

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 2<sup>nd</sup> October, 2013

*The Senate met at the Kenyatta International  
Conference Centre 2.30 p.m.*

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

### PRAYERS

#### QUORUM CALL AT COMMENCEMENT OF SITTING

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, we have a quorum. So, we shall proceed with the orders of the day.

### COMMUNICATION FROM THE CHAIR

#### PROPOSALS ON REVIEW OF SENATE STANDING ORDERS

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, I have a short Communication to make.

As you are aware, the sub-committee on the review of the Standing Orders has been considering the Senate Standing Orders with a view to proposing amendments to the Standing Orders. The sub-committee will shortly be presenting its final report to the Rules and Business Committee following which, pursuant to Standing Order No.244, the Rules and Business Committee shall table its report in the Senate.

Hon. Senators, the sub-committee has received a number of proposals from Senators which have all been considered by the sub-committee. Hon. Senators who wish to make any further proposals are requested to present the proposals to the office of the Clerk on or before Friday, 11<sup>th</sup> October, 2013, so that these may be considered by the sub-committee before it concludes its report.

Thank you.

### NOTICE OF MOTION

#### CONTROL AND ECONOMIC EXPLOITATION OF THE “MATHENGE” TREE SPECIES

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**Sen. Mositet:** Mr. Deputy Speaker, Sir, on behalf of my colleague, Sen. John Munyes, the Senator for Turkana County, I beg to give notice of the following Motion which is directed to the Department of Environment, Water and Natural Resources:-

THAT, aware that a tree species *Prosopis juliflora* and *Prosopis chilensis*, locally known as “*Mathenge*” was introduced by foreign researchers to fight desertification in arid and semi-arid areas of northern Kenya; noting with concern that the spread of the species has now turned into an environmental hazard destroying grazing lands and pasture; recognizing that it also affects fishing grounds and water installations thus creating food insecurity and poverty in a majority of counties in arid and semi-arid areas of the country; the Senate urges the relevant government agencies both at the national and county levels to effectively control the spread of this tree species and also create economic benefits from the exploitation of this product.

## STATEMENT

### REVENUE ALLOCATION TO COUNTIES

**Sen. Mositet:** Mr. Deputy Speaker, Sir, I rise to make a statement concerning a question which had been raised by the Senator for Marsabit County, Sen. Hargura. He wanted to know the total allocation for all the 47 counties for the last 20 years.

Mr. Deputy Speaker, Sir, a Statement on this issue was presented to the House. However, the Senate was not satisfied. To that effect, we requested the Ministry of National Treasury to respond to the issues raised. They indicated that the period of 20 years is a long time and a lot of things have happened. Within that time, some ministries have been merged while others have been scrapped. That means that the AIE holders are different. The Ministry officials said they require a lot of time to compile this information. They requested our Committee for an extension of time, say, three months, to compile the report.

**The Deputy Speaker** (Sen. Kembi-Gitura): Is Sen. Hargura here?

**Hon. Senators:** Yes.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Hargura, since you sought the Statement, you have heard from Sen. Mositet that officials in the Ministry of National Treasury are asking for an extension of three months. Do you have any problem with that?

**Sen. Hargura:** Mr. Deputy Speaker, Sir, three months is a long time.

**The Deputy Speaker** (Sen. Kembi-Gitura): But you have waited for it for quite some time now, have you not?

**Hargura:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): You also understand the reasons that Sen. Mositet is asking for that extension. Are you willing to indulge him for the next three months to come up with a comprehensive statement? Since this issue is now the property of the House and considering the reasons he has given, it is important that we

grant him the time that he requires so that we get a comprehensive statement on this matter.

Sen. Hargura, I request that you agree to that request so that we are able to move forward.

**Sen. Hargura:** Two months, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Mositet, is two months enough?

**Sen. Mositet:** Mr. Deputy Speaker, Sir, the beauty of this matter is that Sen. Hargura has been a civil servant. So, when we talk about allocation to all Ministries in each county for a span of 20 years---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Mositet, let us strike a balance here. Sen. Hargura has waited for quite some time for this Statement. In fact, this is not just an issue that concerns him alone, but the whole House.

Sen. Hargura, let us agree on having the Statement after three months. I do not think that we shall lose much by waiting for that period.

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

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

Next Order.

## BILL

### *First Reading*

#### THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2013

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

## MOTIONS

#### CONNECTION OF ALL COUNTY HEADQUARTERS TO THE NATIONAL FIBRE OPTIC NETWORK

THAT, considering the need for Implementation of an Integrated Financial Management Information System (IFMIS) as required by the law; noting that most counties are not linked to the National Optic Fibre Broadband Infrastructure (NOFBI) ; aware that the rolling out of e-government will be hindered by lack of such infrastructure; recognizing the principles of good governance, integrity, transparency and accountability set out in the Constitution and the need for public participation and access to information; further recognizing that investment in ICT creates opportunities for youth employment; the Senate calls on the National Government, to connect all county headquarters to the Fibre Optic National Network and to link all county headquarters to

relevant national institutions such as the Senate and the Treasury through video conferencing capability to save unnecessary expenses, enhance efficiency and accountability and improve the performance of county governments.

*(Sen. Kagwe on 25.9.2013 – Morning Sitting)*

*(Resumption of Debate interrupted on 25.9.2013 – Morning Sitting)*

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Yes, Sen. Kagwe.

**Sen. Kagwe:** Mr. Deputy Speaker, Sir, I rise on a point of order to seek your indulgence. The Motion that is currently supposed to go to a Division is one that involves matters of counties. Given that hon. Senators are still trickling in, I seek your indulgence, in accordance with Standing Order No.51(3), to postpone the Division on this Motion to a later date.

Indeed, I would like to seek the same indulgence for the other Motions that are supposed to be voted on now. There are about three Motions on the Order Paper. The same case will apply to all of them. If you indulge us on this, maybe, in the course of the day, we could proceed with the voting if we get the numbers.

**The Deputy Speaker** (Sen. Kembi-Gitura): Are you asking for this under Standing Order No.51(3) to move voting to the next day or later today?

**Sen. Kagwe:** Mr. Deputy Speaker, Sir, yes, in accordance to Standing Order No.51(3).

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Kagwe, there are two issues here. First, you have made an application for your Motion. I do not think you can speak for the other Senators. I do not believe you have consulted them. Maybe, they want their Motions to move to the next stage. Shall we finish with yours?

**Sen. Kagwe:** Yes, Mr. Deputy Speaker.

**The Deputy Speaker** (Sen. Kembi-Gitura): It is directed that voting on Sen. Kagwe's Motion proceed for voting tomorrow 4<sup>th</sup> October, 2013 during the afternoon session.

**Sen. Kagwe:** Thank you, Mr. Deputy Speaker.

**The Deputy Speaker** (Sen. Kembi-Gitura): We have to dispense with each agenda item on its own. So, I have finished with yours.

*(Putting of the Question on the Motion deferred)*

ADOPTION OF REPORT ON COUNTY GOVERNMENT  
CASH DISBURSEMENT SCHEDULE FOR  
FISCAL YEAR 2013/2014

THAT, pursuant to the provisions of Section 17 (7) of the Public Finance Management Act, the Senate adopts the report of the Standing

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Committee on Finance, Commerce and Economic Affairs on the County Government Cash Disbursement Schedule for Fiscal Year 2013/2014.

