

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 1st August 2019

The House met at 2.30 p.m.

[The Speaker (Hon. Justin Muturi) in the Chair]

PRAYERS

QUORUM

Hon. Speaker: I direct that the Quorum Bell be rung.

(Quorum Bell was rung)

Order, Members! We now have quorum, we can start.

PAPERS LAID

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Annual Report and Financial Statements of the Laikipia University for the year ended 30th June 2017.

Report of the Auditor-General and Financial Statements in respect of the following constituencies for the year ended 30th June 2018 and the certificates therein:

1. Kapseret.
2. Uriri.
3. Turkana East.
4. Aldai.
5. Kesses.
6. West Mugirango.
7. Samburu North.
8. Nyeri Town.
9. Laikipia North.
10. Kirinyaga Central.
11. Kitutu Masaba.
12. Chepalungu.
13. Funyula.
14. Navakholo.
15. Tinderet.
16. Mukurweini.
17. Gatanga.

18. Mathioya.
19. Maragwa, and
20. Kieni.

Hon. Speaker: Next Order!

NOTICE OF MOTION

ESTABLISHMENT OF DATABASE CENTRES FOR ISSUANCE OF BIRTH CERTIFICATES TO CHILDREN

Hon. (Ms.) Mary Njoroge (Maragwa, JP): Hon. Speaker, I beg to give Notice of the following Motion:

THAT, aware that the Constitution and the Kenya Citizenship and Immigration Act, 2011 provide that every citizen is entitled to any document of registration or identification issued by the State to citizens including a birth certificate; further aware that Article 53(2) of the Constitution of Kenya provides that a child's best interests are of paramount importance in every matter concerning the child; cognisant of the fact that issuance of birth certificates during civil registration associated with children is a challenge across the country due to among other issues, missing information for the parents and children as a result of missing and improper documentations, damaged manual documents, and lack of registration of children born outside hospital environments; deeply concerned over the delays and long queues at civil registration centres and the challenges affecting registration of children by the Ministry of Education using the National Education Management Information System (NEMIS) in the country; this House urges the Government to establish database centres in all civil registration centres for purposes of storing all the necessary information required for issuance of birth certificates to all children and puts in place administrative mechanisms to ensure that every child is automatically issued with a birth certificate before the child attains the age of three years.

Thank you, Hon. Speaker.

Hon. Speaker: Next Order!

ORDINARY QUESTIONS

Hon. Speaker: The first Question is by the Member for Laikipia County.

Question No.354/2019

ISSUANCE OF TITLE DEEDS TO RESIDENTS OF LAIKIPIA COUNTY

Hon. (Ms.) Catherine Waruguru (Laikipia CWR, JP): Hon. Speaker, I rise to ask the Cabinet Secretary (CS) for Lands the following Question:

(i) Can the Cabinet Secretary confirm what plans are underway to ensure that persons residing in Thigithu Estate, Likii, Majengo, and Solio villages of Nanyuki area, Maina Village in

Nyahururu and Kandutura Village of Rumuruti area, all in Laikipia County, are issued with title deeds for the respective places they occupy?

(ii) What steps has the Ministry taken to resettle the squatters currently residing at Kwa Mbuzi area near the Kenya Defence Forces Barracks in Nanyuki Town?

Hon. Speaker: The Question is referred to the Departmental Committee on Lands to prioritise the appearance of the CS to respond.

Hon. Members, before we proceed, allow me to recognise the presence, in both the Speaker's Gallery and the Public Gallery, of students and pupils from the following institutions: Chugor Primary School, Marakwet East Constituency, Elgeyo Marakwet County; Olgos Primary School, Kajiado Central Constituency, Kajiado County; Kahuho Primary School, Kabete Constituency, Kiambu County; Kiboi Primary School, Kiharu Constituency, Murang'a County; Shiners Academy, Kesses Constituency, Uasin Gishu County; St. Claire Educational Complex, Chesumei Constituency, Nandi County; Iten Primary School, Keiyo North Constituency, Elgeyo Marakwet County; and, St. Pauls Amukura, Teso South Constituency, Busia County.

They are all welcome to observe the proceedings of the National Assembly this afternoon. The next Question is by the Member for Kanduyi Constituency.

Question No.358/2019

DELAYED SETTLEMENT OF ARREARS TO SUGARCANE FARMERS

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Hon. Speaker, I rise to ask the Cabinet Secretary for Agriculture, Livestock, Fisheries and Irrigation the following Question:

(i) When will the Ministry settle the outstanding arrears for sugarcane farmers for cane supplied to Nzoia Sugar Company in Bungoma County following a directive by H.E. the President in October 2018?

(ii) What is the reason for the delays in settling the arrears for the remaining farmers?

(iii) What measures has the Ministry put in place to ensure that sugarcane farmers are paid on time for cane delivered to sugar factories?

Hon. Speaker: The Question is referred to the Departmental Committee on Agriculture and Livestock. Next Question is by the Member for Keiyo North, Hon. (Dr.) Murgor.

Question No.359/2019

STATUS OF CONSTRUCTION OF KAMARINY STADIUM IN KEIYO NORTH

Hon. James Murgor (Keiyo North, JP): Hon. Speaker, I would like to ask the Cabinet Secretary for Sports, Culture and Heritage the following Question:

(i) What is the status of the Construction of Kamariny Stadium in Keiyo North Constituency which was started in 2014?

(ii) Could the Cabinet Secretary provide details on the cause of delays in completion of the stadium that was initially scheduled to be completed in 2018, and when it will be completed?

Hon. Speaker: The Question is referred to the Departmental Committee on Sports, Culture and Tourism. The last Question is by the Member for Igembe Central.

Question No.360/2019

STATUS OF CONSTRUCTION OF MERU NATIONAL PARK ACCESS ROAD

Hon. Kubai Iringo (Igembe Central, JP): Hon. Speaker, I rise to ask the Cabinet Secretary for Wildlife and Tourism the following Question:

- (i) What is the status of construction of the Meru National Park access road?
- (ii) Could the Cabinet Secretary explain how the funds allocated to the said road during the Financial Year 2015/2016 were utilised?
- (iii) What measures is the Ministry putting in place to ensure that the said road is completed and what is the projected timeline for the completion?

Hon. Speaker: The Question is referred to the Departmental Committee on Sports, Culture and Tourism. Next Question is by the Member for Kwana, Hon. Kevin Wanyonyi.

Question No.362/2019

MEASURES TAKEN TO CONTROL USAGE OF GLYPHOSATE-BASED HERBICIDES

Hon. Ferdinand Wanyonyi (Kwana, FORD-K): Hon. Speaker, I would like to ask the Cabinet Secretary for Agriculture, Livestock, Fisheries and Irrigation the following Question:

Considering that in 2015 the World Health Organisation provided evidence of link between glyphosate exposure and non-Hodgkin Lymphoma, and that several countries have since banned or restricted use of glyphosate-based herbicides including Round-Up due to health concerns-

(i) Could the Cabinet Secretary provide the guidelines, if any, issued by the Pest Control Products Board on the usage of glyphosate-based herbicides, including the measures being pursued to control the use of such herbicides?

(ii) Could the Cabinet Secretary indicate the quantities and brand names by which glyphosate-based herbicides have been imported into the country from 2017 to 2019, and confirm whether there exist any foreign markets that have cautioned Kenya against the use of glyphosate-based herbicides?

Hon. Speaker: The Question is referred to the Departmental Committee on Agriculture and Livestock. Next are Statements.

STATEMENTS

DISARMAMENT OF NPRS IN NORTHERN KENYA COUNTIES

Hon. Speaker: The first Statement is by the Member for Samburu North, Hon. Alois Lentoimaga.

Hon. Alois Lentoimaga (Samburu North, JP): Thank you, Hon. Speaker, for giving me this opportunity. Pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Administration and National Security on the disarmament of National Police Reservists (NPRs) in northern Kenya counties.

During the months of April and May 2019, the NPRs from Samburu, Marsabit, Isiolo, Laikipia, Baringo, West Pokot, Elgeyo Marakwet and Turkana counties in northern Kenya were disarmed without consultation with the local leaders of the counties. The NPRs are key in

provision of security to the local people because they supplement the regular police at the grassroots level where there are no police stations, police posts or patrol bases. Furthermore, NPRs fight bandits who have been raiding locals to steal livestock in the most remote areas where terrain is bad and without any road networks.

The NPRs accompany livestock for grazing. Therefore, they are the first point of defence in every raid that is carried out by bandits or cattle rustlers, which is something that the regular police cannot cope with. Currently, the local residents of these counties live in fear of imminent attacks. As experienced, the security forces are never on time to help when there is an attack.

Hon. Speaker, it is against this background that I seek a Statement from the Chairperson of the Departmental Committee on Administration and National Security that addresses the following:

(i) The current state of insecurity as a result of disarmament of the NPRs in the aforesaid counties; and,

(ii) the measures the Government is putting in place to curb insecurity in the said counties.

Thank you, Hon. Speaker.

Hon. Speaker: Is the Chairman of the Departmental Committee on Administration and National Security or the Vice-Chair, Hon. Waluke, present to give an indication as to when they will respond? Well, the two being absent, Hon. Lentoimaga, get in touch with the Leader of the Majority Party, who will then direct the question to the Chairperson to respond, even if it is in the course of next week.

The next Statement is by the Chairman of the Select Committee on the National Government Constituencies Development Fund (NG-CDF) on the status of the allocation of funds for each constituency for the Financial Year 2019/2020.

(Hon. Maoka Maore consulted Hon. Jimmy Angwenyi)

I can see that the Chair is listening to Hon. Jimmy Angwenyi. You have a Statement. It looks like you want to make the Statement to the Deputy Leader of the Majority Party.

STATUS OF ALLOCATION OF FUNDS TO CONSTITUENCIES FOR 2019/2020 FY

Hon. Maoka Maore (Igembe North, JP): He is complaining about something.

Hon. Speaker, I rise to give a Statement with regard to the status of the allocation of funds for each constituency for the Financial Year 2019/2020.

A total of Kshs41,749,800,000 was allocated to the NG-CDF for the Financial Year 2019/2020 as per the Appropriation Act, 2019. This amount is equivalent to 2.67 per cent of the national Government share of revenue as per the Division of Revenue Bill, 2019. So far, the NG-CDF Board submitted the Financial Year 2019/2020 budget proposal to the Cabinet Secretary for approval. As part of the approval process, the Head of the Public Service, through a circular dated 23rd July 2019, issued a communication to all State corporations and Semi-Autonomous Government Agencies (SAGAs) to the effect that the Government is in the process of aligning the Financial Year 2019/2020 budget towards the support of the Big Four Agenda. The circular directed that all State corporations and SAGAs are only allowed to spend a quarter of last year's approved budget over the first quarter ending September 2018. So, no capital expenditure will be undertaken unless the particular expenditure item is an ongoing project and is specifically

approved by the National Treasury in writing. To this effect, the annual budget for the Board for the Financial Year 2019/2020 is yet to be approved. *Hiyo ni maneno ya huko*. The circular does not affect us.

(Laughter)

Hon. Members: On a point of order, Hon. Speaker.

Hon. Maoka Maore (Igembe North, JP): Do not worry. Hon. Speaker, in view of the foregoing, the Board shall allocate funds to each constituency as per Section 6 of the NG-CDF Act, once its budget for the Financial Year 2019/2020 is approved. Hence, it will determine the amount available for each sharing among the 290 constituencies. Further, the passage of the Division of Revenue Bill, 2019 will be critical in ascertaining the amount allocated to the Fund to meet the legal threshold of not less than 2.5 per cent of the national Government share of revenue.

Lastly, as we await the conclusion of the Board's budget approval process, constituencies may proceed with developing their respective project proposals for the Financial Year 2019/2020 for up to Kshs136,766,586 while providing for an emergency reserve of not less than Kshs7,198,241 per constituency.

Thank you, Hon. Speaker.

Hon. Aden Duale (Garissa Township, JP): On a point of order, Hon. Speaker.

Hon. Speaker: What is your point of order, Leader of the Majority Party?

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I want to thank the Chairman of the Select Committee on NG-CDF. The HANSARD and the House records will be used for many years. He needs to clarify two things. One, the meaning of the circular from the Head of the Public Service. Parliament is an independent institution and we do not get directives from the Head of Public Service. The Chair needs to clear that. He did it as if he was in Igembe North Constituency talking to his people. He said that the circular does not concern us, but that is not how you do it in the House. He should tell us the implications.

Two, the tradition is that you do not tell us to go and budget based on Kshs136 million. The list, which has the amounts, must be tabled in this House before we go on recess. I want you to direct the Chair to table the Report from the Board and the Cabinet Secretary before Thursday next week, which says, for example, that Garissa Township Constituency will receive Kshs136 million. We can only plan our projects based on a document. He is our Chair and he is very good. Under his leadership, for the first time, the allocation to the NG-CDF has gone up from Kshs33 billion to Kshs41 billion. We are not affected by the Division of Revenue Bill. This must be very clear. The moment the Appropriation Bill is passed, we have no business with the Division of Revenue Bill, which belongs to the counties.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): A point of clarification, Hon. Speaker.

Hon. Speaker: Let me just refresh Hon. Angwenyi's memory. When a Member has risen on a point of order, it is either the Speaker to clarify or the person to whom it is directed. It cannot be followed by yet another point of order.

(Laughter)

Please, this is just to refresh his memory because I know he has come from a memorial service. So, he might have forgotten that because he was listening to the sermon there. You are back in the Chamber. Let the Chairman respond to the points raised by Hon. Duale.

(Hon. Jimmy Angwenyi spoke off record)

Hon. Angwenyi, this House must operate like a House of Parliament. Let the Chairman respond.

Hon. Maoka Maore (Igembe North, JP): Hon. Speaker, let me put it clearly. We are talking about Government finances. The Government gives money and it goes to the NG-CDF. It does not come to us as autonomous money, but it is Government money. In their procedures, they are saying that they want to align the projects that are coming up with the Big Four Agenda. You can choose what to implement and ignore. I have put it the way it is. This document is from the Government. I am tabling officially Kshs136,766,586. The money is less the emergency amount of Kshs7,198,241 per constituency. I am officially tabling the document with these figures as provided.

(Hon. Maoka Maore laid the Document on the Table)

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): On a point of order, Hon. Speaker.

Hon. Speaker: As you can see, the elderly do not have any questions. The Member for Funyula has an intervention.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Speaker. I have a point of clarification. My colleagues were trying to clarify what they do not know. I want the Chair to be clear because they are asking me thinking that I know. They are asking whether the Kshs136,766,586 is inclusive or exclusive of the emergency fund? He needs to answer that.

Hon. Members: *Amesema.*

Hon. Speaker: Hon. Members, that is why it is important to pay attention when a matter is being canvassed. Hon. Limo, Member for Kipkelion East.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Speaker, I want clarification from the Chair of the NG-CDF and he should listen. My Committee, the Departmental Committee on Finance and Planning, was responsible for allocating the Kshs41.7 billion. In our estimation, normally the NG-CDF Board uses around 4 per cent for administration, which is yet to be approved. If we apply 4 per cent of the higher figure of Kshs41.7 billion, it will mean that the Board, without an increase in their expenses, will get more money compared to the last financial year. Therefore, when we discussed the matter, we estimated that each constituency will get at least Kshs138 million and not Kshs136 million, which he recommends. We want to know what the Board has submitted as allocation for administration. Is it 4 per cent or have they raised it? If they have raised the percentage, it will not augur well because it will be a percentage higher than Kshs41.7 billion as compared to the Kshs33 billion in the last financial year.

Let the Chair clarify the amount the Board is proposing to use. Is it 5 per cent or 4 per cent that it has been using?

Hon. Speaker: Is the Chair able to respond?

Hon. Maoka Maore (Igembe North, JP): Let me divert attention to the details of the budget-making process. This money actually comes from the Departmental Committee on Finance and Planning. It is the Committee that will trigger the budget of the NG-CDF Board to

come to our Committee for approval. I have said that, that is in the process. What I have announced could go higher, but it will not go lower than that.

Hon. Kathuri Murungi (South Imenti, Independent): Hon. Speaker, we have been discussing, as Members, officially or unofficially, the review of the NG-CDF Act, 2016. Constituencies have different challenges. There are constituencies with a high population, others have 200 primary schools and 100 secondary schools while others have high poverty levels. Therefore, we have been discussing this. We have done so even in the Special Funds Accounts Committee and made recommendations because of the skewed nature of allocation to the implementation of programmes. We have been discussing ways of revising the NG-CDF Act, 2016, to suit the problems in our constituencies.

I thought before the division, the Chair of the NG-CDF Committee would table some amendments to the Act, so that we can be fair to all constituencies. I hope he still has time to do that. If he is in the process of amending the NG-CDF Act, 2016, he can inform the House so that we buy time to allow the amendments to be brought before the House.

Hon. Speaker: Hon. Kathuri, you were addressing the issue that is in the law. The Chairman may not address that because it is a matter that if you desire to propose any changes to the law, you know the official route. You should write a letter and I can assure you that as soon as you get it to the office, it will be approved to go through the other processes so that you can come and debate the matters on the Floor of the House. That includes the issues you have raised to the effect that constituencies have peculiar circumstances from one another, which is a fact. The Chairman may not be able to respond to that. Even if he were to respond at this point, he may not address that issue.

I see the Member for Mandera North wants to say something.

Hon. Major (Rtd.) Bashir S. Abdullaih (Mandera North, JP): I decline.

Hon. Speaker: Member for Marakwet East.

Hon. Kangogo Bowen (Marakwet East, JP): Thank you, Hon. Speaker. I just want to seek clarification from the Chair on the remaining funds. Some of the constituencies have not received the full amount for the Financial Year 2018/2019.

