

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 25<sup>th</sup> February, 2016

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

*[The Deputy Speaker (Sen. Kembi-Gitura) in the Chair]*

### PRAYERS

### PETITIONS

#### VARIOUS GRIEVANCES AGAINST THE COUNTY EXECUTIVE AND COUNTY ASSEMBLY OF VIHIGA

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, I thank you for this opportunity. Pursuant to Standing Orders No.220(1)(a) and 225(2)(a), I wish to present before the Senate a petition from 12 residents of Vihiga County who are Members of the County Assembly (MCAs). The petition concerns various grievances against the County Executive and the County Assembly of Vihiga.

Before I read the Petition, I want to bring to your attention and the attention of the House that the version of the petition that I am reading is not the original Petition from the petitioner. It is an abridged version done by the Office of the Clerk, in consultation with the Office of the Speaker. This is a shorter form of the original petition.

Secondly, it was also signed by approximately 1,500 residents in addition to the 12 MCAs. However, the signatures were rejected because they were not on a headed letterhead. The material allegations contained in the said Petition are as follows:

(1) THAT following a huge outcry in 2015 over non-payment by the County Government of Vihiga to contractors and suppliers of various goods and services to the County Government, the Vihiga County Assembly established an ad hoc Committee to investigate the matter and report back to the County Assembly with its findings.

**The Deputy Speaker (Sen. Kembi-Gitura):** What is it, Sen Muthama?

**Sen Muthama:** Mr. Deputy Speaker, Sir, will I be in order to say that the Petition that is being read here has been trimmed from its original version? This document is not about the Senator who is presenting it, neither the Chair nor the Senators here. It is about the residents who wrote it.

Therefore, can we have the original version so that we can know the real issues that were raised by the residents themselves instead of having it halfway? This way, they will end up not being represented the way they wish to.

**The Deputy Speaker** (Sen. Kembi-Gitura): Senate Minority Leader, what is your point of order?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, the point raised goes to the very reports of how we process public concerns addressed to us. I will refer to Standing Order No.219. This is very serious and important. This is about the meaning of a 'petition'.

Standing Order No. 219: Meaning of petition

“For purposes of this Part, a petition means a written prayer to the Senate under Article 37 or 119 of the Constitution by a member of the public requesting the Senate to consider any matter within its authority as contemplated in Articles 94 and 96 of the Constitution, including enacting, amending or repealing any legislation.”

Standing Order No.220: Submission of a Petition

(1) A petition to the Senate shall be—

(a) submitted to the Clerk by the petitioner and reported to the Senate by the Speaker; or

(b) presented by a Senator on behalf of a petitioner, with the consent of the Speaker.

(2) Notwithstanding paragraph (1)(b), a Senator shall not be eligible to present a petition on his or her own behalf.”

That does not apply.

“(3) The Clerk shall, within seven days of the date of receipt of a petition, review the petition to ascertain whether the petition meets the requirements of these Standing Orders and of the law.”

Not edit! Review!

“(4) Where the Clerk considers that a petition does not comply with paragraph (3), the Clerk may give such directions as are necessary to ensure that the petition is amended to comply with that paragraph.”

Therefore, the amendment of the Petition is on the direction of the Clerk to the petitioner to amend to fit what the Senate will require; not the Office of the Clerk to edit and/or amend, trim, reduce or add any material particulars to the Petition.

(5) “The Clerk shall, if satisfied that the petition meets the requirements under paragraph (3), forward the petition to the Speaker for tabling in the Senate.”

I have had the privilege of seeing the original Petition from Vihiga County. I have equally been privileged to see the abridged version. It has been heavily edited to the extent that it has lost meaning. It has now been handed over to the distinguished Senator to present to the Senate.

My opinion is to urge you to rule that the abridged version being presented is not the Petition from the people of Vihiga. It is not the Senator's Petition. The Senator is a conduit. He is a conveyer belt and an agent. An agent cannot amend the views of the principal. He brings it here as it is, as it was intended to be.

I implore the Chair to direct that:

1. What the Office of the Clerk has given Sen. Khaniri is not a Petition from the people of Vihiga.

2. The original Petition as presented, having been accepted by the Senate, be presented to the Senate, and that the relevant Senate committee can then carry out an

inquiry to find out whether monies have been misappropriated and whether the transgressions alleged are material and substantial.

*(Sen. Khalwale spoke of the record)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale! I can hear you. Your name is on the board although it is wrongly on the screen. It is showing that you want to debate rather than intervene. Do it correctly.

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, Standing Order No.223(l) and (m) states-

(l) in the case of a petition presented by a Senator on behalf of a petitioner, be countersigned by the Senator presenting it; and

(m) be signed by the petitioner or, if the petitioner is unable to sign, by a witness in whose presence the petitioner shall make his or her mark on the petition.”

Mr. Deputy Speaker, Sir, the Petition given to Sen. Khaniri does not bear those requirements or signatures at all. Is that in order?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I appeal to you that over and above what Sen. Wetangula has prosecuted, there are two very important issues that should guide you in making this decision. That allows Sen. Khaniri to read the Petition;

First, if the fear of the Office of the Clerk was that the petition was too long, already a precedent has been set. In the last Parliament, Speaker Kenneth Marende allowed me to read a Petition---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale! You made your point. You are talking about it being too long. You are preempting.

**Sen. (Dr.) Khalwale:** Yes, Mr. Deputy Speaker, Sir. Secondly, my appeal to you is that while at the County Assembly of Vihiga, there were serious allegations that MCAs were bribed. Sen. Khaniri and I have been bombarded---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale! Assume that what I have in front of me is what Sen. Khaniri is petitioning. You say that you have seen other documents. Therefore, I would rather that you make your point without talking about things that I do not know. I do not know about the Vihiga County Assembly. I have a Petition in front of me. Sen. Wetangula and Sen. (Dr.) Machage have made presentations. We have not come to the length of the Petition yet. Let us talk about the modalities of it. Do not go to the subject at the moment.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I was talking about the issue of you protecting the integrity of this House by giving the right---

**The Deputy Speaker** (Sen. Kembi-Gitura): Did I fail to protect the integrity? Do not go beyond the issues that are in front of us. I will do my best to deal with the situation.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, the integrity of this House is such that a petition is a petition when the signatures of the petitioners have been attached. The document that Sen. Khaniri is attempting to read is just a piece of paper but not a petition.

*(Sen. Muthama spoke off record)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order! Sen. Muthama!

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, what is more, in its original form, the petition has almost 1,500 signatures appended to it and this is what we should be pursuing. If the concern of the Clerk was that those signatures were not on a paper headed by the words; "Petitioned by the people of Vihiga," then, he should have said so instead of trying to edit the petition.

**The Deputy Speaker** (Sen. Kembi-Gitura): Is that it?

Sen. Wetangula, you referred to Standing Order No.220. You read the whole of it but you emphasised the issue of amending a petition under paragraph 3 which states that:-

"The Clerk shall, within seven days of the date of receipt of a petition, review the petition to ascertain whether the petition meets the requirements of these Standing Orders and of the law."

Standing Order No.220(4) states that:-

"Where the Clerk considers that a petition does not comply with paragraph (3), the Clerk may give such directions as are necessary to ensure that the petition is amended to comply with that paragraph."

Standing Order No.225 talks about presentation of petition. Paragraph (3) says that:-

*(Sen. (Dr.) Khalwale consulted with Sen. Khaniri)*

Sen. (Dr.) Khalwale, if you allow me, I will ask you not to distract Sen. Khaniri because we are referring to his petition and I want him to follow, so that we do not repeat the issues.

Standing Order No.225(3) states that:-

"The Senator presenting the Petition shall read such petition but shall confine himself or herself to the subject of the prayer, the material allegations therein and the number of signatures attached."

Sen. Khaniri, I can see clearly, as you said, that the petition that is in front of the House does not have signatures or anything like that. So, it appears as if---

*(Sen. Muthama spoke off record)*

Sen. Muthama, I will not allow you to help me interpret the law, at least not at the moment.

Sen. Khaniri, I can see that the petition that is in front of me, the original petition that has 10 pages, is signed by 12 petitioners and not 1,500 and you have countersigned it as is required by law. Am I correct?

*(Sen. Wetangula spoke off record)*

Order! Sen. Wetangula!

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, I want to bring it to your attention that I have three versions of this petition. I have the original version which bears the extra signatures by residents. We got a letter from the Clerk's Office saying that it did not meet the threshold. So, they sent it back to the petitioners and that is how we came up with the second version with 12 signatures, because we could not get this---

**The Deputy Speaker** (Sen. Kembi-Gitura): To me, it appears that the one with 12 signatures is the one that has come, pursuant to Standing Order No.220, the one that Sen. Wetangula is referring to. After the Clerk looked at the original one, it appears he then reviewed it and asked your petitioners to do it again; that is under Standing Order No.223. You have countersigned the one with 12 signatures. Am I correct to assume that that would be the correct petition under Standing Order No.220?

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, I countersigned both; the first and the second petitions.

**The Deputy Speaker** (Sen. Kembi-Gitura): Forget about the first one because I assume the second one comes under Standing Order No.223.

**Sen. Khaniri:** Yes.

**The Deputy Speaker** (Sen. Kembi-Gitura): What you are saying, which is important, is that you are not reading the one with 12 signatures.

**Sen. Khaniri:** Absolutely; it is different.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, that is our concern.

**The Deputy Speaker** (Sen. Kembi-Gitura): Not our concern but the concern of Sen. Khaniri, which we have helped him to distill.

Sen. Khaniri, if you agree, I would like you to consider the issue. I can see your point which is very clear because the one I have in front of me has 11 pages. Standing Order No.223 requires that you give it in abridged form.

*(Sen. Wetangula spoke off record)*

Order! Sen. Wetangula! Why do you want to altercate with me?

*(Sen. Wetangula spoke off record)*

I have not appointed you an *amicus curie*, neither does it apply to Senate and that is for court. So, Sen. Khaniri, if you are not satisfied that what you are reading brings out the petition, then I will allow you to deal with the petition in its original form. However, you should remember that under Standing Order No.223, you cannot read the whole of it. You should just point out the details of it. I would like to assure you also – because I know you have been in committees dealing with petitions – that whatever case to be brought before the Committee will be the 10-paged petition with the 12 signatures and not your abridged series.

I think the Clerk's office was trying to – because the House did not deal with the signatures – was to assist you to give the petition in an abridged form as required by Standing Order No.223, so that we could deal and discuss it for 30 minutes. The one that shall go before the Committee shall be the petition, as it is the norm, with the 10 pages and 12 signatures. That is the assurance I would like to give you but you have raised a very important point; but that is the position, that what you are reading complies with Standing Order No.223. So, it is your choice.

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, I thank you and I will follow the guidance that you have given. I will read the original document but skip parts that I think may not be very necessary.

Mr. Deputy Speaker, Sir, this is a petition to the Senate concerning various matters affecting the County Government of Vihiga.

We, the undersigned citizens of the Republic of Kenya and residents of Vihiga County, draw the attention of the Senate to the following:-

(1) THAT at the end of the Financial Year 2014/2015, there was an outcry from the contractors/suppliers demanding payments for the work and services rendered within the county. Even the contractor who refurbished the County Assembly Chamber threatened to close it down because the Executive had not paid the contractor after he had completed the work. Due to the many complaints and outcry from the contractors/suppliers and the public, the County Assembly constituted an *Ad Hoc* Committee to investigate the financial mismanagement of funds in the Vihiga County Executive.

(2) THAT on 1<sup>st</sup> December, 2015, the Leader of Majority moved a Motion in the County Assembly of Vihiga to constitute an *Ad Hoc* Committee with the mandate to investigate various issues.

(3) THAT the County Assembly indeed constituted an *Ad Hoc* Committee of 15 members. I will skip that and the list of membership of the committee.

(4) THAT the Committee summoned some senior officers from the Executive in line with Article 195 of the Constitution of Kenya, 2010. I have a list of members from the Executive who appeared before the committee. However, most importantly, the County Secretary and the Governor did not appear before the Committee even after they were duly served with summonses to appear.

(5) THAT after listening to all witnesses who appeared before the committee and analysing the documents adduced before the committee, it was clear that the Executive, through the County Secretary, received Ward Development Programme Projects Plan per ward on how Kshs36 million per ward was to be spent making a total of Kshs900 million for the 25 wards.

This amount was budgeted and the Treasury was to set aside the same in the financial year 2014/2015.

(6) THAT, from the evidence of the County Executive Committee (CEC) member for Finance and Economic Planning, the Exchequer released Kshs1.6 billion for development in Vihiga County Government in the financial year 2014/2015.

(7) THAT, the County Treasury headed by both the CEC member and Chief Officer for Finance and Economic Planning was to facilitate the implementation of ward development projects as per the Ward Development Programme Plan from the money received for development.

(8) THAT, both the CEC member and Chief Officer for Finance and Economic Planning could not produce documentary evidence to show how the entire amount of Kshs1.6 billion received from the Exchequer for development during the financial year 2014/2015 was spent. This is against the principles of public finance as provided for under Chapter 12 of the Constitution of Kenya 2010 and part of the Public Finance Management Act (PFMA) 2012.

(9) THAT, in the financial year 2014/2015, Vihiga County Assembly budgeted for Kshs100 million for Vihiga Emergency Fund. The money was appropriated for and set aside by the County Treasury. The document produced before the committee revealed that during that financial year, the money allocated to the Vihiga Emergency Fund was

used to pay some firms and individuals contrary to Sections 112, 113 and 114 of the PFMA No.18 of 2012.

Mr. Deputy Speaker, Sir there is a list of companies and individuals who were paid this money. I will not go through the list but it is a list of about 16 firms and individuals.

(10) THAT, Vihiga County Assembly budgeted for Kshs100 million for Vihiga County Community empowerment fund. The said amount was appropriated for and set aside during the financial year 2014/2015. The County Treasury brought forward Kshs25 million out of the Kshs100 million. Thus, Kshs75 million was not accounted for.

(11) THAT, all monies raised or received as revenue is to be deposited to the Revenue Fund in accordance with Article 207 of the Constitution of Kenya 2010, and Section 109 of the PFM Act No.18 of 2012. Contrary to the law, the CEC member, Chief Officer and Director, Transport and Infrastructure opened an account in Rafiki Microfinance Bank, being Vihiga County Mechanical and Transport, A/CNo.---Is the account number quoted?

