacy to county governments to impose charges and rates using the rates that are already existing until there is a new law under Article 210(1) of the Constitution which says that such taxation measures can only be imposed when there is national legislation from the national Parliament.

Mr. Speaker, Sir, as far as the Urban Areas and Cities Act is concerned, those are the key amendments. The rest are very small. For example, there are typos and terminological errors here and there.

The third legislation that is amended by this proposed law is the County Governments Act of 2012, which Members know is the most important and fundamental

legislation relating to devolution outside the Constitution. In this regard, it is proposed through this Bill to reduce the number of minimum electoral wards in a county from 15 to 10. I know this is a very, I do not want to say controversial, but this is a matter that definitely needs to be debated thoroughly. We need to know the merits and the demerits so that when this House passes this Bill, we are passing a Bill that helps grow devolution, democracy and representation of the people in accordance with the spirit of the Constitution of Kenya of 2010.

Mr. Speaker, Sir, other than that, it is proposed to amend the County Governments Act to establish a consultative forum at the level of every county, between the county government and recognized professional bodies at the county level.

Mr. Speaker, Sir, allow me to say the following. There is a big disconnect in our counties today between county governments and the people who are being served by those governments. Part of that disconnect is not caused by anybody or by any institution. It is not caused by county executive, county legislature and individual office holders like governors and County Executive Committee members (CECs). It is caused by lack of an appropriate legislative framework to ensure the connection between the people being served and the government that is serving those people.

Why do I emphasise the need for this connection? Why do I say that this connection is anti-devolution? This is because Article 174 of the Constitution provides for the objects of devolution. If you read all those seven or eight objectives or purposes for which devolution exists and principles for which devolution is founded, you will see that this revolves around involving people and ensuring that people participate in the development of their counties.

This also involves connecting the Government to the people which has been missing for the last 50 years because national Government has been disconnected from people. That is why some problems we are facing today as a nation emanate from a disconnection between the people and their Government. Devolution was supposed to reverse this trend and provide governments that are not only close to the people and which are not based on what some people decide, but governments which have a different paradigm of interacting and enabling residents and people to participate in the priorities of that Government.

I have said that one way of ensuring that people connect with the Government is to provide a forum where people can have an input in the priorities, policies and programmes of their governments. One way of creating this linkage is by using established institutions.

The Bill is very clear about recognised and professional bodies in the county. This is not about any professional. You do not want to create an opening for all situations. You should recognise professional bodies that are based in that county. So, this kind of interaction is good. The professionals of a county - I can say this without any fear of contradiction - have intellect, qualifications, expertise and their experience is very invaluable. However, they do not have an opportunity to contribute even on voluntary basis to share their experiences, talents and expertise in their counties.

I meet many people who come from the county that I represent, Tharaka-Nithi. They tell me that they are experts in environmental science and have ideas on how they can curb desertification and ensure that they green the county. However, they have no avenues to share the great ideas that they acquired abroad. These people are not asking to

be paid. These are people who want to volunteer their services. Therefore, there must be a forum.

In principle, I think it is a good idea, not only to have professionals participating in Government matters and in realization of the objectives of county governments. However, I will be happier to see other institutions of society, including the civil society take part. I know that many counties are coming up with public participation laws to enable civil society and other interest groups to participate in county development. The only thing that will need a bit of further thinking is whether it is adequate to provide for a forum between county governments and professionals.

Looking at the purposes of that consultative forum which will be chaired by the Governor and, in his absence, by the Deputy Governor, and in the absence of the two, a CEO member designated by the Governor, the only issue that requires further thinking is whether this is appropriate, especially given that this Senate has already passed legislation. On a more inclusive forum, the County Development Board which includes representation of all shades of political, professional, county government, national Government interests, is a forum which is between heads of departments at the county level and the professionals is not bad in itself.

There should be further thinking so that we do not duplicate or, at worse, undermine the proposed role of county development boards which has been discussed, analysed, approved and passed, not only by the Senate of the Republic of Kenya, but also by the National Assembly of the Republic of Kenya. That is something I thought I should highlight.

The other legislation that should be amended is the Agriculture, Fisheries and Food Authority Act; that is, the famous (AFFA) of 2013. Very briefly, the amendments here intend to remove Fisheries Department from the application of this Act because I think it is too huge so that it only deals with agriculture and food. We will be left with the Agriculture and Food Authority which is a matter of scope.

I am sure that these amendments have been brought by industry players and, perhaps, at the Committee level, this is an area we will want to understand in terms of the Ministry of Agriculture, Livestock and Fisheries at the national level. We should consult widely with the county governments because agricultural sector is now heavily devolved to ensure that these amendments do not go against the Constitution. We are removing Fisheries Department from the ambit of this Act.

The other amendment provides for the membership of the AFFA Authority which is established under the Act. This simply removes the number of national Government representatives. If you look at Section 5 of that Act, you will see the membership of the board is full of national Government representatives. A few of them have been removed or deleted like the representatives of the Transition Authority (TA) and the Ministry for Lands, Housing and Urban Development. Some of them have been reduced. Instead, an amendment has been put to provide for eight nominees of stakeholder institutions. Under the existing law, farmers have a representative. However, it was found important to have other stakeholders in the agricultural sector to be involved. One of the thinking we need to put here with regard to the representation of county governments in this board given that much of agriculture is a devolved function.

As I go towards the end, let me mention very briefly two other legislations that are affected. One is the Kenya Agricultural and Livestock Research Act of 2013. There is

an amendment which removes Livestock and Fisheries Department from the purview of that Act.

The other one is the Crops Act. There are a number of miscellaneous amendments to the Crops Act of 2013. However, let me mention just two. The first one is the amendment that empowers or provides for the Cabinet Secretary responsible for Agricultural matters to appoint the board to manage the commodities Fund. The other one which I will highlight very quickly will be of interest to the Senator for Meru County. I am not seeing him here. He is also the Chairperson of the Committee on Agriculture, Livestock and Fisheries. By relationship, this also concerns me because under the Crops Act, it includes a crop known as *Catha Edulis* or *miraa*. There was a lot of scientific debate last year on whether *miraa* is a tree, drug, crop or what it is. The Amendment settles it so that *miraa* becomes protected as a crop under the Crops Act. I am sure the Senator for Meru County as well as the Senator for Wajir County where *miraa* consumption is very high will be interested to push this amendment through.

The last one is the Transition to Devolved Government Act. The Transition to Devolved Government Act is being amended in two main ways, the rest are quite trivial, but the two main ways is to ensure that when the TA transfers functions to counties, other than just transferring the functions to counties, it must come up with a programme of making sure that the county in question and every county is given capacity by the national Government to deliver that function. Sometimes there has been a lot of unjustified complaints that some counties are not delivering some of the functions properly. I can mention the function of health where there were some interlocutors; not in this House, may be in another House and others outside Parliament saying that, perhaps, we need to rethink returning health to the national Government.

*[The Speaker (Hon.) Ethuro left the Chair]*

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

Mr. Temporary Speaker, Sir, first of all, that is unconstitutional. Secondly, it is rolling back devolution and the solution to some of the capacity gaps that may exist in our counties to deliver functions such as health which are very critical is to do what the law says. The Constitution says in Article 190 and thereabout, that the national Government has an obligation to support counties and empower them to deliver functions. Therefore, TA is mandated under this amendment to ensure that other than saying that these are the functions to be transferred and the Senate endorses, there will be another requirement. This is the kind of support that each county requires from the national Government to be able to deliver the functions in question.

Finally, the Transition to Devolved Government Act of 2012 is amended to give TA the discretion to determine the specific component of a function to be devolved. In other words, it might be appropriate in some cases with regard to some functions, that the entire function cannot be devolved. However, TA and later the Senate as is approves, it should have the discretion to unbundle the functions so that certain components can be transferred and others retained, perhaps, subject to capacity building so that devolution is rolled out smoothly.

There is an amendment by introducing a new Section 24(1). This new section provides that where there is no legislation at the county level concerning a function that is in the county, for example, legislation on crops and yet crop husbandry is a devolved function, then the corresponding legislation at the national level in this case, the Crops Act and other laws will continue governing that function as lawyers say, *mutatis mutandis*, with necessary modifications until the county assembly of that county has passed the respective or appropriate law on that function.

Mr. Temporary Speaker, Sir, I wish to end there and thank hon. Senators for their patience. As I said from the beginning, this Bill is very critical. It helps to streamline devolution. If there are issues which need to be pruned, this is the time to do that pruning so that we can make devolution a reality in our country.

I now beg that the Statute Law (Miscellaneous Amendments) (No. 2) Bill, (National Assembly Bill No. 33 of 2013) be read a Second Time. I request the Senate Deputy Minority Leader, Sen. Abdirahman, the Senator for Wajir County to second.

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

**The Temporary Speaker** (Sen. Murkomen): What is it, Sen. Wako?

**Sen. Wako:** On a point of order, Mr. Temporary Speaker, Sir. I want to raise an issue where I would like the guidance of the Speaker on how we should proceed with this Bill. I do not want to blame anybody because I think there was confusion between the Statute Law (Miscellaneous Amendments Bill) of the Senate and this Statute Law (Miscellaneous Amendments) Bill. This particular Statute Law (Miscellaneous Amendments) Bill No.2) (National Assembly Bill No.33 of 2013) has not been interrogated in the way it ought to be interrogated by the Senate. This Bill is good. I commend the National Assembly for referring this Bill to us. I can see that the systems are now working where they do recognise that this Bill touches mainly on the various Bills which touch on the county. That is a fact. Therefore, therefore, it was a Bill that should have more or less emanated from here, but I do not want to take that as an issue.

The Bill is now before us. The question is how to proceed now because the fact of the matter is that when you read the Bill, it is necessary that the various Committees which touch on the various provisions of the Bill examine them very carefully. This is a very important Bill which is touching on the county. As a general comment, for example, when the Committee on Legal Affairs and Human Rights considered some of the legislation that had been passed by the Tenth Parliament and which did not take into account the fact that some of the functions had been devolved, we carried out very few amendments just to make them compliant with the Constitution. However, it may be recalled by the House that when I was moving that Bill, I said that the various Committees should now examine these various Bills and come up with substantive amendments to those Bills.

The Crops Act touches on issues which touch on county governments. We should not just consider these Bills which will be there and through *mutatis mutandis* principle, we wait until the county governments come up with their own Bills. In fact, I would be very hesitant to wait for the various county governments to come up with various Bills on all these things.

If the national Government is giving the national policy which is now being legislated, and if that legislation is for the counties, then the input of the county governments should be in this particular Bill which will now inform the county assemblies when they are now doing their own enactments. For example, if you take the Kenya Livestock Act, they now constitute the institute, but they have not taken into account---

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. Wako! I gave you a considerably longer time because of your status as the Attorney-General *Emeritus*. However, I am beginning to fear that you are misusing that privilege.

**Sen. Wako:** Mr. Temporary Speaker, Sir, I know you as a man who knows these Acts backwards and forwards. But for the benefit of the Members, I was proceeding a bit so that they understand the context in which I am making it.

**The Temporary Speaker** (Sen. Murkomen): So, what is your point of order?

**Sen. Wako:** Mr. Temporary Speaker, Sir, I wanted direction that maybe we should take a little bit more time on this Bill rather than hurrying it. Let it be submitted to the Committee on Agriculture to interrogate these amendments. It should also be referred to the Committee on Legal Affairs and Human Rights for them to interrogate these amendments. These amendments still preserve the position of the national Government. We should not be seen to be passing a Bill which preserves the position of the national Government other than the *mutatis mutandis* principle that let it continue a little bit. We can take this opportunity now to put in some amendments and refer them back to the House.