*(Sen. Kagwe, on behalf of Sen. Billow, on 24.9.2013)*

*(Resumption of Debate interrupted on  
25.9.2013 – Afternoon Sitting)*

**Sen. Mositet:** Mr. Deputy Speaker, Sir, I also rise on a point of order requesting that at your discretion, you use Standing Order No.51(3) to defer putting of Question on this Motion because it affects all counties. This is a very important Motion which will be used in the process of disbursing monies to the counties. Therefore, I request that you defer putting of the question to tomorrow.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Mositet, voting will be done tomorrow afternoon also.

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

*(Putting of the Question on the Motion deferred)*

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

#### TRANSFER OF ALL KERRA FUNCTIONS TO COUNTY GOVERNMENTS

THAT, aware that Schedule Four to the Constitution assigns the responsibility of construction and operation of national trunk roads to the national Government and that county transport including county roads are the responsibility of the county governments; acknowledging that the Kenya Rural Roads Authority (KeRRA) is mandated, under the Kenya Roads Act, 2007, to administer funds for the development, rehabilitation and maintenance of roads in constituencies which are roads within counties and which fall under Class D category and below; cognizant of the fact that there are already established KeRRA structures in each of Kenya's 47 counties; the Senate urges the national Government to transfer all the functions of KeRRA to the county governments in order to ensure faster and more efficient delivery of services.

*(Sen. Mositet on 26.9.2013)*

*(Resumption of Debate interrupted on 1.10.2013)*

**Sen. Mositet:** Mr. Deputy Speaker, Sir, this is also a Motion that concerns counties.

**The Deputy Speaker** (Sen. Kembi-Gitura): To be considered under Standing Order No.51(3) also?

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

**The Deputy Speaker** (Sen. Kembi-Gitura): It is so directed.

**Sen. Mositet:** Thank you.

*(Putting of the Question on the Motion deferred)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, all the three Motions will be voted on Division tomorrow afternoon.

Hon. Senators, before we proceed to the next Motion listed as Order No.12, I just want you to note that on the Order Paper, this is written as resumption of debate. That is because we were supposed to debate this Motion in the morning. However, we did not have a quorum in the morning. So, we are now going to debate it, starting now. The Motion has not even been moved.

Sen. Mositet, I believe you are the one to move this Motion.

ADOPTION OF REPORT ON IRREGULAR ALTERATION  
OF BUDGET ESTIMATES FOR TURKANA COUNTY  
FOR FISCAL YEAR 2013/14

**Sen. Mositet:** Mr. Deputy Speaker, Sir, I rise to move the following Motion:-

THAT, the Senate adopts the report of the Standing Committee on Finance, Commerce and Economic Affairs on the investigations carried out by the Controller of Budget on the irregular alteration to the Budget Estimates for Turkana County for Fiscal Year 2013/14.

Mr. Deputy Speaker, Sir, the Speaker of Turkana County Assembly wrote to the Controller of Budget and the Senate regarding the budget estimates which they had passed and forwarded to the Controller of the Budget. The Senate, through my Committee, wrote to the Controller of Budget requesting for a thorough investigation to be done on this matter. The office of the Controller of Budget interviewed a number of people in Turkana County. That is the governor and the county executive officers. They also interviewed the county assembly members. Out of that exercise, they came up with a report. This is the report before this House.

Mr. Deputy Speaker, Sir, quite a number of things were noted. What was forwarded to the Controller of Budget is a budget which had not been passed by the county assembly. There was a huge variation. By the time they did this, the executive seemed not to have known that if they were to alter anything the assembly had passed, they were supposed to take the budget back to the assembly. There was an understated amount of about Kshs30,165,875 compared to what the county assembly had passed.

Mr. Deputy Speaker, Sir, quite a number of issues arose after the office of the Controller of Budget went through the budget. They found out that what caused this is as follows:

(1) The capacity of the executive at the county level was low. They did not even know what they were supposed to do. As a result of this, it was noted that they need to build their capacity. As per the tables indicated, a number of the figures that were understated were affecting the county. The county assembly and the county executive seem not to have been operating well together. There has been a rift. The conclusion of this by the Office of the Controller of Budget is that some harmonization is required.

(2) The second is on the records management system. It seems that records at the Turkana County Assembly are handled manually. As a result of this, putting records together has been a major problem.

(3) It was also noted that the infrastructure required to run the Integrated Financial Management Information System (IFMIS) is not there. This is an issue that needs to be addressed fast, so that the system can be used to track records of the operations and disbursement of funds in the county.

Mr. Deputy Speaker, Sir, the Office of the Controller of Budget recommended a further investigation to ascertain those who were involved. They want to know if these people knew what they were doing.

Mr. Deputy Speaker, Sir, this report is pointing out a major issue that all counties in our country need be checked. The Senate has the mandate to make sure that we know what counties are up to. We need to scrutinize budgets of counties. We do not want to run into problems at the start. Considering the Public Finance Management (PFM) Act we are having, it is clear that, as the Office of the Controller of Budget noted, capacity could be lacking in the counties. It is important that the capacity at the county executive is built, so that when they are doing procurement, for example, they will not start messing up. We are told that our PFM Act is a borrowed one from the one used in Nigeria and South Africa. When the first implementation of the Act was done in those countries, quite a number of governors were jailed because of malpractices.

Mr. Governor----

*(Laughter)*

Mr. Deputy Speaker, Sir, I am sorry for that.

We also noted that from the way the County of Turkana was operating, the governor and his executive team seem as if they did not know that they are supposed to be over-sighted by the county assembly. It is important for Senators to ensure that, at the county level, county assemblies operate independently. Their role is also to make sure that they know what the county executive does. The executive should understand that they cannot come up with special votes which had not been passed through the county assembly.

Mr. Deputy Speaker, Sir, as a result of such important issues which were noted by the Office of the Controller of Budget, I call upon this Senate to see to it that we do not allow counties to fail. We should not wait and laugh at them. We should not allow this to get to the point of investigations. We need to ensure that processes are running properly in the counties. Even in areas where there is no harmony between the executive and the county assemblies, it is upon the Senate to make sure that the county assemblies and

executives understand their roles respectively. We need to emphasize to them that they are supposed to work in harmony.

Mr. Deputy Speaker, Sir, with those few remarks, I beg to move and call upon Sen. (Prof.) Anyang'-Nyong'o to second the Motion.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I beg to second this Motion. I will be very brief since Sen. Kagwe is anxious to contribute.

First, it is good to note that the Controller of Budget is doing the work she should be doing, that is, controlling budgets. In this instance it was a fact that figures were altered and the Controller of Budget caught this on time and brought it to the attention of the relevant parties, made corrections and discussed the issue with the Senate Committee on Finance, Commerce and Economic Affairs. We both agreed on the solution to the problem in the interest of both the executive of Turkana County and the county assembly. As my colleague has said, that is the first thing that is important to underscore; that mistakes can occur and when they do, the blame game should not be carried to its absurdity, but a solution should be looked for through the relevant institutions. In this particular case, it is the Controller of Budget.