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Khaniri. I will allow you a little more time because this is the first time that we are dealing with the situation that you have found yourself in. However, let me bring it to your attention that under Standing Order 225(5) – I am holding your time –

“A Senator presenting a Petition shall not speak for more than five minutes, unless with the permission of the Speaker.”

That is the only window that you have. The reason why it is sometimes abridged by the Clerk’s Office is because of the provisions of the Standing Orders. I know you are still very far from finishing. That is the reason I was telling you that I thought under Standing Order no.225, you will deal with the prayers as provided in 225(3). In fairness to you, I will give you another five minutes to finish.

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, yes, I will continue. Being Vihiga County Mechanical and Transport account – the account number is quoted – in which all money received from the hire of heavy machinery and motor vehicles were deposited. Thus, the money received as revenue was being deposited in another account other than the Revenue Fund.

(12) THAT, all Government entities must procure goods and services in accordance with the Public Procurement and Asset Disposal Act of 2005 and Public Procurement and Disposal Regulation. The County Executive procured the low loader without following the procurement process. The said low loader, though delivered to the County Executive premises, has not been officially received and fully owned by the Vihiga County Government. The low loader is parked, not being used for the intended purposes. Hence, the public is not getting value for the money.

(13) THAT, most of the tenders are awarded to companies in which some senior officers of the county Government or their relatives are directors.

(14) THAT, Kshs61.5 million cannot be fully accounted for since some projects have not been executed and some contractors who have completed their work have not been paid. The contractor who refurbished the county assembly chamber has threatened to close it because the balance of Kshs8 million has not been paid but the work is completed. Optic Technologies was paid for installation of HANSARD and voting machine systems in the county assembly chamber when the same was not installed.

(15) THAT, the County Executive recruited some people and later some of them were deployed in unclear circumstances on the pretext that the wage bill was high. It has emerged that some people are recruited and assigned positions in fields they do not qualify.

(16) THAT, the functions of the County Government are clearly stipulated under the Fourth Schedule of the Constitution of Kenya 2010, the projects are budgeted for and implemented by the county Government in accordance with the functions. The county executive has executed some projects which have not been budgeted for.

Mr. Deputy Speaker, Sir, there is a list of projects that have been executed without being budgeted for.

(18) THAT, clear scrutiny of the projects listed in paragraph 17 points out that the projects like the construction of Vihiga County Courts Headquarters and the Kenya Medical Training College (KMTC) computer laboratory are to be undertaken by the national Government since education is a function of the national Government.

I will skip 19 and 20.

(21) THAT, none of these issues in this petition are pending in any court of law, constitutional or any other legal body.

Wherefore, your humble Petitioners pray that, the Senate:-

(22) Through its relevant Committees, the Senate undertakes an urgent investigation into the matters raised in this Petition with a view of establishing:-

(a) How Kshs 1.6 billion received from the exchequer for development in the financial year 2014/2015, inclusive of the Kshs900 million budgeted by the County Assembly for ward development was spent.

(b) How Kshs105 million from the Vihiga County Emergency Fund was spent and carry further investigations on Vihiga County Emergency Fund.

(c) How Kshs61.5 million released by the Transition Authority was utilized.

(d) How Kshs100 million, money appropriated for Vihiga county Empowerment Fund, was utilized.

(e) How the County Government incurred an accumulative pending bills of over Kshs2 billion.

(23) In undertaking the inquiry, to call for detailed investigations and reports thereon from the Office of the Auditor-General, the Ethics and Anticorruption Commission and the director of criminal Investigation.

(24) Recommend appropriate action based on the findings of the investigations thereof including where applicable:-

- a. Prosecution of those found to have contravened the applicable laws.
- b. Recovery of funds and assets of those who may have unlawfully benefited from the county Government funds.
- c. A lifestyle audit to be undertaken by the EACC on all county executive committee members and chief officers of the Vihiga County including their bank accounts and property.

(25) Request the office of the Inspector-General of Police to put measures in place to ensure the safety and security of Members of Vihiga County Assembly who voted in favour of adopting the report by the *ad hoc* committee and who continue to face threats and intimidation for their brave action.



The Petition is signed by the 12 members of the County Assembly and countersigned by me as the Senator for Vihiga.

Thank you.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Sen. Khaniri. Hon. Senators, pursuant to Standing Order No. 226, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes. That will take us to 4.00 p.m., latest. I will now be strict on time because a good number of people have shown interest in debating this. Shall we agree on two minutes to begin with?

**The Senate Minority Leader** (Sen. Wetangula): Three minutes Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Okay, three minutes to begin with and the others two minutes. Sen. (Prof.) Lonyangapuo, did you ask for the Floor on this or on other matters?

**Sen. (Prof.) Lonyangapuo:** On this matter, Mr. Deputy Speaker, Sir. I have listened carefully to the Petition as raised by the Senator for Vihiga and it looks like a story from all counties and mine is not an exception. Indeed, it brings a lot of questions forward, for example, when the Members of the County Assembly (MCAs) approve a budget for a particular year with line items indicated, how does the county executive vary them without going back to the Assembly at any time in the course of the year for approval?

Mr. Deputy Speaker, Sir, it is a story that is really not assisting anybody and it has brought a lot of things. Whatever the public had approved when they were presenting in the year showing what was supposed to be done, you find the governor and his team doing other things contrary to that. You also get a list of contractors; some of them are favorites and they are given a lot of work as opposed to other contractors that exist. Most of them are related or even they are being owned by proxies.

Mr. Deputy Speaker, Sir, I do not know how we are going to handle this matter because it is serious. In my county, there are four contractors that are favorites and yet you get one person has over 20 projects. In the former Ministry of Public Works policies, you are not supposed to do more than four projects in a particular financial year. What laws do these people in the counties follow? I expected that during devolution, the then Central Government was supposed to have dispensed these documents to these new officers in the counties so that they can use them. This is serious and you can note that although the MCAs have passed the budget, some of them are compromised not to become tough on the governors. I have heard from this Petition that the Governor and the County Secretary have refused to appear before the Select Committee that was formed by the County Assembly to investigate these matters.

This means that the trust we have given to some categories of officers is being abused.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Deputy Speaker, Sir. I would like to support this Petition. It is appalling that an illegal account was opened in Rafiki Micro-Finance and yet, by law, county revenue can only be deposited into the County Revenue Fund. We would like - through this particular Petition - a full account to be made for all the revenues that have been collected by this county government over the last three years. It has been lining private pockets through these offshore accounts.

Secondly, it is amazing that in this Petition, the Governor spent over Kshs1 million to install Closed Circuit Television (CCTV) at his private residence and a further Kshs6 million to purchase a generator for his private residence without authority. The cost of the generator that is at the governor's residence is Kshs800,000 and yet they spent a whopping Kshs6million. For this reason, I urge that the Ethics and Anti Corruption Commission (EACC) should not only investigate that purchase of a generator for Kshs6 million instead of Kshs800,000, but it should also investigate how this palatial home of Governor Akaranga was constructed because I fear that if they have used public funds to put CCTV---

**The Deputy Speaker** (Sen. Kembi-Gitura): Is it part of the Petition?

**Sen. (Dr.) Khalwale:** Yes, Mr. Deputy Speaker, Sir. If he has used public funds to put up CCTV and purchase a generator for himself, I fear that even the funds for construction of that residence were public funds. He must be investigated. I condemn and put it on record that the security for those MCAs is not hypothetical. Governor Akaranga physically attacked me with goons in a public function because I had raised this matter.

Mr. Deputy Speaker, Sir, we would like those MCAs to be protected and I want to warn Governor Akaranga that he is not going to intimidate us and tamper with records so as to cover this theft.

Thank you.

**Sen. Billow:** Thank you Mr. Deputy Speaker, Sir. The issues of petitions from county governments have been increasing in recent years. This one is more interesting because it shows that the MCAs who have brought the Petition must have been frustrated in trying to get a resolution to the problems.

The concerns of accountability are there in many counties and the questions that are raised in this one are very serious. I think our committee which has been dealing with a number of these petitions will take a serious view of them including taking actions such as the ones contained in the prayers here. The prayers here, among other things, are demanding that the Office of the Director of Public Prosecution invites the Criminal Investigation Department (CID) officers and the EACC to investigate these matters, including a lifestyle audit of the said persons.

Mr. Deputy Speaker, Sir, I think it is important that we send out a strong message so that we discourage county governments and particularly the county governors from the kind of complaints that we are receiving. This Senate has been fighting to increase money every year for the counties. What we get are petitions about how the money has been misused. This is important but I want to urge Members that, in due course, we will make resolutions in this House for Treasury to stop funds to some of the counties because of persistent and material breach of financial regulations.

Thank you.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Deputy Speaker, Sir. I thank Sen. Khaniri for courageously prosecuting this Petition in the face of the intimidation that he has been facing. I agree with Sen. (Prof.) Lonyangapuo. This Petition is a story of counties' impunity, fraud, theft, looting and all manner of negatives. You saw yourself when a matter came here from your county; the obscenity that your governor is visiting on your county.

**The Deputy Speaker** (Sen. Kembi-Gitura): Which county are you referring to?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I am referring to the County of Murang'a.

To make it worse, it is quoted verbatim that in the course of carrying out its investigations and upon tabling its report before the County Assembly for adoption, Members of the *ad hoc* committee together with the Speaker of the County Assembly received threatening messages sent through their phones reading as follows:-

“Speaker Dan Chitwa and Andrew Ahuga, we shall kill you and your wives and all MCAs in your *ad hoc* committee.”

**The Deputy Speaker** (Sen. Kembi-Gitura): What are you reading, Sen. Wetangula?

**The Senate Minority Leader** (Sen. Wetangula): I am reading it from the Petition.

**The Deputy Speaker** (Sen. Kembi-Gitura): What paragraph are you reading?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, it reads:-

“We shall kill you and your wives and all MCAs in your *ad hoc* Committee. We are coming for your heads, *uliza* Embu County Speaker, Kariuki Mate.”

This kind of reckless impunity must be stopped. Vihiga is one of the smaller counties in this country, but it is still receiving more money in one year than any money the county ever received since Independence. This money must make a difference in the lives of the people. When a governor cannot account for Kshs1.6 billion in a small county like Vihiga, and resorts to *quasi* criminal activities to silence those who are asking questions, then the only hope left for the people of Vihiga County is this august House. That is why the aggrieved parties have chosen to come to the bastion of justice for counties; that is the Senate.

I want to urge - as Sen. Billow, the Chairman of the Committee on Finance, Commerce and Budget, has said - that we need to go beyond even the prayers in this Petition. We need to convince the Controller of Budget that persistent offenders in unaccountability activities and failing to adhere to regulations of management of public funds, who think that funds sent to the counties are personal purses to use and abuse as they wish, must be brought to book. We can ensure this, first, by denying them the money so that the county residents can revolt against them and, secondly, by prosecuting them so that they can go and enjoy the facilities of Kamiti Maximum Prison.

That is the only way they can understand. Otherwise, we will talk and Gov. Kabogo and Gov. Lusaka will continue doing what they do. Everybody else will continue buying wheelbarrows at 1750 per cent of the market price and nobody will----

**Sen. (Dr.) Machage**: Mr. Deputy Speaker, Sir, on a point of information.

**The Senate Minority Leader** (Sen. Wetangula): Please, inform me.

**Sen. (Dr.) Machage**: Mr. Deputy Speaker, Sir, I want to inform Sen. Wetangula that Gov. Akaranga is an ordained reverend in a certain church.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, if you want another precedent of a reverend, there is Rev. Mutava Musyimi chairing the Budget and Appropriations Committee in the “Lower House”.

I want to end by urging this House to be firm, strong and apply the law as must be applied to bring these offending governors to order. For my colleagues who want to

become governors, like the 'lion king', we are paving the way for you to do the right things.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senator! Your time is up.

**Sen. Murungi:** Mr. Deputy Speaker, Sir, I support this Petition and commend the MCAs of Vihiga County who thought it fit to bring this Petition to this House. The MCAs are supposed to be the primary agents of accountability in the counties, but most of them are not doing that job because they have been compromised by the governors. Others are intimidated like we have heard in this Petition. I want to commend the courage of those MCAs and encourage other MCAs in the country to speak out because there is massive theft, fraud and plunder of public resources in all the counties in this country.

In my own county - Meru County - we have pending bills of Kshs1.5 billion for contractors who have not been paid, but largely for contracts based on projects which were not budgeted for. Two or three of those contractors have been paid huge amounts of money because they are mere fronts for people in the county executive. Thorough investigations need to be done by the watchdog committees of this House, especially this year. This is because there will be more theft this year as we approach the elections. We have seen in some of the by-elections, governors using five choppers. We should stop the theft so that governors do not use public money for their own personal campaigns.

I want to advise my colleagues that we will not reform the county governments with some of those governors in place. We have to remove them and some of us have to volunteer to go and remove them, just as we support this House.

Thank you, Mr. Deputy Speaker, Sir.

**Sen. Musila:** Mr. Deputy Speaker, Sir, I want to congratulate the petitioners, particularly the Senator for Vihiga for presenting this Petition. As my colleagues who have spoken have said, this appears to be a trend in all counties. The tragedy is that whenever a Senator points out mistakes on misappropriations, he is labeled that he wants to contest that seat.

I have looked at the list of people who have received money from the County Government of Vihiga under the Emergency Fund, this list has the Council of Governors (CoG). What emergency did the CoG have to receive Kshs8 million from the Emergency Fund? The list goes on and on. It has consultants, cottages, *et cetera*. Governors are finding all ways of spending money.

As I speak, in my own county, for example, the governor is spending Kshs65 million ostensibly for registration of voters. Why is he spending Kshs65 million to register voters, when we know clearly that it is the mandate of the Independent Electoral and Boundaries Commission (IEBC), and we are campaigning towards that? Something must be done. In my view, the department that has failed Kenyans in as far as our county governments are concerned is the Auditor-General. Nobody has questioned this governor. Even when we get reports from the Auditor-General, they are generally not serious enough. They are just casual because it is the clerks in the counties who are sent to investigate. When they go there, they meet these governors and are compromised. They write reports as the governors wish.