When you are forming a board, an institute or a regulatory body, under these various Bills, it is extremely important that you put on that board the interest of the counties. They should also have some say on that board. One of the Bills is actually contradicting our own Bill that we have passed here on the Executive Board.

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

**The Temporary Speaker** (Sen. Murkomen): Sen. Abdirahman, are you standing on a point of order?

**Sen. Abdirahman:** Mr. Temporary Speaker, Sir, I want to seek for some other direction.

**The Temporary Speaker** (Sen. Murkomen): I will start with Sen. Mutula Kilonzo Jnr. and then come to you. I want to request Senators that since they are just seeking direction, they should just address themselves to that particular issue and also take the shortest time possible.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I will be brief. My Chairman is allowed some little more time. I also want to suggest that you give directions on this Statute Law (Miscellaneous Amendments) Bill No.2 (National Assembly Bill No.33 of 2013) because a close reading of the amendments, for example, to the County Governments Act, particularly what appears to be a new section 139 of the County Governments Act, I am not sure that we can do this before this particular amendment is taken to the Committee on Finance, Commerce and Budget to confirm whether this proposed amendment is in line with Article 209.



In the proposed amendment to Section 54 of the County Governments Act, I am not certain whether we can do this without conducting either a public hearing to determine whether this forum is, in fact, in contradiction to the forum that we have set up under Section 91. The amendment is very fundamental yet it appears that the Committees responsible, particularly the Committee on Devolved Government have not been consulted.

The amendment to Section 23 of the Transition to Devolved Governments Act, particularly Section 23 which purports to change the criteria for transfer of functions, this issue should be subjected to our Committee on devolved Government so that we can determine whether, in fact, there is any pending issue on transfer of functions after we have already passed a resolution in this House for the transfer of extra functions. Your directions on this would be very critical. It will be premature to debate this Bill at this point.

**Sen. Abdirahman:** Mr. Temporary Speaker, Sir, listening to the comments from two of my colleagues, I think that this an opportunity for us, not necessarily at the Second Reading Stage, to give an opportunity to two main committees; the Committee on Devolved Government and the Committee on Agriculture lest we miss certain crucial input. Since we have an opportunity to make amendments even at the Committee Stage, in the meantime, the Bill should be seconded and then we allow time for interrogation by the respective committees.

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, the Miscellaneous Amendment Bill is very important because it affects so many areas. In as much as it appears to be touching on small sections of the law to be amended, but they may have a lot of implications in as far as legislation in particular areas is concerned.

I note that there are amendments relating to agriculture, livestock and so forth, but I am not aware that my Committee on Agriculture which is the relevant committee has had a chance to look at the necessary amendments. Would I be in order to suggest that these amendments first be stood in the relevant Committees for discussion and also allow public participation? The counties should be consulted so that they can also give their input.

**Sen. (Eng.) Muriuki:** Mr. Temporary Speaker, Sir, whereas the Attorney-General *Emeritus* has spoken well and they have genuine concerns about particular clauses in the Bill or the procedures involved, the fact is that the Bill is not right now before the House. First of all, the Constitution requires that a Bill from the other House comes to the Senate and goes through the normal stages as though it had originated from here and it should have passed through the relevant Committees before appearing on the Order Paper. As it is now, it has only been moved. I suggest that the Bill should be seconded and then the Chair can rule that before we proceed for debate it should be committed to the relevant Committees.

**The Temporary Speaker** (Sen. Murkomen): Hon. Senators, the issues which have been raised by all of you starting with Sen. Wako are very weighty. As the Chair and also a person acquainted with these issues, I have read through the two legislations. I am persuaded that some of the issues being discussed here are so weighty that it would not be fair if we do not have the benefit of the relevant Committees and public participation. For example, I have just seen that we are dealing with reduction of what an urban area, a city and a town is and that has profound implications on management by the

counties. If you reduce the number of cities or create more than two cities in a county, it has operational costs under the Urban Areas and Cities Act.

There are various issues in the Transition to Devolved Government Act and Sen. Mutula Kilonzo Jnr. has been very persuasive on whether you can amend an Act on an action that has already been completed because we are no longer transferring functions.

We completed that responsibility. If you look at provisions of the County Government Act, the additional provision, it is directly substituting another section that was passed in this House which subsequently is being challenged in court. That is the section related to County Development Boards (CDBS). You will find that, that is important. However, I must say this very clearly, it must come to the notice of the House. That is where it comes back to you the Chairman of Legal Affairs and Human Rights Committee that this legislation, the First Reading was done on 6<sup>th</sup> August 2014. We have had about three months waiting for action from the Committee. It was the Legal Affairs and Human Rights Committee, then to co-ordinate other committees that are relevant as far as this essential amendment is concerned.

I must bring you up to speed in so far as the relevant Standing Order is concerned, Standing Order 134(1) states:

“Whenever a Bill is referred to a Standing Committee, the Chairperson of the Committee, the vice-chairperson or a Senator designated by the Committee to which the Bill is committed, shall present the Committee’s report to the Senate within thirty calendar days of such committal.”

That time has already passed. My decision is that we proceed with the seconding of the Bill. These issues which are being raised are weighty. When we complete the Second Reading, whichever time and date we are going to complete, delay the Third Reading to allow the Committee to go and thoroughly review the Bill. Whatever short time that will be agreed by the RBC, in the leadership of the Majority Leader who moved the Bill with the Third Reading, but should not also be in ordinate delay to enable the Committee to lead the House in the necessary amendments that will be required at that stage. In the meantime, we continue with the Second Reading. You can refer to the issues that you think are necessary for modification the Third Reading.

*(Sen. Chelule stood up in here place)*

Sen. Liza Chelule, are you still interested in challenging the Speaker’s decision. Is there anything you needed further direction on?

**Sen. Chelule:** Mr. Temporary Speaker, Sir, there is nothing. I just wanted to talk about Standing Order No.134. I wanted to draw this attention to the Chairperson of the Legal Affairs and Human Rights Committee that the subject was submitted to the Committee for the last four months and he was not able to see it.

**The Temporary Speaker** (Sen. Murkomen): Order!

**Sen. Wako:** Mr. Speaker, Sir, I accept your ruling, it is a good ruling. As I said in the very beginning, the matter has had confusion somewhere along the line, between the two Statute Law (Miscellaneous Amendments) Bills. That has caused confusion. I do not know to what extent. There was a ruling by ole Kaparo when he was the Speaker that one can only bring amendments during the Committee Stage and Third Reading which have been mentioned during the Second Reading. In other words, you cannot just come up

with an amendment out of the blues during the Committee Stage when you have attended to issues in the Second Reading, so that other members can comment on it in the Second Reading. Complete the Second Reading, I agree that we go as far as we can, but I would urge that maybe we do not complete the Second Reading until the Committees have had a chance to look at it. In the light of that ruling, if you think that ruling by Speaker ole Kaparo binds you, but it was a reasonable ruling saying that you cannot bring an amendment into the Third Reading if you have not raised that matter during the debate on the Second Reading.

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. Amos Wako and the Majority Leader. Majority Leader, you must take notes at this stage.

*(Sen. Prof. Kindiki stood up in his place and consulted other Members)*

You do not need to freeze I am not standing. You must take notes at this stage, because the issues that are going to be raised at the moment have certain implications on your Bill.

Sen. Amos Wako, the issues that you, Sen. Mutula Kilonzo Jnr, the Senate Minority Leader and the Senate Deputy Minority Leader and many other Senators have already identified the areas that could have been problematic. Whereas I have not read the ruling of the former Speaker, I do not think he was saying specific. It must have been generally. As long as you are puncturing holes on areas that require amendments generally, then it suffices to say then ultimately, in the Third Reading, that as a result of the issues that we had raised at that point in time, these are the amendments we are bringing forward. The reason I needed the Senate Majority Leader to take serious attention, was if you look at this Bill, you will realize that the Bill is almost like a Bill being brought forward to align various legislation with devolved systems of Government.

In his consultation with his brothers in the “Lower House” and between the two Speakers, it would be preferable that this is the House to begin with because of its specialty on matters of counties. All the amendments which are being brought, almost 80 to 90 per cent- I am not saying it is mandatory - but it is preferable that it should have engineered from the House of specialty on matters of county Government, and then it would have been easy to inform the other House of the various amendments. It needs that kind of specialty for that matter. This is for persuasive purposes in your further consultations with your brother in the “Lower House” and also together with the other leadership of the National Assembly. I am persuaded that we should proceed with the seconding.

I have ignored you Sen. Billow Kerrow for now because you will be the first one to contribute.

**Sen. Abdirahman:** Thank you, Mr. Temporary Speaker, Sir, for allowing me to second The Statute Law (Miscellaneous Amendments) (No. 2) Bill, (National Assembly Bill No. 33 of 2014) has put here this afternoon.

**Sen. G.G Kariuki:** on a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Murkomen): What is it again Sen. G.G Kariuki?

**Sen. G.G Kariuki:** Mr. Temporary Speaker, Sir, we dare never doubt the ruling of the Speaker. My standing here is not to doubt what you have ruled, but to say that,

whether we will be in order if we just agree to speak the way we have just ruled, knowing that we are not going to get the conclusion of the whole thing until it is taken back to the Committees. This matter, as you said, is very weighty. It involves so much. In fact, if it was my own decision, this matter needed to have been circulated to the county governments to understand and to know what we are trying to do. Otherwise, a part of them may think that they can go to court and do away with this Bill. I see no reason it should not be a shameful situation if we agree that this matter be suspended for a while. Even if we discuss it now, until January, February or March, we shall not have concluded this Bill. So, during that period, why not commit it to other relevant authorities?

**The Temporary Speaker** (Sen. Murkomen): Sen. Billow Kerrow, you may proceed.

**Sen. Billow:** Mr. Temporary Speaker, Sir, I think we need to proceed. We, as a House, are already under the microscope with regard to the delays in some of the Bills that have been forwarded to us. With all due respect, if the committees did not take the trouble to look at this Bill for the three or four months, there is no certainty that, in fact, we will make amendments. But whatever it is we will make it in the Committee and during the Third Reading. So, I suggest that we proceed, because everything else really is not something that we should be raising now. We know where we came from and I think we need to proceed.

Thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Murkomen): Hon. Senators, we need to proceed. The most important point that you have made is to say that we have delayed for four months, waiting for the contributions of the Committee. We cannot correct because the law says that it should be done within 30 days. We have to follow the law. We will proceed with the Second Reading. It will only make the Third Reading a little bit tedious, if amendments will be done. But we can accommodate that inconvenience at that point in time.

Proceed, Deputy Minority Leader.

**Sen. Abdirahman:** Mr. Temporary Speaker, Sir, my flow of thought has very much been interrupted by the numerous points of order, including my own. I was almost getting convinced that at one point we really need to accommodate views from other stakeholders. I joined in because I felt that we needed to create a law or somehow make amendments that will not affect or is in the public interest. However, we will proceed as you suggested. Probably, at a certain point in time, we will correct any anomalies that might have emerged along the way.

Mr. Temporary Speaker, Sir, as I said, I stand to support this Bill, as introduced. It touches heavily on the county governments or devolution in general. It is important that, as the very primary stakeholder – the Senate – we interrogate at every stage and see to it that whatever gaps that may have arisen in the existing Acts, can actually be accommodated in the ones that are introduced.

Many times we said that we had not been consulted. It is an opportunity for us now, since the National Assembly is seeking our concurrence and being the “Upper House,” as the final authority to append our feelings on it. These amendments that are proposed are numerous. The first one is on the Land Adjudication Act, particularly of great interest to people from the Arid and Semi-Arid areas, what was commonly referred to as the trust land and now called “community land.” This is really something that

empowers our people. We have seen huge tracts of land that have been taken by individuals and this has kept on giving us problems. This is an area of great interest which we really need to support.