The second thing that is important to note is that the knowledge of the budget-making system and the process involved in arriving at budgets is extremely vital. This applies to both the executive and the legislature at the national and county levels. There is nothing more important than money and resources in ensuring that devolution works. If the institutions responsible for raising the money and the resources, that is the legislature and two, using that money to implement the programmes, that is the executive - if both do not understand the system of budget-making and the processes involved, then we can be in a lot of problems.

I must congratulate Turkana County, along with other counties, which, although time was very short in this past budget, they managed to, at least, produce budgets. They also made sure that they followed the process, notwithstanding the fact that they were not as properly prepared as they should have been. Even after making mistakes, they were prepared to listen to the corrections that were brought forth.

Mr. Deputy Speaker, Sir, there is this animal called IFMIS. There is nobody more versed in the intricacies of IFMIS than Sen. Kagwe. When it comes to things that involve fibre optics and information flowing through veins and arteries, he apparently has specialized in this mystery. Nonetheless, IFMIS is extremely important in that it is what you might call the computer connectivity, in simple language, among and between various financial managers and institutions of Government. If county governments and assemblies are not IFMIS connected or IFMIS initiated, then problems occur. We, in the Committee on Finance, Commerce and Economic Affairs have had discussions with the Cabinet Secretary, Ministry of National Treasury, Mr. Henry Rotich and his team and the Controller of Budget as well as the Auditor and Controller General. We are all in agreement that no matter how under developed a county is, for example, Tana River County, all counties must, without any exception, be connected to the Treasury and other financial institutions using IFMIS.

Some of the bureaucrats in Government have been made to believe that this connectivity can only occur with donor support. If we do this, we shall delay the process.

As we pointed it out to them yesterday, this is not rocket science. The 65,000 kilometres that Sen. Kagwe always points out that are necessary to be laid out for fibre optic to make things like IFMIS work should be fast-tracked, so that Turkana County does not suffer problems of communication just because of lack of connectivity through IFMIS.

Finally, Mr. Deputy Speaker, Sir, since all of us are on a learning curve regarding financial systems and budgeting in the counties, we in the Senate, the county assemblies and the county executives, it is high time that the Senate Committee on Finance, Commerce and Economic Affairs meets with the executive committee members in charge of finance in the counties as well as the chairpersons of finance committees in the county assemblies. We can sit together and go through issues of budgeting and other financial matters that we shall be handling between now and the next five years. We should do this very soon. This will ensure that subsequent budgeting initiatives do not run into the kind of problems that Turkana County ran into.

In any case, we need to have one mind or be on the same level of knowledge about this if we are to work constructively together. I keep on saying this that the Constitution of Kenya is in itself contradictory. In the earlier part of the Constitution, we, as an institution called Senate, are given the responsibility of defending, promoting and looking after counties in a very high sounding Article. Subsequently, when it comes to money issues, the Senate suddenly disappears and plays second fiddle to the National Assembly. If, indeed, we will defend, promote and look after counties, the most important instrument of promoting counties is money. When it comes to supporting counties, this Senate should be in the forefront of handling such responsibilities.

So, as it were, although the referendum has for the time being, been put in the cooler, this question will keep on revisiting us. It will of necessity again, through the demands and requirements of the Constitution, be put to a referendum so that the people of Kenya can make a sane and sound decision on the role of this Senate in the running and implementation of devolution and county governance in our nation.

I beg to second.

*(Question proposed)*

**The Deputy Speaker** (Sen. Kembi-Gitura): We will proceed under Standing Order No.98 (4). This is an open-ended debate. Everyone willing to contribute has 30 minutes and can utilise all of it, if they so wish.

**Sen. Kagwe:** Thank you, Mr. Deputy Speaker, Sir. I will utilise only three minutes. I rise to support the Motion in terms of the recommendations of the Committee which I happen to be a member. In doing so, I also wish to highlight that the recommendations made by the Controller of Budget, including investigating the Turkana Executive branch, and possibly pitting it to its ultimate conclusion, I seek the indulgence of the House, in the context that has been established by the previous speakers on this matter. The capacity of the Turkana County Government in terms of building this budget and the knowledge, thereof of the procedures as they run and stand, are highly questionable. Therefore, whereas we know in law that ignorance is no defence, we are starting something new. It is important for us to keep that in mind.

It is not just the Turkana County Government that is wrong as we speak. Yesterday, the mandate of the Treasury, given by the Transition Authority to collect money on behalf of the county governments, particularly revenue at the county level, expired. As I speak, the Treasury is collecting money from the county level illegally. This is not how the Public Finance Management Act is designed. However, owing to the transition and the fact that if Treasury stopped collecting the money everything would go chaotic – counties do not have the capacity to do so – that is why we have situations where yes, the Constitution is there. Yes, the law is there, but people are not acting illegally because they want to do so. They are doing so because acting legally in these circumstances would be a bigger ass than the law. We are urging and hoping that the Controller of Budget will be very reasonable about this and, indeed, do a few things, including clarifying the mandate of the county governments in certain areas.

We formally raised the matter of the construction of classrooms at the county level in our meeting with the Controller of Budget. As Senators are aware, the education sector has not been devolved to the county level, except for the Early Childhood Education (ECD). Yet at the county level, classrooms are dilapidated. There are no classrooms in certain areas. The county governments have set aside money that they want to use to build the classrooms. Unfortunately, if they do so, under the law, then they will be told that they are investing money in a function that has not been devolved to the county governments. Consequently, they will be in contradiction of the law. The Controller of Budget can also very well say that the money must be recovered irrespective of the fact that the money was used to build classrooms.

We have asked the Controller of Budget to be cognizant of certain things and the fact that one level of Government can assist another level of Government. Where money has been used for infrastructure, even if the function has not been devolved to the county governments, the expenditure must be respected and the Controller of Budget should make an exemption to some of these things.

Mr. Deputy Speaker, Sir, as we move on to make sure that money is spend the way it is supposed to be, as the “over-sighters” of this function, let us also keep in mind, as we have said many times, that the process of devolution is not an event. It is, indeed, a process.

With those few remarks, I beg to support.

**Sen. Nabwala:** Thank you, Mr. Deputy Speaker, Sir. I stand to support the report of the Committee on the Turkana County Estimates that were altered and this was brought to the attention of the Controller of Budget. This report was submitted to the Finance, Commerce and Economic Affairs Committee and we looked at it. During our visits to the counties, we found out that counties were facing many challenges.

One of the challenges was lack of capacity. Most counties do not understand how to prepare budgets. Turkana County, therefore, is not unique. We found many culprits. When we had a meeting with the Controller of Budget, she told us that they had rejected many county budgets since they had not been properly prepared. Therefore, they did not conform to what the Controller of Budget had set out for them to do. The other issue is that the Integrated Financial Management Information System (IFMIS) was not in place. Not all counties were connected. Therefore, in most counties, the servers were down.

Connectivity was not really there. That was a major challenge. Before we adopt the report, I would like to refer you to page 14.