Hon. Speaker, as you have directed Hon. Murungi, we have unique constituencies. My constituency, though it has a small population, has problems. For example, we use donkeys to transport a bag of cement from a buying point to a school. We have our challenges. We want the formulae for allocation to remain the same, so that every constituency gets an equal amount.

Hon. Speaker: Again, in fairness, Members, save for purposes of appealing to the Mzalendo Group, there is no Bill before the House to address that issue. So, there is nothing for anybody to respond to. But for information of the House, Hon. David Eseli's Bill proposing amendment to the National Government Constituencies Development Fund Act has gone for publication. So, I am sure you will address those issues and deal with them as you find appropriate.

Member for Turkana South, I have also now known that he is called James. Hon. James Lomenen.

Hon. James Lomenen (Turkana South, JP) Thank you, Hon. Speaker for recognising my Christian name. I seek your indulgence to get clarification concerning the NG-CDF. We have challenges when we want to construct schools. The education policy stipulates that you cannot register a school that has not been constructed while the NG-CDF policy says that you cannot construct a school that has not been registered. So, where do we fall? We want that clarification because we are in a dilemma. The NG-CDF does not allow a school to be constructed if it has

not been registered while the Ministry of Education says that you cannot register a school that has not been constructed. That is a contradiction and we need clarification.

Hon. Speaker: That is an important point that should be addressed by the Committee in a meeting attended both by the officials from the Ministry of Education and the members of the Board of the NG-CDF. You would be able to come up with some consensus. It looks like the issue of the chicken and the egg as to which came before the other. In an appropriate way, Hon. Lomenen, you could seek a Statement or indeed file a Question. During the period for the response from the Ministry, you also invite members of the Board of NG-CDF to attend, so that sitting together, there can be some tripartite agreements between the Committee, indeed, representing the National Assembly, the Ministry of Education and the Board. That would be a better route to go. I am sure it will resolve a number of issues which may not be peculiar only to Turkana South.

Member for Malava.

Hon. Moses Injendi (Malava, JP): Thank you, Hon. Speaker. Mine is just to urge the Chair so that he can push the NG-CDF Board. Usually when we are given this money, it is around the month of February the following year. This causes a lot of delay and a lot of problems with our constituents. I urge the Chair to push the NG-CDF Board, so that this money is released to our accounts in the month of October to enable construction to begin in the month of November and December when schools are on recess.

Hon. Speaker: Chairman, that is for you.

Hon. Maoka Maore (Igembe North, JP): Hon. Speaker, the wish of the Committee or any Member is to have this money as early as possible in the financial year. But you remember and also know about the process of National Treasury collections and the KRA collections. By the time they assemble the money to give, it is usually past November. The problem is not the NG-CDF Board. The moment the NG-CDF Board gets the money, they disburse to the constituencies immediately including today if you are meeting the threshold. So, there is no time the NG-CDF Board has withheld money even for a day without disbursement to the respective constituencies when they need the money.

Hon. Speaker: The next Statement is by the Chair of the Departmental Committee on Agriculture and Livestock.

BAN ON ILLEGAL FISHING IN LAKE VICTORIA

Hon. Ali Adan (Mandera South, JP): Thank you, Hon. Speaker. I rise to give Statement on illegal fishing in Lake Victoria.

Pursuant to Standing Order No.44(2)(c) of the National Assembly Standing Orders, Hon. (Dr.) Wilberforce Ojiambo Oundo, Member for Funyula Constituency requested for Statement from the Chairperson, Departmental Committee on Agriculture and Livestock on the following issues:

- i. What measures the Government has put in place to ensure fishermen get legal fishing gears and net and guarantee the security of the same; and
- ii. The time the Government is going to set up a maritime office in Samia Sub-County.

Hon. Speaker, Sir, unreported and unregulated commonly known as IUU fishing is a big threat to fishing industry and globally as it undermines the sustainability and socio-economic benefits of the fisheries resources. Kenya is party to the Food and Agriculture Organisation

(FAO) Agreement on Port State Measures (PSMA) 2015 to deter, prevent and eliminate IUU fishing.

Kenya is also a signatory to the code of conduct for responsible fishing. The Constitution of Kenya ensures that the natural resources are sustainably utilised for the benefit of all Kenyans. The Fisheries Management and Development Act also bars use of all illegal fishing gears and methods. The fisheries resources are vulnerable natural resources and can easily collapse or decline if not well managed.

The fisheries resources in Lake Victoria are common property of the citizens of East Africa Community. The fishing standards, management measures and policy are harmonised through the coordination of the Lake Victoria Fisheries Organisation, the management measures are based on scientific findings, but some are precautionary and is used as fisheries management measurement meant to promote sustainable use and long-term conservation of fisheries resources. The measures take cognisance of international and regional initiatives including the United Nations FAO code of conduct for responsible fisheries and the regional plan of action on specific issues and agreed actions under the Lake Victoria Fisheries Organisation. A ban on illegal fishing method or gears is, therefore, based on its detrimental effect upon fish stocks, aquatic ecosystems and livelihoods of legitimate fishers and food security. The ban on illegal fishing is a global practice for managing fishery and is effected lake wide or in an ecosystem and not in Funyula only as fish have no boundaries.

As far as the fishing gears are concerned, the EAC member states riparian to Lake Victoria have banned a number of undersize or destructive fishing gears and imposed restrictions on the size of fish to be caught, landed and traded as well as restricted fishing areas since 2001. The gears and methods prohibited include: beach seines, cast nets, monofilament nets, gillnets whose mesh sizes are below 127mm, trolling as well as the use of explosive, poisonous or noxious substances.

The ban on 5mm gillnet is not new and was first introduced with the enactment of Fisheries General Regulations of 2001 vide *Gazette* Notice No.7565 of 2001 and currently in the new Fisheries Management and Development Act, 2016. It captures juvenile fish, which is outlawed, namely Tilapia fish, whose standard length is below 25cm and Nile Perch fish whose total length falls outside the range of 50 to 85 cm. The continual procurement and use of illegal nets by fishers is against the law and cannot be supported. Allowing or compensating the fishers to break the law would lead to depletion of the fisheries resources leading to loss of livelihoods, raw materials for fish processing as well as foreign exchange earnings from export of fish.

Recent surveys have shown increased use of undersized gillnets of below 5 inches and subsequent decline in fish stocks. This has in effect seen the dramatic decline in catches in Lake Victoria posing grave threats to the livelihoods and food security on the fishing communities around the Lake. The ban of gillnets below 5 inches is, therefore, premised on the need to recover fish stocks and improve the fortunes of fishermen in Lake Victoria including Funyula. Continual removal of juvenile fish from the lake has led to reduction of fish in the lake and subsequently low productivity.

The Kenyan part of the lake produced 145,000 metric tonnes in 2014 before the decline to 96,000 metric tonnes in 2016 as illegalities increased. The Government, through the newly created agencies by the Fisheries Management and Development Act, 2016, has set up mechanisms for ensuring sustainable utilisation of our fisheries resources.

Part 28 of the Act has created the Fish Levy Trust Fund whose objective is to provide supplementary funding of activities geared towards management, development, capacity award and urgent mitigation to ensure sustainability of the fisheries resources.

Two fisherpersons from fresh waters and marine waters are part of the board of trustees which has already been established. Further, the fishermen have fishermen cooperative societies which provide legal input for sustainable fishing. The Kenya Fisheries Services is strengthening fisher associations and beach management units that will assist in the access of fishing gear. The Ministry is in dialogue with financial institutions on specific packages suitable for the fishing industry. The Ministry also intends to transform beach management units into economic units, a measure that is likely to enhance their capacity, encourage public-private partnership as a means to enhance access of local fishermen to fishing facilities and considering tax rebates for fishing equipment to try and lower the cost of fishing equipment for the poor fishermen.

The other issue is in Part (ii) of the Question on whether maritime office in Samia Sub-County should be established. Initially, the Department of Fisheries had offices in all sub-counties producing fish. Most of the offices have been transferred to the county governments as fisheries is a devolved function. In terms of security, the transport-boundary security committee and the mechanism between Kenya and Uganda addresses the security concerns occasioned by indicted criminals from Uganda. The establishment of the multi-agency Kenya Coast Guard Service under the Ministry of Interior and Coordination of National Government with the mandate of maritime security will enhance security in the lake as a whole, including Busia County. The Kenya Fisheries Agency, being part of the multi-agency Kenya Coast Guard Service will second 50 fisheries officers to the Kenya Coast Guard Service as part of strengthening response to fisheries management issues in all Kenyan waters, including Lake Victoria.

I thank you, Hon. Speaker.

(Hon. (Ms.) Shamalla Jennifer, Hon. Aden Duale and Hon. Jimmy Angwenyi consulted loudly)

Hon. Speaker: Hon. Leader of the Majority Party, your deputy and others, you have not made it possible for the majority of the Members to hear this issue about juvenile fish. Hon. Sankok did not hear about the juvenile fish because he was thinking about calves.

Hon. Ojiambo, can you declare any clarifications you wish to seek?

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you for this opportunity, Hon. Temporary Deputy Speaker. I have seen the response. I have been given a copy. However, there are two pertinent issues that have risen. I need your guidance on how to seek further clarification. On the first part of the response, there is a very telling statement. I want to reread it if you will allow me. It reads: "The fisheries resources in Lake Victoria are common property of the citizens of the East African Community." That is a story telling to the birds. The truth of the matter is that the Ugandan side does not allow a Kenyan fisherman to cross the imaginary border. We call it "imaginary border" because, as they say, the lake is a shared resource. The Ugandans have made it practically impossible. Of course, I will need your guidance on how to pursue that aspect. It has a lot of emerging issues as a result of this Statement. We would, probably, be able to communicate if we got further clarification. We would know how to take self-defence measures in the event of the constant and unprovoked attacks from the Ugandan security forces.

On the second part of the Question, the Ministry seems to have skirted around the issue. They did not give me an answer. I was specific enough and very categorical in my Question: “When is the Government going to set up a maritime office in Samia Sub-County?” The long stories about 5,000 fisheries and coast guards does not really answer the Question that I asked. It was to be a very simple answer. Will they set up a maritime office or not? If they are going to set up the office, when are they going to do so?

The response does not sufficiently address the issues that caused the call for the Statement. I request the Chair of the Departmental Committee on Agriculture and Livestock to seek further clarification. We need your guidance. If it is a matter to deal with national security, you can direct me to redirect the specific Question concerning security matters to the respective Ministry.

Thank you, Hon. Speaker.

Hon. Speaker: That is why I directed that you be given a copy of this Statement, which purports to come from the Cabinet Secretary for the Ministry of Agriculture, Livestock and Fisheries. First of all, it contains a lot of inadequacies, inaccuracies and lots of broad statements. More importantly, that second part seems to conclude that most of the offices have been transferred to county governments. I do not know whether you have seen that part. So, if you wanted a maritime office in Samia Sub-County and the matter has been transferred to the county government, perhaps, you may need to go and visit the County Executive Committee Member (CECM). They are not called ministers. They are called CECMs in the counties. You may have to see the CECM for Busia County dealing with fish or fisheries so that, maybe, you could get more specific responses. Again, Hon. Oundo, the danger one runs into when they seek a Statement is that the Chairperson is not the one who gives the Statement, as you can see. If you had asked a specific Question to the Cabinet Secretary, you would be asking the Cabinet Secretary supplementary questions to which he would be responding.

I have gone through it and I agree with you. Even as Hon. Angwenyi was busy consulting loudly, I was going through it. That is why I thought it was necessary that you be given a copy of the Statement. Armed with this, you can, actually, launch proper and specific questions to the Cabinet Secretary so that you are able to deal with him or her when he or she appears. I am sure the Chairman is unlikely to answer. Looking at him, he may not quite understand. Even though they are talking about juvenile fish, I doubt that Hon. Adan may have dealt with juvenile fish. So, maybe the Cabinet Secretary would come with his officers. You can then engage about these 25 inches and 55 to 85 centimetres and all these things. I am sure the Chairman is unlikely to be the one to respond properly. But I think this could be a good beginning because with this, you can interrogate the Cabinet Secretary and his team from a position of information of what it is they think unless the Chairman wants to go again and find answers.

You see, unfortunately, this Statement is not even signed. It just purports to be by Hon. Mwangi Kiunjuri. It is not signed. If he read it, there are several things that he needed to correct. Going through it myself, I can see there are several things that needed to be corrected. I think a Question would be an appropriate avenue to address many of the concerns because I can see your specific questions have not been adequately and specifically responded to in this Statement. The Chairman may not be able to answer because he does not control the guys that deal with juveniles and adult fish.

Hon. Adan, do you want to respond?

Hon. Ali Adan (Mandera South, JP): Thank you, Hon. Speaker, for clarifying that bit on whether or not the sub-county office will be involved. I am thinking of the same. The Member

can visit the county and consult with the CEC for Fisheries. On the issue of the fisheries resources on Lake Victoria, in terms of the fish that swims without borders, as common property of the citizens of East African Community, that is not about the security of our fishermen or whether if they cross over to Uganda they will be arrested. This resource is borderless and it is shared. Fish move from one place to the other freely. You can catch fish in Kisumu and in Uganda. That is what the Statement meant. Therefore, it is true that the fisheries resource in Lake Victoria is a common property.

Hon. Junet Nuh (Suna East, ODM): On a point of order, Hon. Speaker.

Hon. Speaker: What is your point of order, Hon. Junet?

Hon. Junet Nuh (Suna East, ODM): Hon. Speaker, I know the Chairperson understands zero about fish. He has described it as: "You can catch fish in Uganda then in Kisumu." Fish is not camel that moves around everywhere.

(Laughter)

Fish have somewhere they breed. After they breed, that is when you can catch them. If you have no knowledge of something, it is good to say you are not knowledgeable on it. I am sure the last time the Member ate fish was 10 years ago. Otherwise, his answer would not have been the same.

Hon. Speaker: Hon. Member, do not respond to when you last ate fish. That is not important. You can respond, but not about when you last fed on fish.

Hon. Ali Adan (Mandera South, JP): Hon. Speaker, Hon. Junet is casting aspersions that I know nothing about fish. That is not entirely true. Before I came to this House, I was the CEC in charge of Fish in Kwale County.

Hon. Speaker: Fish!

(Laughter)

Hon. Ali Adan (Mandera South, JP): Hon. Speaker, I have lived in Kwale County for more than 25 years along the beach.

Hon. Speaker: Were you in charge of fish or you were in charge of fisheries?

(Laughter)

Hon. Ali Adan (Mandera South, JP): Hon. Speaker, I know about juvenile fish. I know Spade and Octopus. In Kiswahili they are called *Pweza*. If I was to ask Hon. Junet, he does not know that *Kambakoche* is lobster. Therefore, I am knowledgeable on fish just as anybody who has lived around the fishing areas.

Thank you.

Hon. Speaker: Well, it is interesting that you were a CEC in charge of fish.

(Laughter)

That is interesting.

The Leader of the Majority Party, you are on intervention. Is it on the same thing? It is on Statements. Hon. Oundo, you will be the last one on this one.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Speaker. I can understand the challenges my colleague has. Much has been exposed. Some of us were born, probably, inside the lake together with the fish. So, we understand fish issues more than him. However, this is a starting point. I will rephrase the question in a Question form then engage the relevant technical people in the Ministry and in the county government.

Hon. Speaker: Very well. Hon. Members, before we get a Statement from the Leader of the Majority Party, let me recognise the presence of students from Chebangang Secondary School from Konoin Constituency, Bomet County. They are welcome to observe proceedings.

The Leader of the Majority Party.

Hon Aden Duale (Garissa Township, JP): Hon. Speaker, Hon. Junet is an expert on fish, I am an expert on camels. There are many Members who are experts. Hon. Ichung'wah is an expert on butcheries. He runs butcheries. His neighbour is in charge of *miraa*. So, we should not claim to own something. Hon. Aden is an expert of both fish and camel.

STATEMENT

BUSINESS FOR WEEK COMMENCING 6TH TO 8TH AUGUST, 2019

Hon Aden Duale (Garissa Township, JP): Hon. Speaker, pursuant to the provisions of Standing Order No.44(2)(a), I rise to give a Statement on behalf of the House Business Committee (HBC), which met on Tuesday 30th July 2019 at the rise of the House.

The HBC has prioritised the following Bills for Second Reading should we not conclude them today:

1. The Statistics (Amendment) Bill (National Assembly Bill No.37 of 2019)
2. The National Drought Management Authority (Amendment) Bill (National Assembly Bill No.26 Of 2019)
3. The Sectional Properties Bill (National Assembly Bill No.23 of 2019).

We will also give priority to a Motion on the vetting of the nominee for appointment as the Chairperson of the Board of Directors of the Kenya Fish Marketing Authority once the Report is tabled plus any other urgent matter that is pending before any of our committees.

On the matter of fish, we will revisit it when we will be approving the Chairperson of the Board of Directors of the Kenya Fish Marketing Authority, who has been appointed by the President just before we go on recess.

In accordance with the provisions of Standing Order No.42A(5)(6), I wish to convey that the following Cabinet Secretaries are scheduled to appear before the various committees of this House:

The Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development will appear before the Departmental Committee on Transport and Public Works and Housing on Tuesday, 6th August to answer Questions from the following Members: Hon. Annie Kibeh, Hon. James Gichuhi Mwangi, Hon. Jones Mlolwa Hon. Khatib Mwashetani, Hon. Peter Kaluma, Hon. Rehema Hassan, Hon. Antony Oluoch and Hon. Vincent Mogaka.

The Cabinet Secretary for Health will appear before the Departmental Committee on Health on Tuesday, 6th August to answer Questions from the following Members: Hon. Mugambi Rindikiri, Hon. Kabinga Wachira and Hon. David Gikaria.