Mr. Temporary Speaker, Sir, the next one is the Urban Areas and Cities Act which empowers a county governor to confer the status of a special municipality to a headquarter of a county. In the past, the manner in which municipalities were actually given names by the local authorities was not very clear. I remember in one instance they gave and took it back. This gives an opportunity at that local level and is in line with the decentralization, which our Constitution envisaged. We have seen county governments arbitrarily deciding on rates and charges. The proposal that the national law be used until such a time when counties will develop their own laws is also a welcome move.

Mr. Temporary Speaker, Sir, on the transition to Devolved Governments Act and the fact that there is need to build capacity of county governments, is also something that we need to appreciate. Capacity assessments were recently done and many a time the TA has wavered in actually deciding on how capacity building should be done or whether or not a county was prepared. The fact that the new Act proposes that it is the principle duty of the national Government to build capacities of the county governments, it is something that we also need to appreciate or acknowledge. The fact that the TA itself must develop a programme that is going to help in capacity building is also something worth mentioning.

Mr. Temporary Speaker, Sir, in the County Governments Act 2012, there is a proposal to reduce the number of wards that are represented by Members of the County Assemblies (MCAs) from 15 to 10. This is seriously contentious. I think that is why many of the people who spoke, including the Attorney General *Emeritus*, felt that there was need to consult the local communities or get public participation into this. Looking at what we had in terms of wards in the early days and what we have today, 15 per county is reasonably the right figure. I am not debating it so much at this stage, but it is a contentious matter that we really need to digest and come to the right thought.

Mr. Temporary Speaker, Sir, on the Agricultural, Fisheries and Food Authority Act, where there was a proposal to have an multi-disciplinary regime, mainly with backgrounds in agriculture, finance, law, human resources, as opposed to what we used to have in parastatals, where people were just handpicked without necessarily looking at their qualifications and expertise. I think what is going to appear in the new Act in terms of amendment looks very good. At one point, I also realized as I went through this that the establishment of the fund, which will be managed by a board under the Agricultural Authority Act. The fact that funds that accrue from this sector will be ploughed back into the same sector is something that we also need to critically examine. It looks very appealing.

Mr. Temporary Speaker, Sir, regarding the Crops Act 2013, the Senate Majority Leader spoke about *miraa*. I have personal reservations on that, but it is classified as a crop in this. I am sure that a number of people will share their views on this.

The last one on Agricultural and Research Act, which proposes to remove livestock and fisheries from the purview of the Act to make other minor amendments is also contained therein. The changes are weighty. They are proposals that we need to internalize, so that we are able to look at the merits and demerits on each case. But overall

it is a welcome proposal. Members can look at them with a view to getting hindsight of each of proposed areas.

Mr. Temporary Speaker, Sir, with those few remarks, I beg to second this Bill.

*(Question proposed)*

**Sen. Billow:** Mr. Temporary Speaker, Sir, I rise to support this Bill. The Bill as the Mover said amends several legislations as is expected of any statute law miscellaneous amendment. Regarding the Land Adjudication Act where the changes are to bring it in line with the Constitution, for example, changing things like trust land to community land which is the new terminology according to the Constitution, it is in order and I support it.

On the second amendment relating to Urban Areas and Cities Act, I support these amendments which give the governor the mandate to confer status of municipality to county headquarters. All the county headquarters will enjoy a municipal or a city status so that they can have access to other levels of development. This is important because we need to have that level of uniformity so that some county headquarters are not left behind of their status.

In that regard, the attempt being made in this Bill to reduce the population from what is in the existing Act, that is, the Urban and Cities Act is acceptable. I support it especially the issue of reducing the requirement from 500,000 people to 250,000 people and for urban areas from 250,000 people to 70,000 people. In the County Governments Act, we are also dealing with towns, urban areas and cities. There are different regulations relating to each of this category in terms of the way they are managed, the way revenue is collected, the way they raise their rates and so on. In this regard, I support the proposed reduction of the population. We have been told that big towns like Kisumu and Eldoret have not attained the status of a city. When you look at the operations of those towns, the requirements and the infrastructure, you will find that the Government, through the various Ministries like the Ministry of Transport and Infrastructure and so many others, also provide various investments in some of these areas based on their status. Therefore, this will allow some of the county headquarters to have access to funding, especially through the Road Development Levy which is available to cities. Therefore, it is important we reduce the population threshold so that all the 47 county headquarters are at the same level. We should have a systematic way of grading our cities.

Mr. Temporary Speaker, Sir, I also support the proposal under the same Act that the cities and urban areas continue to use the existing laws in terms of imposing the rates and charges until county governments introduce their own through finance bills.

Regarding the County Governments Act, I do not know what is relevant in the amendment. For example, there is one that says that in the first election, the number of wards in a county should be reduced from 15 to 10. I do not know the significance of that because it says that the minimum number of wards in a county should be reduced from 15 to 10. I do not think that situation will apply again.

There is one which I have heard the Senate Majority Leader raise that concerns the amendment on page five of the Bill relating to the County Governments Act, on the creation of a consultative forum. I agree with what the Senate Majority Leader said that

this amendment of creating a consultative forum for the coordination of development activities is exactly the same thing that we did in the County Development Boards (CDBs). In the CDBs, there is also a consultative forum for the coordination of development. The wording is the same. What the National Assembly is trying to do, with all due respect to that House, is to kill that board very quietly through this Bill. It says that the consultative forum will constitute of heads of departments and chaired by the governor. Heads of departments and the governor form the executive of that county. They do not need a consultative forum. By their composition, they are an executive. A consultative forum is necessary when you have different levels of government.

In the current law, especially in the County Governments Act, what is provided for is an inter-governmental forum which means different levels of Government. Different levels of Government, include the national Government, institutions like Senators, Members of the National Assembly and the county governments. What this amendment is doing is to create a forum which will be chaired by the Governor, in his absence the Deputy, in his absence by the County Executive Committee member (CEC) and departmental heads where they can invite some professions like engineers and lawyers. In my view, this is one of the clauses we may consider for amendment when we come to the Third Reading.

Mr. Temporary Speaker, Sir, on the Agriculture, Fisheries and Food Authority Act, there is a proposed amendment to remove fisheries from the Act. It is also proposed that fisheries be removed from the Kenya Agricultural and Livestock Research Act. It is clear that the challenges of the fisheries sector are not the same as those in the agricultural sector. For a long time, since Independence, agriculture and livestock have shared departments and Ministries so it is possible for the two to be together under the same law and authority, but to bring fisheries under the same authority was completely not appropriate. I agree with the amendments being made to remove fisheries from that board.

There is also an amendment on the membership of the Kenya Agriculture, Fisheries and Food Authority where the chairman will be appointed by the President. I have no problem with that. Then it says that the other eight members will be appointed by the stakeholders. For a long time, if you look at tea or coffee, I am not a tea, coffee or dairy farmer like some of the Senators, but what I know is that if you look at some of the big institutions we have in this country, there have always been challenges with them. One such institution is the Kenya Planters Co-operative Union (KPCU) in the coffee sector. I know that these institutions have always been run by stakeholders from that sector. I do not think you will ever see somebody from Mandera in the board of these institutions concerned with coffee or tea. Even then, they have always had challenges. I do not know what it means when you say that the eight members will be stakeholder representatives. I think it means people should elect their own as we have seen in the coffee and tea sector where people elect someone and then complaints arise. I think there is need to find out whether we still need to adopt the same policies. The reasons we are not succeeding in agriculture are the policies. We have failed, as nation. We have the land, but you will find that our agricultural sector is collapsing. The sugar industry is collapsing. In terms of cereals, we are importing maize. We are in crisis in terms of milk. We are not making progress in all sectors.

I remember in 1979 and 1980s when we had 11 sugar factories. At that time, we were self-sufficient. Today, we have challenges. This is because of the policies. When you set up the Kenya Agricultural and Livestock Authority and say that the stakeholders are the ones to sit in that Board – I am in the livestock sector and our people are pastoralists - when you talk about stakeholder representatives, how will you conduct elections of such representatives by stakeholders when you are dealing with livestock? We are also livestock farmers in our own way. You can call us pastoralists, but we are livestock farmers. This is an area I want to draw your attention. We also need to look at amendments in the Third Stage of the Committee of the Whole.

The other area I want to talk about is the Crops Act where amendments have been proposed on page nine. The amendments – the one I am looking at Section 43 which they are introducing is that a person shall not export raw cashew nuts. A person shall not export pyrethrum, bixa, macadamia and so forth, except with written authority of the Cabinet Secretary. This is not new. These things have been done for the past 20 to 30 years. The kind of authority that has been given by the Cabinet Secretary provides for rent seeking. I know that cashewnuts have had that provision. You cannot export these unless they are processed because we have a processing plant in Kilifi and in Kwale. This also applies to bixa.

We all know that quietly, people got something from the Minister and started exporting raw cashewnuts, bixa and those factories collapsed. I know that the cashewnuts factory in Kilifi collapsed several years ago because of that. This is an attempt. Pyrethrum is having the same challenges. We should use pyrethrum to produce our own products like the insecticides and other products.

The Government has always reiterated that they are concerned and committed to value addition of our commodities. In fact, this is contrary to what they have always done. These laws are at times made to give an opportunity to a Cabinet Secretary to create bureaucracies for engaging in corruption. That is an area that Members want to know about. Why do we keep on bringing it in and out?

Last, with regard to the Transition to Devolved Government Act, the Bill proposes capacity building when a function is transferred by the TA to a county. They must also provide a programme for capacity building. This is a good proposal. The Constitution is very clear that the responsibility for capacity building is for the national Government. They have failed. They have not provided capacity building to counties. That is the reason we cannot transfer some roads or institutions that this Senate has approved.

This Bill also suggests that where county legislation does not exist for a function that has been transferred; they can use the national legislation with some modifications which is pretty obvious. When we were dealing with the impeachment of the Kericho County Governor, you will remember dealing with the Public Private Partnership Projects (PPPPs). At that time, we, as a Committee, had to look at the national legislation relating to public-private partnerships.

**Sen. Chelule:** Thank you, Mr. Temporary Speaker, Sir for giving me this opportunity to contribute to this Bill. I stand to support these amendments. However, there is one area that I still do not understand. This Bill states that the minimum number of wards we should have in every county should be between 10 and 15. I do not understand that. Is this something that was researched? I come from Nakuru County. We



now have 54 wards, but the people there still feel that they need to have more wards. Devolution to me means services being taken closer people. When you talk about 10 wards in a county is like talking about sub counties. This does not mean that we are taking services closer to the people. We would want to have more wards so that people are represented well.

The wards in Nakuru are very big. The ward representatives find it difficult to represent their people adequately. This is because of the sparse wards we have in the counties. I do not understand what they mean by saying that every county should have a minimum of between 10 and 15 wards.

I support this Bill, but at some point, when it is brought for the Third Reading, that is when we will do some amendments.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Temporary Speaker, Sir. I rise to give my contribution to this Bill. The Bill proposes to align some of the Acts particularly the Land Adjudication Act Cap 284 to the Constitution. That appears on pages one and two of the intended Bill.

I want to speak to the amendments to in the proposed Transition to Devolved Governments Act, particularly Section 23. I reiterate my previous contribution that this Bill should have been subjected to the Committee on Devolved Government. The Committee on Devolved Government has presented a report to the Senate agreeing.