The Petition talks about contractors. This is the conduit of money being wasted by governors. On Saturday, I pointed out to the contractors in Kitui County that they were colluding with the executive to fleece the people of Kitui of their money. The governor put all of them together in a Press Conference to say that they are not---

**The Deputy Speaker** (Sen. Kembi-Gitura): Your time is up.

**Sen. Wamatangi:** Mr. Deputy Speaker, Sir, I want to congratulate, together with my colleagues here, the Members of County Assembly (MCAs) from Vihiga. I would also like to congratulate the Senator for Vihiga, Sen. Khaniri, for prosecuting this matter. It is clear to the country why the governors fought tooth and nail - they spent millions of taxpayers' money in court to fight the "Sang Bill" so that they could have the independence and freedom to plunder. After they have filled their bellies with the loot, they have now grown muscles to box and beat up Senators in cahoots with goons. We saw this. I want to say sorry to our colleague, the "bullfighter", because he had to endure such an embarrassing scenario when he was being attacked in a funeral for saying the truth. The truth is that this is repeated in so many counties.

The saddest thing is that we are just about to send to counties almost Kshs300 billion this financial year. We have done this for several years back. At the end of our five year-term, we will have sent to counties more than Kshs1.5 trillion. If you ask anybody what they can see in the counties worth that amount, you cannot see anything. The only thing you can see is governors who drive guzzlers and living in mansions. There are contractors and other collaborators who have built bigger mansions. This are the images that you see at the county level.

Mr. Deputy Speaker, Sir, in the County Public Accounts and Investments Committee, when we prosecuted the matter of Kakamega County, we went to the level of recommending the prosecution of the Governor---

**The Deputy Speaker** (Sen. Kembi-Gitura): Your time is up, Senator.

**Sen. Munyes:** Mr. Speaker, Sir, let me start by thanking the petitioners and the MCAs who have presented this petition. This is a grave matter as put by Sen. Khaniri. We have serious allegations which have been brought forward by this petition that need to be investigated properly. This matter borders on impunity. This is the same impunity that this House allowed when Turkana County altered a budget which had been approved by the Assembly by billions of shillings. This is a case where we are seeing the executive executing budgets not approved. This is not personal money but public resources. I want the Committee to investigate this matter fully regarding the adherence to procurement laws. There is a big issue to learn from this because Turkana is experiencing the same problem.

Mr. Deputy Speaker, Sir, counties want to hide in emergencies. They avoid approvals through emergencies. We want the House to understand that there is no emergency that cannot be approved by the assembly. In the case of Vihiga, a lot has happened and we need to investigate the conduct of MCAs who signed that document then again revisited the same document on the Floor of the House. That is something we have to learn from; something you have already appended your signature comes on the Floor of the House and you are changing it again. That is a matter we need to look at. This is expenditure of Kshs1.6 billion that went ahead without approval. In Turkana, we are spending billions of shillings but the lives of the Turkana people are not changing. People are still suffering and starving because all the money is going to people's pockets. In the next few weeks, I will bring a similar petition and beg this House to help me.

**The Deputy Speaker** (Sen. Kembi-Gitura): Your time is up, Senator. I have many requests and I would like to give everybody a chance. So, I will only allow one-and-a-half minutes for each so that we can all get a chance.

**Sen. Kagwe:** On a point of order, Mr. Deputy Speaker, Sir. I rise to seek that you extend that a little bit to three minutes.

First, I would like to congratulate the Senator for Vihiga and his team. The people who are supposed to oversight the governors---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Kagwe. I know that you have 30 minutes but I said I am allowing up to 25 minutes to 4.00 p.m. but as I sit here, maybe, this is one of the most important things that have come before us under Article 96. This is obviously the core of our business. As one of the Senators said, this cuts across the board in almost all counties. I have many requests for the Floor and with your indulgence, I would like to use my discretion to allow you to ventilate on this issue because it is very important. I do not want to be seen to curtail you.

In my view, this forms one of the most important things to the Senate. These are the moments you sit here and realise that you represent a county. Since I cannot debate with you, I will allow time to debate. So, Sen. Kagwe, you have three minutes and every Senator can have the same.

**Sen. Kagwe:** Thank you very much, Mr. Deputy Speaker, Sir. The people who are supposed to primarily oversight the county governments, particularly, the MCAs, have three problems which this House can address. The first one has to do with---

*(Loud consultations)*

Please, protect me from Sen. Wamatangi on my left and the KANU boss on this side, to enable me prosecute my argument.

There are three things that I think are important if we expect the MCAs to address the issue of oversight in the counties. The first one has to do with the qualification of an MCA. We might try to run away from this argument but as long we have persons who are not qualified to interrogate a budget or do not have the capacity that the governors themselves have, the Constitution requires that governors be persons holding university degrees, but then it went on to say that the people who are going to oversight do not need any qualifications. That is an anomaly and a wrong notion. The Bill that is currently in the National Assembly should be interrogated by this House so that we can give our input.

I do not believe that the Bill must have the word degree in it. However, it must have some form of qualification, for instance, a Certified Public Account (CPA), higher diploma or something that is professionally recognized as an individual who can interrogate a budget.

Mr. Deputy Speaker, Sir, the second thing has to do with payments. If we ask that people be qualified, it follows then that their remuneration must be commensurate with the job they are doing. Many people cannot leave their jobs to become either Members of the County Assemblies (MCAs) or County Executive Committee (CEC) members. If there is a group of people who should be properly paid, it is the CECs. This is because governors are hiring individuals who they easily intimidate because they know they are not well paid. If you remember, a while back, the Members of Parliament used to go to State House to queue to get some money. Sen. Billow can bear me witness.

**The Deputy Speaker** (Sen. Kembi-Gitura): Your time is up, Senator!

Please, proceed, Sen. Abdirahman.

**Sen. Abdirahman:** Mr. Deputy Speaker, Sir, thank you for allowing me to add my voice to this Petition that is before the House this afternoon. I thank the MCAs and the Senator for Vihiga County who have ably presented the Petition this afternoon. As many colleagues have said, this is the fourth year since we started devolution in this country. A number of the county assemblies were not active before in airing the issues of the counties. Many at times, we said, these are more or less an appendage of the executive. However, a number of them are now coming up from the deep slumber which they were in from the first to the third year. I appreciate the efforts that have been made.

It is not a secret that the governors are out to loot funds from the public coffers entrusted to them from the time they were elected. Many a times, when I think critically about the Council of Governors (CoG), I find that they act more or less like a trade union. Trade union members normally come to the aid of their members when things go wrong. I understand that all counties contribute towards litigation and bailing out governors who have issues with either the Ethics and Anti-Corruption Commission (EACC) or any other state organ. We have seen CoG come out strongly to support governors when issues arise.

The other group that has been faulted is the Office of the Auditor General. Auditors are supposed to be checking excesses in counties and looking at where mistakes have been made. They should not only correct those mistakes, but there must be elements to take effective action and recommend action, particularly from the EACC and Criminal Investigation Department (CID). We must see action being taken in these counties.

Looking at the Petition from the Vihiga County Assembly that has been presented by our brother Sen. Khaniri, there is clear evidence of serious breach or malpractice with regard to mismanagement of finances. The man in charge of the Executive of Vihiga County, the Governor, should not go scot-free. I urge the Committee on Finance, Commerce and Budget which may be assigned the task of looking at this Petition to critically examine its contents because there are serious breaches of the Constitution.

It takes about 60 days---

**The Deputy Speaker** (Sen. Kembi-Gitura): Your time is up, Senator!

Please proceed Sen. Chelule.

**Sen. Chelule:** Mr. Deputy Speaker, Sir, I thank the Senator for Vihiga County for bringing this Petition on behalf of the MCAs. We, as the Senate, represent the interest of counties. Therefore, it is a pity that resources allocated to county governments are being misused by the governors. One of the roles of the MCAs is to oversight the county executive. It is the responsibility of the County Public Accounts and Investments Committee (CPAIC) to interrogate how devolved funds are being spent by the county governments.

The Controller of Budget is responsible for all the funds that are devolved to the county governments. It is sad that the people who elected us are suffering and denied services by the county governments. Budgets are prepared by the county governments without involving members of the public. It is time citizens of this country are involved in the budget process at the grassroots level. They must know well in advance which projects their county governments will fund in a given financial year. It is not right for the governors to spend money without being accountable to their people. Some of them hire choppers using public funds. This is being wasteful. They must be made to account for every single cent that is devolved.

I urge the CPAIC to make sure these governors are accountable. It is not enough to debate the Petition without taking action against those people who have been mentioned here. I heard the Senator for Turkana County say that he will soon bring a similar Petition to this House. It is okay for us to discuss Petitions as they are presented here. However, we need also to discuss other issues facing the county governments.

I beg to support.

**Sen. Hargura:** Mr. Deputy Speaker, Sir, I join my colleagues in supporting this Petition. It is touching on very serious issues on procurement from the funds that the Senate approved. From what I hear, the story is the same throughout the country because procurement procedures are not followed at all; the governor is everything and contracts are predetermined. Before they even advertise, they already know who will win the tender. This is a common practice in the counties. Therefore, there is need to follow up and see what is happening. We thought that such issues would be raised in audit reports. However, in audit reports that we are getting, we do not see this kind of malpractices being highlighted. This is because the auditors just go and look at the books which are mostly in order because whoever is engaging in the malpractice knows that no fault will come from the books. However, the county assemblies should do physical audits of projects and see whether work is truly being done.

The other issue is on revenue collection. We have realized that the governors are concentrating on the national Government equitable share. They are not talking about the revenue being generated at the counties. Most of them are collecting less than what the local authorities were collecting. We are told that the counties now bank those funds in their own accounts. The accountability for those funds is not there and that is a serious issue. We created the county governments with a vision that they would in time generate enough funds to be self-sufficient, but it is the other way round. Counties are even stopping the collection of whatever the local authorities were collecting.

Mr. Deputy Speaker, Sir, our concern for the counties should not end with this Petition. We should seriously look into all the other counties so that we can streamline this malpractice that is spreading in the counties.

**Sen. Karaba:** Mr. Deputy Speaker, Sir, thank you, for giving me an opportunity to contribute to this very important Petition. It has come at the right time after we have witnessed what the governors are doing and studied the laws affecting the governors *vis-a-vis* Senators. It is evident from experience that governors spend money yet there is nobody to oversight them. When they misuse funds and the case is eventually brought to the Senate, and it recommends that they be impeached, none of them has been impeached after all this process. Therefore, they feel free to do whatever they want because there is nothing the Senate can do. We have made recommendations but nothing happens.

So, it is my view that all the counties should be given the recommendations of this Petition. We have realised, for example, through what we read in the newspapers that governors have even gone ahead to hire goons and gangs before the next election so that they are assured of being re-elected. In executing this, they use money meant for development. So, if we are not careful, we will be locked out of contesting for those positions and they will remain theirs forever without anybody else penetrating.

Therefore, we need to do something with this Petition so that we can penetrate and see what is happening with public funds. There is a lot of misuse and nobody seems to bother because all the Members of County Assemblies (MCAs) and County Executive



Committee members (CECs) have been comprised by the governors. There is nothing they can do to remove governors. The Petition is an eye opener. It can benefit all counties.

**Sen. Sijeny:** Mr. Deputy Speaker, Sir, I thank the people of Vihiga County, the MCAs and the Senator for demonstrating maturity, civilization and being law abiding citizens. They have chosen to follow the laid down provisions in the Constitution and respect the oversight role of the MCAs and the Senate. They have not resorted to violence and those ugly scenes that we have seen in other places; for instance, people being frog-marched, gun shots and people getting injured. They have followed the law. I commend them for that.

Mr. Deputy Speaker, Sir, having said that, I urge the relevant Committee to prioritise this work and come up with concrete and watertight recommendations that will not only solve the problems of Vihiga County but enable us as a country to come up with clear accounting systems that cannot be breached. Accounting systems will clarify many other issues, for example, who will be held responsible and accountable. It is not wrong to err but to repeat mistakes again and again is bad. Every county is part of our country. If a particular county makes mistakes, we should correct it and make sure that it does not repeat.

Internationally, we are getting a bad name because of such things that are being reported; this massive mismanagement of hard-earned resources. They are resources not only from us taxpayers but from other countries too. This is not good. Therefore, I urge this Committee to come up with good recommendations to educate Kenyans so that we can read from the same page.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I was looking at the law and I am concerned about one little thing. I sit in the sub-Committee of the Committee on Finance, Commerce and Budget that will investigate this matter. What will happen when we start investigating this matter is that somebody will interfere with the records. So, I have been wondering whether we can offer an option to Sen. Khaniri. First, the option would be a Motion for this Senate to have a special audit as quickly as possible. Secondly, ensure that the documents are not interfered with and thirdly, if possible as we did in the case of four counties under Article 225; we stop funds from being released to that county.

Kenyans are desperate and they are coming to us; people of Murang'a and Makueni counties are desperate. If we go through the same rigmarole in the Committee on Finance, Commerce and Budget, this issue will not be addressed in the urgency that I have seen in this Petition. I suggest that we look at a different method particularly for this one. This year, we need to catch only one governor, not two, just one. We ensure that they are personally responsible for the misuse of funds. You and I will sleep well at night for having served these Kenyans properly. As is that case with the other Motions that go through 60 days, as far as I am concerned, that will not offer the solutions that Sen. Khaniri and the people of Vihiga County are looking for.

Lastly, I thank Sen. Khaniri. He has so many petitions. We have not given him the resolutions to any of those petitions but your county does not get tired.

Mr. Deputy Speaker, Sir, if you allow, tomorrow let us come with a Motion, stop funds, go for a special audit and do what we call in court; *Anton Piller* order. Let us go for that material before somebody tampers with it.

**Sen. (Prof.) Lesan:** Mr. Deputy Speaker, Sir, I also wish to contribute to this Petition. First, I thank the Senator for Vihiga and particularly, the citizens of Vihiga for having trust in this Senate and bringing a Petition to this House.

Petitions to this House by citizens are useful even for Senators because they bring forth very tangible reasons for bringing them to the House. I say so because there is a Petition that has been brought by the residents of Bomet County; for sure, although the process is ongoing, there is a lot of useful information. It is an eye opener for us in the Senate. We know what is happening at the counties as a result of petitions, for example, the one from the citizens of Bomet County.

I urge the Senate to take these petitions seriously, more so not only on listening and investigating them, but taking tangible action. This will serve as a consequence. When citizens bring petitions to this House they receive threats; for example, the petitioners from Bomet County. Each one of them got a letter from the County Executive threatening them of law suits for defamation. This is illegal. Every citizen has a right to petition this House. They are not supposed to be under any threat of being sued. However, this is exactly what happened with the petitioners from Bomet. I hope this Senate will protect them because they are exercising their rights to petition this House.