Mr. Deputy Speaker, Sir, page 13 sets out the budget that was prepared by the County Assembly and what they had approved. If you look at the variance or the alterations that were made, for instance, with regard to Transport, Roads, Housing and Public Works, this was reduced by Kshs7,700,000. When you look at the County Assembly Budget, you will see that this was increased by Kshs449,663,498. Under the Office of the Governor, the County Assembly had approved Kshs425 million. However, this was reduced to Kshs175 million. Under Finance and Planning the budget approved was Kshs1,380,000,000, but this was reduced to Kshs1,000,000,000. The variance is Kshs380 million considering that there was lack of capacity by the county government in preparation of the budget.

The PFM Act 2012 stipulates that the county assemblies shall consider the county governments' budget estimates with a view of approving them with or without amendments. I think the problem here is that the due process was not followed. When the county executive felt that it did not agree with what the county assembly had done, it should have made alterations and referred back or made consultations so that the amendments made are in agreement. That is where they erred. We have spoken to both the executive and the county assembly. We have tried to advise them to improve their relationship because, at the end of the day, the county assembly has to oversight the budgets. From time to time, the executive needs to consult with the county assembly.

The Controller of Budget ordered that investigations be done with regard to this report. The report has now been returned with recommendations which are outlined. One recommendation is lack of capacity which I have touched on. There is also the variance that has been highlighted and the IFMIS system which is a big contributor.

I support this report because devolution is new to all of us. Everybody is learning. We are all in a learning process. I think we need to give Turkana County a chance. We should adopt the Report for them to move on. Next time, with the support of the Controller of Budget, they will prepare their budget in a proper manner.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Deputy Speaker, Sir. I will start by giving the highest recommendation to the Speaker of the County Assembly of Turkana for being hawkeyed as contained in a letter that is annexed to this report. The Speaker pointed out that the original budget as passed had been interfered with.

I am hoping that this debate is being transmitted live. If it is not, I hope that the HANSARD proceedings will be forwarded to all county assemblies so that they use this as a precedence to remind them that there is no provision, under the law, for the county executive, governor or the county treasury to veto a budget that has been approved by the county assembly. I would like us, as Members of the Senate, to create deliberate and strong partnerships with county assemblies because, unlike my predecessors who have spoken here, we are saying that this is a mistake because we are in the process of learning with regard to the devolution process.

However, I want to differ. This could be a calculated way to slowly start devolving corruption. Why do I say this? I say this because if you look at the functions that were altered; you will see alterations in the office of the governor, pastoral

programmes, tourism and education. One thing is constant about all of them. If you go to pages 9 and 10, you will be sad to note that when the County Assembly of Turkana voted on the issue of Pastoral Economy and Fisheries, they wanted Kshs310 million for development. However, somebody in the office of the governor said that they were not doing the right thing. They said that they did not need development and reduced this to only Kshs100 million.

Similarly, they wanted Kshs200 million to be used for development, but the same person who was changing, again, slashed it to only Kshs100 million for development. This means that in the mindset of the executive of the county government of Turkana or precisely the person who was engineering these alterations, he wants to frustrate development in Turkana, so that there are monies available in the office of the Turkana treasury for recurrent expenditure, for them to do the usual corrupt deals that they do. Why do I say this? I say this because if you look at page 9, under finance and planning, where you find treasury, the county government, in its wisdom, wanted only Kshs800 million to be available at the treasury. But if you look at the altered one, the county government has now increased that from Kshs800 million to Kshs1.4 billion. This means that somebody wants easy money next to him, which he can manipulate and take it one way or another.

Mr. Deputy Speaker, Sir, I want to congratulate the Speaker, Madam Kioko, who is in charge of the Committee and the Controller of Budget, Agnes Odhiambo, for doing what she has done. These findings go a long way in disapproving some of the people who have spoken on the role of the Senate. There is a Member of Parliament called Kang'ata, another one called Washiali from Kakamega and the former Member for Nyandarua, hon. Kioni, who was the running mate for my presidential candidate in the United Democratic Front (UDF). All of them, in their ignorance, have said that the Senate is not necessary and can only be sitting once in a year to make a deliberation on revenue division and allocation and then go away. Some have even said that it is not necessary and some have said the job of the Senate can be done by the National Assembly. I hope that since this is the first incident to emerge, they will have the noble hearts to reconsider speaking from points of ignorance and realize that the Senate must continuously be there to do what we are doing this afternoon.

Mr. Deputy Speaker, Sir, it is for this reason that today I want to support this and remind those who think that they will kill the Senate, that there is one man they need to go and read around about. He was a very wealthy man and one of the first black people to have an aircraft and own horses, but he was killed because he was fighting for the poor. His name was Josiah Mwangi Kariuki. They should ask themselves: How could such a rich and wealthy person have been so passionate about the interests of the poor? It is in the same House as those ones who are proposing that the Senate is not relevant, where J. M. sat when some people decided that they should kill devolution and, therefore, the Senate.

There is a nice book called "*An End to Poverty*" which was written by the World Bank Adviser to Kofi Annan, who believes that it is possible, in our lifetime, for us to end poverty. It is amazing that it has escaped all of us that the people who promote poverty in third world countries are we, the politicians, accountants and lawyers. These

are the people who are in charge of the contracts. They draft contracts, do procurement and the politicians make the big decisions.

Mr. Deputy Speaker, Sir, if only we in the third world could remember that it does not add any food on your table as a rich man, for your five year old daughter to eat from a table of opulence, when a child in Turkana, her age mate, is sleeping on an empty stomach with hunger pangs. We, as leaders of this country, must make this commitment, so as to see an end to poverty in our lifetime. It is possible because we are lucky that we come from one of the richest countries in the world. Kenya is today behind Singapore. What a shame. In 1963 when we got Independence at the same time, Singapore, a tiny little thing of 600 square kilometres with a tiny population of five million people, fewer than the number of Luhyas living in the whole of this country, is now ahead of Kenya. It does not have the kind of resources or market that we have that can buy from the manufacturing process that they do on their side. The answer has just been that the people of Singapore who are just as diverse as we are, refused corruption and rewarding members of their kind. Singapore is mainly an immigrant community of Japanese, Indians and so on, who came and settled there when the British were creating a zone there for their dominance.

Mr. Deputy Speaker, Sir, I look at Sen. Orengo and remember how he inspired me when I was at the university and he was a Member of Parliament. I remember how I joined him and we created *mageuzi* in this country. The only reason we used to be teargassed and our ribs broken is because we believed that Kenya could be better. Now we have the opportunity and are here. Why do we support corruption? These governors must be asked to accept oversight from the county assemblies and Senators. We are not going to allow a situation where I take money to Kakamega and I am not expected to question how that money is being spent. If you do not question, what you will see is exactly the case that we are seeing in Turkana.

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

**Sen. Musila:** Mr. Deputy Speaker, Sir, thank you for this opportunity to make my contribution to this Motion.

Mr. Deputy Speaker, Sir, from the outset, I support this Motion and the recommendations made therein. First of all, let me laud the action taken by the county representatives from the County of Turkana for raising the red flag when they saw this. I dare say that other assemblies around this Republic should copy the work that has been done by the members of the county assembly of Turkana. This is because in my own mind, I believe that it is possible that there are other counties in Kenya which might have done even worse things than what we are looking at about Turkana County.