The Acting Cabinet Secretary for the National Treasury and Planning will appear before the Departmental Committee on Finance and National Planning on Tuesday, 6th August to

answer Questions from the following Members: Hon. Paul Abuor, Hon. Ernest Kivai, Hon. Jayne Kihara, Hon. Godfrey Omuse, Hon. Kuria Kimani, Hon. Abdul Dawood, Hon. Peter Kaluma and Hon. Wafula Wamunyinyi.

The Cabinet Secretary for Agriculture, Livestock, Fisheries and Irrigation will appear before the Departmental Committee on Agriculture and Livestock on Thursday, 8th August to answer Questions from the following Members: Hon. Zaddock Ogutu and Hon. Ali Wario. This is where we have a problem. There are two Ali Warios. This one is the Chairperson of the Departmental Committee on Labour and Social Welfare, Hon. Benard Shinali, Hon. Janet Nangabo and Hon. Josphat Gichunge.

The Cabinet Secretary for Energy will appear before the Departmental Committee on Energy on Thursday, 8th August to answer Questions from the following Members: Hon. Kubai Iringo, Hon. Michael Muchira, Hon. Francis Chachu Ganya, Hon. Nzambia, Hon. Alois Lentoimaga and Hon. Edith Nyenze.

The Cabinet Secretary for Education, Science and Technology will appear before the Departmental Committee on Education and Research on Thursday, 8th August to answer Questions from the following Members: Hon. (Dr.) Wilberforce Oundo, Hon. Koros Kipsengeret, Hon. Richard Chonga, Hon. Ferdinand Wanyonyi, Hon. (Capt.) Ruweida Obo, Hon. Oku Kaunya and Hon. Ezekiel Ombaki.

The Cabinet Secretary for Sports, Culture and Heritage will appear before the Departmental Committee on Sports, Culture and Tourism on Thursday, 8th August to answer Question No.337 from Hon. (Prof.) Jacqueline Oduol.

Hon. Speaker, through you, I want to inform the Clerk and the committee chairpersons that, this Statement that I have read is not in vain. Ministers must appear before committees. There is a culture where when Members ask Questions, the Cabinet Secretaries talk to the chairpersons and they are given permission not to appear before committees. That culture must stop. This habit of Cabinet Secretaries sending text messages to chairpersons indicating that they will not appear before committees and the chairpersons consenting is not fair. The due process is that once a Statement from the HBC is read the Cabinet Secretary must appear before the committee.

The only time we can excuse a Cabinet Secretary is if he is out of the country or if there is a Cabinet meeting - I am sure the Head of Public Service would communicate that - or if he is indisposed. You hear Members are in committee room while the Chair talked to Cabinet Secretaries over the weekend through text messages or *WhatsApp*. That is not how we should run business. I want you to ask the Office of the Clerk that by tomorrow, we must know on our notice boards where each committee is going to sit on Tuesday whether the Cabinet Secretary will appear. These Questions are usually sent to the Cabinet Secretaries two weeks before I read them here. So, they cannot claim that we have ambushed them. That is why we have a backlog of Questions. We have a huge number of Questions because Chairs are excusing Cabinet Secretaries. Hon. Speaker, in future, I think you need to make a ruling on this matter.

Hon. Speaker: Just a minute. There are those that perhaps may not be aware. In the past when we did not even have sufficient ICT equipment, there would be a schedule of where each committee would be meeting the coming week. More recently, those schedules are supposed to be reflected on the screens and they must keep running so that every time a Member passes through the reception, he can stop there and see the place and time the committee on health, for example, is sitting and the business to be transacted. That is the way it should be so that if it is a day when Cabinet Secretaries are required to appear before respective committees, that

information is clearly displayed on the screens, so that any Member of the House, a member of the public and even the media are free to go and see when the Cabinet Secretaries are appearing.

Therefore, the ICT Department, through the Clerk's Office, is directed to make sure that that is complied with without fail. Indeed, even ordinary meetings of committees should be displayed on a daily basis, even if it is a Friday. Somebody walking into this institution should be able to see that next week on Monday, this particular committee will be sitting at Uhuru Park doing public participation or will be sitting at the Kenyatta Internal Convention Centre or any such like places, if not within any of the other rooms provided by Parliament. That is the way to also give information to every Member. It should even be on the website, but it should not be taken that when it is on the website, it is not displayed. It must also be displayed. That is what happens in all other modern parliaments. You walk in and you can tell that this committee is sitting in this room and even the business to be transacted is indicated. That is the way to also remind our own Members.

I appreciate sometimes Members will be busy in various other places doing all manner of things, like today Members have been to two different functions. But when a Member gets to the reception, he is able to very quickly know, if he is a Member of a committee and there was leave for the committee to meet at a particular place and time, he can immediately get the information and move to the venue. At all times what we do must be known. That is the spirit of the Constitution. Information must at all times be available not just to ourselves, but also to the public with whom we interact. Even when you come with your visitors to the reception, they should see on the screen that there is this and this business happening. Even when you have constituents who want to harass you, you tell them, "I am a Member of this committee and you can see it is sitting. So, you better go back to the village and we meet over the weekend." That is another way of helping you offload some of the unnecessary baggage that occasionally accompanies you.

Indeed, the point you have raised, Leader of the Majority Party, is important. The Clerk's Office should assist the House to get this information.

I see other interventions. Are they on the same matter? Member for West Mugirango, what is your intervention about?

Hon. Vincent Kemosi (West Mugirango, FORD-K): Thank you, Hon. Speaker. I also want to thank the Leader of the Majority Party for the clarification he has made, more particularly on the absence of Cabinet Secretaries. In the recent past, I have seen a trend where most committees, particularly those I have sat through, we have seen the Chief Administrative Secretaries (CASs) appearing, but usually our Questions are directed to Cabinet Secretaries. I wish to get directions whether CASs are legally allowed to respond to Questions. Even previously when we had ministers in this House, it was the Assistant Ministers who were duly elected and sworn in as such who were responding to queries and not the Permanent Secretaries. Kindly clarify that.

Hon. Speaker: Because we did not want to make references to some offices that are not very clearly known to the Constitution, that is why in our specific part of the Standing Orders we provided that a Cabinet Secretary should appear and if he is not able to appear for whatever reason, which must be recorded, he or she is represented by an officer not below the level of a Principal Secretary. It was a clever way of trying to avoid making reference to those people you have just mentioned. Those are positions that could disappear overnight. We did not want to have our Standing Orders having references to some of those strange titles. That is why we provided for an officer not below the level of a Principal Secretary and it is for good reason.

It may well be that you want to see the Cabinet Secretary in person, but it might be even better that the Principal Secretary appears. They are the accounting officers. They are likely to give you better answers, especially if the issues you are raising are not of a political nature. Not that I expect the Cabinet Secretaries to know too much politics, but some of the Questions, like the ones that go to the Committee on Finance and Planning, if you go to the Principal Secretaries, you are likely to get better and more informed answers. Take the example of a Statement sought by Hon. Oundo on fisheries. I am sure if the Principal Secretary in charge of Fisheries, not the one in charge of fish, were to appear, he or she is likely to give much more substantive answers relating to things about the 25 to 55 to 85 centimetres, the juvenile fish and things like those. You are likely to engage much better. You may find a Cabinet Secretary appearing before you to answer, but you ask a supplementary question and he asks for time to consult. So, he tells you that the people who accompany him are the experts.

Nevertheless, for the reasons such as the ones the Leader of the Majority Party mentioned - if they are, for instance, attending a Cabinet meeting or a Cabinet Secretary is out of the country on official duty - ideally a Principal Secretary should suffice. But at all times, the Member asking the Question should be asked whether he or she feels comfortable getting a response from a Principal Secretary or he would rather be addressed by the Cabinet Secretaries themselves. Those others who have been responding, it may well be that they have been responding on behalf of the Cabinet Secretaries because they have been given some responsibilities to assist. However, we do not want to capture them in our Standing Orders for reasons that I have stated earlier. So, Hon. Mogaka has raised a valid point, but I think the chairmen should at all times afford the Member asking the Question an opportunity to indicate whether or not they would be satisfied getting an answer from a Principal Secretary in the absence of the substantive Cabinet Secretary.

So, for the chairpersons of committees, it is important for us to adopt that style. The Member is your colleague and should be given the opportunity to indicate whether or not he or she feels comfortable getting answers from a person other than the Cabinet Secretary. That way, decisions can be made on the basis of what the desire of the Member would be in appropriate cases. All the same, let us not allow Cabinet Secretaries to communicate to us through what the Leader of the Majority Party termed as text messages, *WhatsApp*, *Instagram* or such other medium. Let us just use the official channels.

Hon. Member for Samburu North, you also have an intervention.

Hon. Alois Lentoimaga (Samburu North, JP): Hon. Speaker, you made a very good ruling on the issue of displaying committee meetings on the screen. It used to be there before, but I do not know why it was discontinued. One problem we have been experiencing in the past is the last-minute change of venue for meetings. You are told in the morning that the venue for the committee has been changed from one place to another. It is very inconveniencing. I think your ruling will go a long way to solve these problems. I hope they will stick to the venue such that when it is decided to be in Continental Building, it should be there throughout the meeting. Otherwise, it is so much inconveniencing to change venues of committee meetings at the last minute. We waste a lot of time running up and down for a new venue that was not scheduled earlier on.

Hon. Speaker: Very well, that is a compliment, Hon. Lentoimaga. Let us have Hon. Kolosh.

Hon. Ahmed Kolosh (Wajir West, ODM): Thank you, Hon. Speaker. The biggest challenge that committees in this House are facing is from Cabinet Secretaries. The Standing

Orders recognise officers in the rank of Principal Secretary. However, I do not know whether the Cabinet Secretary can be said to be above a Principal Secretary because they are not recognised in law. The ruling would have been firmer in such a sense that it can only be a Cabinet Secretary or a Principal Secretary. The mess we have today is that we have people who are not recognised by law and they always appear on behalf of Cabinet Secretaries and they do not have the required facts.

Hon. Speaker: Do not give examples. The point you have raised is sufficient.

Hon. Ahmed Kolosh (Wajir West, ODM): We are only saying that the ruling should be very strict.

Hon. Speaker: No. It is not a ruling. It is what is in your Standing Orders which were carefully crafted with the people you are referring to in mind, but we could not get them into a law.

(Loud consultations)

Well, we do not wish him to lose. Hon. Members, let us make progress.

I take this opportunity to recognise students from St. Andrews Kaggwa Boarding Primary School from Borabu Constituency, Nyamira County. They are welcome.

Next Order.

BILLS

First Reading

THE NATIONAL COHESION AND PEACE BUILDING BILL (SENATE BILL NO.35 OF 2018)

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

Hon. Speaker: Sorry, are we at Order No.9?

(Hon. Speaker consulted the Clerk at the Table)

Next Order.

Second Reading

THE DIVISION OF REVENUE BILL (SENATE BILL NO.13 OF 2019)

Hon. Speaker: Chairman, Budget and Appropriations Committee.

I want to confirm that there is nothing wrong with referring to a person as chairman or chairperson, especially where I can identify clearly that the chairperson is of a particular gender. There is nothing wrong. It can be a chairwoman, chairlady, chairperson or chairman, all are okay. This one is a man and so, he is a chairman.

Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Speaker. Clearly, I am a

Chairman.

Hon. Speaker, I beg to move that the Division of Revenue Bill (Senate Bill No.13 of 2019) be now read a Second Time.

Hon. Speaker, even as I beg to move thus, I will be requesting you and the House to give us direction on certain pertinent constitutional matters. Let me just mention that as the Members are aware, on 23rd July 2019, the Division of Revenue (No.2) Bill was published and tabled before the National Assembly and forwarded to the Budget and Appropriations Committee, after which, it underwent the Second and Third Reading on 25th July 2019.

Similarly, the Senate, on Tuesday, 23rd July 2019, passed its version of the Division of Revenue Bill No.13/2019, which is what we have today, and forwarded for concurrence through a Message to the National Assembly.

Hon. Speaker, you forwarded that Bill to the Budget and Appropriations Committee after reading that Message to this Assembly. However, Article 95(4) states thus:

“(4) The National Assembly—

- (a) determines the allocation of national revenue between the levels of government, as provided in Part 4 of Chapter Twelve;
- (b) appropriates funds for expenditure by the national government and other national State organs; and
- (c) exercises oversight over national revenue and its expenditure”.

While Article 96(3) stipulates that:

“The Senate determines the allocation of national revenue among counties, as provided in Article 217, and exercises oversight over national revenue allocated to the county governments”.

This, therefore, raises the concern as to the constitutionality or otherwise of the Division of Revenue Bill as forwarded by the Senate. However, the subsequent implication is that this undertaking risks diverting the attention of this House from the objective of sharing of resources equitably between both levels of Government.

Hon. Speaker, I am on record before this Bill came to this House saying that I had read in the media that there was a Bill that had been published by the Senate called the Division of Revenue Bill. From traditions and precedence set from 2013, the genesis of the Division of Revenue Bill has been the National Assembly and it has not been in vain. Article 95(4) of the Constitution clearly stipulates that it is the National Assembly that shall determine the allocation of revenue between the two levels of Government.

Article 96(3) speaks to the County Allocation of Revenue Bill. From our traditions, since the advent of devolution under the Constitution, the Division of Revenue Bill emanates from the National Assembly and the County Allocation of Revenue Bill emanates from the Senate.

The question then that begs an answer is whether this Bill is constitutionally before this House after having emanated from the Senate. This is a question that is open to debate and I beg that even as we consider this Bill, we consider it. Hon. Speaker, the House is aware that this is among the matters that are before the Judiciary or in court with the Senate seeking advisory opinions. With all due respect to our Judiciary, we have listened and heard the arguments advanced in court. We have also heard some of the questions raised by members of the bench with regard to where this Bill should be initiated.

It is important that we determine that question now just for avoidance of creating anarchy in the conduct of business. Parliament as a whole - both the National Assembly and the Senate - ought to conduct their business in an orderly way. That is why we are always reminded that this

is a House of procedure. Therefore, the procedures we have set since the advent of the Constitution are that, procedurally, the Division of Revenue Bill has been initiated from this House before it moves to the Senate. I think this is something you need to guide the House so that, even in future, there is no anarchy.

I know Article 218 of the Constitution exempts the Division of Revenue Bill and the County Allocation of Revenue Bill from being money Bills. Therefore, these Bills are not in the strict sense of Article 114, money Bills that must strictly emanate from this House. I think a careful reading of Article 95(4) tells us that the authors of the Constitution must have intended that the Division of Revenue Bill will be initiated by the National Assembly. That is why it was clearly put in text that the National Assembly shall determine. We must, therefore, as a House and Parliament, decide and agree on what this determination means.

If the Senate cannot determine, it is the National Assembly to determine the allocation of revenue between the two levels of Government. Then, it speaks volumes to our role as the people who should initiate and, in actual sense, determine how much goes to each level of Government. As we look at the Bill and debate goes on, you have heard many of us being called enemies of devolution. I am surprised that, as we speak about how we are sharing revenue today, nobody is speaking about how that revenue will be raised. We must tell Kenyans the truth that the revenue we seek to share between the two levels of Government will be raised from them in the form of taxes. Therefore, the people who are out there cheering governors and senators as they demonstrate on the streets and call us names like enemies of devolution should know this.

When the Chair of the Departmental Committee on Finance and National Planning will table the Finance Bill later this year, the same people will call us enemies of the people when we pass proposals to raise revenue through further taxation of Kenyans. Therefore, Kenyans should also be aware that the debate is not as simple as money being shared. It is not just revenue that is coming from somewhere, but revenue that will be raised through taxation of Kenyans. It will be very painful at a time like this when Kenyans are suffering, to subject them to further taxation so as to raise more revenue to share between the two levels of government.

Therefore, I want Kenyans to be alive to the fact that, as we are speaking about the Division of Revenue Bill, this revenue speaks to taxes and further taxation of Kenyans who are suffering from very hard economic times. When the Senate did the Division of Revenue Bill (Senate Bill No.13 of 2019), they maintained the shareable revenue as was projected at Kshs1.878 trillion as the national equitable share between the two levels of Government. Members should note that there are a few differences between what we had done in the first Division of Revenue Bill which we passed. For instance, we had allocated resources for leasing of medical equipment a figure of Kshs6.2 billion. In the republished Division of Revenue (National Assembly Bill No.2 of 2019), the Senate has removed the Kshs6.2 billion towards the leased equipment.

Allow me to ask a question if, indeed, the Senate is charged with the responsibility of protecting county governments and devolution. This Kshs6.2 billion is not money that has been allocated to any other function other than a function of devolved government. This is at a time when the national debate is on cancer epidemic in this country. Part of the measures the Government took in 2014 was to ensure that we equip our hospitals to enable early diagnosis of cancer and other ailments, in support of devolution.

It is, therefore, ironical that the same Senate which should be protecting devolution is now killing it in the provision of health care in our counties. They are killing devolution by removing the Kshs6.2 billion because it is for leased medical equipment like ultrasound

machines and computer tomography (CT) scan machines which are cancer screening machines in our counties. It means the owners of the leased equipment tomorrow, without this allocation, can pull their equipment away from our county hospitals. Therefore, if you are talking about people killing devolution, then it should be clear to Kenyans who is protecting devolution and who are killing it.

As I said, we considered this Bill in as much as we had constitutional questions in our minds. That is why I thought it was important to raise them. As we considered it, we noticed they had removed this money and they have created a further deficit of about Kshs19.7 billion by allocating Kshs335 billion to the county governments shareable revenue. The Senate has not informed the country and this House where this Kshs19.7 billion will be raised from. That is why I am telling Kenyans that any additional shilling proposed by the Senate or anybody to go to the county governments must come either in the form of taxes or further borrowing.