The Senate has resolved to agree to the appeal filed by all counties in respect of the functions which have not been transferred. This is to the extent to which the Bill attempts to give extra criteria on the Transition Government to provide capacity and programme. This is inconsistent with our resolutions. Two, this is inconsistent with the Constitution. The Constitution is very clear. You transfer a function and the function is accompanied by resources. There is no other programme that is required. Who is supposed to supervise this programme that is proposed under the amendment to 2(5)(a) and who determines the capacity?

The reports of the Controller of Budget, since the beginning of the new dispensation have stated that counties do not have the capacities to develop legislation and other things. The proposed amendments to 23(5), if implemented, will extend the mandate of the TA beyond the three years. Three, it will provide a programme that cannot be supervised. Four, we know this because the TA has been here several times. They have complained that they cannot function because they do not have funds.

So, on what basis will we give them these functions because they have failed to perform the functions that they were given at the first instance as the Transitional Authority (TA) have failed to perform them? One of them is to ensure a smooth transition between the municipal and urban councils to the new governments. It is on record that the Transition Authority has not plugged the holes that were closed by the old municipal councils and urban councils. It is on record that counties are still operating some of the accounts that were being run by the old councils and yet this amendment seems to suggest that the Transition Authority should be given more functions in order to perform this function. I disagree entirely.

In Section 5 (b), for the last three years, the Transition Authority has been unable to unbundle functions. Why then would we add Section 5 (b) in their functions to the extent that we are asking them to unbundle those functions? This is again inconsistent with the resolution of this Senate in so far as that function is concerned.

Mr. Temporary Speaker, Sir, the other reason why this Bill should have been subjected to the Committee – I want to bring it to the attention of this House – is with regard to page 19 of the proposed amendment. Whilst the amendments on page 3 proposes to amend Section 23 by adding Clause 5 (a) and (b) and Section 24 (1). On page 19 of this Statute Law (Miscellaneous Amendments) Bill, you can see that one of the Bills – this must be a typographical error – it is suggested that this Statute Law (Miscellaneous Amendments) Bill in the Memorandum and Reasons, is proposing to amend Section 37 of the Transition to Devolved Governments Act which proposes to, in fact, delete Section 37 which is the section that gives the authority to TA. Therefore, this is one of those clauses that should be deleted from this Bill.

On the County Governments Act, in so far as it seeks to amend sections 4 and 5, I have no objection. The Bill proposes – I think there is a mistake here – to amend Section 26 (2) of the County Governments Act. This amendment has been overtaken by events because the first General Election under this Constitution was conducted in 2013. As far as I am concerned, this amendment is superfluous or has been overtaken by events and should be removed from the Bill.

The amendment to Section 54 is very controversial. The purpose of Section 54 of the County Governments Act was to provide structures of decentralization and to provide county intergovernmental forums. The amendment proposed in sections 2, 3, 4 and 5 will most likely, if passed by this Senate, remove the purpose for which these sections were put in and is a very mischievous amendment. We should not allow it by any extent. One reason is because as stated by Sen. Billow, there is no reason why the governor of any county should be the one chairing the proposed forum in Section 54 (2). We have passed an amendment to Section 111 of the County Governments Act seeking to come up with what we have called as this Senate, a forum to coordinate development. This would seem either to have been overtaken by events by the signing of the amendment by His Excellency the President or superfluous or mischievous. Therefore, I will propose that we reject the amendment to Section 54 as proposed in the Statute Law (Miscellaneous Amendments) (No.2) Bill, (National Assembly Bill No.33 of 2013).

Mr. Temporary Speaker, Sir, on page 6, with regard to the proposed New Clause 139, my contribution to this is that this is an attempt to run away from the provisions of Article 209 which gives a specific charge that should be made by the county governments. It is on record that counties are charging members of the public, levies that are not contemplated by the Constitution under Article 209 (3). For the avoidance of doubt, I would like to read it:-

“A county may impose property taxes, entertainment taxes and any other tax that is authorized to be imposed by an Act of Parliament”.

That is the law and, therefore, the amendment to Section 139, if allowed, will cause more confusion than is necessary under the Constitution. If county governments want to extend any charges that are not proposed under Article 209 (3), they are at liberty to propose an amendment to the law or alternatively a Bill that is proposed under Article 209 (3) so that they can levy those charges. To allow this would be to, in fact, attempt to circumvent the Constitution.

The rest of the changes to the First Schedule on page 6 appear correct because it appears from the forms that the drafters of the County Governments Act had made a typographical error. To that extent, that will be my contribution to this Bill so that we can

amend what is necessary in so far as the Land Adjudication Act, the Transition to Devolved Governments Act and the County Governments Act are concerned. I am not certain that I agree with the proposals to amend the Urban and Cities Act by reducing the population and then leaving the criteria the way it is. It appears that that amendment will, in fact, increase costs of management of the cities.

I beg to support subject to those changes I have mentioned.

**Sen. Mositet:** Mr. Temporary Speaker, Sir, we are discussing a very important law. The way it has been brought into the House, knowing very well its importance to the counties, just like my colleagues have proposed, it should be subjected to the relevant committees. I know that time is not with us but I will still plead that it should be looked into. We should let Senators ventilate on it through the various committees.

I can see a lot in this Bill about land and particularly the issue of community land. Section 61 Cap.284 on page 16 of the list of amendments, there is a proposal which reads:-

“In respect of each adjudication section, the adjudication officer after consultation with the District Commissioner of the district within which the adjudication section lies, shall appoint not less than ten persons”.

I happen to have come from an area which is quite rich in community land and we know the suffering our people went through without knowing that their land had been taken. Now, again with devolution, we are saying that it is the District Commissioner who is going to appoint the committee which is going to do the adjudication. With all due respect, I doubt whether that can really work even on the ground. That is just one of the anomalies that I have picked.

The other one is what the previous speaker talked about – the Urban Areas and Cities Act. I have no problem with that. I feel that quite a number of areas are still marginalized even after the new Constitution was promulgated. We still have some authorities like Kenya Urban Roads Authority (KURA), which still favour areas with municipalities and cities. When they are given funds, they do not consider adjacent areas, like my county or even Makueni. Even Kitui which is quite far enjoys that status. That is one area in the Bill that is good. If it goes through, I believe that the governors, particularly mine, should really move with speed to make sure that Ongata Rongai, Kitengela and even Ngong become municipalities, so that we can benefit, in case KURA will still be there next year.

Mr. Temporary Speaker, Sir, there is a mix-up of agriculture, livestock and fisheries, and even forming of the authorities. We need to think of boards which will regulate and not really manage. That can only be done properly if we can subject the entire Bill to the relevant committees. The Committee on Lands and Mineral Resources requires to be given time. We also have the Committee on Agriculture, Livestock and Fisheries and the Committee on Finance, Commerce and Budget. By involving these committees, we will ensure that the intentions of the Bill are achieved and the people on the ground will benefit.

Mr. Temporary Speaker, Sir, this is a good Bill. The few areas which have been pointed out by the Senators need to be panel-beaten so that the good intentions can be achieved. We should also ensure that the public is given a chance to ventilate. This is because over 90 per cent of the issues concern counties.

With those remarks, I support with amendments.

**Sen. Musila:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to make my contribution to this Bill, which I support subject to the views which I will express here.

Mr. Temporary Speaker, Sir, I agree with those who raised earlier objections to the continuation of this debate on very important matters which we intend to amend. I also understand that this Bill has been in the Senate for a long time; from July until now. I would like to know whether before this Bill went through the National Assembly, they did public hearings on the amendments that were proposed. This is because we would have taken comfort in those public hearings. At least, we would have a record of what the views of the public on some of these proposed amendments were. Given that we do not have that information, I think that there is a very strong case; that the matters that are proposed to be amended in this Bill be subjected to public hearings as we proceed. This is because it will not be proper for some of these weighty amendments to be undertaken without consulting the public. I say this because even the Chair of the Transition Authority (TA) has already raised concern, that many Bills which have been passed by the National Assembly and even by the Senate have not gone through that process, which is against the Constitution.

On the issue of land, this afternoon you heard me raise the issue of a trust land in Kitui called Kanyonyoni, where agencies of the Government have grabbed 400 acres contrary to the Constitution. This is because the management of trust lands which are now being converted into community lands lies on the country government and the National Land Commission. But in this case, some people just took the land, because it was a transition period; just before the new county governments took over. This is a subject of discussion in this House. I support the trust lands being made community land. This is because “trust land” was a term that was used to give land to be in trust for the public. But those who were given trust to look after that land did not think that this land belonged to the public or community. They just dished it away. Therefore, when it is community land – which means that it is owned by the people – one will think twice before playing around with it, without the consent of the community.

Mr. Temporary Speaker, Sir, on the Urban Areas and Cities Act, there is a proposal to reduce the number of inhabitants in a city from 500,000 to 250,000. I really do not understand this. Further, the number in municipalities has been reduced to 70,000. We are inviting chaos in the management of urban areas in this country. I recall sometime ago, there was a Minister for Local Government whom I would not like to mention, who used to go round dishing out municipalities all over without any formula. We ended up with mushrooming municipalities. Some did not even qualify and others did not even have infrastructure. Since our population is growing, why should we find it difficult to create a city? Like the previous speaker said, we would like to see Ongata Rongai, Kitengela and Ngong becoming municipalities or cities. There must be authority and criteria for giving these cities and municipalities. I would be very hesitant to allow this. Even when we say that the Governor shall confer the status of a special municipality to the headquarters of the county even where it does not meet the threshold specified under subsection 3 (a), again, we are inviting chaos. If you give the governors a free hand to declare municipalities and cities, you will find villages or small towns becoming cities. I

think the charter for declaring a city should be left to an authority. This is a matter that we need to look at very carefully.

The issue of transferring functions under Section 24, I thought the Senate met in Mombasa and eventually passed a resolution on the functions to be devolved. Are we going back to that? In my view, this proposal is redundant. It is the same with the County Governments Act, Section 26(2) where we are being asked to delete the word 15 and reduce to 10 wards. The first election under the Constitution was conducted in March, 2013. I do not think we are going to have another first election. I do not know what this amendment intends to serve.

Again the issue of a forum to consult is a very good idea but I look at it as something meant to undermine the County Development Board Act which we passed. As you know, it was controversial and some people were trying to block it. After rigorous mediation - I believe the Speaker took part in it - it was agreed that the County Development Board Act goes through although it is still a subject of litigation. I think I am seeing a sinister motive here. It says here that the governor chairs this one and initially if you can remember, they were advocating to chair the County Development Board.

Mr. Temporary Speaker, Sir, I have no doubt that this forum is meant to substitute County Development Boards. I think there is some mischief here which we must not accept. The forum is good, and if you include these professionals to participate in the development of the counties, we should make a provision and amend the County Development Act to include those professionals so that they participate fully but under the framework of the County Development Board which already exists. This is one area that we should ignore.

Mr. Temporary Speaker, Sir, I have already spoken about the role of the Senate. I have said that we have already participated in the transfer of functions under Section 24 and we do not need this. All in all, I do not wish to continue with other areas of proposed amendments but the underlying principle here is that as we move to the Third Reading we need the Committee responsible to sit down so that when it comes, they would have proposed certain amendments after critically looking at these proposed amendments. I want to underline the importance of us moving fast in disposing all Bills that are referred to us by the "Lower House" lest we are accused of sitting on Bills which are important for the country.

Having said that, I think it was a mistake to keep this Bill for so long but then two wrongs do not make a right. We cannot rush it. We must thoroughly scrutinize it especially during the Third Reading.

With those few remarks, I support.

**Sen. Ndiema:** Mr. Speaker, Sir, I stand to support the amendments except for a few areas that I will briefly touch on.