Mr. Deputy Speaker, Sir, this country has a culture of altering documents. You will recall that during the drafting of this Constitution that is in place, the final document, the Constitution of the Republic of Kenya, was sent to the Government Printer, after exhaustive discussions by all the stakeholders, including the Committee of Experts and the Select Committee on the Constitution, and a final document agreed upon. When this final draft was sent to the Government Printer, it was discovered that somebody went there and altered certain provisions of the Constitution; a very grave matter. So, again, now we are seeing this happening in the good County of Turkana. I think it is possible

that something similar has happened in other counties, only that there have been no people as sharp as the members of the county assembly of Turkana to discover.

Mr. Deputy Speaker, Sir, this action sends a very strong signal to all governors, that they must treat the deliberations of county assemblies seriously. Whatever decisions are taken, whether it is budgetary or other laws by the county assemblies, they must be taken seriously and implemented as passed by the peoples' representatives. Here we are talking of representation. The people of Turkana, represented by their MCAs, passed a budget, and then, someone sitting in the governor's office takes the role of the assembly to alter figures, against the wishes of the peoples' representatives. I am looking at this in a very serious manner, just like we can make a law here and send it for assent, and before it is assented to, somebody makes alterations. Is that not a serious matter? Indeed, it is very serious. So, I do not buy the story that this is new devolution or a new thing. It is a culture that permeates in this country and must be stopped, with punitive measures.

Mr. Deputy Speaker, Sir, therefore, I would like to go even further than the recommendations and say that caution must be given and the Controller of Budget be asked to investigate whether there is a possibility of other counties having done even worse things than what the County of Turkana has done. I am emphasizing this because as we start this, as our first case of oversight, let a wake-up call go to all and sundry that this Senate is not going to allow governors to alter any legislation that is passed by the assemblies.

Mr. Deputy Speaker, Sir, the issue of budgets all over the Republic has become very contentious. I think two days ago we had a problem in our sister County of Makueni. I think that all counties in this Republic have a problem with budgets. Either it is because they have not done budgets before or they feel that they can do what they want. So, we want to send a warning to all governors of this Republic, that whatever law, be it budgetary or legal, that the county assemblies will pass, they will have no authority to alter anything within it, because that is the law. We are moving from councillors to assemblies. Therefore, if this practice was happening in county councils, I think that they must now know that we have graduated and are now in assemblies. We have honourable members of the county assemblies who are now capable of making laws. Nobody should alter anything. I think that this is very important because we are going to see a lot.

Mr. Deputy Speaker, Sir, I want to urge the Controller of Budget to quickly move to other counties, check and ensure that the budgets that are in operation are as per the assemblies' passing. She should also ensure that in future, the contentious manner in which the budgets of this year have been done by the county assemblies will not happen again. We have a good example with the most powerful nation in the world; the United States of America (US), where there is a shut down. There is a shut down because the people's representatives have refused the Executive's proposals. There is nothing they can do about it other than to persuade them to buy their proposal. If the US Government can shut down because the people's representatives have refused to pass a budget, why would the Governor of Turkana change the people's representatives' budget?

I am just emphasizing this to show how serious the legislators are in doing what they are supposed to do as per the Constitution of the Republic. Therefore, let the message be sent out clearly, not only on this, but as a caution to all the governors and

their executives that they will not amend anything. If they want to amend anything, they will have to return it to the county assembly which will have to deliberate. If it finds it fit, it will then make the alterations because it is the only body that is authorized by the Constitution to make any amendments.

I beg to support.

**Sen. Mutula Kilonzo Jnr:** Mr. Deputy Speaker, Sir, I rise to support the recommendations made by this Committee and to also state that this matter comes very close to my heart because you may have noticed that the County Assembly of Makueni has passed a budget of Kshs975 million from a proposed Kshs500 million. In fact, this morning, the Members of the County Assembly of Makueni and the Governor were meeting the Controller of Budget in order to establish whether or not the County Assembly of Makueni had capacity to alter the budget that was presented by the Executive.

In terms of capacity building as one of the recommendations, it appears to be a problem which was not contemplated by the law because the county executive member may be a professional in the budget making process or a person familiar with accounting issues, but the county assembly might not have a similar capacity in terms of budget making. Therefore, in terms of capacity building, it is my view that in trying to build the capacity of both the county assembly and the executive, we should think of a recommendation to make sure that the county assembly and the county government prepare this budget estimates in consultation in order to avoid the disputes that we have seen before.

Mr. Deputy Speaker, Sir, with regard to recommendation No.5, in the case of reconciling the county executive and the county assembly, I propose that as the Senate, we should find a method to have a law which is not a proposal in the similar nature of reconciling the county executive and county assembly. It must be made mandatory that the county executive and the county assembly must work in consultation with one another, particularly on matters involving the Budget. The disagreements that I have seen, particularly in the County of Makueni have got very little to do with the Budget, but something a little more personal. That is something that most likely the Controller of Budget cannot handle.

It is evident from the report that was made by the Committee in so far as Turkana is concerned, that the operation of IFMIS is absolutely necessary, mandatory and, in fact, too late. I propose that this management system should be put in place immediately and as quickly as possible because it is possible that some of the counties have already committed errors. I dare submit that some of the county executives are going to face the law sooner than later for conducting themselves in contravention of the Public Finance Management Act.

Mr. Deputy Speaker, Sir, I would like to agree with Sen. (Dr.) Khalwale on the proposal that either this recommendation or alternatively the HANSARD of this session be sent to all the county executives immediately this Motion is passed, so that they can understand that, first, they are not a law unto themselves. Secondly, they cannot do what they like. Thirdly, when they go against the law, the law will catch up with them and

most likely they will be sent to jail or be charged in court as is provided in the County Government Act.

In conclusion, this report is extremely timely because, in the case of the County of Makueni, there has been no action, no development; and protests have been the order of the day for the last six months. The county is stuck and we cannot move. People are quarrelling and yet the law is clear on what is supposed to happen. As we continue playing our oversight role as the Senate, perhaps, there is a question we must ask: The person of the office of the Controller of Budget is running from pillar to post in every county, attempting to reconcile all these people in terms of their budgets.

Perhaps, it is time to consider an amendment to the law and see whether these functions can be delegated in some form or offices set up in every county so that at the time these budgets are being prepared by the executive and the county assemblies, they should follow the law at the first instance instead of what we have in place now, where they must come to Nairobi or the Controller of Budget must go to Makueni three to four times in order to scrutinize the budget, item by item.

It is my humble submission that this report is timely and it must be passed as it was proposed by Sen. (Dr.) Khalwale. I also agree with Sen. Musila's recommendations so that the people who thought that we were elected for purposes of passing time in Nairobi can then understand that we are the people who are supposed to look at the interests of the counties and we will do so jealously until our term ends.

I support.

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, this report is just a random sample of what is likely to be happening in very many counties in this country. All that has been done is a lot of hiding in transparency. The powers the governors purport to be wielding will cause a lot of foot sores everywhere they would want to step without thinking about the implications of the Constitution and the law on matters that they command. What you see in this report as put forward by the Controller of Budget and also as recommended to us by our own Senate Committee on Finance, Commerce and Economic Affairs---. This is what I would term in summary as total mischief by both the office of the Controller of Budget and the executive office in Turkana County.