Let me use this opportunity to send a warning especially to our Cabinet Secretaries (CSs) and Principal Secretaries (PSs). At the risk of getting into a matter that could be *sub judice*, I will not ask questions. Count four of the charges leveled against the former CS and PS of the National Treasury was having exceeded the debt ceiling set out in the Public Finance Management (PFM) Act. Therefore, what the Senators are telling us today is that the newly appointed acting CS and PS of the National Treasury should go out and borrow a further Ksh19.7 billion. I can assure them that the Director of Criminal Investigations (DCI) Mr. Kinoti will be with them in court hopefully next month. This is if they occasioned further borrowing and yet, those who were in office before them have already been charged for having exceeded the debt ceiling as set out in law.

I am saying this because Senators are not telling us where the Kshs19.7 billion will be raised from. As I have said, it can only be raised either by further taxing Kenyans or by going out to borrow. Even what we borrow, remember Kenyans will still pay through further taxation in the future. Therefore, there is no free shilling anywhere.

Hon. Speaker, allow me to go to what the Committee observed and the recommendations of the Committee. As I mentioned, one of the first observations was that this Bill creates a further financing gap of Kshs19.7 billion above the Kshs6.5 billion that we already created. However, fortunately for the National Assembly, the Kshs6.5 billion additional allocation that we gave to our county governments over and above the Kshs310 billion in the first Division of Revenue Bill, we did show how we intend to raise that money to finance it, but the Senators are asking us for a further 19.7 billion.

Hon. Aden Duale (Garissa Township, JP): On a point of order, Hon. Speaker.

Hon. Speaker: What is your point of order?

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I want the Chair to clarify whether he is moving the Second Reading or he is raising constitutional matters. This is because if he is moving the Second Reading, I want to stand on a point of order and say that this Bill cannot be discussed until the Speaker makes a ruling. It is unconstitutional for it to originate from the Senate. So, I want the Chair to confirm if he is moving the Second Reading or he is raising constitutional matters. If he is moving, then I think we need you to first listen to us raise the constitutional matters that the Division of Revenue Bill cannot originate from the Senate.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Speaker. At the beginning, I said that even as I seek to move this Bill, there are pertinent constitutional issues that this House must address itself to. Therefore, I was just highlighting some of the issues in the Bill to inform the House as to the pertinent issues. I have alluded to some of those issues that relate to Article

95(4) of the Constitution, but I wanted to touch on the recommendations, which... Hon. Speaker, I will not be moving. I wanted to touch on some of the recommendations that may touch on the constitutional issues.

Hon. Speaker: You see, if you are going to talk about the recommendations, you will have moved.

Hon. Kimani Ichung'wah (Kikuyu, JP): Then, Hon. Speaker, allow me to move.

Hon. Members: No.

Hon. Speaker: You will be at liberty to respond to whatever issues that may be raised.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Speaker, I was saying that since I had begun moving even with the constitutional issues – and I know some of those issues – I would beg to be allowed to move then if there are other issues that we can respond to, I will be very happy.

Hon. Speaker: Hon. Duale, are you raising a constitutional issue?

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, we are raising serious constitutional issues. The communication or the ruling of the Speaker becomes part of the precedent of how the Legislature is run. So, we really want you to rule on this matter that has dragged the whole country and we will raise the issues.

Hon. Speaker: Hon. Duale, you are, therefore, rising on a point of order to oppose that the business appearing as Order No. 9 be read a Second Time. The Chair should not move.

Hon. Aden Duale (Garissa Township, JP): Yes. In fact, I rise to oppose the Second Reading of the Division of Revenue Bill (Senate Bill No. 13 of 2019) on constitutional grounds.

Hon. Speaker, we need to stop playing games. The work of this House is not a game of chess or Game of Thrones. It is clearly set out under the Constitution that we must deliberate and resolve issues of concern to the people of Kenya. Article 95(4)(a) of the Constitution requires the National Assembly to make a determination in the allocation of the national revenue between the two levels of Government. Instead, what we are doing is that this House has been forced to play a game without a reasonable conclusion, unless we agree with this misguided view that the governors and the Senators have been telling the people of Kenya.

I want Members to agree with me that the vertical division of revenue between the two levels of Government within the reading of Article 95(4)(a) of the Constitution is a function of the National Assembly. It is a function of the Budget and Appropriations Committee. You have seen and heard people saying that this House is to blame for the stalemate on the division of revenue and that there is a cash crisis in the counties. For the first time, I listened to the Chief Justice yesterday and I listened to Judge Smokin Wanjala of the Supreme Court and they said they will respect the separation of powers between the three arms of Government. They said this matter is not a matter for the courts to decide. It is a budgetary matter. The courts' function is to interpret an existing law. The courts cannot decide and give out resources. I am the one who tables the estimates of the Judiciary, Parliament and the national Executive to this House and the Chief Executive Officer of the Judiciary appears before the Budget and Appropriations Committee and the Departmental Committee on Justice and Legal Affairs. If the courts have powers to give you money as the Council of Governors want... The Judiciary itself has serious financial constraints. The judges could have allocated themselves more resources. So, from where I sit, the Judiciary cannot allocate money to any other arm of Government or State organ. That is why, for the first time, the Supreme Court, in its wisdom, said this is a matter for the Legislature, whether it is both Houses or one House.

So, we are being called enemies of devolution by the governors and citizens of our good country on the basis of unexplained figures. I have said that when the CS for the National Treasury tables his Budget Policy Statement (BPS), it has interim figures on how to guide the whole budget. You cannot wake up one morning and say: "I am giving counties Kshs355 billion." You know I watch football. In games like football, you see people being awarded cups and medals. In our roles of oversight, representation and legislation, you do not get medals or cups at the end of the game. What you do is you protect the Constitution and you represent and defend the sovereign will of the people as expressed in Article 1 of the Constitution. In that article, the people have delegated their powers to us. That is what we are doing this afternoon. This cake of the national revenue does not just appear magically. It does not just drop from the sky. The Senate and the governors are not applying their minds to the serious question that this House interrogates the sharing of the national cake. They are salivating about a cake. Who bakes the cake? The Senate has no role in this cake called the national budget.

So, Hon. Speaker, through you, I want to ask them whether they know the ingredients of this cake. The Chair of the Budget and Appropriations Committee, the Chair of Departmental Committee on Finance and National Planning and all Chairs know. Do they know who bakes this cake? Do they know who shares the cake? Do they know who eats the cake? Do they know who cleans the plate after the cake is eaten and do they know who pays for the cake? This is what we need to understand. The only institution under the Constitution that bakes the cake; that knows the ingredients; that shares the cake and that eats part of the cake is the National Assembly. Each year, this House shares the national revenue cake to the Executive, Parliament, the Judiciary and the county governments. Once we share this cake in a very reasonable manner to the best interest of the people of Kenya, the Constitution requires the Senate to thereafter also share the piece we have allocated to the 47 county governments. That is why the Senate will deal with the County Allocation of Revenue Bill. That is their function and that Bill has been insulated from the mandarins of this House.

For us to disagree with the Senate on the County Allocation of Revenue Bill, we must raise a threshold of two-thirds majority. Hon. Speaker, time has come. We must also defend and insulate the Division of Revenue Bill from the chaos that we see in our country. The framers of the Constitution in Articles 218, 114 and 95(4), contemplated to insulate the Division of Revenue Bill. It must be a Bill that will be dealt with in the National Assembly and will not be subjected to the mandarins of mediation. The same Constitution protects the County Allocation of Revenue Bill. We have baked the cake and we have allocated money to the county governments. Kenyans are not being told the truth. They are only being told that Kshs310 billion has been allocated to the counties. The Division of Revenue Bill has allocated Kshs376 billion to the county governments. Outside the equitable share, the counties are being given Kshs8.9 billion by the Government through the Fuel Levy Fund. They are being given Kshs4.5 billion for Level 5 hospitals, Kshs900 million for the free maternity programme, Kshs2 billion for Technical Vocational Education and Training Institutions (TVETs); and, through the signature of the Cabinet Secretary for the National Treasury, they will get Kshs38 billion from donors. We must tell Kenyans that the counties will not get Kshs310 billion but 376 billion. That is a fact.

When the Cabinet Secretary for the National Treasury presented the Budget last year, he set a target of collection, which is necessary to allow the national Government and the county governments to provide services to the people. This must come out clearly. He was asking us to approve a list of the ingredients for the baking of the cake. Through the Budget Policy Statement, the Cabinet Secretary brings the ingredients to use to prepare this cake called the national Budget

of the Republic of Kenya. We have a huge economy. The sum total of the budgets of Tanzania, Uganda, Rwanda and Burundi is US\$206 billion. The Budget of this country is US\$264 billion. That tells you how huge our country's economy is. We cannot make Kenyans in the counties to suffer because of the egos of governors, Senators and Members of the National Assembly. You will recall that the proposal in the Bill was met with uproar, including even by Members of this very House, who looked at the reduction in various taxation measures that affected that cake. However, we came to a conclusion at the end of the day.

Hon. Speaker, permit me to state without any fear of contradiction that the sharing of the cake is a process but not an event. As a House, we cannot give counties a larger slice of the cake just because they want more. When you cook food in your house, it must be distributed equally. You cannot allow your first born to take, in his plate, half of the food that his mum has cooked. You cannot just say that because you want food, you want to get a bigger share.

Let me come to the Fourth Schedule of the Constitution. It outlines the distribution of the functions between the national Government and the county governments. The national Government is responsible for 35 functions, which include foreign affairs and policy, international trade, national defence, police service, the courts, the national economic policy, the monetary policy, universities, tertiary education, secondary schools, primary schools, special education and others. The county governments have been assigned only 14 functions, out of which eight are shared with the national Government. So, they only have six functions exclusive to them. You cannot compare one level of Government with 35 functions, some of which are key – like security – with another level of government with 14 functions, out of which eight are shared with the national Government. They have only six functions which are exclusive to them. The distribution of functions effectively assigns the national Government more than three times the number of functions assigned to the county governments. The Constitution, the budget-making process and the Public Finance Management (PFM) Act contemplate that resources are shared based on functions. The Intergovernmental Relations Technical Committee (IGRTC) has not costed the functions in the counties, seven years down the line. We do not know the cost of healthcare in our counties.

To safeguard the interests of county governments, 15 per cent of the national revenue should be the deciding factor. This Government, which is the first one that implemented devolution, has been giving the counties close to 30 per cent. There is a story which says that the National Assembly, Hon. Junet, Hon. Ichung'wah, Hon. Kimunya and I, are killing devolution, which is a whole chapter in the Constitution. You cannot kill it. For you to kill devolution, you need to call for a referendum. So, do not point fingers at us. Let us look at the figures. We really want you to make a determination today. I pray that the ruling will be in favour of what we are asking. We ask you to send the Bill to the Senate, they look at it and if they can increase... We cannot have two Bills which are moved concurrently. Even before we go for mediation on one Bill, we must mediate on which Bill we should decide on. That is confusion. Why should the two Houses have two Bills? The latest audited accounts, which were approved by this House, are for the Financial Year 2014/2015, which sets out the figure of the national revenue at Kshs1.038 trillion. Fifteen per cent of Kshs1.038 trillion is Kshs155.7 billion. If we were to go by 15 per cent, the 47 counties' equitable share would be Kshs155 billion. But we have given them twice as much; Kshs316 billion. The Division of Revenue Bill, which was passed by this House last week, sets aside Kshs316.5 billion to be shared among the counties. That is Kshs160.8 billion above the constitutional threshold of 15 per cent.

One House of Kenya's Parliament cannot be a squatter in another House. Since I joined politics, squatters are evicted forcefully. You do not have dialogue with squatters. You get a court order, go to a police station and get officers to evict them. The Senate and the Council of Governors want to become squatters in the National Assembly. We must evict them. Time has come. The governors' function in the Legislature is to appear before the Senate's County Public Accounts and Investment Committee (CPAIC) and respond to audit queries. Governors have no legislative powers. They cannot use the Chief Justice and the process of the Supreme Court to legislate for them. They should resign as governors and become Members of Parliament in the next general elections, if they are interested in legislation. This House took into account the recommendations of the Commission on Revenue Allocation, and we agreed with the figure that was proposed by the National Treasury.

On the other hand, the Senate was swayed by the Commission on Revenue Allocation's recommendation and adopted the figure of Kshs335 billion. Look at even the goodwill we had. The Chair was with me in the mediation. Before the mediation collapsed, the Senate had proposed Kshs327 billion while we had proposed Kshs316 billion. What happened to the Kshs327 billion? They have now gone to Kshs335 billion. We can see that there is a bit of political deceit and dishonesty. They are jokers as a Member is saying. They are jokers with no plan.

On page 15, the recommendation of the Report that was adopted by this House, on paragraph 22, provides that any increase in allocation to counties over and above what is proposed in the division of revenue must be met by specific reduction in the Judiciary, Parliament and various ministries. The Accounting Officer for the National Assembly said that he needs more money. The Accounting Officer for the Judiciary, the Registrar, said she wants more money and the Accounting Officer for the national Government, who is the Principal Secretary National Treasury, said that we had cut his budget and wanted more money. The question we need to ask ourselves is that if we increase the money to counties, where will we get it from? Even in our households or kitchen, we do not plan or budget for something we do not have. According to economics, the best you can do is to live by your wallet. If your wallet cannot buy you a cup of cappuccino in Hotel Intercontinental, you should look for kiosks that are around to buy tea. You cannot go to Serena Hotel with a belief that Hon. Junet might come at 5.00 p.m. and start having tea. What happens if he does not come? You will be forced to go to the kitchen and peel potatoes for two hours.

So, we do not have the money. Since I want to give more time to my colleagues to make their contributions, let me go to the final part of my contribution. This thing has disturbed me. It is the people, through the payment of taxes, who finance the national Budget. The National Treasury proposes to collect Kshs1.8 trillion from the people. If we consider raising an additional Kshs19.2 billion through taxation, that will be the end of this country. We saw yesterday the inflation rate in our country has gone up by 1.5 per cent. That tells us that prices of commodities have gone up. Where do we get Kshs19.2 billion from? This is the question we want to ask Senators and governors. They will not get it from the Judiciary, Parliament or the National Treasury.

Last year, we saw what happened with the proposal to increase taxes on fuel in this House. There was war in this Chamber. Do we add taxes on essential consumer goods, and for that matter, which goods? Even if we borrow the Kshs19.2 billion and give it to the counties, the debt will still be financed by the people of Kenya through taxes. Who is kidding here? This is not a game. We are not proposing an equitable share of allocation to county governments for fun.

The numbers are real and they mean taxation of each Kenyan. We are aware that additional taxes mean a higher cost of living for everyone. Kenyans can barely make ends meet at the moment. If we agree with the proposal from the Senate and governors, we better say goodbye to the Kenya that we know.

As a House, we passed the Division of Revenue Bill. We have taken all reasonable advice from the National Treasury. We have arrived at a figure and we have consulted the CEO of the country. We have all agreed that the best we can give is Kshs316 billion. We are aware that any collection means taxes which this House has to approve through the Finance Bill. As the people's representatives, we are not ready to approve more taxation on behalf of the people of Kenya.

We are not ready to engage in this back and forth game of ping pong that is going on. On Thursday next week, we are going for recess. The Chief Justice said that this is a function of the Legislature and asked for a report to be filed within 14 days. Our Litigation Department and the lawyers representing you, Hon. Speaker, should make our contribution part of the report that will be sent to the court. We control our calendar and the Judiciary controls its calendar. In 14 days, we will come back to this Bill after we have come from the long recess in September. The calendar of the House is neither controlled by the Hon. Speaker nor by the leadership. For us to change it, we must bring a Motion to that effect to the House. So, we will pass the Division of Revenue Bill and convey it to them. They can amend it or kill it at mediation, then blame us for not being reasonable and hide behind a crisis they have manufactured; a crisis they have created. Subsequently, in the disguise of solving the crisis, they publish a Bill. For the Senate and governors, it is an enjoyable game because people find it fashionable these days to blame the National Assembly for not accepting unreasonable demands.

Hon. Speaker, we would like you to look at the following Articles of the Constitution and make a determination. Look at Articles 218, 217, 95(4)(a) and (b), 110, 111, 112 and 113 on approving Bills concerning counties. Look at Article 96(3), on the role of the Senate. Then finally make a determination that in whatever we do, we cannot read the Constitution in isolation; that whether you are budgeting or legislating; every Article of the Constitution that pertains to the two levels of Government must be read together with the Fourth Schedule. In my opinion, you need to give us direction. This Bill is not properly before the House and it is unconstitutional. If we go this route, then we will not be representing the people of Kenya, and the delegation of power they have given us in Article 1 of the Constitution will be wasted.

Hon. Speaker, I want you to step down this Bill until you make a Communication. I rest my case.

(Applause)

Hon. Speaker: Let me hear the Member for Kitui Central.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Speaker. Let me also join my colleague, the Leader of the Majority Party, to add my voice and request you to guide the House whether this Bill is in the House properly in terms of the House that has originated it.

I will not take long. I want to raise four points which you may consider as you give your direction. Chapter 8 of our Constitution talks about the Legislature. Article 93(1) of the Constitution talks about a Parliament which has two Houses - the Senate and the National Assembly. Article 2 that I want to read so that Members can hear says: "The National Assembly...

Hon. Speaker: Is it Article 2 of the Constitution or clause 2 of Article 93?

Hon. Makali Mulu (Kitui Central, WDM-K): It is Article 93(2) of the Constitution. It says:

“The National Assembly and the Senate shall perform their respective functions in accordance with this Constitution.”