On the issue of Urban Areas and Cities Act, I find the amendments here quite in order. The original Act made conditions so difficult that we ended up demoting urban centres which had certain status for long. An example is Kitale which has been a municipality as long as I can remember but it is now not a municipality. The law should also recognise the present status and not make things so difficult.

Mr. Temporary Speaker, Sir, the amendment proposes that all county headquarters be considered for a certain status of municipality. I do agree with that

because in classifying urban centres, we should plan ahead. We should not wait until population has grown with unplanned structures and then we say we want to convert them to municipalities. I think we should be forward looking provided there is land and adequate plans showing that the urban centre is aiming to be a municipality. There is nothing wrong in classifying it as a municipality. The issue of giving equal opportunities to all counties through making all the county headquarters municipalities is appropriate.

Regarding the areas of the Transition Authority, I do not quite understand why this amendment is necessary when we know quite a substantial number of functions have been transferred and the few that are remaining should have been transferred by now. The only problem we have experienced in this area is resources being availed to county governments to undertake these functions. The Transition Authority has not done valuation of assets and has not unbundled the functions. So how can it, therefore, ask for more time to assess whether a function will be transferred or not? There seems to be mischief here where transfers of functions seem to be facing or projected to face some delay or an elaborate effort to delay transfer of functions.

Mr. Temporary Speaker, Sir, there is the issue of County Governments Act where a County Consultative Forum for the coordination of development is supposed to be formed. I believe the executive is already a forum to coordinate development within the executive in the county. You do not need to legislate that because the executive is already there and its work is to coordinate development. What is required in the Constitution is that there must be participation and all-inclusive involvement in planning. The public is also supposed to be included. The first people to be involved must, of course, be the representatives of the people beginning with the constitutional representative of a county in the name of a Senator and the representative of the people in the name of Members of the National Assembly and Members of the County Assemblies. As long as those are not involved in development activities at the county level, we cannot say that bringing professionals will make that forum complete.

Mr. Temporary Speaker, Sir, we already have an Act of Parliament on County Development Board although it is facing challenges, I believe it can be amended to include co-opting members from professional organizations. Even here, it is not defined what professional organizations are. What prevents individuals from appointing their friends to development forums who may not really be professionals in the manner that is suitable? We need the relevant committee to look into this issue so that it is rejected outrightly and County Development Boards are put into place.

On the issue of Agriculture, Fisheries and Food Authority (AFFA), there is certainly a move to ensure that people who are not State officers are reduced in Government boards. However, overdoing it is also very dangerous. Where regulation is concerned or a body is formed – most of these bodies are to regulate the private sector – and you bring in the private sector to regulate the private sector, there could be a danger of conflict of interests. The regulation may not be achieved as desired.

*[The Temporary Speaker (Sen. Murkomen) left the Chair]*

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

Mr. Temporary Speaker, Sir, we all know that the process of land adjudication historically, excluded some people who had rights in owning land or being registered to own land merely because of technicalities that they did not see advertisements when adjudication was gazetted. They do not read Government gazette notices because that is where they appear. We all know that the Kenya Gazette does not reach the public in the rural areas. Even if it reaches there, most of our people are still illiterate and do not read it. Provision should be made for a participatory manner in which everybody who has an interest in land is given an opportunity to express his or her interest. Where time has lapsed, there should be provision for inclusion eventually when a person with rights resurfaces.

Mr. Temporary Speaker, Sir, with those few remarks, I support. However, I also suggest that the relevant committees should look into this so that the amendments meet the desired objectives and are in the public interest, because what I see here is the need for further consultation and participation.

Thank you.

**The Temporary Speaker** (Sen. Mositet): Sen. Onesmus Kipchumba Murkomen.

*(Laughter)*

**Sen. Murkomen:** Thank you, Mr. Temporary Speaker, Sir. I know many people do not know I am called Onesmus.

I have been listening to the contributions of the Members, having the benefit of sitting there. If you look at the contributions or the Bill itself, you will see that it looks like it was drafted in a hurry without any particular plan or an objective to achieve or correct it. This is because it is uncoordinated except for the agriculture one. The other legislations related to trust land, particularly, the ones on county government; the County Governments Act and the Urban Areas and Cities Act, you cannot really tell exactly what economic or political considerations were being achieved because they have been drafted in a very incoherent manner.

I understand that in the Land Adjudication Act, we are trying to contextualise the fact that we needed to say county council, county government and so forth. However, you did not even need to amend that now. You could have cleaned it in that manner because the Constitution already says where “local authority” appears, it should be substituted by “county government”. That is not the problem. The pointer or the big issue here is that we have delayed so much in dealing with the Community Land Act which would have gone comprehensively in providing the mechanisms, systems and the management of community land and properly inherit what the trust land law was all about. The message is that – I am sure the Senate Majority Leader will read the HANSARD – he had come here with a Community Land Bill and the Commission for the Implementation of the Constitution (CIC) and a few other people complained that it did not go through this and that. However, the right procedure was what the Senate Majority Leader, Sen. (Prof.) Kindiki was doing to come up with a Community Land Bill so that then we can discuss this issue of community comprehensively. Half of Elgeyo-Marakwet County is occupied by what we can call community land. We need to use that land for economic purposes. Some of the areas like Turkana, Pokot, Elgeyo-Marakwet, Baringo where we now have oil and Lamu where we have natural resources are under community land. The issue is;

people want to sale that land, lease it to an investor or be compensated and there is no clear system. The Senate Majority Leader is here seated next to me. The thing that must be expedited is the Community Land Bill so that we can debate and pass it.

Mr. Temporary Speaker, Sir when it comes to the Urban Areas and Cities Act, I have also listened to my colleagues giving considerations that they want to create a town, urban area, city or municipality because there is development that is hinged on that. That is not true. The Division of Revenue Act considers population and things that are not urban. You cannot manufacture urbaneness; it must be a characteristic. That characteristic includes population living in that town. Elgeyo-Marakwet, perhaps, does not even have a town because the population of the biggest or something closer to a town, say, Iten, is almost 10,000 persons during the day. However, at night, it might only have 500 people. Eldoret Town, for example, might have 200,000 or 300,000 people during the day but at night maybe only 50,000 to 100,000 people. We just have to follow what is happening all over the world. A town is a town. You do not want someone to come from the United States of America (USA) and say that he is going to Tot Municipality in Elgeyo-Marakwet County only to find that it is a shopping centre just because we want to impress the locals.

I was involved in drafting this Bill and what is so interesting about the Urban Areas and Cities Act is that when we had completed drafting the Bill and said that 500,000 people and above would create a city that would have made only Nairobi and Mombasa to be the only cities in the country, when the Bill went to Parliament - I was a layman or an outsider at that time - Parliament said despite the fact that Kisumu does not have 500,000 people, it would, however, be called a city. The point I am making is that we have to stick to characteristics that are uniform. The second thing is that a city does not get conferment of a greater standard of a county. This is actually an entity of a county government. That is why Nairobi is called Nairobi City County. Mombasa is Mombasa City County. This is because they are cities and at the same time counties.

When you go to Kisii, you will find Kisii Municipality which is the urban area. The law says that we should create a management board for the urban area because of the challenges we have. However, the management board is not autonomous. It is responsible and reports to the county government. That puts an extra cost to the running of the county. Establishing a town, municipality or a city is not for the sake of getting benefits. You have to incur a cost to give services to the people of that area because of a larger population. So, you cannot force a city or an urban area for purposes of having a name. The city must have the challenges and characteristics of an urban city. Therefore, reducing our cities in Kenya to have 250,000 people and 70,000 people for a town or municipality and yet there is no conferment of any benefits that come with being a city is not necessary.

Mr. Temporary Speaker, Sir, some people are still living with the mentality that Kenya Urban Roads Authority (KURA) will set up a unit in an area once it becomes a municipality. However, we all know here that there is no extra allocation to KURA that is not part of what goes to county governments. Therefore, we should not create unnecessary layers of government.

That argument also raises the question of whether an urban area can charge a fee outside county governments. Whatever fees are being charged in Nakuru or Naivasha towns have been agreed by the county assemblies. So, you should not fear that you will



create entities that will be levying fees on their own. Parking fees now or any other fees that will be levied by any town across the country must be something agreed by the Parliament of Kenya or the county assembly of a county. This creates autonomy again for that reason.

There is the issue of giving the Governor power to confer status of a municipality to a town. One can wake up one morning and decide that since Nyandarua is operating from a shopping centre somewhere, the place of operation should be called a municipality so that we feel nice. If it does not meet the characteristics of a municipality, then it is wrong. If Iten does not meet the qualifications of a town, why should you fast track it to become a municipality? I am talking about Iten because it is in my county. This is a good example to give. Let us allow urban areas to grow. When they reach the stage of becoming towns, they will become towns. When they reach a point of being municipalities, let them be municipalities.

**Sen. (Eng.) Muriuki:** On a point of order, Mr. Temporary Speaker, Sir. Is the Senator for Elgeyo-Marakwet in order to pretend that he does not know about affirmative action? If a county has no city, municipality or town, you have to choose one that appears like a town, call it a municipality, get the facilities there and it becomes the headquarters. Very soon this House should pass a law to make Ol Kalou a municipality and we move on. If we do not, then we will never have any.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, where is the point of order? He was either giving information or making a contribution and yet he will have his time. The point I was making is that acquisition of a city like Mombasa or Nairobi should be through a criteria provided in law.

**Sen. Ndiema:** On a point of information, Mr. Temporary Speaker, Sir.

**The Temporary Speaker (Sen. Mositet):** Do you want that information?

**Sen. Murkomen:** Yes, Mr. Temporary Speaker, Sir.

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, I wish to inform Sen. Murkomen, whom I respect as one of the drafters of the Constitution that there are cities in this world which started as small centres. When Nairobi became a city, it was not as big as it is today. A city like Abuja started from nothing but was called the Capital City of Nigeria and, indeed, it has grown to fit in that name. What is wrong with us having 47 cities? We must have more “Nairobis” in Kenya so as to develop. Our people in the rural areas should have cities which are an alternative to Nairobi.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, whereas my neighbour has given me information, the information was erroneous and jumbled up. He has agreed that you grow from a village, shopping centre then it becomes a town in a municipality and then a city. Let us not define a centre in my village, for example, call Embobut a city so that out of a “feel good” desire, it becomes Embobut City. When you go there, you can count the number of shops.

Let us have criteria which allow our counties to grow from one step to another to reach that level. There is what we call the city of the county and a municipality. The city of a county will remain the same even if there is one shopping centre. However, this one does not get the status of a municipality. This is a global issue. There is a Sister Cities Associations and Municipalities Association in the world. We must remain within the global definitions. When the Urban Areas and Cities Act was being drafted, that is what we had in mind.

I want to add my contribution to what Sen. Mutula Kilonzo Jnr. ably talked about with regard to the Transition to Devolved Governments Act. If no one is desirous of reversing the process that Senators have already completed, there will be no function to be transferred. There is no transitional process of a function. The transition time is still going on. It will end next year but there is no function that someone will apply for so that we consider. That is why I am saying that whoever drafted this law was either ignorant, was in a hurry or was just doing it for the sake of it.

In fact, if you want to talk about transfer of functions, that is under Article 187 of the Constitution. This is about functions being transferred to the other level of Government which is already provided for in the Intergovernmental Relations Act. The Transition to Devolved Governments Act is a timed Act. It has a time frame and certain minimum obligations for its existence. The reason why it has been implemented in a major way is because we have transferred the functions. What is remaining is the auditing of assets, liabilities and so forth. However, this does not involve provisions which are superfluous being inserted here. If you refer to the notes attached to these Bills, you will realize that there was a proposal at some point to delete the transition period from three years.