On page 16 if you look at the increases *vis-à-vis* the decreases, this information that is tabulated on this pamphlet really tells you that the governor knew what he was doing. There is no excuse here that there were mechanisms not in place as given to us by the Controller of Budget on page 19 (2) where she is thinking of non-inclusion of additional votes. There was an inclusion of additional votes intentionally. The Controller of Budget says that Turkana County did not have a Budget Officer. Whose mistake is that? Is it a calculated move by the office of the Controller of Budget to have some counties fail, by not availing the relevant officers in the sensitive budgetary process? God knows what the intention was, not forgetting that Turkana is one of the marginalized, hitherto considered backward places in this country. What was the intention? That is what should be investigated. It was a calculated move by the governor's office to either interfere with the budget process or to intentionally just increase the amount of money that he wanted in his office, to the detriment of other departments in that county.

Mr. Deputy Speaker, Sir, this shows that there is need for us to review the laws on the functions of the Senators. If the law mandated the Senator to look at the final draft of the Budget before it is presented to the office of the Controller of Budget, I am sure this would not have arisen because the Senator would have listened to the complaints of the House and compared it with the information and records that have been put forward as generated by the office of the Governor. We do not have that power. Indeed, I wonder how many of us in this House have even seen the budgets of their counties. I tried to ask for the drafts, but I was never given until I gave up. I had no constitutional mandate to force them to give them to me. This is one of the areas that really need to be looked at in law. I always keep on saying that the Constitution as was passed had a lot of lacunas that need to be looked at, especially so in this area of financial management.

Mr. Deputy Speaker, Sir, the law needs to be revised totally to make sure that a Senator has a bigger say on the final examination of the Budget presented to the office of the Controller of Budget. Since we were passing that Budget just to please an individual's legacy, then here we are and we have to accept it and work with it.

I am happy with the way the report has been presented to us by the relevant Committee.

With those few remarks, I support.

**Sen. Orenge:** Mr. Deputy Speaker, Sir, thank you for giving me the opportunity to support this Motion. I want to recap what my colleagues have said and go beyond what has been said; that this is not a simple matter. It goes to the very root of the system of government that we have established. Where matters of this nature are involved, we, as Senators, must go beyond partisanship, look at each and every case on the basis of facts under law as presented to us. The Governor of Turkana is a friend and colleague. I have worked with him and know that he is a responsible person. So, I would not in any way want to cast aspersions on his part or on the part of the County of Turkana. Looking back at what we have fought for in terms of creating this new constitutional dispensation and also ensuring that the systems of government project accountability, transparency and openness in the management of public affairs, we cannot sit back and call a spade a small spoon, but take the case as it is. To that extent, I want to agree with Sen. (Dr.) Khalwale that this is not a partisan matter and the Senate should pronounce itself strongly and clearly in respect of this Motion.

Mr. Deputy Speaker, Sir, the office of the Controller of Budget set out to carry out investigations, but did not do so. Instead, they shied away. Also the Parliamentary Committee shied away because the issue in the report by the Controller of Budget as found on page 6, No.22 (c) says that the Committee should determine whoever is responsible for the alteration, if any. In answering that question and making that determination, the office of the Controller of Budget found the alteration, but shied away from determining that question and recommended that there should be further investigations. The office of the Controller of Budget must also be taken to task because there are materials before them that would have enabled that office to determine that question.

We must ask them why they refused to determine that question. They are a constitutional and independent office which has powers which we do not have. They can

conduct this investigation, call for documents, and summon those who are responsible. Therefore, to say that some of those responsible were not available is to run away from a constitutional task that they were given, particularly when they were doing the report with a view of passing it on to Parliament. The office of the Controller of Budget works under the guidance of Parliament and the Senate. Our Committee also shied away from determining that question. Allow me to read the recommendations on the last page. It says:-

“That the Budget presented to the Office of the Controller of Budget was not the one approved by the County Assembly. The Committee recommends that further investigations be carried out.”

Mr. Deputy Speaker, Sir, here is the Office of the Controller of Budget recommending that further investigations be carried out. The Committee also recommended that further investigations should be carried out. Probably, while approving this report, this Senate will recommend that further investigations be carried out. So, in a nutshell, we will end up doing nothing. There will be much talk, but no substance. If you want to look at the seriousness of this matter; by making those alterations, on the face of it, the offence of forgery was committed because the document was altered. If it was not forgery then there was alteration of a public document.

This document is an instrument of a parliament because the county assembly is a parliament. This is a serious issue because someone altered the instrument that has been carried out through a Parliamentary process although it is at the county level. This is a serious matter because if you do not know, this is not the first time it has happened. There was a time Parliament had passed a law in relation to elections, that is, the National Assembly and Presidential Elections Act, the Office of the Attorney-General and the Office of the Government Printer altered the words “not more than” and removed “not less than”. In law this can bring a lot of chaos and anarchy. On the face of it, it was not noticed until people were going for elections.

Luckily, this matter went before a judge who made the right decision, but suffered for it. He was disciplined in other ways because the executive at that time was all-powerful. So, that judge, up today, thinks that the beginning of his problems was when he refused to listen to the executive and said that the Government and the Attorney-General had made alterations to the law. That was a serious matter that required somebody to be punished. Since they had altered it, they did not stop there. They took the altered document for a purpose to the office of the Controller of Budget for the purpose of releasing funds in the manner that was contained in the altered document.

Mr. Deputy Speaker, Sir, regarding the offence of abuse of office, if you occupy an office and you use that office for such purpose, under the old law, it was punishable under the penal code. But right now, it is a very serious offence under the Constitution and under the law that relates to anti-corruption and ethics. The constitutional violations are more serious because what the executive in Turkana was trying to do is to undermine the authority of a constitutional body. The county assembly had deliberated and passed the budget estimates. However, instead of allowing it to take its normal course, they changed it. That means that they had no regard at all for the county assembly.

When you read the Constitution, the principles and provisions relating to Leadership and Integrity in Article 73, the principles and values of public service, to that extent, the Senate must express its condemnation in the harshest terms to the county government of Turkana because this was a deed of the county executive of Turkana. They cannot run away from it. It does not matter whether it is controlled by CORD. I must say that when it comes to these matters, we should not look at which government is there. If it is in CORD or Jubilee area, as a Senate, we must be seen to be working for the right cause and that we are true to the Constitution and the oath that we took. So, we must say what must be said without mincing words.

Mr. Deputy Speaker, Sir, my recommendation would be that at an appropriate time, this matter should go back to the Committee for further investigations, so that the Senate is not seen just to be passing reports for the sake of it. We are not adding anything from what we have received from the office of the Controller of Budget. If you look at the JM Report which was an inquiry done by Parliament at another age when saying things as they were was more difficult - that was in the 1970s. The report made specific recommendations, but when it landed in the hands of the executive, it wanted to alter the report because Parliament showed teeth and clearly stated that so and so should be investigated. In fact, that report particularized who should be investigated. Where the investigators could not get anything, they directed the Government to carry out investigations, for example, the circumstances under which JM's watch was found in a toilet in Makadara Estate.