Article 95 of the Constitution talks about the National Assembly while Article 96 talks about the Senate. It is clearly stated who does what. Having that in mind, it is very clear, as the Chair of the Budget and Appropriations Committee has said, that it is the responsibility of this House to originate the Division of Revenue Bill. I am saying this because Article 217 of the Constitution talks about the County Allocation of Revenue Bill.

It says that if this House attempts to amend or reject that Bill, it requires two-thirds majority. The spirit of the Constitution is that it should be originated by the Senate so that when it comes to this House, then we require high numbers either to amend or to reject it. I do not think the framers of this Constitution would have been mad to originate County Allocation of Revenue Bill from Senate and still allow the Senate to originate the Division of Revenue Bill. My thinking is that the Senate should be able to know that when it comes to originating this Bill, it should be role of the National Assembly. The question is this: If they can originate the Division of Revenue Bill, what would stop any Member of this House from originating County Allocation of Revenue Bill next year? These are the hard questions we must ask ourselves. If we agree as a House that we are going to debate at the Second Reading, then there is no harm and I would request Hon. Junet to immediately originate a County Allocation of Revenue Bill and we discuss it and see how far we will go. We should avoid this confusion in this country because financial management is important.

The second point is the issue of revenue sharing. The revenue raising measures are only captured in the Finance Bill. Even as we are discussing this, this House has not passed the Finance Bill, which means we are not even aware of the amount we are going to collect because Hon. Members will have to debate and approve the Finance Bill. When you look at the Finance Bill, the revenue raising measures have nothing to do with the counties. We are not talking about how much will be raised at the county level. We are talking about the national level and the National Assembly is the House that looks at the national level interests. The Senate looks at the county interests. On that matter then, we cannot be looking at national interests and then have no role when it comes to sharing national revenue. It is logical thinking. If we move that way, automatically, the Senate should accept that discussing, agreeing or not agreeing with the Division of Revenue Bill should be originating from this House. Otherwise, if it was expected otherwise, we should be having thresholds as we have with County Allocation of Revenue Bill in the Constitution. When you read the whole Constitution, there is nowhere where the Senate is required to either reject or approve, implying this House has the mandate to reject this Bill.

The other point - and this is the most critical as a finance person - is that we are discussing about increasing amount to a level of a government and nowhere in that Bill, even as the Senate brings the Bill, are we told how to finance that deficit. To me, that is critical because it means then somebody has to meet the deficit. The question is: Where will that money be obtained from? Even as you give direction, we cannot have unfunded budget. It has never existed anywhere. We cannot have a budget where we are not saying where the resources will come from. Even as you give us direction, I humbly request you that you consider that fact that the deficit must be funded.

The last point is on Article 219. It clearly states that once you approve the allocation to county governments and national Government, the county government allocation must be released by the National Treasury to the county governments. So, you cannot change anything. Where we have a shortfall of revenue, then it is the national Government which meets that shortfall. To me, those are the most critical issues even as we debate this issue. You need to guide us on that, so that we can debate from an informed position.

With those remarks, I will be sitting here waiting for your communication. Thank you.

Hon. Speaker: I can see the corners. I know it is a point of order, but remember it is on the basis of constitutionalism. I just want to hear a few Members on the constitutional issues. Hon. Kimunya.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I am glad the Leader of the Majority Party has raised this matter because it has been disturbing me. When did we get this practice of a Division of Revenue Bill being introduced in the Senate and a parallel Bill being introduced in the National Assembly, so that we have two Bills running concurrently and then they swap? We are not even sure which one takes precedence over the other.

In checking with colleagues, it appears that there was this misunderstanding in the reading of Article 218. For the benefit of the House, Article 218 says that, at least, two months before the end of each financial year, there shall be introduced in Parliament (a) the Division of Revenue Bill and (b) a County Allocation of Revenue Bill. Somebody seems to think that because Parliament includes Senate, the two Bills should be introduced concurrently in both Houses. As you look at this, I would like you to look at Article 218 against Articles 93, 95 and 96. Article 93 is what establishes Parliament and defines Parliament as consisting of the National Assembly and the Senate. Most importantly, it also says the National Assembly and Senate shall perform their respective functions in accordance with this Constitution. Article 95 defines the role of the National Assembly and specifically mentions at 95(4) that the National Assembly shall determine the allocation of national revenue between the levels of Government as provided in Part IV of Chapter 12. It does not say that Parliament “shall”. It says the National Assembly shall determine the allocation of national revenue.

It also goes to Article 95 and says the Senate determines the allocation of county revenue among the counties as provided in Article 217, which basically begins with the determination of formula and then every year, application of that formula across the different counties to subdivide the money. So, when you look at Article 218, it is very clear. You are talking of Parliament, and which House of Parliament that Bill will be introduced into, and not a situation of saying that a Bill may be introduced in either House. In fact, if you look at it from that argument, that because it affects counties - that is where they seem to be drawing from - the Senate participates in law making function of Parliament by considering debating and approving Bills concerning counties as provided in Articles 109 to 113.

The Leader of the Majority Party has just explained about all these grants and conditional monies for roads and health, which are contained within the Appropriation Act. If we were to extend this argument in a very basic level, then what will stop the Senate from introducing to the Senate an Appropriation Bill because it contains money for health and roads? We must stop these ping pong games and stick to what the framers of this Constitution envisaged. This was very clear - that there shall be two houses. Each House has its responsibility. Let us stick to those. They said within Article 93 that let each House function in accordance with this Constitution. Within the Fourth Schedule, there are specific jobs that are allocated to the county government. If, for example, I was to come and introduce a Bill here in terms of control and

licensing of dogs in Nairobi or even bring a petition here, you will be the first one to tell me that the matter belongs to the Senate. That is where it is supposed to be discussed. Similarly, if my colleague, Senator from Nyandarua, was to introduce a Bill in Senate considering the running of universities, the Senate Speaker should be able to tell him that the matter is overseen by the National Assembly and he cannot introduce it there. If we do not have that functioning, we end up with a mix. That is why you end up with all these things of finding Cabinet Secretaries being summoned to appear before the Senate when we are also waiting for them in the committees of National Assembly. This happens because of breakdown in terms of appreciation of the roles of each of these Houses.

I do not want to belabour the point, but it is important we establish the competence of each of these Houses and decide what one can do. I believe this will be the breaking point so that, from now on, we know that the Division of Revenue Bill will originate from this House and then we will share it with the Senate. Then, it will go through the process in accordance with Articles 109, 110 and 113. Similarly, they will bring their County Allocation of Revenue Bill so that Hon. Junet does not get tempted to allocate more money to Nyandarua County for me by introducing a County Allocation of Revenue Bill here. Then we end up with disagreement and we start playing politics by saying the National Assembly has given this county more money than the other. It should be based on what has come from them.

So, I want you to look at all those and help us bring this matter to an end. I would also wish to ask or urge you to consult with your colleague, the Speaker of the Senate. That is so that we have an amicable understating that, from now on, the limit of the Senate ends here and that of the National Assembly ends here. Then, we will not be seen as the ones who are holding the country to ransom. I am very glad that the courts can see the danger that the Senate and the governors want to put this country into. If the court was to entertain at all that case and start ruling by challenging the Appropriation Bill, you can be sure the whole country will have to shut down on the day that ruling is made. You cannot release money without the Appropriation Bill. We will not have salaries even for the courts. We will not have salaries for even this House to operate and pass the Finance Bill that is required to even operationalise the Appropriation Bill. So, there are so many risks that people are playing around with. It is all emanating from a misunderstanding of a very basic thing, that Article 218 cannot be read alone. It can only be read alongside Articles 93, 95 and 96.

Let me not belabour the point but ask that you help us in making a determination on whether this Bill or any other in future can originate from the Senate and, if it does, whether it should be considered by this House.

With those remarks, I beg to support the Leader of Majority Party's point of order.

Hon. Speaker: The Leader of the Majority Party rose on a point of opposition. Let us have Hon. Junet.

Hon. Junet Nuh (Suna East, ODM): Thank you Hon. Speaker, for giving me this opportunity to contribute to this very important matter.

As has been said by my colleagues, Parliament must conduct its functions in accordance with the Constitution. This is one of the occasions when we have the Speaker to determine for us whether a Bill before this House is properly or constitutionally placed before us. It is in one of your first rulings in the 11th Parliament. You said that a Member can stand in his place to seek guidance on a constitutional issue at any moment. I think this is one of the moments when the House or a Member has decided to seek your guidance on a constitutional matter.

It is for a fact that the Division of Revenue Bill is a Money Bill, under Article 109. What we intend to seek from you is where this Bill should originate from. I said that it is for a fact that this Division of Revenue Bill is a Money Bill. We seek your guidance on where this Bill should originate from. We have two Bills as we speak today. One is from the National Assembly and another from the Senate. In my view, what the Senate is inviting Parliament to is a fatal head-on collision of two Bills. Unless it is arrested at the earliest opportunity, we might have a fatal head-on collision in this House. You should not allow that to happen as a man who has sworn to defend, protect and uphold the Constitution when you took the oath of office as the Speaker of the House.

I do not want to belabour the point of constitutional issues that have been brought about by my colleagues. It is in Article 94 where there is an express provision that it is this House that divides the revenue between the two levels of government. I do not want to belabour the point of Article 218 which says that, after two months, the Division of Revenue Bill must originate from this House and the County Allocation of Revenue Bill must come from the Senate. It is not good if we go the way the Senate has gone, to originate a Bill which they do not have any jurisdiction over. We can also originate the County Allocation of Revenue Bill amongst counties. I can guarantee you I am intending to do that. Once I do it, I will give a lot of money to my Migori County. That county might receive a third of the whole allocation because it will be my right to do so. That is what the Senate has done on the other Bill.

This is a serious matter that we cannot take for granted. Laws are made here for posterity. I remember in the 11th Parliament, the issue of the Division of Revenue Bill came up. As a House, we resolved this is a matter within the domain of the National Assembly, but our colleagues in the Senate decided to go and seek an opinion from the Supreme Court. The Supreme Court gave an opinion that this Bill must be taken to the other House. The Supreme Court failed to tell us what we do when we have a stalemate as the situation is today. They should have gone further and said the Bill should go to the Senate. We know mediation has been provided in the Constitution. When mediation fails, either the National Assembly or the Senate will have the upper hand. They should have decided. That is where they fell short. That tells you how the opinion was not well thought out, if I have to criticise it. Criticisms of judgements and opinions are allowed. The opinion fell short of the expectations of the Kenyan people. This is the situation they found themselves in. If you seek my opinion as a Member of this House, now that the opinion of the Supreme Court did not cover eventualities after a stalemate, I think this House should pass the Division of Revenue Bill and send it to the President to assent to it so that counties can continue operating until when the Supreme Court will expand their opinion, as it were. After all, it is an opinion on how we should handle stalemates. I can guarantee you that the Supreme Court has no mandate to allocate figures. They cannot give you Kshs300 billion. They cannot give you Kshs1 billion because even the money they operate on is allocated from this House.

This is a matter on which you must pronounce yourself, not because of today that we have two Bills. It is because of posterity. Devolution is here to stay for long. It is not going to end with the 12th Parliament. Devolution is going to be there until the Constitution is amended. I do not foresee any Kenyan who is interested in amending the Constitution to get rid of devolution. For that reason, we must get clarity on where this Division of Revenue Bill and County Allocation of Revenue Bill can originate from. Once we set that parameter, we can discuss the rest. I was listening to the advocate of the Council of Governors two days ago when he was presenting his case. He categorically told the Supreme Court that the Senate has no

jurisdiction or mandate to originate a Division of Revenue Bill. I heard it with my own two ears. I wondered whether that man was really representing his client or he had decided to follow the Constitution. In fact, Senior Counsel Ngatia, in his submissions, said Senate does not have authority to originate a Money Bill. It is on record in the Supreme Court. If the client's advocate has already agreed in court that they have no jurisdiction, I do not think we should continue addressing this.

Coming down now, after I leave the constitutional issues so that you can interrogate them and address us, the county governments are nowadays operating as though they are a department of the State Department of the Ministry of Devolution. That, they can only operate when they receive money from the national Government.

Hon. Speaker, those are people who are supposed to generate their own revenue. Before the county governments were in place, we used to have county councils and municipal councils. They were operating without national Government revenue. We used to have clean towns and parking spaces. We never used to see stray dogs on the road. Now, does it mean that we are not going to have clean towns if the national Government is not going to give funds? Where does the money that is generated locally go to? If the Council of Governors says: "We have raised three trillion from our side, can you add us another trillion?", that will be an arguable case. Somebody is telling you he has nothing. When you go around the towns, you see many *kambas*. What is it called in English? Ropes! Toll stations everywhere collecting revenue and market centers collecting revenues. Where does that revenue go to? That is not small money. What they are trying to do is to cleverly invite the national Government to tax Kenyans more. Actually, they are inviting the President to overtax people so that they later say that the national Government is overtaxing people and yet, it is the same money that goes to them.

Hon. Makali Mulu has said that county governments are asking for more money and they are not telling us how that revenue will be generated. The Finance Bill does not go to the Senate. One of the mechanisms to generate revenue for the Budget is through the Finance Bill. How come the Supreme Court did not say: "Take the Finance Bill to the Senate so that they can tell us how many dogs they will treat and how many morgues they are going to construct?" Also, they can collect parking fees and bring it to the national Government kitty so that we can share equitably. I do not want to belabour the matter because there are many Members who want to speak on it. This is a matter that must be taken on a high moral ground. You can take the Bill to the constitutional court when it has been assented to and look at its constitutionality. But when it is before this House, it is our business to look at the constitutionality of the Bill lest we are later accused of churning out unconstitutional Bills, as the Senate has claimed.

With those few remarks, I request you to, not later than Tuesday next week... This is a matter of grave importance to the people of Kenya. Your ruling on this matter should not come, God willing, later than 2.30 p.m. on Tuesday.

Thank you.

Hon. Speaker: Member for Kipkelion East.

Hon. Joseph Limo (Kipkelion East, JP): Thank you, Hon. Speaker, for giving me this chance to also give my views concerning this Bill. At the outset, this House is one of the respected Houses in the world. We are clear in our minds in terms of our roles. In the 11th Parliament, if I may remind the House, we as the National Assembly were clear on our role when this issue started during the 2014/2015 Financial Year. The Senate was not clear on its role and it went to court. I am not a lawyer or a legal expert, but I can remember that there is something called the spirit and the letter of the Constitution. What it means, in my own understanding, is

that the intention of the drafters of the Constitution when they drafted the roles of the National Assembly as contained in Article 95(4) and the roles of the Senate as contained in Article 96(3)... As you make your ruling, consider those two Articles of the Constitution. Articles 95 and 96 are the mother of all articles when it comes to issues that are to be transacted in this House and in the Senate. Why do I say so? They define our roles. If there are other Articles in the Constitution, they are to be considered as subsidiary to those two main Articles that cover the roles of the National Assembly and the Senate. If you are a doctor, and another person is an engineer, the main role of the doctor is known to be treatment of patients. The details are not important. What is important is the main role. For an engineer, it depends. For example, if it is an electrical engineer, it is fixing issues to do with electricity. Therefore, when it comes to the role of this House and the Senate, the Constitution is clear in Article 95(4). The role of the National Assembly is to determine the allocation of national revenue between the levels of Government. For example, it can say Kshs1.8 trillion will go to the county governments. The remaining amount, after considering items that have been stipulated in the Constitution meant to benefit the whole country, like paying debts, goes to the national Government.

When it comes to the role of the Senate, it is clear that after the National Assembly has divided the national revenue into two, the Senate will decide on how much counties will get. For example, County No. 1, Mombasa, will get this much and County No. 35, Kericho, where I come from, will get this much. That is the role of the Senate. From where I am seated, I can confirm that, as a House, we have never disputed the County Allocation of Revenue Bill. In fact, in most cases, few Members contribute on it then we ask the Speaker to put the Question because we have other business on the Order Paper to attend to. It is assumed that Senators from all the counties have looked at the Bill and, in their opinion, the Bill is sufficient. Therefore, we have never desired to sit in their House to determine what each county government will get. That is the role of the Senate and we have never challenged it.

I want to concentrate on those two Articles of the Constitution. If the Senate is unclear what the two Houses are supposed to do and initiate, that is not the case for this House. The Senate was confused on what their role is and they have gone to seek court's opinion. My understanding is that when you seek an opinion on your own volition, when you get it, it is binding on you. It is not binding on the person who has not sought it. Our mind is clear and we know our work. That is why I recommend that we do not allow the Senate and the CoGs to bring us down to a level of portraying us to Kenyans as the ones who are preventing money from going to the counties. They do not want to go a step further and ask: "When this revenue goes to the counties, why is it not felt on the ground?" So many people who are Christians – and I do not know about Islam and other religions – recognise that in the Bible whatever you are given, you have to show what you are able to do with it before you ask for more. The Senate is quiet on what the Leader of the Majority Party has said. On top of the Kshs316 billion we are recommending, there is a further Kshs60 billion which is conditional allocations to the counties. They are not talking about it.

Hon. Speaker, so that I can allow the other Members to contribute, I want to urge you not to look back. Safeguard the role of this House. Our role is to pass the Division of Revenue Bill which divides revenue between the two levels of Government. That is in black and white.

In fact, I will urge this House to even recommend to you, Hon. Speaker that, you present the Division of Revenue Bill we passed in this House to the President for assent. The other House can continue with the road shows and demonstrations as the country moves on. We want services to be provided to the people.

Hon. Speaker, thank you very much. I urge this House to support the opinion that the Senate does not have a role to play in the Division of Revenue Bill, as we passed it in the first and second financial years in the 11th Parliament. We set a precedent. We passed the Bill and it was assented to and the country moved on very well. These other sideshows should be avoided. I beg to urge you to make a ruling as per the views of very many Members.