Mr. Deputy Speaker, Sir, there are complaints not only from petitioners but also from the county assembly against the county executive. We have seen this in Makueni County. We have the same problem in Bomet County where there are conflicts between the county assembly and the county executive. I am glad that this Senate has given some direction; funds for the county assemblies will, from now henceforth, go directly to their accounts. I am glad that the Senate has given some direction, in that the county assemblies will henceforth get funds going directly to their own accounts. This will limit complaints and, therefore, give an upper hand to the county assemblies when it comes to raising some of these issues.

Lastly, some of the issues experienced in the counties are a result of the very low level of education of persons---

**The Deputy Speaker** (Sen. Kembi-Gitura): Your time is up.

Sen. Ongoro.

**Sen. Ongoro:** Mr. Deputy Speaker, Sir, when you read through this Petition you will find that the issues that the petitioners from Vihiga County have raised are a representation of all counties countrywide. Every issue in this Petition affects all counties.

One of the issues raised is the ward allocations and how they are spent. If you visit any county you will not be given a clear procedure or laid down rules on how the allocations are spent. Also, in every county, new debts are paid and the outstanding ones are not cleared. But the most interesting issue is how the county funds are spent without approval. What happens in all the counties is just a semblance of approval. When the governor wants anything to be approved, there are all manner of goodies including trips that are given to Members of the County Assembly (MCAs). In one afternoon, the MCAs with tickets in their hands are asked to approve billions without interrogation, and they are off for a trip. That is not approval at all. Even if it is approved by 100 per cent of the Members, it is something that has not been interrogated.

The issue of transparency in the collection of revenue has been raised in the Petition. You will not get data that can be presented to anybody and the exact amounts

that were collected. There is no accountability on how the amounts have been used in all the counties. We do not know how much they collect in terms of revenue, in which accounts they are held and what they are being used for.

This brings us to the question that we have discussed here before. Come the next elections, the qualifications and integrity of MCAs must be of paramount importance. We need MCAs with the right qualifications and integrity, who will interrogate the governors and the procedures. As raised by Sen. Mutula Kilonzo Jnr., if we do not move fast, by the time we visit any county assembly to investigate anything, we will not get any evidence. We must move fast, visit the counties and interrogate those matters. We should demand for these facts before they erase the evidence.

I beg to support.

**Sen. Kanainza:** Thank you, Mr. Deputy Speaker, Sir, for the opportunity. First, I want to appreciate Sen. Khaniri for being the eye of the people of Vihiga County. As we consider all petitions that have been brought to this House, it would be important for the relevant committees to look into the matters raised as soon as possible. We have so many petitions from the counties and people expect us to act on them as soon as possible.

It is our mandate, as the Senate, to protect the counties and their governments. It is very unfortunate that county governments have resorted to stealing and engaging in corrupt deals. It is only the Senate that can save these counties. Sometime back, Sen. Sang brought a Bill to create the county development boards. How I wish we could pursue the matter in a different way, so that we can ensure that all stakeholders in the counties are brought on board when it comes to issues of development. This would save us the problems that we are facing at the moment.

Mr. Deputy Speaker, Sir, as one colleague said, we also need to look at the academic qualifications of all elected members not only in the county assemblies, but also in the National Assembly and the Senate so as to ensure quality delivery of our mandate. It is also high time that Senators were given the county oversight funds, so that they can also give back to the society through civic education. This will ensure that people know their rights and the mandate of the Senate.

Thank you.

**Sen. Mwakulegwa:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to support this Petition by the people of Vihiga. Four years down the line, devolution is actually dying slowly. This is because in most counties you will find the public complaining about the usage of public funds by governors. Therefore, we need to be creative and come up with laws and methodologies to ensure that petitions not only come from the counties, but the issues therein are dealt with.

We have mismanagement in one way or another in all the counties. In fact, it would appear like we created executive thieves in the 47 counties. We have tried to impeach governors here, but we have somehow never been successful. As a result, the governors are doing what they want knowing that the Senate cannot actually stop them. Unless we devise a new way of dealing with these people, we will continue being seen as toothless bulldogs that cannot bite. We need to be creative.

Secondly, all the counties have been collecting levies and monies, but they are not accounted for. It seems the governors lock themselves in their rooms and devise systems without accounting for the money allocated to the counties. Most of them are misappropriating money so that they can use it to campaign and retain their seats. It is

high time we got our money for oversight, so that we can actually go to the public and educate them. This will ensure that the public do not approve those expenditures during public participation forums.

Today we are discussing issues of Vihiga and tomorrow it will be Murang'a or any other county. We need to be creative and maybe even review the laws to ensure that when the Auditor-General gives a report, it will not just be a matter of presenting it in this House and then it goes to the shelves. We need to ensure that no money is released to counties that have audit queries, until such release is approved by this House. As things stand now, we seem to be lamenting and mourning when the governors are enjoying their loot. Let us come up with Bills and devise ways of counterchecking the expenditure on public funds. This will ensure that even the Senators who want to become governors do not follow---

**The Deputy Speaker** (Sen. Kembi-Gitura): Your time is up.

Sen. Bule.

**Sen. Bule:** Mr. Deputy Speaker, Sir, I wish to congratulate and thank the Senator for Vihiga for this Petition. The issues raised in this Petition not only apply to Vihiga, but to all counties in the country.

Both the Senate and the county assemblies have an oversight role to play. However, the Senate is toothless and has been undermined.

Mr. Deputy Speaker, Sir, the Senate has been undermined and has not taken any step to curb this menace in the counties because we are estranged to the world. We have not been empowered and given the necessary funds that we should use to oversee the utilization of these monies in the counties. The governors who are the corrupt elements devolved to the counties have got the opportunity to loot these monies.

It is up to this Senate to stand firm and come up with ways of monitoring and evaluating these funds before taking any amount to the counties. Three years down the line, all the money allocated to counties has not been used on tangible projects. This is the time that we have to liaise with the county assemblies and work hand in hand to ensure that Kenyans are safe from the greedy governors who mind their pockets and their stomachs.

Thank you. I support.

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, I congratulate Sen. Khaniri for this Petition. As has been expressed by Members, it is pathetic that we see this kind of picture nearly in every county. Maybe they should be called county "executhieves" because that is the title they deserve. If you look at the Petition, using Kshs1.698billion for unaccountable ventures is pathetic. They did this in the name of allocating Kshs36 million to every ward. Spending Kshs11million to construct a kitchen, store and a toilet abhors straight thinking. In Migori County, the governor's bed was bought at Kshs1.2million. I wonder how that bed is.

In that county, a governor who a few years ago could not afford a good car before he was elected governor now has a fleet of high guzzler vehicles and in every street he has a storey building among other several hotels in the town. They are taking public money and not even hiding. When you look at the Auditor-General's Report, you cannot use it to accuse him on anything. It is good that a bold move was taken by the Members of County Assembly (MCAs) of Vihiga County. In Migori County, the MCAs have been

compromised for a long time. I am waiting for this kind of Petition to be presented to this House but every time it is ready, it disappears somewhere. That is impunity.

Mr. Deputy Speaker, Sir, this is the kind of leadership that we have at the counties. Sooner or later, the public will be tired and will demand the abolition of counties because what has happened is decentralisation of corruption. We are not saying it was good for corruption to have been at the Central Government level where a few people control country resources. Decentralisation has increased the amount of monies that are being misappropriated.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you Senators for a rich debate on an important issue. Pursuant to Standing Order No. 227 (1), the Petition stands committed to the Standing Committee on Finance, Commerce and Budget.

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

### PAPERS LAID

#### REPORT ON THE MEDIUM TERM BUDGET POLICY STATEMENT 2016

**Sen. Kagwe:** Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table:-

The Report on the Standing Committee on Finance, Commerce and Budget on the Medium Term Budget Policy Statement, 2016

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

#### REPORT ON OIL SPILLAGE INTO RIVER THANGE

**Sen. Mwakulegwa:** Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table:-

The Report on the Standing Committee on Energy on the fact-finding visit to Makueni on the matter of the Statement sought on the Kenya Pipeline Company oil spillage into River Thange in Kibwezi, Makueni County.

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

#### REPORT ON THE KENYA NATIONAL EXAMINATIONS COUNCIL (AMENDMENT) BILL (SENATE BILL NO. 7 OF 2015)

**Sen. Karaba:** Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table:-

The Report of the Standing Committee on Education on the Kenya National Examination Council (Amendment) Bill (Senate Bill No.7 of 2015)

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

## NOTICES OF MOTION

ADOPTION OF THE REPORT ON THE MEDIUM  
TERM BUDGET POLICY STATEMENT 2016

**Sen. Kagwe:** Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Standing Committee on Finance, Commerce and Budget on the Medium Term Budget Policy Statement 2016, laid on the Floor of the House on Thursday 26<sup>th</sup> February, 2016.

RENEWAL OF MANDATE OF *AD HOC* COMMITTEE TO INQUIRE INTO  
THE RIGHTS OF PERSONS IN PRISONS AND BORSTAL INSTITUTIONS

**Sen. Adan:** Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, the Senate on 22<sup>th</sup> October, 2015 resolved to establish a Select *ad hoc* Committee on Prisons and Borstal Institutions consisting of 11 Senators to inquire into the rights of detained persons and persons held in custody and other imprisoned persons under the law;

REQUIRING Parliament to enact legislation to provide for human treatment of such persons with due regard to the relevant international human rights instruments and report back to the House within three months of its establishment;

REALISING that the three month period lapsed today 25<sup>th</sup> February, 2016, and owing to the magnitude of the work involved, the Committee was not able to complete its work within the stipulated period;

NOTING the need for more time to carry out a thorough inquiry into this matter;

NOW therefore, the Senate resolves to renew the mandate of the Committee for a further period of 45 days to enable the Committee to complete its work and report to the House.

Thank you.

ESTABLISHMENT OF SELECT COMMITTEE TO INVESTIGATE  
THE CRITERIA USED TO PROFILE AND PAY IDPS

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, whereas the Prevention, Protection and Assistance to the Internally Displaced Persons (IDPs) and Affected Communities Act makes provision for the prevention, protection and provision of assistance to IDPs and affected communities, and gives effect to the Great Lakes

Protocol on the protection and assistance to IDPs and the United Nations guiding principles on internal displacements;

OBSERVING that the Act establishes the National Consultative Committee on IDPs whose mandate is to *inter alia* ensure registration of IDPs and maintain a database of such persons and advise the Cabinet Secretary for Devolution and National Planning on the exercise of his or her powers and functions under the Act;

CONCERNED that the Statement delivered to the Senate on 30<sup>th</sup> September, 2015 by the Chairperson of the Standing Committee on Labour and Social Welfare as a response on the enquiries on the status of the IDPs resettlement points to the fact that the distribution of the IDPs Fund which was approximately Kshs 15billion was done in a discriminatory manner and the criterion for profiling the IDPs was skewed;

NOW THEREFORE, the Senate resolves to establish a Select Committee to investigate the operations of the Ministry of Devolution and National Planning and the National Consultative Committee on IDPs as far as the resettlement process and criteria used to profile and pay IDPs is concerned and further determine whether the Kshs 15billion was used for the intended purpose and report back to the Senate within three months;

The Members of the select committee are:-

Sen. Boy Juma Boy  
Sen. Stephen Sang  
Sen. (Eng.) Muriuki-Karue  
Sen. (Prof.) Anyang'-Nyong'o  
Sen. Peter Mositet  
Sen. George Khaniri  
Sen. Naisula Lesuuda  
Sen. Janet Ong'era  
Sen. Emma Mbura

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you. No more notices of Motion. We move on to the next Order.

## STATEMENTS

### STATUS OF LOKICHOGIO INTERNATIONAL AIRPORT

**Sen. Munyes:** Mr. Deputy Speaker, Sir, I seek a Statement which I did last year. Today the Chair is ready to respond to it. Will I be in order to request that you allow the Chair to respond?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Munyes, my record shows that you were to seek a statement.

**Sen. Munyes:** Mr. Deputy Speaker, Sir, let me seek, then request. The answer is ready. It was for last year and the Chair is ready to respond.

**The Deputy Speaker** (Sen. Kembi-Gitura): We are in a new session. Can you kindly do the right thing?

**Sen. Munyes:** Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.45 (2)(b) to seek a Statement from the Chair of the Standing Committee on Roads and Transport concerning the status of Lokichogio International Airport.

In the Statement, the Chairperson should address the following:-

1. Explain why the runway renovation has taken over two years to complete, necessitating the use of half the runway.
2. Explain the cost of the project after completion.
3. Whether the Chair is aware that the existing delays and disruptions have caused huge economic problems for the people of Turkana County and the entire aviation industry.
4. What action the Government will take to expedite the completion of the said project.

**The Deputy Speaker** (Sen. Kembi-Gitura): Chairperson of the Standing Committee on Roads and Transport. Sen. Sijeny!

**Sen. Sijeny:** Mr. Deputy Speaker, Sir, I am ready with the answer.

**The Deputy Speaker** (Sen. Kembi-Gitura): How is it that you are ready with the answer?

*(Laughter)*

**Sen. Sijeny:** Mr. Deputy Speaker, Sir, a similar Statement had been requested before in exactly the same terms.

**The Deputy Speaker** (Sen. Kembi-Gitura): Is it long?

**Sen. Sijeny:** Mr. Deputy Speaker, Sir, it is very brief. In view of what you said, I will go straight to the answer.

To reply on why the runway renovation has taken over two years to complete necessitating the use of half the runway is that the project has not taken over two years to complete. The works commenced on 15<sup>th</sup> November, 2014, hence time lapse to date is about 12 months not over two years. However, the project has experienced delays due to the following reasons:

- I. There were unforeseen ground conditions that resulted in an increase in the scope of works as all loose sandy material had to be over excavated and carted away. The resulting excavated section had to be back filled and compacted in several uniform layers. This resulted in extra time required to carry out the earth works.
- II. The unexpected last term heavy rains affected the progress as the works could not be carried out when it was raining.
- III. Lack of suitable gravel material also caused delay in construction of the sub-base layer. This requires the material to be stabilized with cement which was not included in the contract. The Kenya Airports Authority (KAA) is in the process of acquiring cement so that the sub-base works can proceed.
- IV. The cut-off of the Kitale-Lodwar Road by floods is also likely to affect supplies. There has also been resistance by locals in accessing gravel material which is a key component in pavement works, hence affecting progress.