Mr. Deputy Speaker, Sir, without mincing words and at an appropriate time if this Motion is not passed today, we must take this thing back to the Committee. If you look at the Report of the Committee, it is a two-page report. The quality of the report does not depend on the length, but if you look at the people in this Committee, there is Sen. Kerrow, a man with tremendous qualities in this matter, Sen. Mositet, my leader, Sen. Wetangula, the Majority Whip Sen. Elachi, Sen. Kagwe, Sen. (Prof.) Anyang'-Nyong'o, Sen. Mungai, Sen. Mukiite Nabwala and Sen. Kipchumba. To say the least, I expected something better from this high profile Senators sitting in a Committee like this. In fact, this is a repetition. This is a summary of the executive summary of the report by the office of the Controller of Budget. They could as well not have held any meetings at all. They should have just summarized what Mrs. Odhiambo was saying instead of bringing a report which is short on parts and very light on recommendations that are concrete.

Mr. Deputy Speaker, Sir, devolution will work on the basis of how it starts and not how it ends or how it continues. If it starts in the wrong way, it would be extremely difficult to recover. So, these are small incidences. As the Senator for Migori said, indeed, it is just a replication of what is, probably, happening in other counties. If this is the way we have started, I would say that devolution, probably, started on a wrong note. We are taking for granted a serious violation of the constitution and, probably, a cocktail of criminal offences in order to give space for this county government to learn its lessons. But, probably, if you allow them to learn their lessons, they may assume that there will always be time to learn those lessons. So, the thing to do is that when it happens, we should deal with it seriously. This is because if you start using kid gloves, then rightly as others have said, we would merely be devolving corruption to the county governments.

Mr. Deputy Speaker, Sir, the process of budgeting and how county governments prepare their budgets and the legislative process they go through was a matter of meticulous discussion. We should not take for granted the template set out in the Constitution for which Parliament played its role even on behalf of the Senate. The Public Finance Management Act, which is important here, was passed by the Tenth Parliament which towards the end of the life of it, had assumed the functions of the Senate also. The functions of the Senate were taken over by that Parliament so that in seeing a situation where there are these kinds of violations, the Senate should not be seen to be treating any crime or any violation with the kind of recommendations that we have here.

So, Mr. Deputy Speaker, Sir, if this matter goes back to the Committee, then Clause 6 in this Report should go. They should come back and tell us “so-and-so did the alterations; and so-and-so should be charged. If we receive their recommendations, the Executive may not do it because there are a lot of things we do here which are disregarded by the Executive, for example, the various Motions we have passed. But we have played our role. When people look at the history of this Senate with regard to any situation or any challenges that face the nation, I think the Senate will be judged by its record; that we did the right thing when were required to do so.

Mr. Deputy Speaker, Sir, people should not emphasize the role of a modern Parliament to be just that of oversight. The role of Parliament is to make sure that the things which should not happen do not happen so that in this instant, we, probably would be waiting for somebody to carry out the investigations and wait to do oversight. I think they have shown that they cannot do the job; so you do the job because the law allows you to do it. At the end of the day, I would be very happy if paragraph No.6 contained the names of those who did this heinous crime. This is not mischief. Mischief sometimes can be excusable. This is a crime and a crime was committed and it should be treated as such.

*(Applause)*

Mr. Deputy Speaker, Sir, I just want to end here by talking about the role of the Senate in county governments. This is a component of the problem. For example, what happened at the Westgate Mall is a component of the challenges the nation faces. Sometimes, countries depend on institutions or officers who are given those positions. For example, in this particular case, there are officers who should have told the governor if, probably, one can say he was advised. But there are officers who should have seen that what went to the governor was not the right thing. This is a reflection of what is happening because, you know, in this Westgate thing, the Director-General of National Intelligence Service (NIS) is the only person who has direct access. In fact, if you look at that Act, it gives him direct access to the President.

Indeed, if you remember in the last Parliament, the NIS tried to introduce a provision to the effect that if a new Government is elected, then that new President should continue with the Director-General of the NIS. But Parliament, in its wisdom, refused and said that if a new President is elected, the office of the Director-General of the NIS is so important that you must have a person whom the Head of State is

comfortable with. He can be dismissed at any time. So, I will be pretending a lot because many people are saying that “Oh! It was the failure by the security agencies to this and that.”

Now, the question we must be asking ourselves, just like the question that we must ask ourselves about the Governor in Turkana is: When was this presented to him and when did he sign it? Yes, Director-General of the NIS could not have failed to tell the President and the Commander-in-Chief that there was a likelihood of these incidences occurring. He must have because he is the only person he reports to directly. If he reported, the country would want to know when the President knew. These are questions which we shall not run away from.

**Sen. (Dr.) Khalwale:** Yes!

*(Applause)*

**Sen. Orengo:** We cannot run away from it. If we want to deal with this thing in Turkana, we must compare it to what happened at the Westgate Mall. Therefore, the whole intelligence community must be put to account. If I was occupying those positions, all those five characters or so, should not be there. They should have gone like yesterday.

With those few remarks, Mr. Deputy Speaker, Sir, I can see there is enthusiasm to the extent that I cannot continue.

I thank you, Mr. Deputy Speaker, Sir.

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

Before I call the next speaker, Sen. Orengo---

*(Several Senators stood up in their places)*

Please, sit down. I saw who stood up.

Sen. Orengo, if you look at this report under the Motion that we are currently debating, we are approving the Report of the Committee to which is attached the report and recommendations of the Controller of Budget; right? But if you look page 6 of the Committee’s Report – Revision of Budget Estimates, Item No.1--- Are you with it?

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Something is missing; it says:-

“Investigations established that there were alterations approved by the Turkana County Assembly”

I think the words “to the budget” are missing there. So, since that is the report we are debating, we cannot let it go the way it is. Chairman of the Committee, I hope you are going to have it amended before we approve it.

Sen. Haji.

**Sen. Haji:** Thank you very much, Mr. Deputy Speaker, Sir. I want to support this Motion because I think it is necessary for us, as Senators, to do everything possible to assist the county assemblies and devolution to take root in a proper manner.

Mr. Deputy Speaker, Sir, first and foremost, I want to congratulate the Controller of Budget as well as the County Assembly of Turkana. I am a bit confused as to whether

it is the county assembly which discovered this anomaly or whether it is the Controller of Budget. So, if it is the County Assembly Speaker who discovered this mistake, I think it is very wrong to say that Turkana County has no capacity. They have proven that they have the capacity since many of their speakers indicated that this could have happened in many counties. I do not doubt that at all. We need to commend the Speaker and his assembly for taking up this matter with the Controller of Budget, so that it can be rectified.

Mr. Deputy Speaker, Sir, what does this indicate? I think it indicates that although we are underrating some of the county assemblies, others are up to the task. All they need is to be assisted to carry out their mandate. I want to agree with my colleagues here that copies of the record of our discussion of this Motion in the Senate should be passed on to the county assemblies as well as to the governors. They must know that these things cannot be allowed to continue happening if devolution is to take root.

Mr. Deputy Speaker, Sir, with due respect, I think counties lack the capacity and capability of doing their responsibility, particularly on budget making. What we know is that the Transition Authority (TA) attached some officers to help county assemblies to settle down together with the governors. They were particularly given clerks to the county assembly and also an administrator to assist the governor in doing the job of procurement and the rest. What we know is that some of these officers have, because of disagreements with the executive, left their offices and gone back to the Ministries.