Thank you.

Hon. Speaker: Hon. Members, the issue that has been raised is a point of order raising a constitutional issue as to whether or not the Division of Revenue Bill (Senate Bill No.13 of 2019), which was due for Second Reading, should be proceeded with or not. Various Members who have spoken on this point - and I can understand their thrust – have said that this Bill should not be proceeded with. That is the constitutional issue that we would want to deal with alongside the practice and tradition as is well established within our jurisdiction.

Hon. Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Speaker, for giving me this opportunity. Two wrongs do not make a right. This is a House of traditions as you clearly put it. We have had some history and traditions about this. It is actually the first time we are hearing that the Division of Revenue Bill is originating from the Senate, contrary to Article 109 of the Constitution. As the Speaker of this House, you have mentioned many times, as Hon. Junet has clearly put it, that any matter of constitutionality can be raised at any stage of a Bill. We should not at any given opportunity accept that this Bill should continue. When you are seated with the Senators they say: “We know we are not going anywhere.” They are aware it is unconstitutional. So, we should not entertain this.

In the last financial year, when we also had issues with the Division of Revenue Bill, I remember very well we went through mediation and a Bill was republished. To republish means you go back through the due process, where the Bill originates from the National Assembly. Who advised the Senators to think that a money Bill can originate from the Senate? In fact, when Hon. Junet said that he was planning to bring the County Allocation of Revenue Bill, it can originate from here. Article 109 of the Constitution says that any Bill can originate in this House but, because Article 96 of the Constitution gives the Senate county jurisdiction, we do not originate that Bill from here.

The cardinal thing for you to do is you must be decisive. You must make a decision right now. We know counties need money. The Bill that we passed should be forwarded immediately to His Excellency the President so that it can be assented to and then we see if governors will reject that money. We do not want to entertain this too much. Two wrongs do not make a right. The cardinal thing for you to do is to reject this Bill on the basis of unconstitutionality based on Article 109 and in line with Standing Order No.1. You can use your discretion where something has not happened historically or traditionally. Since I came to this Parliament, I have always known the Division of Revenue Bill normally originates from here. Why does it originate from here? The Budget Outlook Paper comes to this Parliament. From the BOP, we go to the Budget Policy Statement. After the BPS, we go to the Division of Revenue Bill. We know the way the sequence has been. It has been a tradition. So, we do not need to waste time and entertain this Bill. We should reject it because it is unconstitutional and we move forward.

I thank you.

Hon. Speaker: Hon Members, maybe, I could actually express myself on this so that we make progress without necessarily having to wait for too long. If we go for a weekend, we shall create more anxiety. Thereafter, I could come up with a more substantive reason.

Hon. Nassir, do you want to say something before I express myself? It looks like this matter is really exercising our minds.

Hon Abdullswamad Nassir (Mvita, ODM): Hon. Speaker, my colleagues have been able to expound on everything. I am sure our colleagues on the other side are aware of everything. However, in your communication, and as absurd as this may sound, probably, you might want to consider that the Senate were exercising their rights under Article 119, where every person has a right to petition Parliament. As absurd as it sounds, maybe, it is only right that this should come back as a petition that the Senate has submitted. It is clear to each and every one of us here and Senators know that they do not have the duty to originate this Bill.

I agree with Hon. Junet and with you even more as you have indicated that you need to put a stop to this right now. And the reason is, if this House sets precedent of us being able to be overrun; if this House is going to set a precedent of every single person trying to bring things that are unconstitutional and we sit back... So, first and foremost, declare that what they are calling a Bill is not a Bill; that they have exercised their right under Article 119 which provides that any person in this country has a right to petition Parliament. Change it in the Order Paper and then it goes to the relevant committee so that we dispose of this matter.

Thank you, Hon. Speaker.

(Laughter)

Hon. Speaker: Hon. Ichung'wah, you also want to weigh in briefly? I think I am able to make some pronouncement so that we do not keep everyone anxious for a week.

Hon. Ichung'wah, please.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Speaker, as I sought to move this Bill for Second Reading, I mentioned that there were certain weighty concerns that even we, as the BAC, had. I want to agree with many of the Members who have expressed those concerns in different ways and, more so, regarding the interpretation of Articles 93, 94, 95 and 96(3) of the Constitution. As Hon. Makali Mulu alluded to, tomorrow, Hon. Junet might decide to publish his own County Allocation of Revenue Bill allocating more resources to Migori at the expense of Kiambu. Therefore, I want to agree with Members that, indeed, there are weighty constitutional issues that you need to make a determination on.

I also want to point out that the reason why civilised nations like ours enact constitutions is for there to be order in governance. If we allowed anybody and everybody to act outside the provisions of the Constitution, there will be anarchy in this country, not just in terms of the petition that the Member for Mvita is alluding to, but in Members here or in the other House publishing all manner of Bills. That is why Article 114 is on the definition of money Bill. Then there are exemptions provided for under Article 218. There are laid out procedures and ways in which Bills will be brought to Parliament. Therefore, it is important that you call not just this House but Parliament to order, so that we enact Bills that are brought to both Houses in line with the provisions of the Constitution.

Hon. Speaker, I, therefore, beg to say that I am amiable to not proceeding to move this Bill until you give us your communication and guidance in this House. That is because it is you the Constitution has placed in your office as the Hon. Speaker of the National Assembly. It is at a level where you guide not just Parliament, but the nation. It was not by accident that the Office of the Hon. Speaker of the National Assembly was ranked as the third most powerful office in this country. It is because it was known that you would be called upon, time and again, to guide

the nation over issues that are not just in matters of succession, but also on such weighty constitutional issues.

Therefore, Hon. Speaker, I beg to stand down and wait for your guidance relating to this matter.

Hon. Speaker: Hon. Members, I have just considered that it may take some time for us to go and do a considered ruling. However, I think we can make some decision for reasons to be provided in that considered ruling.

One of them is that, as we have heard from several Members, Chapter 12 of our Constitution, which is the chapter relating to finance gives an elaborate process on the application of public finance. In particular, the National Assembly plays a key and pivotal role in the allocation of revenue and grants to the national Government, the Judiciary and Parliament, through the Parliamentary Service Commission. The same House deals with the ways and means of raising revenue as we pointed out. Again, Hon. Members, as has been pointed out quite clearly by Hon. Kimunya and Hon. Makali, Article 93 of the Constitution that establishes Parliament says more specifically in Clause 2 that:

“The National Assembly and the Senate shall perform their respective functions in accordance with this Constitution.”

As you know, Articles 95 and 96 provide for the roles of each House, including who represents what. Article 95 (1) states thus:

“The National Assembly represents the people of the constituencies and special interests in the National Assembly”

The corresponding provision in 96(1) says:

“The Senate represents the counties, and serves to protect the interests of the counties and their governments.”

The latter represents geography while the former represents the people. There is a requirement under Article 93(2) that each of us must perform our roles in accordance with the Constitution, which invites us to look at it in the context of the Division of Revenue Bill, and who is given what role. Many of you have amplified the point that Article 95(4)(a) is clear that the National Assembly determines the revenues between the two levels of Government. Those two levels are well known: The national and the county government levels. Those are the only two levels that we have. The corresponding provision for the other House, so that each House will perform its role in accordance with the Constitution, is Article 96(3). It says:

“The Senate determines the allocation of national revenue among counties, as provided in Article 217, and exercises oversight over national revenue allocated to the county governments.”

Article 218 1(a) and (b) as amplified by Hon. Kimunya specifies that:

“At least two months before the end of each financial year, there shall be introduced in Parliament—

(a) a Division of Revenue Bill, which shall divide revenue raised by the national government among the national and county levels of government in accordance with this Constitution; and,

(b) a County Allocation of Revenue Bill, which shall divide among the counties the revenue allocated to the county level of government on the basis determined in accordance with the resolution in force under Article 217.”

If we are to interpret who deals with what, one must go back to the roles and functions assigned to each House in Articles 95 and 96, respectively.

Therefore, in keeping with the traditions and practice, a Division of Revenue Bill in the Republic of Kenya can only originate in the National Assembly.

(Applause)

If there is introduced before the House of Parliament a purported Division of Revenue Bill originating in the Senate, then that purported Bill is *ultra vires* to the Constitution. It is null and void to the extent of breaching those clear provisions of the Constitution.

I, therefore, agree with a majority of you that, indeed, if we continue to consider or allow the Chairman of the Budget and Appropriations Committee to introduce for Second Reading the Division of Revenue Bill originating from the Senate, we shall not only be breaching our own rules, customs and traditions, but we will also be going against the Constitution. I, therefore, rule in the interim, pending further substantive reasons to be given in my considered ruling, that the current Division of Revenue Bill appearing as Order No. 9 in today's Order Paper shall not be proceeded with. It is withdrawn and, therefore, no further debate on it will continue.

(Bill withdrawn)

The House is accordingly guided that a further and more detailed communication will follow. We, therefore, move on.

Next Order!

Second Reading

THE STATISTICS (AMENDMENT) BILL

Hon. Speaker: The Hon. Leader of the Majority Party? Can the Whip bring in the Hon. Leader of the Majority Party? He is supposed to move the next two Bills.

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Speaker. I was doing something in the office and I have realised you are looking for me. This is the first time you have looked for me.

Hon. Speaker, I beg to move that the Statistics (Amendment) Bill (National Assembly Bill No. 37 of 2019) be now read a Second Time.

This Bill seeks to amend various provisions of the Statistics Act, 2006. This Act currently mandates the Kenya National Bureau of Statistics (KNBS) to be the principal agency for the collection, analysis, dissemination of any statistical data and also to be the only body that is the custodian of official Government statistics and to perform any other specified functions related thereto.

Accurate national and county statistics are required at both levels of Government in order to assist policy makers in planning, policy formulation, budgeting, monitoring and evaluation of programmes. So, for the Government to plan our budget and many other issues they must have the right statistics. This Bill is coming at a very important time because on 24th of next month the KNBS will carry out the national census that will help our country in the next 10 years on how to share resources, formulate policies and share political power. So, it is very important.

The amendments proposed in the Statistics (Amendment) Bill are intended to enhance, good governance, expand the scope of the Bureau and to align this Act of 2006 to those which

are in the Constitution. So, mainly it is about aligning the Statistics Act, 2006 to the provisions of the Constitution. The Chair of the Departmental Committee on Finance and National Planning who looked at this Bill during public participation will second.

On the highlights, Clauses 1 and 2 of this Bill seek to align the definition in the Act to those which are in the Constitution. Other terms defined include the “national statistical systems” which is the whole network of bodies involved in the collection and use of national statistics data under the supervision of the bureau. Clause 3 seeks to enhance the capacity of the bureau by conferring professional independence in keeping with international best practice. For us to carry out statistics, more so of national importance like the census, we must be alive to the fact that our laws must also align to the United Nations Fundamental Principles of Official Statistics which should be observed when collecting data. So, we are trying to align ourselves to our Constitution and international best practices.

Clause 4 seeks to empower the relevant Cabinet Secretary in certain cases to extend the period within which census should be conducted to take care of unforeseen circumstances. This is the most important thing. Hon. Speaker, I want to ask you that we pass this Bill before we go on the long recess. We are coming back in September. The clause states that in case there is a problem during census in a village or constituency, the Cabinet Secretary has the powers to ask for a fresh enumeration to be conducted. So, Clause 4 is very important.

Let us also be very clear, the census exercise begins on 24th of this month. Kenyans think it is done only one day. The exercise will be done close to seven days, from 24th to 31st August. The important night is 24th but if you are not counted on that night, you can still be counted between 25th and 31st. So, it is important we pass Clause 4 before we go on recess, so that in case of unforeseen circumstance, the Cabinet Secretary can extend the exercise beyond the seven days. We are not sure about nature because anything can happen.

Clause 6 of the Bill proposes to amend the Act to separate the role of the bureau from the management in order to ensure there is good governance and the board handles policy. I think this is a matter for discussion. The serious census issue be left to the managers and not the board.

Clause 7 seeks to clarify the functions of the Director-General of the KNBS, which is to include the function of designating statistics produced by the National Statistical Systems as official statistics based on set criteria.

Clause 13 of the Bill proposes to empower the Director-General and the Board of the KNBS to correct, revise, adjust or cancel statistical information where the data is again found to be incorrect. Who has that power? I am sure from experience of the last census, even if you are not happy with the board’s decision, you can still look for a judicial review. It is important we give the board and the management this power. That they have the power to correct, revise where there is a problem and adjust or cancel statistics if they feel the information or data is inaccurate.

Clause 15 seeks to amend Section 26 of the Act to criminalise the use of data produced by the KNBS. That is why we have the research station in Malindi. There are people in the private sector or others who use the data of KNBS without their permission. Therefore, Clause 15 seeks to amend Section 26 of the Act and criminalise that act.

Clause 17 of the Bill seeks to amend the First Schedule of the Act that sets out the types of statistics that can be collected by the KNBS, including the various variables under the National Integrated Identity Management System (NIIMS). Clause 18 sets out the principles observed in the KNBS in the collection of data.

Hon. Speaker, I am very sorry because you were looking for me and I had to run from my office. Lucky enough, there is a shortcut used by the Speaker so, I used your hallway. This is a small Bill.

I beg to move and ask Hon. Limo to second.

Hon. Speaker: Hon. Limo

Hon. Joseph Limo (Kipkelion East, JP): Thank you, Hon. Speaker for giving me this chance to second this important amendment Bill which was referred to our Committee when it was first brought to this House. I want to confirm that upon receipt our Committee went ahead to prosecute the Bill through publishing in the newspapers to invite for public participation. We confirm that on 13th June we did this and upon the expiry of the period, we had only received one memorandum from KNBS which we went ahead to discuss. Arising from the various consultations, we came up with proposed amendments which we will be moving in the Third Reading.

We had an engagement with KNBS together with the State Department for National Planning. During the Budget for the last two financial years we provided enough resources to ensure that census is carried out. As all of us know, we had various challenges which arose during the 2009 Census. To avoid that, we provided enough resources to ensure they prepare everything on time.

The Leader of the Majority Party has spoken a lot about the various details of the Bill but in summary, I want to say that this Bill is actually aimed at ensuring that the data obtained from the census process is as accurate as possible. Various terms like “official statistics”, “professional independence” and the issues of sampling frames are defined. The Bill also expands the scope of the functions of the KNBS. It also sets out the principles to be observed in collection of data by the bureau. In addition, the Bill empowers the Cabinet Secretary to extend the period within which the national census may be conducted if need be in order to ensure that as many people as possible are captured during the census.

[The Speaker (Hon. Justin Muturi) left the Chair]

*[The Temporary Deputy Speaker (Hon. (Ms.)
Jessica Mbalu) took the Chair]*

Hon. Temporary Deputy Speaker, it also proposes penalties for those who will violate the various provisions. The Bill also empowers the KNBS to apply electronic means in collection of data so that the data will be as accurate as possible. This is expected to be carried out 24th and 25th August. We expect that this time round, the data collected will be accurate. I urge the various managers who will be conducting this census, especially the coordinators in the counties and sub-counties to ensure that the recruitment and training of enumerators and supervisors is actually done in a fair manner and as much as possible, provide the opportunity for the very many jobless youths to be able to participate. This exercise is able to generate a reasonable amount of money for any youth who is intending to start some business. Therefore, this is a big opportunity for the various youths in the villages. Even if they get one youth in every village and they invest it well, it is going to be an opportunity to change their lives.

So as to allow the other Members to contribute, I beg to second the Statistics (Amendment) Bill, 2019. Thank you, Hon. Temporary Deputy Speaker. I second.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): I will allow those who are coming in and walking out one minute to resume their seats. Hon. Member, you are supposed to resume your seat or freeze.

(Question proposed)

The first slot goes to the Member for Kimilili, Hon. Mutua Barasa.

Hon. Didmus Barasa (Kimilili, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to support this Bill. This is a very important Bill that seeks to realign the current Act with the emerging trends, the new Constitution and very many things. My only worry is that, because we have attached too much data from the KNBS in deciding how much revenue various counties and our regions get, at times that data is falsified. How I wish that going forward, we would try to ensure that the integrity of the data and process is upheld. The process should reflect the true picture, so that the Government can pick those statistics to guide its planning.

Even as I support this Bill, I sit in the Departmental Committee on Administration and National Security and we were clear when Government officers appeared before us that such jobs should be reserved. Enumerators should be picked from local areas for ease of identification by home owners. We have very many criminal gangs everywhere.

Today in the morning, I received calls from my constituency where people were telling me that during census, they will not open their doors for any enumerator that they do not know. This will negatively affect the exercise. I ask those people who are involved in driving the recruitment exercise to ensure that the people who will be given these temporary positions to carry out this census come from local areas for ease of identification.

This Bill is very important to this country. We must also, as a country, move away from planning development for this country without really being guided by statistics. The reason why this House exists is to bring about equity so that we can develop our regions equitably. Those regions that are lagging behind in terms of development should be given a first priority and more resources to be able to catch up with the most developed regions. This Bill is very important. It is going to guide and shape the development of our regions, specifically in identifying marginalised areas. We still have areas in this country that have never seen a tarmac road. When it comes to national budgeting, you do not see them featuring among the regions that are going to receive money to improve our road network.

So, even as we support this Bill, I also urge the Committee to go further and look at ways of how we can insulate the process of data collection in Kenya to a level where you cannot doubt the data that KNBS collects. This is because we have seen scenarios in the past where even after census, some leaders or people from some particular regions dispute the data that has been collected. That can only be prevented by ensuring that we have a watertight law that will guide collection of such data and not give room for manipulation and breeding certain interests that are not within our national values.