- V. The cost of the project after completion - the contract served for this period is Kshs150, 362,100.46.

This is to explain whether the Chairperson is aware of the existing delays have caused huge economic disruptions for the people of Turkana County and the entire aviation industry served by the Airport.

- VI. The KAA acknowledges that partial closure of the runway has reduced air traffic in and out of Lokichoggio, resulting in negative economic effects as well as reduced revenue for KAA. The partial closure was necessitated by the fact that there is only one runway at the airport. The KAA has instructed the contractor to expedite and complete the works.

- VII. On what action will the Government take to expedite the completion of the said project, the contractor has been asked to increase his equipment holding on site and expeditiously complete the work. Phase I of the project is expected to be completed by April, 2016. Phase II is expected to be completed by April, 2017.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Munyes!

**Sen. Munyes:** Mr. Deputy Speaker, Sir, the KAA has failed to complete projects of this nature in very many parts of this country. Nanyuki Airport is also facing similar problems and Isiolo Airport has not been completed among very many others. The duration of completion should not be blamed on heavy rains in Turkana because we have been facing droughts. I do not know of the rainfall she is talking about.

It should not be an excuse to tell us that they had to excavate because that is part of the job. She has said that they had to pay for raw materials in Lokichoggio. Everybody pays for raw materials and that should not be the excuse because it is part of the tender. She also said that locals refused to give land yet we allocated land in Turkana for the airport. I spoke to members of my community and they said they had given out land. Therefore, that is a lie we are getting.

Tourism and the aviation industries have been affected.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Munyes, you were seeking a clarification.

**Sen. Munyes:** Mr. Deputy Speaker, Sir, let me build on it. There is what we call the alternate airstrips. If you fail to land in Juba, the next alternate is Lokichoggio. The safety of passengers in this part of Kenya and South Sudan is affected. The National Safety Council (NSC) and the International Committee of the Red Cross (ICRC) have pulled out of Lokichoggio. These are organisations that employ Kenyans. They have pulled out and gone to Entebbe and other places because somebody has refused to complete the job. Isiolo is suffering the same fate. You cannot land in Nanyuki with a bigger aircraft or else you will crash. The safety of Kenyans is at stake.

Could the Chairperson and the Ministry avoid making excuses over the Kitale-Lodwar Road claiming that it floods when that is not the case and expedite the process in the next six months? Cement is available even in Lokichoggio, leave alone Kitale. You can also get cement in Nanyuki and Isiolo as well. Could the project be expedited for the sake of Kenyans?

**Sen. Ongoro:** On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Ongoro, please ask your question before she responds.

**Sen. Ongoro:** Mr. Deputy Speaker, Sir, I listened to the answer that has been given by the Vice Chairperson. Honestly speaking, this is the most incredible answer I have listened to in this Senate. Bearing in mind that the airstrip will open an entire economic bloc in the northern part of this country, putting in mind the fact that oil was discovered in that region, bearing in mind that it is an activity under closure that strips this country of very many opportunities; the Vice Chairperson should not shift blame to natural occurrences like rain because I am sure a feasibility study was done.

Could the Chairperson give a substantive answer because when you conduct a feasibility study, you factor in rain, drought and all manner of things? I am not impressed or satisfied with that answer. Could she give a substantive answer?

**The Deputy Speaker** (Sen. Kembi-Gitura): Vice Chairperson.

**Sen. Sijeny:** Mr. Deputy Speaker, Sir, I had already given the undertaking of the Ministry. The Cabinet Secretary (CS) gave an undertaking that work will be expedited. That is already happening and work is in progress. So, there will not be any undue delay.

As for the feasibility studies, the Ministry said that some of the occurrences were unpredictable. Be it as it may, the CS has been invited to appear before the Committee on Roads and Transport on 1<sup>st</sup> March, 2016. Once he confirms to attend, we shall definitely invite not only the Senator for Turkana but all other Senators.

We will inform them in good time because many other issues had been raised previously. We invited the CS but unfortunately, due to the changes in the offices, he could not attend. By 1<sup>st</sup> March, 2016, we shall have all the answers in detail by the CS himself.

**Sen. Munyes:** On a point of order, Mr. Deputy Speaker, Sir. For the interest of the whole country and the aviation industry, I would like the Vice Chairperson to see to it that the Ministry considers reviewing many projects of this nature so that we at least have safety in the aviation industry. When you fly to some of the airstrips, you will find that they are pathetic and they can cause loss of lives. We have seen them cost lives in Busia and other places.

I will be happy to attend the session but the projects should be expedited for the sake of the country.

**The Deputy Speaker** (Sen. Kembi-Gitura): An undertaking has been given. So, I advise you to ensure that you attend the proposed meeting with the CS if it is confirmed so that you can raise those very important issues with him.

**Sen. Munyes:** Mr. Deputy Speaker, Sir, I am obliged.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you.

Sen. Karaba.

**Sen. Karaba:** Mr. Deputy Speaker, Sir, considering what the Statement was all about---

**The Deputy Speaker** (Sen. Kembi-Gitura): No, that is finished.

**Sen. Karaba:** Sir, I am expecting an answer from the Chairperson.

**The Deputy Speaker** (Sen. Kembi-Gitura): Is that on the Kenol-Sagana-Makutano Road?

**Sen. Karaba:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): I deferred that to next week on Tuesday. Are there any more Statements?

## STATUS OF THE KENOL-MAKUTANO-MARUA ROAD

*(Statement deferred)*

This afternoon, we took a lot of time on several other issues. There are some Statements that were being sought and others were to be given. I know that the Senate Majority Leader has the usual Statement to give and he shall do so. However, that will be the end of Statements because nobody is seeking the Floor either to request for or issue one.

Sen. Karaba, the one you sought will be issued next week on Tuesday or, if that it is too soon for you, on Thursday.

**Sen. Karaba:** Mr. Deputy Speaker, Sir, yesterday, it was ruled that if the answer is available today, it should be given now and that is what we are waiting for.

**The Deputy Speaker** (Sen. Kembi-Gitura): The answer is available but I have given direction that it will be given next week on Tuesday or Thursday.

**Sen. Karaba:** The Chairman is here and I am also here to listen to the answers and the concerns of Kirinyaga residents. Since you have ruled, I will go by your ruling. I will wait for the answer to be issued next week.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Karaba, what did you say? I did not get the last part of it.

**Sen. Karaba:** Mr. Deputy Speaker, Sir, I will go by your ruling.

**The Deputy Speaker** (Sen. Kembi-Gitura): Did you say you obey or disobey my ruling?

**Sen. Karaba:** I obey, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you very much Sen. Karaba. That is the spirit.

The next Statement is by Sen. (Prof.) Kindiki.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 1<sup>ST</sup> MARCH, 2016

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I rise to give a Statement on the Business of the Senate for next week; the week starting 1<sup>st</sup> March, 2016.

On Tuesday, the Rules and Business Committee (RBC) will meet. Some of the Bills that will be given priority by the House next week, subject to the directions of the RBC, include the following:-

- (1) The Office of the County Attorney Bill (Senate Bill No.37 of 2014).
- (2) The Office of the County Printer Bill (Senate Bill No.42 of 2014).
- (3) The Water Bill (National Assembly Bill No. 7 of 2014).
- (4) The Universities (Amendment) Bill (Senate Bill No.31 of 2014).
- (5) The County Hall of Fame Bill (Senate Bill No.33 of 2014).

*[The Deputy Speaker (Sen. Kembi-Gitura) left the Chair]*

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

Hon. Senators, Tuesday, 1<sup>st</sup> March, 2016 being the last day for Parliament to debate and pass the Budget Policy Statement (BPS), pursuant to Section 25(7) of The Public Finance Management Act, the Senate is expected to debate and adopt the report of the Committee on Finance, Commerce and Budget on the BPS. So, we expect the BPS report by the Committee on Finance, Commerce and Budget to be given utmost priority because Tuesday is the last day which Parliament must debate and pass the BPS.

On Wednesday, the Senate will continue with any business that will not be concluded during the Tuesday sitting, especially Bills that are at various stages and any other business that will be scheduled by the RBC.

On Thursday, the Senate will consider Bills at Second Reading. It will also deliberate on Motions and any other business that may be scheduled by the RBC.

I take this opportunity to thank you Senators for your continued availability to deal with the business of this House. I thank you particularly for a job well done yesterday. We passed a number of pending business that has been before this House for a while. I think we should continue with that spirit.

As we said at the beginning of the Session, this is the last full Session that we have. The Fifth Session has been truncated by the General Election date which comes early. So, I hope that we will do our best so that we can give Kenyans value for money. I request that you show the same spirit next week so that we transact the various businesses that will be scheduled for that week

Thank you.

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

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, you remember yesterday we handled quite a number of Bills but due to numbers, we did not have occasion to proceed to the Third Reading. So, I will defer Order Nos.8, 9, 10, 11 and 12, all of which were handled yesterday but we did not proceed to Third Reading.

## **BILLS**

### *Third Readings*

THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLY APPROVAL)  
BILL (SENATE BILL NO. 20 OF 2014)

THE HIV/AIDS PREVENTION AND CONTROL  
(AMENDMENT) BILL (SENATE BILL NO. 4 OF 2015)

THE COUNTY INDUSTRIAL DEVELOPMENT BILL  
(SENATE BILL NO. 7 OF 2014)

*(Bills deferred)*

**MOTIONS****ADOPTION OF THE MEDIATION COMMITTEE REPORT ON THE  
NATIONAL DROUGHT MANAGEMENT AUTHORITY BILL**

THAT, the Senate adopts the Report of the Mediation Committee on the National Drought Management Authority Bill (National Assembly Bill No. 42 of 2013) laid on the table of the House on Thursday, 3<sup>rd</sup> December, 2015.

*(Sen. Wangari on 24.2.2016)*

*(Resumption of debate interrupted on 24.2.2016)*

*(Motion deferred)*

**ADOPTION OF REPORT OF AD HOC COMMITTEE ON  
COUNTY HEADQUARTERS**

THAT, this House adopts the Report of the Ad-Hoc Select Committee on County Headquarters laid on the Table of the Senate on Thursday, 3<sup>rd</sup> December, 2015.

*(Sen. (Eng.) Muriuki on 24.2.2016)*

*(Resumption of debate interrupted on 24.2.2016)*

*(Motion deferred)*

**COMMITTEE OF THE WHOLE****THE KENYA NATIONAL EXAMINATIONS COUNCIL  
(AMENDMENT) BILL (SENATE BILL NO. 7 OF 2015)**

Hon. Senators, we do not have the numbers for this Order. It is, therefore, deferred.

*(Committee of the Whole deferred)*

**The Temporary Speaker** (Sen. Ongoro): Last week, we handled Order Nos.13 and 14 and again, because of numbers ---- You can see even today, we do not have the numbers. So, I will also defer Order No.13.

**MOTION****APPROVAL OF MEMBERS TO THE COMMITTEES ON PUBLIC ACCOUNTS  
AND INVESTMENTS AND DEVOLVED GOVERNMENT**

THAT, pursuant to Standing Order Nos. 177, 179 and 210, the Senate approves the following Senators nominated by the Rules and Business Committee to serve in the respective Sessional Committees as indicated below:-

**A. COUNTY PUBLIC ACCOUNTS AND INVESTMENTS COMMITTEE**

1. Sen. Wamatangi Kimani
2. Sen. Stephen Ole Ntutu
3. Sen. (Eng.) Karue Muriuki
4. Sen. (Prof.) John Lonyangapuo
5. Sen. Wangari Martha
6. Sen. (Dr.) Khalwale Boni
7. Sen. Omar Hassan
8. Sen. Sitswila Wako Amos
9. Sen. Nyong'o Anyang'
10. Sen. Mong'are Okong'o Kennedy
11. Sen. George Khaniri

**B. COMMITTEE ON DEVOLVED GOVERNMENT**

1. Sen. Murkomen Kipchumba
2. Sen. Lesuuda Naisula
3. Sen. Kerrow Billow
4. Sen. Beatrice Elachi
5. Sen. (Prof.) Wilfred Lesan
6. Sen. Sitswila Wako Amos
7. Sen. Janet Ong'era
8. Sen. Omar Hassan
9. Sen. Tirole Ndiema Henry

*(Motion deferred)*

We will, therefore, start with Order No.14 which is the Persons with Disabilities (Amendment) Bill (Senate Bill No.13 of 2015) of Sen. Omondi because she is in the House.

**BILLS***Second Reading*THE PERSONS WITH DISABILITIES (AMENDMENT)  
BILL (SENATE BILL NO.13 OF 2015)

**The Temporary Speaker** (Sen. Ongoro): Sen. Omondi, you spoke for two minutes and you had one hour. So, you still have 58 minutes to go.

**Sen. Omondi:** Madam Temporary Speaker, I beg to move:-

THAT, the Persons with Disabilities (Amendment) Bill, (Senate Bill No.13 of 2015) be now read a Second Time.

The principal object of this Bill is to amend the Persons with Disabilities Act No.14 of 2013 with a view to provide for the obligations of national and county governments in ensuring the well-being of persons with disabilities.

Article 54(1) of the Constitution provides for the rights of persons with disabilities, including the right to access social amenities and the right to be treated with dignity and respect. The two levels of government have an obligation to ensure that persons with disability are protected and the requirements of Article 54(1) of the Constitution are met.

Currently, matters relating to persons with disabilities are dealt with by the National Council for Persons with Disabilities (NCPWD) under Section 4 of the Persons with Disabilities Act. However, there are no structures at the county level to ensure the well-being of persons with disabilities. This Bill, therefore, seeks to amend the Act to provide a legal framework for dealing with matters affecting persons with disability at the county and to revive the composition of the Council, to reflect the devolved system of government and parastatal reforms.

Madam Temporary Speaker, the Bill, therefore, imposes general obligation on the national and county governments. In the first instant, the Bill obligates the national Government to:-

1. Develop policies on the protection and promotion of the welfare of persons with disabilities.

2. Cause to be undertaken surveys, investigations and research concerning the causes of the occurrence of disabilities and development of new assistive devices.

3. Promote various measures for prevention of disabilities.

4. Provide facilities and infrastructure for the training of professionals in the rehabilitation of persons with disabilities.