Mr. Temporary Speaker, Sir, I know that it is within your powers to add me more time. If you could add me another five minutes I will appreciate. In this regard, we are talking about the transition period. Someone said that we should extend the transition period and the term of the Transition Authority. That is a serious issue. If anyone wanted to do that, then we would have a discussion. There is one problem in this country as we speak. The technical committee that should serve the summit is not in place. We do not know the reason why it is not in place.

Our Committee has been inquiring why we have not received any reports from the Summit or from the Council of Governors. They have been having several meetings and they have not reported to this House. Be that as it may, we must not extend the term of the Transition Authority or transition period from the back door. When we want to extend that period, it must come from the front door and we must have legitimate and important discussion about that issue.

Mr. Temporary Speaker, Sir, look at this provision in the County Governments Act, what is called County Consultative Forum. How on earth would someone say County Consultative Forum for development will only involve professionals of that county? That is elitist. Where do you get these elites called professionals to come and meet in the county and have a special sitting with the governor that *mama mboga* and farmers in that area would not be in that meeting? I cannot imagine how it managed to find itself in a Bill. That you segregate a particular section of the population and give them a special sitting with the governor, not even a County Executive Council member (CEC) in charge of development, a chief officer or a head of department but the governor would directly come and chair a consultative meeting with people who have an elitist status of professionals, we cannot accept that. In fact, it cannot stand and no one will accept it.

Mr. Temporary Speaker, Sir, the counties cannot be turned to be elitist structures. Consultation under the law requires that the governor consults everybody. If there is an issue involving *tuk tuk* traders or *piki piki* riders, you call them. If it is about farmers, you call them. If it is about house girls, because those are things that the governor deals with

at the local level, you call them because all the social, political and economic issues that involve the county must give space to everybody; whether persons with disabilities and people who are schooled or not schooled. Therefore, I completely object to any provision of this nature besides the fact that this is unnecessary addition when the county should be implementing the county development board in place.

Mr. Temporary Speaker, Sir, I believe the intention of the Agriculture, Fisheries and Food Authority to separate the fisheries department from the agriculture is well meaning and well intended. In this amalgamation of various boards, it was slightly misplaced. When the time comes when we will be debating the authority that will take care of matters of fisheries, I will give my input.

I believe that the substratum of this Bill should not have been here if the person who had drafted it had applied his or her energy and mind properly. That is why I said earlier, sitting in that seat, that in future, we need Bills that really touch on county governments and the consultation that is there between the leadership of the Senate and the National Assembly particularly from the Jubilee side, should be able to segregate Bills that focus on county governments to start from the Senate. This is because of the special nature of our responsibility as a House. It is not as a requirement of law. I am just saying in terms of good operational rules should be that the Senate Majority Leader should first come with this Bill so that all of us are informed about it, contribute to it and make our country a better place to stay.

Mr. Temporary Speaker, Sir, I am glad that I am sitting in the Committee on Legal Affairs and Human Rights. I will make my comments known there. However, I will request this House one thing; that we should amend our Standing Orders to make the Committee on Devolved Governments a Standing Committee because as a result of it not being a Standing Committee, we have been deprived of the opportunity to inform the House on various legislation because under the Standing Orders, a Sessional committee does not take a Bill. It becomes difficult when those necessary Bills start touching on inter-governmental relations and other things when the time comes.

**The Temporary Speaker** (Sen. Mositet): Your time is up! Sen. G.G. Kariuki.

**Sen. G.G. Kariuki:** Mr. Temporary Speaker, Sir, I was here from the beginning when this Bill was being moved by the Senate Majority Leader. It created a lot of questions and points of order because of what it is. Since the Speaker had decided on the way forward, we all agreed. The Speaker should not be challenged for making that decision. However, we should look at this Bill clause by clause, because this is a Bill affecting county governments. It has a lot to do with county governments. Whatever we are proposing here ought to have come from the county governments so that we know and regulate according to the wishes of the locals, assuming that the local leadership would have introduced the Bill to the public for their comments because the issue of land, whether adjudication, is a very weighty matter. This is where you can find counties, national Government and also the Senate disagreeing because it is an issue of natural resources belonging to a particular county.

Mr. Temporary Speaker, Sir, sometimes we need to change our policy in terms of thinking that we can just forget where we come from and assume that we know better than other people. My feeling, as somebody who has been in politics for quite some time, is that we fail by not involving the public. Was there any problem for the Committee

dealing with this matter to go round and ask or propose to the people what they are intending to do? The people would have talked to you. For example, if you want an urban council to have 250,000 people, they will agree or disagree with you. However, to assume that because we have the authority, we can just move on and do what we want is quite unfortunate.

You now want to go back to introduce District Commissioners (DCs) in land adjudication. Is the history of those administrators dealing with the adjudication matters good? Some have history you would not even wish to be reminded about. This is where corruption started many years back; that if you have money, your land can be adjudicated and some parts of other people's land would be taken away.

Mr. Temporary Speaker, Sir, we cannot be here as witnesses of making law which we know will create more problems. I agree with Sen. Murkomen when he was asking whether this Bill was properly drafted. However, looking at it, it is said it went through the Office of the Attorney-General. However, I think we need to know that the Attorney-General's office is a legal office. He is a Government legal advisor but not a Government political advisor. Therefore, we should not take it for granted that just because the Bill went through the Attorney-General's office, it is an appropriate Bill which will solve our problems. These are things that we always need to be careful about.

Although the terms changed from trust land to community land, the meaning is almost the same. It became trust land because the land was being trusted to the British to supervise and manage for the locals. Now, we can manage ourselves without necessarily looking for help from anybody from outside.

Mr. Temporary Speaker, Sir, looking at this Bill, the intentions are very good and I was impressed by the mover when he tried to oil something which was a bit dry. I am very sure because I was not quite convinced looking at him when he was talking. If he had been given a chance, he would have come out with some amendment. We should be careful when we talk about the "Lower House" or the National Assembly. We have to be civil. Let it not appear as if a crime has been committed. We also have committed various crimes. If you asked the county governments whether the Senate is doing well, some of them will tell you that they do not know what is happening. We should know that we are heading the same direction and if our brothers go wrong, we need not criticize them but correct them. That is the only way we shall have cohesive politics which is lacking in this country. In this country, we do not know where the National Assembly, the Senate or the political parties are heading to. There is total confusion. We are, therefore, likely to put this country into a bigger problem.

Mr. Temporary Speaker, Sir, I do not intend to go through this Bill clause by clause because it will take a long time. There are many areas that I may not agree with but since the Speaker committed to the House that the Bill will be committed to the relevant committees so that they come up with a more detailed and clearer Bill when the time comes, I think that will be in March next year. I do not see the reason why this Bill was not immediately committed to the relevant committee so that we pass it in March because during December and part of January we will all be away. It will be a big problem to get Members to deal with this Bill.

It is normal to subject this Bill to the Attorney-General but the final responsibility lies with the person who signed it and not the Attorney-General. This is a Bill concerning county governments for the purpose of Article 110 of the Constitution. If you look at that

Article it is so confusing that the drafters of this Bill needed to be very clear on what they meant. Although they say that this will not occasion any additional expenditure or public funds, that assertion does not hold any water. I did not want to go through this Bill clause by clause but just to make a political statement as I have just made.

Mr. Temporary Speaker, Sir, we should all the time know what belongs to the Government is the Government's and what belongs to us is ours because times have changed. We no-longer have Government Bills. I do not think anything should change because we still have the Opposition and the Government side. We have to be sure that what we are doing is in tandem with Government policy. We are facing a new kind of politics which some of us have to learn. It is good to say that there is no end to learning. I am learning a completely new political society. For example, if you want to be a Member of the Opposition today, you become one and when you want to pretend that you are not in the Opposition it automatically happens.

Mr. Temporary Speaker, Sir, time has come for us to re-think where we are going. I was a Minister for Lands for many years and I can tell you that if you want to destroy the entire country, play around with land issues. Land issues should be decided with the owners of the land. If it is land in Maasai land, let the Maasais decide whether they are ready to do what is in the Bill. If it is something that involves the Kisiis or the Laikipia people, you should let the indigenous people know why their land is being taken away and if it is for their own good. They will not object, but if they object, you leave it because this is a very serious matter. I saw the Purko Maasai and the other clans killing one another and I was directed by the President to go and make sure that that conflict ended. Kitengela land was a very serious issue where the Maasais had said that they will take it and the Government was dilly dallying. I had to take a decision to avoid bloodshed and let the Maasai keep their land.

When we are discussing land issues, the question of where the headquarters is going to be and whether the department of fisheries will be removed from the Ministry of Agriculture, Livestock and Fisheries are just minor details which ought to come from the appropriate committees and all other governing authorities so that we know which direction we are heading to.

With these remarks, I beg to reserve my support because it is going to come during the Committee Stage. So, it does not matter whether I support it or not, because I will not be tied or put in prison. I will wait for that moment to say what you want me to say.

I beg to support and wish that we will always be guided by public demand. Thank you.

**Sen. Hargura:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to this Bill. The Bill covers many Acts and that is why the views of the Members should have been sought in the relevant committees so that we can benefit from their deliberations on the same. All the same because the Chair has ruled that it will go to committees either way, I would like to give my contribution.

The first one is with regard to the Trust Land Act. This Act has been used for a long time. The county councils have been using it and through it, communities have been losing their land. With the coming in of the Constitution of Kenya 2010, the trust land has been renamed community land. My expectation is that we have a completely different Act which gives a lot of authority or powers to the communities to manage their own

land. That cannot be attained by changing the Trust Land Act to Community Act and, changing county council to county government because the Act is still the same. We have a county government which is more entrenched than the county councils. Therefore, we also need the communities to have more say in their land. In fact, it should be a situation whereby the communities will have titles to their land because they are the ones to make decisions on what should be set aside and what procedure should be used. They should be fully involved. There was no need of doing these cosmetic changes. We would rather, as the Senate, complete the process because we already have the Community Land Bill which has been tabled in the House. We would rather expedite that one than have these kind of cosmetic changes.

For the Urban Areas and Cities Act which reduces the population, I do not get the rationale of reducing the population threshold so that we end up with more cities and municipalities. This is because if you look at what the Act is amending, in the case of cities from 500 to 250, that is just one requirement. There are many other requirements which have to be met. If you check Section 5(9) of the Act which is being amended, the population is just the first part but there are other requirements from part (a) up to (g) which that area has to meet before it can be called either a city or an urban area. It has to demonstrate the capacity to generate sufficient revenue. If you reduce the population requirement, then you have reduced the capacity for that particular area to generate the required revenue. I do not think reducing the population threshold will assist in any way. You might have many urban centres or cities which are not operational because they did not meet the other thresholds. If the rationale was that you have more urban areas so that they can levy more taxes, then that is negative because we are coming up with ways of taxing Kenyans who are already overtaxed. That is not the direction to go.

Mr. Temporary Speaker, Sir, coming to the County Governments Act, of course, it has been said that the issue of 15 to 10 wards has been overtaken by events because the first election has been held. I do not know the rationale of somebody trying to change this when after the new Constitution there is only one first election and it has already passed. I do not know why we are amending things backwards.

The other part which has been addressed by many Members is the issue of the consultative forum. If you check the Act which is being amended, it states:-

“There is established for every county a forum to be known as county intergovernmental forum.”

This was supposed to be just coordination between what the county government is doing and what the departments which have not been devolved are doing at the county level. Initially, what was there was just heads of departments of the national Government rendering services at the county level, then the executive committee members of the county assembly so that they can synchronize their activities. From this, a particular source of national Government funding has not been taken into account and I do not know why. Maybe the reason could be because it comes from the National Assembly. We have the Constituencies Development Fund (CDF) which is going to the county and that is one fund which has not been brought into these kinds of committees or forums at the county level. That way, you have a Government fund which is not synchronized with other Government funds. We only have the heads of departments and the county executive committee members. You have left out the CDF. There must be some way of roping in CDF because it is also doing the same things that these departments are doing.