As I finish, because I also want my other colleagues to contribute to this matter, I ask the people who will be involved in the census that will be conducted in a couple of months to consider relooking at the merit list of the people they have given these positions. It is in the interest of this country that such jobs should be reserved for jobless graduates and other unemployed Kenyans. Those who are already employed by the Government in different offices should not be given these particular positions, unless we are convinced that there are no other

jobless Kenyans from those particular regions. Such temporary jobs should not be a preserve of those who are already serving in the Civil Service and private sector but they should be reserved for the very many jobless young people in this country.

With those few remarks, I support this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Can I have the Member for Ugenya, Hon. David Ouma Ochieng'? He is the next one on my request list. Give him the microphone.

Hon. David Ochieng' (Ugenya, MDG): Thank you very much, Hon. Temporary Deputy Speaker. I stand to support this very important Bill.

Planning is a major function of the national Government and the county governments. It requires us to have precise numbers that can help us decide how we will distribute resources. Numbers are always magic. If you lose the arithmetic of numbers, then planning goes off the rail. That is why this Bill is very important. It aligns the current KNBS with the Constitution of Kenya, 2010. If you have heard what is happening in the counties today, for the first time, the KNBS will help the counties to set up planning units and statistics units to enable them plan with numbers in mind.

Before I go far, I want to say that politicians should stay off the census exercise that is coming. Our job in the census is to avail ourselves to be counted, but not to start managing numbers before we do the census. We should not front numbers and say that as a certain group of people, we are many and we have given birth to more children than others. We do not know the number of people in the country and that is why we are doing the census. The last census that was run in this country had problems. It was contested and we have been banding numbers around without having any official records. I want to request again the politicians to keep off this exercise, so that the technocrats at KNBS can do their work in a serious, technical and unbiased manner so that we can plan with numbers that are not manufactured. You probably know that between this year and 2024, we will do a boundary review in this country. One of the main features in a boundary review is numbers. To help us review boundaries without problems, the integrity of the numbers that we get in the various parts of this country will be very important. It is only in Kenya where people contest numbers. If you are undertaking a scientific exercise of counting people and you are told that these are the numbers that have come out, why would someone imagine going to court to contest numbers which do not lie?

When we go for elections every year, people laugh at us. If you look at the reports given by observers, they say that the election process was done very well. However, one thing with numbers in Kenya is that we do not know how to do additions. We count polling stations, constituencies and everything else but when it comes to tallying of votes, which is just adding one plus one, we get seven. When we add two plus two, we get eight. I want to request the bodies concerned to undertake this technical process objectively so that when we get one plus one, we get two, so that no one goes to court or any tribunal to challenge the numbers that will come from this particular process.

I will go specifically to the Bill. I have looked at it. We are giving the KNBS, for the first time, independence of professionalism. Where the KNBS says this is it, then we should not question. We are saying that the KNBS shall have professional independence and shall observe the fundamental principles of statistics, as set out in the Fourth Schedule of the Constitution. What we will request from the KNBS is professional independence. They should not be waylaid. They should not allow people to speak to their.... It is always said that if you want to move and you stop to listen to any dog barking, cows mooing and chickens crowing, you will not go far.

So, we want to request the KNBS to focus on the work at hand and the freedom to ensure that they do the right thing.

My attention has been drawn to the issue of having a corporation secretary. I will bring an amendment in this regard. The Corporation Secretary for the KNBS must report to the Director-General. As soon as you leave a lacuna and say that this secretary shall be appointed by the board, but you do not say that he reports to the Director-General, you can have a lawyer in the corporation who bypasses the Director-General and reports to the board directly. That is a recipe for chaos. I will propose amendments in this Bill to ensure that the Corporation Secretary who will be appointed reports directly to the Director-General.

The matter of integrity of the documents of the KNBS is also quite important. As we strengthen the laws to ensure that the documents that are held by the KNBS are sacrosanct and kept well, we want to ensure that KNBS is able to develop systems, structures and physical infrastructure in its own operations to ensure that documents are protected. We want to ensure that our data is not abused by people who come from out of the country. The world is such an interesting place where people are always scavenging for information. For example, the Americans and Britons always get information to undermine our sovereignty. So, we want to ensure that the systems therein are kept in such a way that we can say that our numbers are ours.

I want to come to the overall issue of ensuring that our laws are respected in this country. As we amend this Act to give KNBS more powers and allow it to go to the counties, we want them to know that this is a national Government function. Let them help them up to the ward level to plan with numbers. It will shock you now that even as we are trying to make sure that health services are being delivered well, a governor says that he will buy seeds for people in Murang'a County. There are 100,000 people in one ward but he brings 10,000 packets of seeds and then you are told that people in Murang'a County got seeds. This happens across the country. We have provided free healthcare. If you give it to 1,000 people in a ward that has 50,000 people, that is not fair. So, we want our planning to be done based on the numbers.

As I end, I want to laud the Leader of the Majority Party for this Bill and request all Members to support it, so that we can have a process that will give us numbers that will help us plan.

With those remarks, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Member, your amendments are very welcome in the Committee of the whole House.

Let me hear the Member for Kitui Central, Hon. (Dr.) Makali.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Speaker. Let me at the outset say that I support this Bill. The amendment Bill is timely because we are just about to conduct the census and it is important we get the right legal framework for that purpose.

The fact of the matter is that we want to amend the Statistics Act of 2006 so that it is aligned with the Constitution. Even as we do that, we need to realise that statistics, all over the world, are very important. Statistics are used for planning and making important national decisions. Since they are that important, it is important that any country collects statistics that are reasonable, that reflect the reality on the ground and that are not doctored. That is why countries spend billions of shillings to make sure that they get the correct statistics. For example, for the census we are going to conduct, the country is going to spend over Kshs10 billion to collect data. That money would have been used to do other important projects on water or roads. But as a country, we have said because statistics are important, we are going to set aside those resources

so that we get the right statistics which will help the country for the next almost 10 years in planning.

That is why it is important that this amendment Bill provides for separating the role of the secretariat from the role of board members. In any country where things function properly, the truth of the matter is the work of a board is to provide strategic direction of any organisation while the work of the secretariat is to implement the strategic issues raised by the board and implement them as they move forward to make sure that the organisation functions properly. That is why I like the idea of having a Bill where the work of the Director-General of KNBS is clearly stated and the work of the board is clearly stated. As we engage in this important national exercise, we do not have gaps of who is supposed to perform a certain role. That is very important.

Another important issue I want to mention is national official statistics. In the country, even though we know it is the KNBS which is supposed to officially generate national statistics, there are cases when you quote them people question whether the data makes sense. Time has come, even as we approve this amendment Bill, that as a country we need to make sure that the KNBS becomes the source of official statistics so that any time you quote it, it is an authority in statistics. For them to reach that level, they have no choice but to make sure that they use scientific methodologies to collect their data. That is critical and that is why I urge my colleagues to approve the amendments so that we give this important national institution the legal support. It will make it easy.

I am the Chair of a caucus in the House called Evidence-Informed Oversight and Decision-Making. Any time we interact, one of the questions we grapple with is the source of official statistics. Kenyans want a one-point-call so that when I run to such an institution, I can get all the data I want of the country for purposes of my planning. So, I encourage Members to support the Bill.

Another proposal that we should support is the introduction of penalties. If you go against the norms of collecting data, and you publicise the data in the country, you should be penalised because data is very important in making decisions. I am imaging the review of our boundaries. We know very well that it is going to be based on population numbers. Imagine a situation where someone gives us wrong figures and at the end, we do not carry out the exercise correctly. You will be misleading Kenyans on which ward needs to be moved or which constituency needs to have an extra ward and such kind of reorganisation. It is very important we make sure that through this Bill we get the right data.

There is division of our resources. In this country, as we share the national revenue, there is a lot of data required at the national level and county level. There are a number of parameters that are considered for allocation of resources. The parameters have to do with the number of geographical size, population size, poverty levels and many others. These parameters can only be known when we have statistics. That is why statistics is very important. That is why you hear everybody in Kenya agreeing that the 2009 population census seems to have led to a number of issues in terms of the data collected. Other than counting and collating the information, there is the theoretical framework which underpins the data. When you look at the 2009 demographics, from a theoretical perspective, those who research in that area, it was not making any sense. That is why even as we collect data, there must be an underpinning theoretical framework so that the data agrees with international frameworks of data collection.

As I conclude, I support my colleagues who have said that it is important that the exercise to be conducted in August is carried out in a very fair and transparent manner. As we speak,

because we represent people, there are many complaints about the way recruitment for enumerators has been done. If we start on the wrong footing, obviously, we will not get the good results at the end of the day.

I urge technical officers in charge of the activity, more so the population census, to make sure that we do not allow Kenyans to engage in side shows. In my village, if on the night of 25th August, I find that the person knocking on my door is somebody I have never seen, while I know that there are young men and women qualified to conduct the same activity, I can tell you for sure that is a side show. Why should you send a stranger to my house to ask me important questions while I know very well it could have been done by people from the village who are well known and who will even make it very easy? If my grandmother is visited by a neighbour's child, she will not ask why they are there at midnight because she knows her neighbour. So, I encourage those recruiting to make sure that we give young Kenyans the opportunity to serve as enumerators or supervisors and we will avoid side shows.

The other important thing is the issue to do with drought and farming because it allows the country to target its initiatives. As we collect the data, it is important we approve these amendments as soon as possible so that before we start collecting data in August, we have this framework which will make it smooth to implement the exercise.

With those remarks, I support the amendment Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Thank you, Member for Kitui Central. I am happy to hear that you lead a caucus I was a Member of in the last Parliament. I hope you will do very well. It was led by one, Hon. Dr. Musyoka, Member for Machakos County: Evidence-Informed Oversight and Decision-Making. This is what we are bound to do.

I now give this opportunity to the Member for Kipipiri. I know he is good in statistics.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill that seeks to align the existing Bill to the current reality not just in terms of constitutional matters but also with regard to what is actually happening now within the world of statistics and data collection. I wish to support what you and Dr. Makali have amplified, that is, evidence-based decision-making. If we want to make a proper decision, we need to obviously have the right data available to us. That way, we can make a decision based on evidence rather than throwing your finger in the air and assuming that you will get it right.

I have heard comments from some of the Members in terms of what this is. When I read the Bill, these are exactly the issues that the Bill is seeking to bring. If you look at the Fourth Schedule, for example, which is now a new thing, it brings in the fundamental principles of official statistics. It brings into place the issue of confidentiality, professionalism and the whole point of sharing data internationally, including how it is collected. The Bill is well crafted. I am very happy with it. Most important is the fact that we will now have a modern legal framework for data collection, storage and dissemination. We are now saying that all the data that is collected by the KNBS is confidential and cannot be used except for statistical purposes. It even criminalises use of that data, say, by legal enforcement agencies like the Kenya Revenue Authority in assessing you. Whatever data is collected can only be used for statistical purposes. The import of this is that Kenyans will now be freer with responses. They will be more forthright with the information that they give to the KNBS.

Previously, when those forms would be sent to people – this is done not only during the census – they would look at the questions and start wondering if it is information coming from the KRA through the KNBS and would then be misused. That has affected the response rates,

which have been traditionally very low. Obviously, with a low response rate, it also means that the quality and reliability of data collected gets comprised.

I am very happy that the introduction of professionalism, limiting the use of the data, and making the data confidential will now add to the confidence of the respondents which then has a knock-on effect on quality of data. I said earlier that I am happy this Bill seeks to align issues to the current reality. The amendment to the current Section 19 seeks to provide that responses could also be sent through electronic means. For any of you who have been collecting data of late, you know that when you circulate questionnaires to people to fill manually, the response rate is very poor. However, when you use *Google* forms or *SurveyMonkey* and such other electronic survey technics, you end up with a higher response rate because people using their computers or phones are able to respond immediately. Even the processing of that does not need to be re-entered because it is all integrated within an electronic environment. I see this helping the advancement of technology, given that so many people are now computer literate, especially the young who do not even want to touch books to read, let alone using pens to fill forms. I can now see better responses that will help the KNBS when we allow them to receive data through electronic means.

I do not want to belabour the point that has been made on the census. It is important that we get the data right. The 2009 results have always been under contention. It even led to skewed allocation of resources. You can see where the people are living, but they do not have money. That is the kind of disparity that we want to resolve even as we get data.

I truly support that local staff should be hired for the census, but even as we are agitating for that, we should never lose sight that by just going so local, you could also comprise on the data. We could have manipulation of data because people could well do some things knowing that there is no oversight from outside. Hence as I support the call for local staff to be employed so that they can be recognised, we should not lose sight of the fact that there could be risks such as data being compromised. You will need to introduce people from outside to enhance the reliability and credibility of the data that will be collected during census so that you do not end up with challenges in terms of people saying a neighbour came but did not give us the right thing. That independence is a fundamental principle of data gathering.

As much as you are saying that it is easier to open up to the neighbour, people might also be secretive. They do not want their neighbour to know what they have. The survey is much more than just counting people. The census will involve even the number of animals you have, sources of income and other things that people may not want to share with their neighbours. It is important that we balance some of these things; the pros and cons of using local staff vis-à-vis outsiders. We need to encourage that at least all the youth, who are competent but not necessarily in other employment, should be given first priority. That way, we will not end up with people who are already employed taking leave just to take up those census jobs. That is what the concerns seems to be when I talk to the youth of Kipipiri. I am sure it is the same across the country. So, let us give them an opportunity. Let us go out as political leaders and tell our people the need for the census. Let us help them understand and mobilise them to be prepared. Since we are going to be on recess, we will all contribute to ensure that every Kenyan is captured so that we can have a semblance of the data that we already have through the Huduma Namba. How does it correlate with what is in the census? That way, we will tell if, indeed, generally we are making some headway in terms of accuracy of statistics. When it comes to allocating resources, boundaries review, and future development plans, at least, we will base all that on a correct and accurate data set.

I wish to congratulate the Committee for having worked on this Bill. I hope we will all be available to support and pass it in the shortest time possible. We should then give the tools to KNBS to do its work in accordance with this updated legal framework.

I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): I give the chance to the representative of the people of Baringo South. I had seen him. He is consulting. Hon. Chachu Ganya, you are not the representative of the people of Baringo South. I had seen their Member consulting. It is the same for the Member for Mvita. I can see they are in consultation although they had requested to speak to this. Let me have the Member for Kisumu East.

Hon. Shakeel Shabbir (Kisumu East, Independent): Thank you, Hon. Temporary Deputy Speaker.

Statistics is one of the very key tools of development and resource allocation. The first census that we know about was the *Doomsday Book*, sometime over 1,000 years ago. Based upon that the then king decided how resources were to be allocated. Resources are allocated for equity and not equality. That is why we have marginalised areas that need to have more resources allocated to them. The issue is data. As they say, numbers do not lie, but cooked up numbers are the worst. They not only lie but also destroy. So, what is very important is the integrity of data, the integrity of the process, the integrity of the institution, the professionalism of the institution and the integrity of those who are collecting the data. It is very important.

We have seen the Cambridge Analytica and the false information, the false news, the false data that is going around. At this moment in time, we have people who are now being taken in as enumerators. They should be local. They should not be teachers. The youth are unemployed yet we are finding teachers with fulltime jobs taking on these things and getting paid. At this moment in time, the youths in Kisumu are going on strike because of the unscrupulous way in which the enumerators have been chosen. They are relatives of people. Unemployed youths and our university graduates have been left aside. They have been told “you are not going to get something if you do not talk to the Chief well.” Some lists have been put up already. My concern is the quality of the enumerators and the acceptability of that person who is going to come and count your household. Is he going to walk in? Is your wife there? Are your children there? If these guys have paid to be there, unfortunately, they are going to be trying to recover their money. I think that is the basic problem.

The KNBS is a very professional and dedicated institution. It is underfunded. It is led by a Director-General who, incidentally, is the president of the worldwide institution on statistics. So, this is a great man leading the institution. In fact, what is happening is that, as they are trying, this is already being sabotaged at the local level. I am speaking about Kisumu. I know others have already talked about it. Although we want to align to reality, we want to align to facts. We need to do this properly. Data collection and storage is very important. The trail is very important. I notice that Clause 11 of the Bill empowers the KNBS to apply electronic means of data collection. Electronic means requires that there will be no forms. There will be nothing. There is no trail. You know how some of these elections we have gone through have been, where information has not been remitted or transmitted because you have to transmit through a Local Area Network (LAN), through Safaricom or whatever else. Now you know that these people are going with these computers and there is no trail. How are you going to say we have 20,000 people in Nyalenda when they are only 8,000? Who is going to deal with these things? This is what we are saying.

As much as we say that electronic means should be there, we say “garbage in garbage out.” If there is electronic data, it must have a measure of control measurements and certain qualities. That is so that anomalies are checked if there is some electronic data which is keyed in and is not at par with the standards that have been set for that. There are so many women and men in Nyalenda, which is one of my wards. If you go and put very little or very much, the data should say “hold on. This is not acceptable because it does not fall within the parameters.” Then, that means somebody else must look at it.

I was very honoured to go to Malawi as a Member of the Departmental Committee on Finance and National Planning. They spent some money and took us to Malawi. They showed us this electronic data system. That is where the questions turned up. Malawi is having a few problems. It has less than 20 million people. One thing we found out is that it costs Malawi USD1.64 per person for the census. Then we asked our Kenyan brothers how much they have put in. One of my brothers, *Mheshimiwa* Makali Mulu, brought this up. They have put up USD6.49 per person in Kenya. Multiply that by 52 million people. Where is the difference? The situation is the same. Electronic data is the same. It is the same people. Whether our geographical distances vary or not and you are choosing enumerators from the area, the information should not be so different that you change it from USD1.64 to USD6.49 per person. When they came to us for their budget, in the Departmental Committee on Finance and National Planning, we looked at it and they trimmed it down to around USD4. But, still, they have already spent the money. They have already bought these computers which we do not know where they are coming from. In Malawi, they have used computers from Zimbabwe and other people in the United Nations. We are buying computers here.