5. Promote the integration of persons with disabilities in schools and employment within the public service.

6. Ensure access to free basic education and other social amenities to every child with a disability.

In the second instance and keeping with the spirit of devolution, the Bill requires county Governments:-

- a. To implement national policies for protection and promotion of the welfare of persons with disability.

b. Coordinate Government and non-governmental sponsored programmes targeting persons with disabilities within their respective counties.

c. Align county legislation and regulations with the national policy relating to persons with disabilities.

d. Promote the integration of persons with disabilities in the county public service.

Madam Temporary Speaker, the Bill proposes to establish a County Committee for Persons with Disabilities (CCPWD) in each county, consisting of representatives from the county executive, faith based organisations which deal with issues affecting persons with disabilities in the counties and persons who have knowledge and experience in running programmes related to persons with disabilities.

The Bill further confers various functions on the county committees including:-

a. Development of mechanisms and identification of persons with disabilities residing in their respective counties.

b. The establishment of a data base for persons with disabilities.

c. Monitoring and evaluation of the progress by counties in ensuring that article 54(1) of the Constitution is realised.

d. Advising the governor on the appropriate measures and interventions to be put in place for the protection of persons with disabilities in the county.

e. Implementation of programmes to promote the socio economic development of persons with disabilities in the county.

f. The coordination and implementation of programmes relating to persons with disabilities in the county developed by the council and the Social Assistance Authority.

The Bill intends to fit the proposed County Committees for Persons with Disability (CCPWD) into the existing administrative framework of county governments. Therefore, the Bill proposes that the committees shall be committees in the office of the County Executive Committee (CEC) member responsible for matters relating to persons with disabilities.

The members of the committee shall hold office for a term of three years and shall be eligible for reappointment for a further non-renewable term of office for two years. Further, the members of the committee shall be entitled to allowances as determined by the CEC member, in consultation with the Salaries and Remuneration Commission (SRC).

Madam Temporary Speaker, the Bill also proposes to review the membership of the National Council for Persons with Disabilities. This review is informed by the concerted effort by all State actors to ensure that statutory bodies are efficient, cost effective and able to deliver on the objectives for which they were established.

The Bill proposes to reduce the number of people nominated for appointment to the Council by organizations for persons with disabilities, executives and the Attorney-General. The Bill proposes a further amendment to the Act whose effect shall be that “the relevant state agency shall not approve the construction of a road, building or premises if the plans for the construction do not include access for persons with disabilities”.

The Bill is expected to promote the well being of persons with disabilities in the counties, to streamline the operations of the Council by reducing the number of Members and to ensure greater access by persons with disabilities to premises and other amenities.

I beg to move and call upon Sen. Sijeny to second.



**Sen. Sijeny:** Thank you Madam Temporary Speaker, for giving me the opportunity to second this Bill. This Bill, in a nutshell, helps to implement the provisions of the Constitution by devolving governance, creating structures and bringing services to persons living with disability at the grassroots. By amending this Bill, it helps also to create awareness on how people living with disability can be supported in various fields. This is a special constituency and they are everywhere. Research has proved that most of them, without the kind of intervention being sought, live under poverty especially within the rural areas.

Madam Temporary Speaker, once the Bill is enacted and implemented, it shall look into the issues of the persons living with disability. We find that most of them suffer from many issues of disability. We have chronic disparity diseases like cancer, diabetes, malnutrition, HIV/Aids and other infectious diseases. There is also the category of groups who suffer serious injuries leaving them with permanent disabilities as a result of accidents, terrorism and violence whether domestic or other types. In that view, it can happen any time and to anybody.

We should have people everywhere not only at the national level but even at the ward level who look at their concerns to ensure that we have infrastructure that will help to support them so that they are able to carry on with their daily work. When this Bill is implemented, it will be easy for everybody who is concerned to look at the external environment, go down to the people at the grassroots and know what interventions are required. With the formation of these various committees, they will be going round and ensuring that the rights of the people living with disabilities are protected.

Madam Temporary Speaker, indeed, we have seen from the media, both electronic and print, that persons with disabilities have proved that disability is not inability. They are ready and willing to work, support themselves and be independent, but there are certain interventions which are required. Even if you look at healthcare, many people have neglected them especially families who are not aware of what the unique interventions that persons living with disability will require.

Awareness creation needs to be done. We are still in the process of creating legislation that will ensure interventions at the grassroots level for these persons. If it is persons who are visually impaired, then they are able to get Braille at whichever hospital wherever they are. We should have people well trained to give the services required so that we can all have a healthy nation where everybody is able to depend on themselves. This over-dependence on white collar jobs should become a thing of the past. We should learn from the rest and get markets for goods produced by persons living with disability.

Madam Temporary Speaker, as we all know, this is something that can happen to anybody, anytime. Even now, the building can collapse and by tomorrow we will be persons living with disabilities.

I beg to second.

*(Question proposed)*

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you Mr. Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): Sen. (Prof.) Kindiki, I think it is quite clear that I am not a man. So, address me appropriately.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Madam Temporary Speaker, it is clear and I apologize.

I beg to support this Bill and I thank Sen. Omondi for bringing it. I also appreciate her as an Hon. Member who is a person with disability. This gives Kenyans pride that the people that are nominated to come to this House to represent special interests are working to make sure that those special interests are catered for.

Thank you very much Sen. Omondi and we hope our other colleagues who represent other special interests like you and women will bring more Bills that are sensitive to the special interests. It is for that reason that they are here.

Madam Temporary Speaker, I will say a few things about this Bill because for a long time, we have approached the issue of disability from a humanitarian and sentimental point of view as opposed to a “rights based” approach. So, what this Bill does is to give effect to our Constitution. The Constitution makes it very clear that persons with disability have certain rights as human beings and so they enjoy all the rights that each human being enjoys. Given the fact that they are persons with disabilities, special measures must be put in place to ensure they are enabled to function like other citizens.

Secondly, I also want to say that this Bill gives effect to the Persons with Disability Act. It gives better clarity to the existing law which has been in place since 2005, but which - I am afraid to say - has not been very well implemented. I hope that through this amendment Bill, the implementation of the Persons with Disabilities Act will be enhanced. I have received a number of delegations in my office, notably on outstanding issues around taxation, access to buildings and education for persons with disabilities. Some of these issues have to be resolved through legislation, like the Bill which is now before this House. Others will have to be addressed through delegated legislation.

Two weeks ago, I engaged with some delegation from the National Gender and Equality Commission. I know that they are pursuing a number of legislative measures, through delegated legislation, that can address the issue of taxation, so that persons with disabilities can get certain tax reliefs, not just upon their own operations, but also the wheelchairs and other facilities that are required to be imported from outside the country, to enable them function more efficiently.

Madam Temporary Speaker, the need to waive tax completely is something that should be pursued aggressively. I have undertaken to the delegation that came to see me last week from the Commission that I will pursue this matter with the National Treasury, to ensure that persons with disabilities are appreciated and get what rightfully belongs to them. We have taken a commitment, as the Jubilee Coalition, to ensure that all that must be done to give dignity and rights to persons with disabilities is adhered to. It is there in our manifesto and we will do whatever it takes to support them.

Madam Temporary Speaker, I commend the sponsor of this Bill and ask my colleagues to support and pass it. Hopefully, when it becomes law this Senate and the rest of us in leadership should do whatever we can to ensure that it is implemented.

Without much ado, I beg to support.

**Sen. Karaba:** Madam Temporary Speaker, thank you for allowing me to contribute to this important and timely Bill. This Bill also touches on education because most of the people who are affected are mainly young children aged 5 to 18 years who require a lot of attention. We have some institutions for persons with disabilities in my

county. We have the Kirinyaga School for the Deaf in Kerugoya and Kibirigwi School for the mentally challenged children. We also have a number of homes for people with disabilities spread all over the country. There are also such children who are integrated with normal students and are taught in the normal system.

The Government seems to have given a deaf ear to these institutions. Children in some of these institutions live by the grace of God. Some of them have no special equipment to use. Sometimes they have to rely on charitable organisations, well wishers and churches, because the Government gives very little financial assistance. We should all support these institutions and the children who are enrolled there. Children with disabilities need to be identified from their homes because some parents do not declare that they have such children at home. Such parents do not want to be associated with them and, hence, neglect them.

We should even come up with a law to compel the Government - through chiefs or the *Nyumba Kumi* Initiative - to identify children with disabilities and take them to special institutions. This is because not many parents like to be associated with such children. This Bill, therefore, should include persons with disabilities who have not been to these special institutions.

Madam Temporary Speaker, some of these institutions are in a pathetic state. Some of them do not even have enough food for the children, since they depend on donations. They lack special equipment and facilities for the physically challenged. Expenses in such institutions have been left to the communities and churches. If we can solve some of these problems through this Bill, I am sure that we will live in a country that we are proud of. We should have free education for all.

The Government should address the challenges faced by children with disabilities, because many of them are neglected by the parents. In fact, the author of this Bill should amend it to provide for the census of disabled people. We should find out how many there are in every sub-county and county. This will ensure that every county takes care of their persons with disabilities.

Most institutions for persons with disabilities do not have proper transport facilities. Sometimes teachers are forced to walk deaf and blind children across the road due to lack of special transport facilities. We have neglected this society in this country. In Canada and other advanced countries, the persons with disabilities are given a lot of respect. Special seats in buses are reserved for persons with disabilities. In some countries there are special lifts for such people.

I was in Zambia with my friend Sen. Omondi and found out that the Minister for Gender, who is disabled, has made sure that her office has facilities for the disabled.

She has made sure that her office accommodates persons with disabilities. She has provided elevators, chairs and washrooms for persons with disabilities. Therefore, there is need for us to take care of these people and make them enjoy life like the rest of us. Sometimes when we construct toilets in schools, we do not think about persons with disabilities. So, with the passage of this Bill and establishment of the county offices that will take care of the needs of persons living with disabilities. I am happy students in these institutions will be treated in a humane way.

Madam Temporary Speaker, it is important we pass this kind of law because it will compel county governments to take care of all persons with disabilities in their counties. The department will be taken care of in the same way that they take care of

others, for instance, the education departments. Teachers who teach in those institutions have a lot of problems. I, therefore, request the Government to set up a programme to train teachers on special skills to deal with children with disabilities. Without the special skills, the teachers will end up becoming caretakers or house helps. They will not know the demands of the students.

Madam Temporary Speaker, Sir, we must support this Bill because it is anchored on a devolved function. County governments should come up with programmes to support persons with disabilities. There is lack of information from parents who have children with some disabilities. Many parents are not comfortable talking about the conditions of their children. According to some African traditions, disabilities are associated with curses. Therefore, I urge both county and national governments to provide information to parents with children living with disabilities. Let them come up with programmes on how to address the plight of persons with disabilities.

We must provide persons with disabilities with necessary equipment like hearing devices, wheelchairs and walking sticks and so on. In fact, all this equipment should be zero rated. I urge the Government to import such equipment on a large scale because there are very many people living with disabilities in this country. When the equipment is zero rated, it will be availed to people who need it at no extra cost. A school like Thika School for Persons with Disabilities, which is supported by the Salvation Army, has done so well. County governments should emulate such schools and cater for person with disabilities. Every human being is entitled to a good life.

I beg to support the spirit of this Bill.

**Sen. Elachi:** Madam Temporary Speaker, I support this Bill because the amendment is timely. Article 54(1) of the Constitution is clear on how our sisters and brothers with special needs are supposed to be incorporated in all sectors and spheres of life in our county. To date, persons with disabilities struggle hard to move round their institutions because of lack of facilities for them. We passed an affirmative action agenda of reserving 30 per cent of Government tenders for them. However, if you look at statistics today, you will be shocked to learn that very few people living with disabilities have successfully applied and won those tenders. Why are we not supporting our brothers and sisters living with disabilities?

Madam Temporary Speaker, one of the things the county governments have refused to implement is any law that does not address itself to devolution. Therefore, the committees that have been proposed here by Sen. Omondi will be started in every county to look into the plight of persons living with disabilities. The report of the Kenya National Human Rights Commission (KNHRC) of 2013 said about 70 per cent of our population is made up of youth. Therefore, this Bill will unlock many opportunities for persons with disabilities in different sectors of our country. We must ensure these persons access social places without any hindrance. In the past, we have not been very strict with construction of buildings. We must now ensure all buildings cater for the needs of people with disabilities.

Madam Temporary Speaker, the United Nations (UN) has a clear resolution on incorporating persons with disabilities. We must create an enabling environment for them to participate in all sectors. Many parents suffer a lot taking care of their children with disabilities. Sometimes they do not talk about the condition of their children because of

stigma. I hope the committees envisaged in this Bill will go a long way in assisting children living with disabilities to enrol in schools.

We know of children who are chained or tied with ropes at home. They do not go to school. Many of them are undergoing a lot of suffering. Their parents are also in a lot of pain because they have no one to counsel them. We normally arrest their parents because we feel they mistreat their children and that they do not want to take them to school. However, we need to come up with a clear framework on how to engage such parents to understand that they can take care of such children in a better way because they are just like other children even though they have special needs.

Madam Temporary Speaker, some of these disabilities can be cured if parents seek medical attention in good time. However, people lack information, for instance, on where to go for therapy. It is difficult for a parent to take a child to a public hospital for physiotherapy. You can imagine the case of the children from Busia who were disabled after being injected with a vaccine. Another example is the Loreto Convent School girls who were involved in an accident in Tharaka-Nithi county. Most of them are now disabled.

We, as a country, have never accepted that disability is part of life and anyone of us can find ourselves in this condition. Even in Parliament, some of our Members have become disabled, for instance, Sen. Leshore and Hon. Ghati. Today they have some difficulties moving around. They do not have access to some places. People even distance themselves from them. Some people no longer accord them respect as they used to before they were disabled.

I hope governors will understand that when they have people with special needs, they take care of them. For example, they must make sure children with disabilities go to school. In fact, they must be provided with food in school so that parents who normally hide them take them to school. We must provide them with free medical services in the counties because health is a devolved function. It is the obligation of the county government to ensure that such children access medical services in any hospital. We must also establish physiotherapy centres. If the women Senators were given a fund, they would cater for unique cases that nobody thinks about, for instance, physiotherapy services for those living with disabilities.