At least somebody from CDF should be attending or be part of this; maybe the secretary to the committee or the officer appointed by the Board. At least somebody from the CDF should be roped in so that whatever CDF is doing can also be known by the other actors like the county government and the national government departments. That way, we will avoid duplication.

Taking into account this new consultative forum, I do not see the rationale of removing the intergovernmental name. That could have been a better name than calling it consultative. This is because you are trying to put the levels of government together so that they know what each one is doing so that they can coordinate their activities. When you remove it, maybe with a view to trying to widen it, then you say you are going to include professional bodies. We do not have professional bodies at the county level. Rarely do you have these bodies at the county level, maybe non-governmental organizations that will make sense because they are at that level.

Looking at it from another angle, it has been raised by other Members that this could be a way of doing away with the County Development Board (CDB). I do not see how this consultative or intergovernmental forum can replace the CDB because these are all implementers. We still need to have the Board in place. If you look at the old structure, we used to have district executive committees and district steering groups. These were all forums at the district level then, and maybe now at the county level, which brings all the development actors together so that they can synchronize their activities and ensure that there is no duplication. Areas of priority can also be established. They can also benefit from each other's knowledge.

Mr. Temporary Speaker, Sir, when it comes to the CBDs, this is basically an oversight body which allows other leaders in prioritizing development activities. This has to be in place once we are through with the court cases. However, on this particular one, I did not see any sense of changing the name from intergovernmental because basically we are trying to rope in all the actors. I repeat; the CDF part has to be brought into the picture because that is where we are losing Government funds which are not open to scrutiny by other members of the county government and other actors.

Mr. Temporary Speaker, Sir, I will make a comment on the agriculture and fisheries bit. I think the rationale is clear. If we have separated fisheries from agriculture, then it is good also if the Act is tailored that way. However, there is one amendment when it comes to the agricultural board. It talks of the chairman who will be non-executive appointed by the President. If you look at the old Act, it says that he has to be vetted by Parliament. Why reduce this? This is because that will give the President a loophole in appointing anybody while the direction we are taking is that whoever the executive appoints has to be vetted by the legislature. This one has been removed. This could be a step in the wrong direction. We would rather maintain the vetting by the legislature. I hope that the Bill, once committed to the relevant Committees, will have a better outlook. Maybe the issues that have been raised by the Members will be taken into account. That way, we will have a Bill which will be implementable.

I beg to support and hope that it will go through the process as given by the Speaker.

**Sen. Obure:** Thank you very much, Mr. Temporary Speaker, Sir, for this opportunity to make some preliminary observations, now that there is an opportunity for

this Bill to go to the Committee and come back for the Third Reading, when I hope we will have a further opportunity to make comments.

Some of the amendments being proposed through this Statute Law (Miscellaneous Amendment) Bill are very fundamental. In my view, some of them require careful scrutiny. In fact, they also require thorough examination, not only at the level of the National Assembly and this Senate, but also by affected stakeholders and even the Kenyan public at large. Therefore, I feel that the public should be given an opportunity to interrogate some of the amendments, because they are very fundamental.

Mr. Temporary Speaker, Sir, while I agree that some of the proposed amendments are, in fact, overdue and very routine, I also feel that some are not. For example, we know that we no longer have county councils because they have been replaced following the repeal of Cap.265. However, I do not know why we are really in such a great hurry to consider this at this particular moment. For example, only a few days ago, The Community Land Bill went through First Reading in this House and was committed to the relevant Committee on Land and Natural Resources. That Committee of this House has already embarked on that Bill. In fact, only today, the Committee organized a public hearing. We had a long session at the KICC today, where we received views from members of the public on that particular Bill. Very useful comments, observations and recommendations were made at that hearing but we are still going ahead to make amendments, for example, turning trust lands into community land under these miscellaneous amendments.

I do not know whether this is necessary because we could wait a little longer so that we have a substantive Bill coming back to this House from the relevant Committee, so that this matter will have gone through all the stages, including public hearings. We will have something substantive to talk about.

Mr. Temporary Speaker, Sir, we are now proposing amendments to the Urban Areas and Cities Act, to reduce the threshold in terms of the population. Why is this necessary? I do not think that this is necessary. It is not going to confer any special benefits to the counties by doing this. We should stick to the criteria which has been set and let our towns and cities achieve the set criteria before we can do anything about this.

Mr. Temporary Speaker, Sir, regarding the transition to the Devolved Governments Act, I do not know whether these proposals are necessary. In my view, really, there are no further functions to be passed down to the counties from the national Government. This is superfluous because it has been overtaken. I want to express some concern about the establishment of a consultative forum for the coordination of development activities. It is being proposed that heads of department and recognized professional bodies in the counties come together at that consultative forum to discuss issue of development at the county level. I see this as mischief because this House has already passed the County Development Boards Act and is meant to undermine what this Senate has already done.

Mr. Temporary Speaker, Sir, there is already a forum where professionals are going to meet with the county executive. They can meet as many times as possible. They do not need a law to facilitate their meeting. The county executive can invite any professional that they want and transact whatever business they want to transact. The proposed forum is only going to be elitist because the various sectors in the counties are not represented at all. There will be no representatives of the people in those fora. I do



not know what we are trying to do through this amendment. I think this should be rejected.

I also see through the Agricultural, Fisheries and Food Authority Act very far-reaching amendments being proposed. I do not know why all these must be done through the Statute Law (Miscellaneous Amendment) Bill rather than a specific Bill that will deal with these kind of amendments. I feel that maybe we should allow the relevant Committee of this House to advise us on how to proceed. We should allow for more time and input from stakeholders, so that when we deal with some of these emotive issues like land, the general public has been given an opportunity to make their input.

Thank you.

**Sen. Hassan:** Thank you, Mr. Temporary Speaker, Sir, for this opportunity to share some initial thoughts contextually, with respect to this Statute Law (Miscellaneous Amendment) Bill.

First and foremost, as stated by other Senators, I hope and wish that as this Bill goes through the various stages or processes of the Senate in terms of our legislative mandate, we shall have sanitized a couple of issues to ensure that it is brought in line with the Constitution and achieves the spirit of devolution.

Mr. Temporary Speaker, Sir, I have not been quite concerned about the regime of land laws in this country. I know the Senate Majority Leader is set to bring some legislation. However, looking at the entire regime of land law, there is a way in which the new Constitution literally replaces that regime of land law. In my view, rather than trying to introduce the little amendments here and there in terms of terminologies, to bring laws that might not necessarily be in compliance with the Constitution, we need to re-think and overhaul the entire pieces of legislation as relating to land.

You have to realize that, even as we move forward, we need to know the contents of what was agreed based on the Supreme Court direction that both the Cabinet Secretary for Lands, Housing and Urban Development and the Chairperson of the National Land Commission (NLC) agree. We were told that they did agree. We need to know what the terms of agreement were for us to do a comprehensive re-alignment of all land laws so that conforms or brought to bear with the new Constitution.

As a Senate, we need to really look critically. There are other various provisions under the land chapter which we need to sanitize or to be brought in compliance with the new Constitution. Therefore, as much as it says that there might not be a general need to bring separate Bills, particularly when it comes to land, we might need either to consolidate certain Acts of Parliament, do away with others and bring some compliance with respect to the new Constitution. Therefore, on matters of land, I believe that we need more of a comprehensive look in terms of how to critically review the legislation as pertains to land so that we can achieve the desires of the Constitution.

Mr. Temporary Speaker, Sir, land is so critical and important to us and is partly the basis of our politics. Like every other legislation, it is a political document and it must capture the aspirations of the Constitution which is the basic component of this country. I would be very suspicious to believe that people now will try to bring certain minimum amendments rather than look at the holistic compliance. From the area that you come from, land is so critical. I agree with the previous speakers that we need an extra ordinary insight to look critically at the motives around these miscellaneous amendments so that as we discharge our mandate, we also realise that there is a new Constitution that just does

not say delete or add, it says overhaul, so that it complies with what needs to be done with respect to compliance to the new Constitution.

In terms of giving governors with certain powers to confer special municipality status to headquarters of the county, there must be objective criteria so that we do not have governors running amok. There is a criterion to confer certain status. As we debated other elements of law, we have set objective criteria of who should be awarded what. It must be criteria that serve as a minimum. Those counties that might not have those minimum, I agree with Sen. (Eng.) Muriuki in terms of affirmative action because that is why devolution came. If Mombasa is ten paces ahead, we at least need to pull a pace or two to the other counties. I will point out it if we allow Sen. (Eng.) Karue's county to move without special asserted affirmative action. If they were to build a county headquarters similar to that of Mombasa, they would need to wait for two or three financial cycles to do the county governor's houses and offices.

Therefore, it is important for us in that objective criteria to ensure that certain counties that have been dispossessed or disenfranchised are adequately resourced, so that they bring them to speed. I know also Tharaka-Nithi, the Senate Majority Leader's county, needs a similar affirmative action. Those of us who might have been lucky to have some of these buildings that date back to the colonial period and still serve the purpose are a bit humane to realize that counties must operate from a certain aboard. Therefore, they must be brought to pace. We need objective criteria which should also serve as an affirmative action to those who might have been disenfranchised over the period.

Lastly, all the time when I hear, particularly the national Government speak, I can see this captured in the spirit of this Bill where they talk about county governments not having capacity. You can devolve that function with the capacity. It is not rocket science. If I want to devolve a function and that function has professionals who discharge that mandate on a day to day basis, the capacity issues do not arise.

Mr. Temporary Speaker, Sir, the national Government is creating a perception as if those working at counties lack the necessary competence or capacity. These are people, majority of whom at this point and time, are seconded from the national Government. A number of governors have served in critical positions in various governments. They have been Ministers, Assistant Ministers, heads of parastatals and heads of government agencies. They have come from the private sector and from various other sectors. So, to perceive as if there is a capacity gap is a very dangerous jargon in terms of defeating devolution. I do not believe you can devolve, give them sufficient capacity and give them capacity building even when a function has been devolved.

Therefore, if these arbitrary powers were given to any agency, including the Transition Authority (TA), then you might have some of these matters with respect to devolution or unbundling of functions being extremely arbitrary and discretionary that we would not know which objective criteria people would use to gauge this capacity. Sometimes I wonder whether it is those who are not at the national level who lack the capacity because you keep on talking about people having capacity gaps and yet you have been charged with performing those functions for the last many years and have not delivered even to any extent on those functions. Look at the issues you hear today; that someone responsible for health care saying that they lack capacity yet for the last 50 years, we had the absolute powers to discharge the functions of health care, but we did

not exhibit any capacity. What is the miracle now that counties are in and we are talking about capacity issues? I have been a very big supporter of this agency but I can now raise sincere issues around its capacities. They have always given excuses why this has not been done.

As we interrogate governors here, you realize that part of their problem is the TA. We do not want to give them that type of discretion but in totality. As we move this Bill through the various processes, I hope that we will find it fit in ourselves to sanitize this law so that we bring it in conformity with the Constitution and particularly, to discharge the mandate of the Senate.

Sen. G.G. Kariuki said that I support or I do not support but that will be demonstrated as we go through the paces and steps of this House.

**The Temporary Speaker** (Sen. Mositet): Since there are no more requests, I call upon the Mover to reply.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, Mr. Temporary Speaker Sir. I will not belabor too much because I have heard what Senators have said. That is the purpose of the Second Reading.