They have not shown us how they are going to collect the electronic data. I think this is going to be a major problem. I do not say that they should not be collecting it electronically. I am saying I do not want to be a doomsayer. I think this is where we are going to have false data. We are going to have a situation that even if you do it every five years, we are not going to be able to accept this information that they have put together. It will not be because they have done a wrong thing but because the systems they have used are not properly proved and not properly set out within the requirements. So, what we would like to do is that they can follow through paper data if it was there. Somebody is going to tell me “the server is sitting in France.” Is the server going to be sitting in France when we are questioning the data and how it is recovered? I do not think so. Much as we agree that it should be done, I am saying that we talked to the Director-General and his people. They asked us not to wash our dirty linen in Malawi. We did not, but I put it to them that you promised us that enumerators would be local people yet you have given this to chiefs and other people. We are going to have problems. We are striking in Kisumu on Friday, tomorrow. We are going to strike and throw these people out. That is what we are going to do.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, I have nine requests from Members who want to speak to this Bill. I am sure if we avoid repetition and are considerate of other Members, we can all speak to it.

Member for Funyula, Hon. Oundo Ojiambo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute on this Bill.

(Hon. Josphat Kabeabea raised his hand)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order. Before you proceed, there is this Member. I do not know what he is doing. We do not do that. Let me hear from the Member for Tigania West. Are you on intervention? You do not use your hand to express yourself.

Hon. Josphat Kabeabea (Tigania West, PNU): Hon. Temporary Deputy Speaker, you have skipped our side and given our chance to the other side.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Just say that again.

Hon. Josphat Kabeabea (Tigania West, PNU): You have given two people from the other side opportunity without giving anybody from this other side.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Tigania West, this is a free-seating House. You are informed. You can sit anywhere. Again, that is not the procedure that the Chair would follow; of picking from this side and the other side. Such provision does not appear in our Standing Orders. You have just walked in; you may not get a chance now. There are Members who came earlier and they want to contribute. You do not need to check which side to sit on so that you can catch the Speaker's eye. I can tell you that you will still get a chance. You are the second last. A Member like Hon. Chachu Ganya should be the one talking because he is the next one in the request list.

Carry on.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker. Dr. Mutunga is my friend. So, if I am given a chance, he has as well gotten a chance. This is an opportune time for amending the Statistics Act, which has been with us for many years. It is also time for us to align the Act with the new constitutional dispensation and with the best practices.

The issue of statistics goes to the core of human welfare and to the core of a sophisticated and advanced society. We use data, which are eventually translated into statistics, to make far-reaching decisions, including critical decisions that affect lives of people in a more profound manner than anything else. It is therefore important that our statistical data set should be beyond reproach, as they say, like Caesar's wife. I never saw her. So, I believe what they said is true.

One of the fundamental issues that underpin the confidence of statistical data is the integrity of the process. The integrity of the process is achieved by the way we conceptualise the problem and the need to collect data, the way we frame up data collection tools and most critically and importantly, the people charged with the responsibility of collecting the data. As an example, we are going to have the National Housing and Population Census that we hold after every 10 years. Many of us in Kenya know that the 1999 Census had issues. So was the one for 2009 in respect of seemingly exaggerated figures from some parts of the country. I just hope that this year, KNBS will preside over a process that will achieve what is correctly true.

As we have always said, you can always do anything with data, including manipulating it, and making any conclusion you wish. In academic research, we have the principle of replicability such that if somebody collected data to respond to the same problem they should come up with more or less the same conclusion. When many of us quote data from KNBS, there has always been the question: Is the data correct? This is because there has been a question of credibility and how the process is done. Many Kenyans are reluctant to offer details because they fear those details will essentially end up in the wrong hands, either to help in prosecution or malicious use of data information. That is why I am happy that the proposed Bill has literally criminalised and made it impossible for an investigator or anybody else to use that data for purposes of investigation and prosecution. We suppose that approach will allow a higher

response rate than has been the case in many researches I have, fortunately, had a chance to supervise and review.

My colleagues have raised concerns about the recruitment of enumerators, supervisors and ICT people. I hope the management of KNBS is listening to the cries and comments of the people of Kenya so that before it is too late, they must rectify and attend to that issue. We have very many young people who are highly educated, but unemployed. I would vouch for them to be given jobs. Those who have jobs, it is only kind and fair that you relinquish those jobs you might have been given to allow the young people undertake those jobs. Most importantly, those who are given the opportunity need to have a sense of patriotism and provide the correct information inculcated in them.

Going through the Bill before us, there are some issues that might have to be revisited during the Committee of the whole House for purposes of amendments. If you look at Clause 3, it provides that in the event there is any doubt about the veracity or accuracy of the data, with the approval of the Cabinet and upon gazettelement by the Cabinet Secretary, the Director-General can repeat such census and surveys. The danger we have in this particular case is serious. We are simply saying that the Cabinet, the Cabinet Secretary and KNBS, however much they say they are independent – and they have a strong board – can actually be pressurised to repeat the exercise in a section or particular geographical area in the event that some political stakeholders are dissatisfied with the results. This provision is mischievous, and there is a very high chance of it being misused. I would urge Members that when we get to the Committee of the whole House, we ventilate on these issues comprehensively and clearly.

There are two fundamental issues that need to be looked at: the qualifications of the Director-General, and the Corporation Secretary. If you look at the Bill as presented before us, the Corporation Secretary is expected to have higher academic qualifications than the Director-General. For example, the Bill provides that the Corporation Secretary shall hold a postgraduate degree in law from a recognised university, while the Director-General is merely required to hold a degree in statistics, economics, demography or mathematics. Generally, in terms of the law of pecking order, the Corporation Secretary ought not to have superior academic qualifications than the Director-General. So, we will have to make a choice to lower the qualifications of the Corporation Secretary or we enhance the qualifications of the Director-General.

Hon. Temporary Deputy Speaker, Clause 13 of the Bill has a dangerous provision that the Director General may, with the approval of the board, cause any official statistical data collected, analysed and disseminated by the bureau to be cancelled, revised or adjusted after ascertaining the data is not accurate. This cannot be allowed to pass. We are simply sanctioning incompetence. We are simply sanctioning poor planning and there is a hidden hand here. If you release data that I am not happy with and I can marshal pressure from elsewhere, we will cause the data to be cancelled, recalled or revised. What if that data has already been quoted elsewhere and decisions made? What if it has already been quoted and used in a thesis where somebody has been awarded a degree? By recalling and cancelling that data, does it mean that you are recalling and cancelling the degree completely?

Hon. Temporary Deputy Speaker, as I conclude, I must commend the Senate for the Fourth Schedule which has laid down the principles of official statistics, that is commendable. In the First Schedule that has been amended, we need to do further amendments because there are very many issues that need to be addressed where official statistics are needed instead of relying on half-baked research papers.

Finally, I urge all people of Busia County, because it is even written in the Bible that Joseph and Mary went back to their home area to be counted, during the census on 24th August, let everybody go back to their counties to be counted for purposes of equitable allocation of resources under the county government and the National Government Development Constituencies Fund, whichever approach we will take.

Hon. Temporary Deputy Speaker, I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The people of Busia should remember Joseph and Mary. Before the Member for North Horr, there was a request by Hon. Millie Odhiambo and I am aware she does not have a card.

Kindly, use the Dispatch Box.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Am I audible? Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. Before I proceed, may I also take this opportunity to send my message of condolence to the families of Hon. Ken Okoth and Hon. Joyce Laboso. The two were my very good friends. I have been away and that is why I am doing that now, but they were two very amazing leaders. I will not go beyond that, may their souls rest in eternal peace.

I support and will not say much so that I can give others a chance as I had only one issue. I agree with Members that we need statistics for purposes of planning. I also agree that we need integrity. As a country we have been confronted with this issue before when our census was not presented because there were issues of integrity. The public thought that there were inflated figures. It is very important that there is a lot of integrity when we are dealing with statistics.

If look at this Bill it seeks to refine the Statistics Act. That is why it has a provision for the company secretary and their role but I only have two issues of concern. First, I would have hoped that we create a linkage with technology in a fast-paced world. I would have wanted to see the greater role that technology would play because it not only shortens the amount of time that we use, but it also helps in very many ways. I have an example, even though that is not an issue of statistics, but data is statistics. The USA has a system of crime investigation which is the Combined DNA Index System (CODIS). So, long as you have been in the system and they take information about you, they can use that in future and it helps in dealing with crime. That is why I am concerned about the proposed amendment to Section 26 that introduces sections of activities that are outlawed.

Clause 15 says:

“Section 26 of the Principal Act is amended-

(a) by inserting the following new paragraphs immediately after paragraph (g)-

(ga) redistributes or sells material of the bureau without written authority from the Director-General.”

I have no problem with that. It continues by saying “uses data from the bureau for investigation of specific individuals or organisations or for any other purpose other than statistical purposes”. I have a problem with that because I will give an example. When I worked at the Cradle, even though we were not official statistics collecting agencies, the statistics that we picked were based on the cases that were coming to the organisation, which would inform us where crime was prevalent and what kind of person is likely to commit crimes. The way this is phrased, it means that once you get that statistics, you can do nothing about it.

Hon. Temporary Deputy Speaker, I would be happy if we say that these statistics can be indicative so that you do not stop people altogether from undertaking any action where the statistics tells you there is a problem somewhere that could even be criminal in nature. The way

we are putting it here means that we cannot investigate where there is a problem. So, I would be happy if we redefined it and say that the statistics could be indicative and that could be a reason for taking further action. Right now what is provided seems that even though I agree that we should not use it to investigate individuals, but we should frame it such that you can use the statistics to do further investigations. If there is a problem somewhere, then you cannot leave it because we are outlawing it. So, I urge the Chair of the Committee to relook at that so that you rephrase it in a manner that does not outlaw for instance when statistics tell you there is a problem of misallocation of resources or anything of a criminal nature.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. You are a long serving Member of the House. I direct that next time you carry your card so that we can show the rest good manners and etiquette of the House.

Let us have the Hon. Member for North Horr. Hon. Members, I have eight requests for this. Hon. Odhiambo, thank you for the example of spending little time. Hon. Chachu, you can use the microphone next to the Member for Tigania West.

Member for Tigania West, when you go to the intervention button, do not remove your card from the request button. When you seek intervention - this is for all Members - you just press the button for intervention so that your name keeps reflecting because the last time you did that your name became second last and I noted it.

Hon. Member for North Horr, please proceed.

Hon. Chachu Ganya (North Horr, FAP): Thank you, Hon. Temporary Deputy Speaker. I join my colleagues in supporting the Statistics (Amendment) Bill, 2019. The objective of this amendment is to align the parent Act with the Constitution. It will ensure terminologies and concepts that are used in the Constitution are also obtained within this Bill.

Accurate national statistics is critical in policy formulation, planning and budgeting. It is important in monitoring and evaluation of programmes for this country. National planning based on accurate statistics will ensure equity and fairness in resource allocation and distribution. It is for this reason that integrity of statistical data is imperative. As we conduct this census, we must ensure integrity of this data. Correct and accurate information must be collected. Our enumerators should be up to the task and should record the correct information. Those who give false information and those who record false data for some deliberate reasons must be penalised and this law must ensure this happens.

In this Amendment Bill, Clause 13 is very critical to me, where the professional independence of the KNBS is assured. It is very important that their independence is guaranteed. The bureau must have the final word on statistical data and information in this country. It must have the power to cancel, review, adjust and if necessary, revise any statistical information that is obtained.

In the last census, 10 years ago, we had serious problems in this country. Since this bureau did not have those powers, those decisions were made elsewhere. Of essence to me is Clause 4 of this Amendment Bill whereby the relevant Cabinet Secretary is given the powers to extend the census period to take care of any unforeseen circumstances during the duration.

As we are speaking right now, in the whole of northern Kenya, we are undergoing a serious drought. This is a disaster in the making and as a result our people have crossed to neighbouring countries or gone to far-flung regions in many remote corners of our constituencies which cannot be accessed due to lack of roads. Under such circumstances this amendment ensures that the Cabinet Secretary has powers to make the necessary adjustments where deemed

fit. This was not there before and we hope this time round the Cabinet Secretary will ensure he uses his or her powers to ensure that all Kenyans are enumerated.

As I conclude so that I give my colleagues a chance, I want to urge that the census being undertaken on 24th of this month in those sparsely populated constituencies like mine and many others in northern Kenya are given serious consideration. Resources need to be allocated to these areas so that the census is effectively undertaken. There is need for vehicles and motorcycles to be hired in large numbers for the elders to be paid to guide the enumerators to where our people are. Security is of essence because just last night I lost five people due to insecurity in my constituency North Horr. For that reason and many other reasons, security must be given to the enumerators especially those who will be in volatile areas.

All Kenyans whether they live in Nairobi which is densely populated or sparsely populated constituencies like mine, North Horr in northern Kenya, have a right to be enumerated. We will be allocating resources and making decisions for this nation based on this statistical information. For that reason, it is imperative that all Kenyans are enumerated. I hope the concerned officials in the KNBS will be up to the task.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Hon. Members if time allows, I want to give to the Member for Kaiti, followed by the Member for Tigania West, Member for Lagdera, Hon. Mohammed Hire, the Member for Bumula and the Member for Gatanga in that order. The Member for Kaiti, you have the Floor.

Hon. Joshua Kivinda (Kaiti, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to support this important Bill. I will use two minutes so that I can give my colleagues a chance. Data is very important, as my colleagues have said, for the Government to plan resource allocation. As you know, in the upcoming census there have been a lot of complaints from the people of Kaiti concerning the hiring of enumerators. It is very funny to see people who are earning salaries being given the opportunities and yet we have youths who are graduates from universities lying idle. This is something which needs to be looked at. We have to be serious as Kenyans because we promise our youth opportunities and jobs. This is one way of creating jobs.

About the census exercise which is coming, data should be private and confidential. We do not need to use the data for political realignments. On 24th and 25th August, the Government needs to give strict orders to private companies so that they can give their workers a chance to participate in the exercise.

Finally, I urge all my colleagues and all the leaders in this country to support the exercise because we need a smooth-running exercise. On security, we need the Government to be vigilant so that we can have a good exercise.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have the Member for Tigania West.

Hon. John Mutunga (Tigania West, JP): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to contribute to the Statistics (Amendment) Bill (National Assembly Bill No. 37 of 2019). The process of counting people or demographic precision is very important for this country for purposes of planning. It is important for us to realise that we need to have a very comprehensive process where questionnaires can capture a lot of data that can be used for long-term planning. I believe that is why it is done every 10 years. This is a very costly exercise.

Census is the most costly type of research one can do. It collects information that can be very useful for a very long time. I believe 10 years is worth the investment.

It is important for us to have precise information for planning because they say if you fail to plan, you plan to fail. If you plan using the wrong data, then you have a problem. Murphy's Law states that nothing is as easy as it looks and everything seems to take longer than it should. If anything can go wrong, it will at the worst possible moment. If we use the wrong data, then we shall get the wrong figures. If we do not plan this exercise very well, then we might not get there and, therefore, we might not get the correct report. So, credibility of the data is very important. The Bill is very precise.

The results of 2009 had a problem; they were questioned. It is important for us to put in place better plans this time round so that we do not misuse resources. We need to triangulate this data. We cannot rely on census alone because census is about triangulation. I can see clear sources of information. Of course, one of them is the Huduma Namba. We have collected quite a bit of data which can be used, including the data and information that is collected from our civil registries. I believe every child who is born, or anybody who dies in this country is registered and that data can be corroborated so that we know exactly whether the number of people counted through the census is precise or not and whether the process itself is credible.

I would like to say the information we get from the KNBS for research or other purposes is sometimes doubtful. We, therefore, need to corroborate information from all centres so that we can have better information for research and other purposes.

I support the Bill.

Next is the Member for Lagdera.

Hon. Mohamed Hire (Lagdera, KANU): Thank you, Hon. Temporary Deputy Speaker.

(Hon. Mohamed Hire crossed the Floor without bowing)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The microphones are not working. Come to the Dispatch Box. Order Member for Lagdera. You must do the right thing. Go back and bow. I will add you one more minute. As much as you want to contribute to this Bill, you must follow the rules. Do not cross the Floor without bowing.

(Hon. Mohamed Hire went to the Bar and bowed)

You were out of order, but you are in order now. Please, do not repeat that.

Hon. Mohamed Hire (Lagdera, KANU): I thank you, Hon. Temporary Deputy Speaker. Due to the constraint of time, I forgot some of the House procedures.

Thank you for your guidance. I also want to contribute to the Statistics (Amendment) Bill. The amendments in this Bill are very critical, especially at this time when we have the mammoth exercise of census. It is generally a very important exercise in every country because it gauges the planning process. It will give us housing data, income data and population density. All these parameters are important in making an informed economic decision when you are allocating resources.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Thank you, Member for Lagdera. This House is governed by procedures. You will have eight minutes to contribute to the Statistics (Amendment) Bill (National Assembly Bill No. 37 of 2019) in the next Sitting. So, get ready because you will have the first priority to contribute.

Order Members. Allow me to appreciate the Members who were ready to contribute to this Bill like the Member for Bumula, Hon. Mabongah Mwambu and the Member for Gatanga, Hon. Ngugi Nduati.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Because this House is governed by procedures and our Standing Orders, Hon. Members, the time being 7.02 p.m., the House stands adjourned until Tuesday, 6th August 2019, at 2.30 p.m. I thank you all.

The House rose at 7.02 p.m.