Amongst us, we have persons who have various disabilities. We have blind, lame and deaf people. We even have those who are depressed. That is also a form of disability. How can we take care of them? Therefore, we must not ignore cases of depression. Disability means that your body is not functioning normally. Until we define it in these terms, we will always have different misconceptions. I hope the committees in the counties will classify them so that we can get the different target groups with different disabilities.

Madam Temporary Speaker, there is always conflict between people living with disabilities. Some feel they deserve better treatment than others. For example, those who are physically disabled feel that the blind do not deserve special treatment. It is upon us to treat them equally. As we approach the 2017 elections, we must take action. Everyone has his or her own target group among the disabled. It is time we assisted the sector to overcome conflict.

We should support each other. That is why the Constitution is clear and it gives the Government the obligation to ensure this is done. I hope the political parties will also

do the same. Let us categorize them so that all of them feel that they are being embraced. This will avoid conflict; some of them feel that it is only a particular group that is being embraced. We, therefore, need to amend the Act and classify disabilities.

Nobody is happy about disability. If it were our will, we would pray to God to save us from it. With technology, pregnant women from some families go for ultra sound to determine the condition of the unborn baby. We should work to find solutions.

The Committees which will be set up in counties must target key sectors, for instance, education and health. We must economically empower persons with disabilities. The disabled have their fund. These committees must monitor how the fund is utilized. Is this fund supporting them? It is a pity that resources set aside for persons with disability do not reach them. It is very hard for them to access their funds. How do we support them? The county governments should provide a conducive environment where people living with disabilities can conduct their businesses. However, this is not the case now. They are harassed by the county *askaris*. They pay the same market levies as other people. We must put in place incentives to help them grow.

Madam Temporary Speaker, lastly, I hope that we will pass this amendment. I also hope that all the amendments that we have passed and forwarded to the National Assembly will be cleared this year. I plead with them to do so. We should also clear the Bills that they brought to us.

With those few remarks, I beg to support.

**Sen. Kittony:** Madam Temporary Speaker, I join my colleagues in congratulating the Mover of this Bill, Sen. Omondi, for seeing it fit to bring it to this House at the right time. Every person has a right to be treated in a manner that is conducive to a good life.

This Bill is appropriate since we have a Constitution that accommodates everybody in this country. I would like to compliment the Mover. It is not like in the days where when one got children with disabilities, he or she hid them because it appeared to be a taboo. However, nowadays everybody has a right to a good life. We need to respect and let them live with dignity.

While supporting this Bill because disability is broad and there are a number of disabilities that we come across in everyday life; there are those who are mentally handicapped and have been totally neglected. We also have the blind and the deaf. I propose that, if I am in order, maybe at the Committee Stage, amendments should be incorporated so that these people are not left out. We are devolving this and the proposal goes to the county level, therefore, they should not be left out. A number of mentally handicapped people are hidden; nobody knows anything about them. You will find them tied in a dark room in the villages since it is seen as a taboo and parents do not want them to be known. In the Committee Stage, this Bill should be amended to include all forms of disabilities.

In developed countries, people with disabilities are respected and taken care of in a special manner. However, with our case, there is stigma. It is important, that as we devolve this to the county level, there should be civic education so that people start appreciating that disability is not inability. Everyone has a right to a good life.

Madam Temporary Speaker, this Bill has come at an appropriate time. I am proposing that these amendments be taken on board so that it is inclusive and everybody is taken care of. I congratulate and commend the Mover of this Bill. I hope that it will get

through and that the committee that will be appointed in the county governments should be supported to make it a workable reality as soon as possible.

I support.

**Sen. (Dr.) Zani:** Madam Temporary Speaker, about 90 per cent of the Members currently present in this House are the specially elected Senators and they are making a lot of contributions. I congratulate Sen. Omondi for this important amendment to this Bill. The challenge in the Act is that the counties element has not been taken care of. Most of the policies have been at the national level without considering the counties.

When talking about disability, there is a wide range of people with disabilities. In this country, we have neglected the invisible disabilities, for instance, mental disabilities. In many countries, we have found people who have otherwise been successful in many ways. Some are fantastic musicians and artists, among others. Therefore, physical disability is not the end of one's life.

In developed countries, initiatives are in place to ensure that persons with disabilities are assisted by providing them with right supporting gadgets. In Kenya, we need the assistance from every person. This Bill needs to look at the whole issue of bringing all angles of disability. This calls for research to find out state obligations and how best this issue can be addressed. In rural areas, there are mothers who do not have an idea about vaccinations. Therefore, children are prone to a wide range of disabilities. Research should be disseminated so that people can have an idea on its importance. Most of these issues have been legislated, but there are no ways to ensure that mothers take their children for vaccinations at the required times.

Madam Temporary Speaker, many cases of disabilities are as a result of neglect of many issues. Children suffering from disabilities will fail to attend school. In fact, children fail in schools only to realise later that they suffer from blindness and they cannot see the teacher's instructions on the black board. Some of the eye operations are easy to carry out. For instance, cataract operations can be done in five minutes. Therefore, it is the will that is missing.

In rural areas, there is no central point where all these issues can be addressed. Therefore, the county committees will be helpful in addressing these challenges. A lot of these disabilities are as a result of globalization. In the mining sector, lead poisoning is the causative agent of these eye disabilities. Research will help the State to establish if lead pollution can deform many children. We might have the *Zika* virus in many forms in this country without our knowledge.

The composition of this committee is important. The clause provides for nomination of two persons; a man and a woman, with experience in running programmes and nominated by governor. I suggest an amendment; that the appointments should be made after wide consultations with various institutions that deal with disability issues. With this, we shall get the right people with experience on disability issues.

Madam Temporary Speaker, when the law does not specify how appointments are to be made, the governor may pick on one person without the necessary qualifications. The Bill should provide for appointment of persons that have expertise in disability matters. They should retreat to schools and look at the performance of children with disabilities. In the Committee on Education, we deal a lot with Early Childhood Development (ECD) trying to place them within communities so that there is closeness. No school should deny a child admission because of his or her disability.

Madam Temporary Speaker, of late, upcoming infrastructure has incorporated disability friendly structures. Sometime back, in an airport, there was no lift and a certain physically challenged lady in a wheelchair had to be manually lifted. This can cause unnecessary accidents. Lifts should always be serviced because somebody will require their usage. How will blind people walk without the assistance of lifts? The lifts should have voice instructions to aid them in movement. I remember Sen. Omondi, in a certain forum, sharing her experience of how she felt at home while in United States of America. She said everything is smooth and nobody can easily notice that some persons are physically challenged.

We know that disability is not a one day occurrence. There are people who were not physically challenged, but because of accidents, they became victims. You might find that a person was not born with disability, but accidents and shootings happen. You may suddenly find that you cannot move and you are on a wheelchair or you have gone blind and you have to deal with that. So, we must look at this from a unilateral point of view, but not a specific point of view of thinking this is only for a particular group of people. Tomorrow, anybody will need these facilities.

There are legislators who need these facilities and others will come and they will also need them as well. We should consider all the issues of social amenities and how they can be attained; whether it is about water, roads or buildings and how they need to be constructed such that a child or a grown up with disability would navigate their way very easily.

This amendment also gives specific recommendations for county governments to do certain things. Firstly, they need to consolidate the various policies. I do not know whether we have one guiding policy on disability; when was it last reviewed and how will it be cascaded to the counties? Another proposed amendment to this Bill talks about making sure that there is congruence between county assemblies' legislation and the national legislation.

There should no contradiction between what comes from the counties and the national Government regarding matters of disability. Therefore, there is need to look at that policy and review it, make sure that any other subsequent legislation will be directly synced to what comes from county assemblies. That is very critical so that there is alignment of legislation with the national policy to ensure that there is no contradiction. This means a lot of work for the stakeholders. Sen. Omondi will need to put the different stakeholders together.

During public participation on amendments on this Bill, it will give a good chance for Kenyans to talk about the various policies that are in place, the various issues that have come up and the various researches and their findings and how to put them together and enhance the work of the county committees that have a lot of responsibilities to develop mechanisms for identification of these. There should be a database because we should have the statistics on various forms of disabilities. You will not get data on schizophrenia or other forms of mental disabilities when you want it. That becomes very difficult. We should not forget that there are many parents who have hidden children with disabilities. Again, we should get into this and have the accurate data.

When the conversation begins and people are encouraged to do more and come up with the figures, then, it becomes very critical. We should have the names, places of residence, types of disabilities and any other information that could help address the



disabilities. If it is a disability that is short-term and can be addressed, for example, correction of eyes or a cataract operation, let it be done. If it is something that is long-term in terms of correctional possibilities, let that be addressed. If it cannot be corrected, then the idea is to move towards assistance so that those with such disabilities can be enabled in a particular way.

There should also be monitoring and evaluation of the counties to ensure that there is respect and dignity because this is what the Bill is all about. You will not have respect and dignity when you must rely on others for everything. You should move by yourself, feel respected and speak as people listen to you. That should not be because of your disability, but because you talk as a human being. So, the respect and dignity is very critical and that is the mood that should always be there. As projects are being monitored and evaluated and the progress is being sought, we should ensure that the respect and dignity is upheld and that is very critical.

There is also need to advise the governors on the various measures and interventions that need to be put into place and how to come up with programmes for socio-economic development. I remember there was a big project sometime back at Bombolulu Handicraft. A lot of material fabric came from Bombolulu Workshop for the Handicapped. Dresses were being made and marketed abroad. I do not see as much activity in that direction. What is happening to such a critical industry? At the end of the day, like any other person, you want to meet your social and economic needs. You must be capacitated in one way or another and have programmes that will guide you in order to fulfill those specific considerations. That is also critical.

Apart from the issue of vetting of the two officers who will be appointed by the governor, the composition of that particular committee is okay. I hope the committees will be spread across all the 47 counties. That also creates the issue of collaboration between the 47 counties. I am sure they will have programmes that are more or less the same. So, it is very important for us to have a sense of exactly what goes on within and between counties.

Madam Temporary Speaker, as I end my contribution, the representation on labour, devolution, education and health is an addition to the initial Act that brings more value.

I support.

**Sen. Orengo:** Madam Temporary Speaker, I also join my colleagues in congratulating Sen. Omondi for bringing this Bill at this time. This Bill is important in terms of the fact that it will go towards implementing Article 54 of the Constitution. There are Third Generation Rights of Freedoms under the Constitution that we have, probably forgotten about in our daily lives because they do not appear to be rights and freedoms which can be implemented immediately. To adjudge a society which cares and in which there is indeed equality and equal protection and benefit of the law will depend on how we treat our people who may not be well endowed as everybody else. This relates to what I am calling the second or third generation rights. Under the Constitution, it is contemplated that these rights will be enforced or implemented progressively. However, the space we are given by the Constitution should not be used to defer rights and freedoms under the Constitution.

Madam Temporary Speaker, in contributing to this Bill, I want to be reminded of the fact that one of the most well-known and very effective Presidents of the United

States of America (USA), former President Franklin Roosevelt, was hit by polio when he was relatively young. However, he rose up to be the President of the USA. In fact, there is nobody in history who has been president in the USA for more than two terms, except former President Franklin Roosevelt. The important thing about him is that he lived his life on a wheelchair from 1929. Because of the facilities he was given most of time during his entire presidency, nobody knew that he was suffering from such disability.

With a disability which was a chronic one, he managed to successfully lead the USA during the Second World War, in which the USA and the allies became victorious. He had a very wonderful spouse known as Eleanor Roosevelt who was very constructive and effective in the establishment of the United Nations. Many people who have read the history of the organisation know that it would not have been in place without Eleanor Roosevelt's contribution.

Franklin Roosevelt was President of the USA for more than three terms. In fact, he died while he was serving his fourth term. He was not only able to lead that country successfully through a war, but also a recession that started a little bit later after he had been hit by polio. I am just using this as an example. Probably, we may not know that the people within our society whom we consider to be having disability and, therefore, cannot contribute successfully in nation building, maybe the person that we need at this time. Probably we would have more peace in Africa and in the region if we had people with disability given opportunities to be effectively employed in the service of the nation. I believe even East Africa would be safer.

Madam Temporary Speaker, today I was watching something in the social media, seeing how Dr. Besigye was being beaten and roughed up. I felt so bitter and bad. I know somebody like President Roosevelt would be pained because given the way he was beaten up, it is quite possible that the next time you will see Dr. Besigye, he may not be walking on his feet. He may join the persons with disability. That is something that must be condemned because some of the disability is created, not through disease, but bad governance.

I want to remember one of our heroes, Mr. Matiba. Probably, without going to detention and serving his life in prison, he would still be up and about. Therefore, when we talk about this subject of disability, we must always remember that sometimes those with disability may be people who care more about society than those whom God has given the full control of the mental and physical capacities.

As I remember President Roosevelt, there is another person in England known as Mr. Stephen Hawking, a professor who is suffering from a neuron disease which is degenerative and cannot talk. He has to use certain scientific contrivances in order to communicate. After the Second World War and since the discovery of the *Theory of Relativity* – probably one of the greatest contributors to the field of physics is this man called Prof. Stephen Hawking who is a fellow in Cambridge University. He has even written one famous book known as *Brief History of Time* which I think is a must-read for many people. So, disability is not inability. That is the starting point.

I congratulate Sen. Omondi for bringing this very important piece of legislation. I hope it will be enacted and through it, we will try to focus this problem, not only at the national level, but also take it to the counties. This is because sometimes the way county governments are run, it is like they are these small “banana republics” where what matters is the people who sit at the governor's office, without really caring about the less

advantaged people of society living in those counties. Therefore, when we have something in the law, it can awaken their conscience to make a determination that you have a variety of people in every county who must be taken care of.

Madam Temporary Speaker, I had a good opportunity of being with Sen. Omondi in Siaya County. Her arrival there showed how less we cared about people with disability. We found that our doors were not wide enough and the stairs were ill-constructed. It was a very unfriendly construction, repairs or renovations which had been carried out in buildings in Siaya County in general. This applies to many other counties. So, this Bill will ensure that this responsibility is not just felt at the national level, but it is cascaded to the counties.

It will bring up the level of awareness and responsibility to counties so that those living in those terrible conditions, but which does not lead to inability are well taken care of. If they are taken care of, they can take care of us as I have demonstrated in the case of President Roosevelt who could not walk on his two feet, but took care of the greatest power on earth— probably, the greatest after the Roman Empire — although that may not be a permanent condition as other powers are emerging.