It is to bring to fore the proposed legislation and allow ventilation. I share many of the sentiments that have been highlighted during the debate. We need to be careful and protect devolution. All of us in this House are in agreement that when it comes to devolution, we must ensure that more than any other institutions, that we are vigilant and make sure that our counties are nurtured.

I only have one more remark and it connects to the contribution by my brother, Sen. Hassan, whom we agree with on many issues like the wonders of devolution, fantastic opportunities offered in our counties to grow areas which have been marginalized for a long time, including my own county Tharaka Nithi. Therefore, I am a champion of devolution because I know as the rest of Kenya is being transformed Tharaka-Nithi will be transformed through devolution. The only thing, I do not agree with Sen. Hassan, is that in everything he has to see national Government and some conspiracy theories about the national Government. I am saying this because I have just heard him say that when the Bill talks about capacity, it is trying to demean counties---

**The Temporary Speaker** (Sen. Mositet): Order, Senator. There is an intervention by Sen. Hassan.

**Sen. Hassan:** On a point of order, Mr. Temporary Speaker, Sir. Sen. (Prof.) Kindiki made it very clear that the purpose of Second Reading is to allow Senators to ventilate. Ventilation is a very broad term. My ventilation is also an opportunity for him to demystify some of those things. So is he in order to now skew my ventilation to mean it is an endemic issue by bringing in the national Government?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I would not be very far from the truth to allege that Sen. Hassan will never finish a speech without attacking the Jubilee Government. That is okay because he is a Member of the minority. My problem is that he needs to read the Constitution and attack the Government having read it. I want to read for my brother Article 190 of the Constitution. This Article was not written by Jubilee but by Kenyans from all shades of the political divide. It says:-

“Parliament shall enact legislation to ensure that county governments have adequate to enable them perform their functions.”

It goes on to say:-

“Parliament, by legislation, shall provide for the intervention by the national Government if a county is unable to perform its functions or does not operate---”

The issue of capacity in counties was anticipated. It is not a demeaning ideology but an ideology to compel the country to believe in devolution and to mandatorily make sure that the national Government strengthens rather than stifles the devolved units. This should be a good civic education for my brother. Other than that, we agree on many issues. I know that what he says is what I believe in.

I disagree with Sen. Murkomen when he says that you cannot manufacture a town. You can actually manufacture a town. I want him to once again revisit the classic economics of Adam Smith “The Wealth of Nations” You can, by providing the requisite ingredients like infrastructure, land, labour and capital, actually manufacture a town, and actually, cities have been manufactured.

As Sen. Ndiema said, Dodoma and Abuja were manufactured because of policy and infrastructural interventions. I want to thank every Senator who has contributed. I am sure there will be many more inputs which will be invaluable.

With those few remarks, I beg that the Statute (Miscellaneous Amendment) (No.2) Bill, (National Assembly Bill No.33 of 2013) be read a Second Time.

Before, I finish I have a point of order.

Mr. Temporary Speaker, Sir, I rise on Standing Order No.50 and Standing Order No.54(3) to request that given the hour we are in and the numbers we have, that the Speaker defers the putting of the Question on this Bill.

**The Temporary Speaker** (Sen. Mositot): As the Senate Majority Leader has requested, we will defer putting the Question because this is a Bill concerning counties.

*(Putting of Question that the Bill be read a Second Time deferred)*

### *Second Reading*

#### THE FERTILISERS AND ANIMAL FOODSTUFFS (AMENDMENT) BILL, NATIONAL ASSEMBLY BILL NO.36 OF 2013

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move:-

That the Fertilizers and Animal Foodstuffs (Amendment) Bill (National Assembly Bill No.36 of 2013) be read a Second Time.

I will be very brief. The purpose of this Bill is very simple, definite and direct and yet it addresses a very important issue relating to availability, production, distribution, access, and affordability of fertilizer. As hon. Senators know, fertilizer is an important farm input that has an overall effect on food production. Animal foodstuff on the other hand is critical to the livestock which is part of the agricultural sector as a whole. While fertilizers support the crop industry, livestock industry is mainly supported by the foodstuffs industry.

This Bill establishes a Board; the Fertilizers Board, is the main thrust of this Statute Law (Miscellaneous Amendment) Bill. This is what will advise the national

Government and county governments on policies which are appropriate to make fertilizer affordable. This Board will, among other things, advise the Cabinet Secretary for Agriculture, Livestock and Fisheries regarding agricultural policies because agricultural policy is a function of the national Government. This Board will collaborate with research institutions and universities to ensure there is research conducted on how to make fertilizer available and affordable. This Board will ensure the development and establishment of fertilizer industries and factories in our country.

As hon. Senators know, this country has been struggling with the establishment of the fertilizer industry since 1978. There is a huge scandal known as the KenRen that took place in the 1970s. Some money got lost in the effort to create a fertilizer industry and that project did not take off. It is only this year; I say this with a lot of pride, that the Jubilee Government has entered into a public private partnership arrangement with a private investor who has been identified to establish the first fertilizer industry in Eldoret. This will be the first in our country. Going forward and given the critical role of agriculture in our economy, it would be important to have a Board and a sector wide policy on fertilizer and animal feeds so that we can grow our agriculture.

Mr. Temporary Speaker, Sir, finally, the reason why this Bill is important is because it provides for a framework for subsidizing fertilizer and animal feeds production. There is no country in the world that has a vibrant agricultural sector without a subsidy programme. Agriculture is critical to all countries; developing and developed countries alike. They normally say that if you want to see a riot, it will be as a result of inadequate food. Even in the most sophisticated society, if people cannot be food secure you are looking at civil unrest. The issue of subsidies is important. Definitely, that subsidization programme will have to be harmonized with the World Trade Organization (WTO) subsidy programmes and the other regional and international trade arrangements and the protocols and treaties that Kenya is party to given that our Constitution requires us to internalize international law in our trade and investment policies.

Therefore, this Board and the functions this Board will perform are going to change our agricultural sector, our livestock production and crop production for food security for the prosperity of our country.

Without much ado, I beg to move that the Fertilizers and Animal Foodstuffs (Amendment) Bill (National Assembly Bill No.36 of 2013) be now read a Second Time.

I request Sen. Ndiema to second.

**Sen. Ndiema:** Thank you, Mr. Temporary Speaker, Sir. I stand to second this Bill.

**The Temporary Speaker** (Sen. Mositet): Sen. Ndiema, I know we are short of time, but I will add you an extra five minutes.

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, five minutes may not be sufficient.

**Hon. Senators:** You will continue next time!

**Sen. Ndiema:** Thank you, Mr. Temporary Speaker, Sir. As a Member of the Committee on Agriculture, Livestock and Fisheries, and knowing that we have been grappling with issues concerning food security and the central role that fertiliser and animal foodstuffs play, this Bill could not have come at the right time. This is the right time especially now that our Constitution guarantees every Kenyan a right to quality food.

Mr. Temporary Speaker, Sir, the fertiliser and animal foodstuffs industry has remained unregulated for a long time. The sector is faced with a lot of confusion and is unpredictable such that when the time comes for farmers to plant, often times fertiliser is not available and whenever fertiliser is delivered, there is no guidance as to what fertilisers to use and sometimes farmers end up using inappropriate fertiliser, leading to low production.

Importation of fertiliser in most cases is sometimes driven by suppliers and not the consumers. This Bill seeks to regulate that industry so as to ensure that there is availability in terms of quantity and quality of fertilisers.

**The Temporary Speaker** (Sen. Mositot): Order. I think the Senator is in the mood of continuing and since the Mover is in the House, let me just allow him to finish so that I can propose the question.

**Sen. Ndiema:** Thank you, Mr. Temporary Speaker, Sir. We are anxiously waiting for this Bill to be passed so that this sector is regulated.

Today, some of the animal feeds that you find in the market is substandard and yet it is sold very expensively. There has all along been need for regulating the manufacture of animal feeds and distribution so that the farmers get value for their money and so that food production is enhanced. This Bill seeks to create a Board that will be advising the Government on all matters relating to fertilizers and animal foodstuffs. There has not been a Board hitherto, because the Principal Secretary is the one holding that power.

Mr. Temporary Speaker, Sir, implementation has been wanting and that is why I support creation of the Board despite the fact that currently there is a move to reduce the number of boards in this sector. But because of the central role that fertilizer and animal foodstuffs play as input in the agricultural sector, this should be an exception. A Board to regulate this sector should be formed.

I know that at the appropriate stage amendments will be brought to improve on the Bill and particularly on the functions of the Board because this Bill proposes that the Board becomes a regulator as well as a player in the industry. We should decide whether the Board will play the two roles or only be a regulator. The regulatory role is more wanting than the business part of it and that is why I feel that it should be emphasized.

Mr. Temporary Speaker, Sir, the Act as it is now does not take cognizance of the changes that are there in the Constitution or the devolved functions because agriculture has now been devolved. It is necessary that such a Board, if formed, while it will be advising the national Government, it will also be facilitating the county governments to perform their function or mandate in the agricultural sector.

This Bill also envisages promoting research on fertilizer to ensure quality and safety. Safety of agricultural inputs is very important especially in this era where consumers know their rights, want to ensure that what they consume is of a quality, that it is healthy or will not be harmful to their bodies and also that the products can be traced. This Board will ensure quality and safety of fertilizer and animal products.

Mr. Temporary Speaker, Sir, it will also advice on issues of procurement and promote manufacturing. For a long time, we have been importing fertiliser yet we are a big consumer of fertiliser in this region. We have a market here and in the neighbouring region such that if we had a manufacturing plant, we would not lack a market, we would create employment for our people and also save on foreign exchange that we spend.

Petroleum products are normally the key raw materials for manufacture of fertiliser. In view of what is happening in the mining sector, that we are also going to get oil in the region, this has come at the appropriate time. We have the mineral, manpower and capacity, as a country, to manufacture. This Board will advise and promote investment in the area of fertiliser manufacture. It will also ensure that fertiliser and animal foodstuffs reach the farmer at the grassroots level. Currently, fertiliser, especially the subsidized fertiliser purchased by the Government does not reach the farmer. It reaches the National Cereals and Produce Board (NCPB) depots which are not widely distributed in this country. Where they are, they can only be in the county headquarters. Small scale farmers, those who need two or three bags of fertiliser cannot afford to go and queue to purchase the little fertiliser that they require. They fall prey to those who want to sell fertiliser at very high prices. So, the subsidy that we are providing to farmers does not achieve the desired goal of particularly assisting the small-scale farmer. I believe this Board will ensure that fertiliser reaches every village, of course, working with the county governments. The amendments will be brought, I believe at the right stage, where county governments will be involved.

Mr. Temporary Speaker, Sir, the composition of the Board as envisaged in this Bill will involve professionals and stakeholders in the fertiliser industry. We note that the Board being formed here under this Bill is specifically for fertiliser. It does not include animal foodstuff. I believe at the right stage, animal food stuff should also be a business of this Board. We also feel that the composition of the Board could be adjusted in a manner that it does not appear to be centralised, that counties are involved in a way in ensuring that the Board is properly constituted and represents the interest of the counties because as the Senate, that is our business, to ensure that counties are represented particularly the farming community, researchers and so forth.

With those few remarks, I beg to second the Bill.

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, I now wish to propose the Question so that when we adjourn, we will just come straight to the plenary. Senators, you have done very well. As you can see, we have surpassed our normal and usual time as per the Standing Orders.

*(Question proposed)*

## ADJOURNMENT

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, it is now time to adjourn the Senate. The Senate stands adjourned until Tuesday, 2<sup>nd</sup> December, 2014 at 2.30 p.m.

The Senate rose at 6.43 p.m.