As we set up these committees at the counties, my sister, Sen. Omondi, we have to ensure that we are not just creating sinecures. Let us have people in those committees who can make a difference in the societies which they live. So, merely having a person appointed by the governor to be the chairperson may not be good enough. There should be some kind of process to ensure that the people who are appointed by a governor, public officer, or otherwise, must be people who are committed to a cause such as this one, which may lead to making a difference in our societies and counties.

Madam Temporary Speaker, as Sen. (Dr.) Zani said, the people who are meant to represent faith-based organisations and others which deal with people with disabilities, the objective or purpose is not just to create offices or positions. Rather it should be to look for people who can ensure that something is being done which would enable those who suffer from disability to be given their rightful place in society and the demands of the Constitution in this regard is taken into consideration.

Madam Temporary Speaker, this may come as a way of amendment, a reporting system where both in the assemblies and even in the national Legislature both in the National Assembly and in the Senate, there should be a report coming from county governments and even the national Government. This report will show exactly how they are prosecuting this responsibility of ensuring that the objects of the Constitution are met. Indeed, as this Bill says, proper policies have been developed for the protection and promotion of the welfare of persons living with disabilities. Let the report show that, indeed, there have been services which have been undertaken.

If it is a matter which only ends with the national Government and precisely the Executive, or the governor at the county level, without a reporting mechanism, then the society at large may not have a way of knowing how this constitutional project will go on. I call it a constitutional project because it is required by the Constitution that these measures be taken.

I urge that in the Committee Stage, one of us makes a proposal that there should be a reporting system to the people of Kenya. The reporting should go through Parliament at the national level and the county assemblies at the county level. These

measures will be important in evaluating whether we are making sustainable programmes for our people to emerge from poverty to prosperity.

Madam Temporary Speaker, I want to end by saying that a lot of disability in the world today is being created by bad governance. I have cited the case of hon. Matiba in Kenya and Dr. Besigye in Uganda, among others. Whereas we can live with disabilities which are natural or which are brought about by calamities or disease, we cannot live with disabilities which are caused by human beings, whatever their situation in life. I wish to finalize by thanking Sen. Omondi for this good work.

Thank you.

**The Temporary Speaker** (Sen. Ongoro): Thank you for that eloquent contribution Senator. There being no further request, I call upon the Mover to reply.

**Sen. Omondi:** Thank you, Madam Temporary Speaker. I beg to reply by thanking my fellow Senators for showing passion on matters to do with disability.

I want to appreciate them for their contribution. Indeed, disability is a club and everybody is a potential member. You can join anytime. This reminds us that we must be prepared every now and then. We must make our environment disability friendly, including our structures and have passion for disability issues.

I want to outline some important guidelines that can form a basis on how to ensure that we are disability friendly. One is involvement. We need to involve persons with disabilities and recognize, support and consult them in all matters and at all levels and also to ensure that the issues pertaining to disability are given a priority in everything that we plan to do.

Madam Temporary Speaker, I want to say that issues raised by my fellow Senators on disability enrich this Bill and I know it is going to solve challenges that are facing persons with disabilities. In terms of devolution, persons with disabilities are being taken left and right; they do not know where they are supposed to seek for services and support. This Bill will ensure that things are in order and they will receive the services that are required.

I want to request under the Standing Order No.54(3) that we defer the putting of the Question so that we get numbers to allow us to go for Division.

**The Temporary Speaker** (Sen. Ongoro): Okay, Senator, your request has been granted and the Question will be put on Tuesday, next week.

Next order!

### *Second Reading*

#### THE MICRO AND SMALL ENTERPRISES (AMENDMENT) BILL (SENATE BILL NO. 12 OF 2015)

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, the Mover of this Bill is not in the House. Therefore, the Bill is deferred.

*(Bill deferred)*

*Second Reading*THE NATIONAL CEREALS AND PRODUCE BOARD (AMENDMENT)  
BILL (SENATE BILL NO. 15 OF 2015)

**Sen. Kittony:** Thank you, Madam Temporary Speaker. I rise to make a statement on the memorandum of the objectives and reasons for the National Cereals and Produce Board (NCPB). The principal object of this Bill is to amend the National Cereals and Produce Board Act---

**The Temporary Speaker** (Sen. Ongoro): Sen. Kittony, as a matter of procedure, you need to just move that this Bill be now read a Second Time and you proceed before you give your contribution.

**Sen. Kittony:** Thank you, Madam Temporary Speaker. I beg to move:-

THAT, the National Cereals and Produce Board (Amendment) Bill (Senate Bill No. 15 of 2015) be now read a Second Time.

This is a Bill of Parliament to amend the National Cereals and Produce Board Act to provide for the establishment of the County Cereals and Produce Committees. Agriculture is a devolved function.

Madam Temporary Speaker, by providing for the establishment of the county cereals committees, the Bill seeks to ensure enhanced production of maize, wheat and scheduled agriculture produce in counties so as to ensure food security in the country.

Madam Temporary Speaker, the Bill also provides for the functions of the county cereals and produce committees. These include the facilitation of the purchase of maize, wheat and scheduled agricultural produce from farmers, the payment for such produce delivered by farmers, data collection and the collection and dissemination of information to farmers, county government and the National Government. The committees are expected to act as a link between the National Government and the county government by collaborating with the National Cereals and Produce Board in the carrying out of its functions. The committees will also submit reports to the county executive committee member and the Board regarding the performance of their functions.

Madam Temporary Speaker, this Bill does not delegate legislative powers or limit the fundamental rights and freedoms. It is expected to ensure that the production of maize, wheat and scheduled agricultural produce is enhanced and cascaded to the farmers in the counties. In addition, the county governments will be able to buy the produce directly from the farmers. The provision of crop and animal husbandry services is a function that falls within the ambit of the county governments, as specified under Part 2 of the Fourth Schedule of the Constitution. This Bill, therefore, concerns county governments in terms of Article 110 (1) (a) of the Constitution of Kenya. It is also not a money Bill within the meaning of Article 114 of the Constitution.

Madam Temporary Speaker, I am a farmer. I believe farmers have had a raw deal for a long time. They do not get proper prices for the crops that they produce.

I beg to move and ask Sen. Elachi to second the Bill.

**Sen. Elachi:** Madam Temporary Speaker, I beg to second The National Cereals and Produce Board (Amendment) Bill, 2015. I thank this House for passing The Food Security Bill, knowing very well that we have had the National Cereals and Produce

Board (NCPB) for many years in areas designated by the Government, for example, Kitale, Nakuru, Kisumu, Kericho and Mombasa.

We, as a House, need to appreciate that agriculture is now devolved. We have created many committees in the Bills that we have passed, but we need to ask ourselves how they will be implemented. We need to know how much food is in the NCPB stores. When we passed The Food Security Bill we also provided for what should happen in the committees. In Nairobi, for example, you cannot ask people where they farm. Some of them are landlords. That is where they get their income. However, at the end of the day, every Kenyan should have food. This Senate must, therefore, ensure that this amendment Bill and the Food Security Bill are implemented by the Government, so that people access food easily.

Madam Temporary Speaker, we have the Galana Food Project which is being implemented. The President is in Israel and has expressed hopes that the project will work. We should devolve cereal boards to Tana River and other places and form committees to ensure that there is enough food and no wastage. We store a lot of food in the cereal boards that we have across the country, but no one monitors or raises a red flag that a certain area has 20,000 or 1,000,000 bags of maize that is about to rot because they are unable to sell or supply. In the past, the NCPB stores had been opened and closed from time to time. The stores should be open all year round, so that if I take my maize there now, I should be able to go back in three months time and buy food. Sometimes we close those stores and import food. That is why farmers are complaining.

We have focused so much on maize that we forget that there are other agricultural products that need to be stored. We also have dairy farming which requires storage facilities. My father supplies milk to Kenya Cooperatives Creameries (KCC). There are competitors within the sector. Therefore, there is a surplus of milk right now that they do not know where to take it. If you ask why they cannot produce powder milk, they give you stories, but you find another farmer who has surplus milk producing powder milk. You then ask yourself whether we are in the same country. We are not encouraging our farmers to pursue agriculture as a source of income and livelihood.

As we create the committees, there is need to ensure accountability within the industry. Farmers should be able to take their wheat produce to the stores. They should also have a ready market for surplus poultry and poultry products. We should not just focus on maize, but also meat products, wheat and beans. Stores should be available for these products whenever there is surplus. It would be wrong for the Government to let farmers' institutions go down, just because of competition from the private sector. The Government should stand with the farmers, most of whom are voters, and ensure that they benefit.

Most NCPB stores have surplus because farmers lack information. For example, nobody tells them whenever there is bumper harvest that they need to reduce the prices. We keep quiet leaving the farmers wondering why the Government does not buy their maize. We should borrow from what happens with fuel prices. Fuel prices have gone down because there is a lot of competition. Many countries that have oil are now supplying it. For example, Iran is back in the market and so fuel prices will go down. We keep quiet and leave farmers to complain every day. We also do not have agricultural extension officers to sensitize the farmers.

The committees that we are creating in this Bill will ensure that farmers are informed in good time. If there is an outbreak of crop diseases, these committees should act accordingly. Their business is not just to wait for the surplus to be taken to the cereals boards. If diseases will affect crops, it will be the responsibility of the committee to take action and use the right pesticide. We can mitigate and save the crops before it is too late.

Madam Temporary Speaker, as we amend this Act, we need to address the conflict between the county and national Governments in terms of devolved sectors like agriculture. This is a devolved function, but the national Government has not fully devolved it. Even as we propose to have county cereal committees, we will have to consult widely to ensure that we do not have conflict. If the committees are there to inform, we should have mechanism within the Act to allow the committees to inform the national Government. During the times of drought and famine, the national Government seeks assistance from donors.

I support this Bill and hope that we are going to suggest serious amendments to ensure that mechanisms are there to support both the national and county Governments.

I beg to second.

*(Question proposed)*

**Sen. Omondi:** Madam Temporary Speaker, I thank you for this opportunity. I also thank Sen. Kittony for speaking on behalf of the farmers. This is a timely Bill because the country is facing a lot of food shortage. We have a lot of problems as far as nutrition is concerned simply because we depend on imported food. Farmers are facing a lot of challenges in terms of transportation, pricing and storage of their farm produce. As a result, farmers have experienced losses which have negatively affected the economy of this country.

Food security is key for the growth of our economy. Many county governments are now coming up with projects to give farmers machines. However, there are no structures in place to enable farmers make good use of these machines. One of the challenges they face is lack of electricity to operate those machines. For instance, in my county, there is a SACCO for dairy farmers that has been given a dairy machine, but they do not have electricity. Therefore, they cannot preserve their milk.

If we address the issue of farming and food security, we will have a healthy country. When that happens, production and the economy of the country will be cushioned. This is the basis of where we, as legislators, can claim to have done our work during our tenure.

I beg to support.

**Sen. Sijeny:** Madam Temporary Speaker, first and foremost, I commend Sen. Kittony, who in particular being a woman, a mother and a farmer, knows the plight of farmers in this country. Women are major contributors in this sector. She has first-hand understanding of the plight of farmers in this country.

This is a good Bill. The county cereals committees need to be established. As their functions are stipulated, definitely, things will not be as usual. It is a major step forward in improving the state of agriculture in this country. Kenya was known as an agricultural State and it never lacked food. Even when drought came, we could supplement among ourselves. However, we face famine because such committees are

lacking. Although we have the NCPB, these people will help the farmers directly. We have the agents, the so called brokers who frustrate the efforts of Kenyans; for instance, farmers are stranded with their maize and are not able to get seeds on time. Food security is lacking completely. However, with the enactment of this Bill, it will be a thing of the past.

Madam Temporary Speaker, this Bill is not just about the creation of certain offices where people will enjoy some allowance. That is only a motivation to ensure that they do not engage in monkey deals to get extra money, but it will assist them concentrate on their work. It will be an all-inclusive job that will help people work in harmony. The national and the county government will work together; that networking and connection that has been lacking will be established. This will bridge the disconnect, harmonize and help both levels of government to understand that they are working for one nation. This will enable *Wanjiku* get all she needs so that she may live a comfortable life.

It is not in order that a country which was once a rich agricultural State starts lagging behind in food production. This is not fair at all.

The Bill caters for remuneration because it is important. Once it is harmonized, it recognises the existing institutions as per the Constitution. This shall be put in place in consultation with the Salaries and Remuneration Commission (SRC). There will be no issue of inflated allowances so that they could be calling for meetings, for instance, 10 times a week yet the work requires only meeting once quarterly, once a month or bimonthly. This will enable people to work properly.

Madam Temporary Speaker, the functions of this Committee will include the facilitation of the purchase of agricultural products, for example, maize and wheat, and the scheduled agricultural produce from farmers and the payment of such produce delivered by farmers.

The payment of such produce delivered by farmers will enable us to get data collection and dissemination of information to farmers. With the enactment of this Bill, we will not be guessing whether all agricultural produce was good or otherwise. This kind of bad practice which has been happening will be a thing of the past. When we have proper records - the personnel who want to inflate the prices of the agricultural produce that they have received without paying the farmers - this will not occur. This NCPB will enable this institution to work properly, issues of corruption, neglect and bad governance will not be there.

When we say that the Committee will also submit reports to the county executive committee members and the board, regarding the performance of these functions, we, as a country, should embrace the result-based kind of management. By embracing it, we will know the position we are in, as we commence this work. What is the information we are getting? What are the results that we have in our farming at the NCPB? Kenya depends heavily on agricultural products. The staple foods are maize, among other agricultural produce.

When they are preserved properly, people get nutritious food. If not, the consumption of wrongly treated food kills. The result is reduction of manpower. Most of the times, those who suffer are children and women hence there is no development.

Madam Temporary Speaker, when we have these reports done, we shall know the kind of produce we require in future, the challenges we experience and what can be done



to address them. The national Government should look into the personnel while the county governments implement the policies. At the end, they will be evaluated on their functions to ensure that no resources are misappropriated. When there are droughts, for instance, certain foods find ways into kiosks and are sold.

### ADJOURMENT

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, it is now time for the interruption of business. Sen. Sijeny, when this Bill comes on the Order Paper for debate, you will have five minutes to conclude your contribution. The House, therefore, stands adjourned until Tuesday, 1<sup>st</sup> March, 2016, at 2.30 p.m.

The Senate rose at 6.30 p.m.