Most of the governors, as we all know, have never worked in the civil service. They do not even know anything about procurement. Therefore, the best that the Transition Authority can do is to assist them in their roles by taking them through an induction course or seminar for three or four days. They should have been taken to the Kenya School of Government (KSG) and stayed there for one month. They can be taught what to do and what not to do in order for devolution to take root in just three days. I think that is what is missing.

Secondly, Mr. Deputy Speaker, Sir, since this House is responsible for overseeing what is happening in the county governments, I want to request the TA or the National Treasury to send a circular to tell the county assemblies what their role is and what their role is not. The governors also should be told what their role is and what their role is not. We know that even an established government occasionally will try to interfere with the law makers because some of these go through the executive. An alteration like this can happen if people are not very careful by noticing what is happening.

Mr. Deputy Speaker, Sir, I want to support this Motion and look forward to the Senate following it up to its logical conclusion.

Thank you, Mr. Deputy Speaker, Sir.

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

**Sen. Abdirahman:** Thank you, Mr. Deputy Speaker, Sir. I stand to support the Report by the Committee on Finance, Commerce and Economic Affairs. I want also to thank the Speaker of Turkana County Assembly who is the source of this information. He has done a great job for the people of Turkana and for Kenyans in general because these alterations, as hon. Orengo put it, amount to abuse of office.

I was trying to run through the main Report of the Controller of Budget and when I looked at page 16 on the increases and decreases, I realized there was an increase on the allocation of Kshs237,750,00 to the Office of the Governor, and the allocation on Finance and Planning increased by 144,539,342. There was a decrease, if you look down there, under the County Assembly, of Kshs548,463,000. The budget for Energy, Water and Environment also follows.

There is a clear indication that, at least, the office of the governor had a hand in this. I do not think that can be left to go like that. People must take certain responsibilities for certain actions that do not fit the aspirations and vision of the people who had suffered for long. This is the only opportunity that many people, particularly those who have claimed to be marginalised for many years, can reap the benefits or dividends of devolution which is a God sent opportunity for many people.

I also want to say that what we are doing, through our Committee on Finance, Commerce and Economic Affairs or even as the Senate is to assert our authority in terms of performing our oversight role. I have listened to a number of Senators. Most of them have said that they did not get copies of the budget estimates for their counties. We are not involved in the budget preparations. However, we can only oversight what we know, what we can access and what we have gone through. This is an opportunity for us to assert our authority, as the Senate, the highest decision making organ, with regard to counties.

I want to also point out that the budget estimates were prepared long before the county integrated development plans were done in various counties. I do not think that is the right way to go. We have followed what national governments have done in the past. In the past, national governments used to ask respective districts to prepare five-year development plans which were never followed.

In the past also, the Treasury and the Ministry of Planning and Devolution did not play a complementary role at the national level in the past. They performed their roles in an isolated and compartmentalized manner. We are trying to transfer the same things to counties even under the devolved system. I say so, because we just went for a validation workshop in our respective counties. I think we had our validation workshops about three weeks ago. Which one comes before the other? Planning must precede funding. It must come before funding. That is why we have budgets that are incompatible with the needs of the people.

I slightly want to differ with one Senator, I cannot remember his name, who said that classrooms are being considered in budgets and that classrooms of primary and secondary schools must be approved by the national Government. We know that there are concurrent functions which either level of government can undertake with some agreements.

We have just passed a Motion in this Senate urging the national Government to allow the county government to take over primary and secondary school education and not only early childhood education (ECD). I do not know how many counties have so far gone into formal agreements with the national Government. So, if we have to factor in budgets for particular functions that are not assigned to counties, then the functions have to be delegated, if they have not been given by the Constitution to counties.

We are all performing complementary roles; the Senate, county governments and the national Government. We need to do this in a harmonised way without compromising the quality, vision of the people and our development aspirations. The truth of the matter is that there were fundamental weaknesses regarding the planning and budgetary processes that were undertaken by the county governments. I say so, because there are guidelines that were provided by the Transition Authority (TA). I read through the guidelines. Somewhere in one of the pages, it says; they could put, at least, 30 per cent of the total budgetary provisions for the year to development estimates. If we spend 70 per cent of all that you get on recurrent expenditure, honestly, when will we develop those areas? We will not develop them. Therefore, we need to debate, in this House, the guidelines for budgetary processes and planning processes so that we set standards and benchmarks for the county governments. We should check the national Government on how best it is guiding the county governments.

My two last items are on capacity building. I hear of capacity building from the TA, but I hold a different view. I have a feeling that the TA is a group that wanted to safeguard its jobs. However, they should capacity-build people. I have said this before and a number of colleagues have spoken about it. You can only capacity-build people when they are already doing a job. So, we still require capacity-building.

The Centre for Parliamentary Studies and Training (CPST) under Parliament has done a good job for counties so far. We got engaged with them and we need to link our county governments with the CPST which has a director. This is an institution we can benefit from. The Senate must urge the county governments to link up with the CPST so that they gain capacity through it and not in the way that the TA has run amok with these issues. That is why the Motion we discussed yesterday on KeRRA continues to persist. We must find a way of ensuring that we have an organized system in which we can capacity-build counties.

Finally, with regard to the IFMIS, this is a wonderful process. We need to encourage people to use it because it will help us to avoid wastage and duplication. It will also help us to curb corruption. It is a good thing, but I understand it does not often work. You will always hear that the systems have shut down. I do not understand it so much, but I think it should keep on running. It must also be a system that people will be trained on. It must also be a system whose effectiveness can be checked. This should not be a system that when there is some liquidity, the Treasury runs to give some little cash to counties and when there is no cash they block the systems.

I understand that there are numbers that have been assigned to each county and each personnel. We understand that it is a good system, but it must be made much more efficient.

Thank you for allowing me to contribute.

**Sen. G. G. Kariuki:** Thank you, Mr. Deputy Speaker, Sir for this opportunity. First of all, I have been listening and have gone through the document which is in front of us. I have seen that among the three teams; the Controller of Budget, our Committee and the Speaker of the Turkana County Assembly, my respect goes to the Speaker of the Turkana County Assembly. This is because he is the only person who raised an alarm. When he reported this case, it was taken casually. It was not taken in a serious manner

the way it should have. He reported something that was wrong. However, those who received this alarm took it casually.

Our Committee did one thing which was to copy what the Controller of Budget had said. This is a very serious matter. The Committee also assumed that the whole Senate would go with them. I think we must change this attitude. Any Committee that gives a report to this House must have dealt with the report seriously and must know that they are presenting to the appointing authority. We are the appointing authority of these Committees. Therefore, we would like to see proper investigations being conducted. We should have been told that investigations were carried out, probably, as far as identifying the person who altered the figures. However, we are putting the Speaker of Turkana County Assembly in a very serious political situation. This could be used by others. They could say that it was propaganda by the Speaker of the County Assembly because nobody was pinned down and no one was found to be responsible for doing whatever happened. We took for granted that what the Auditor-General had said was okay. Our Committee just took the Report of the Controller of Budget. They did not care. The Controller of Budget knew that the Committee would have no time or would not be interested in the looking at the report and that it would end up at the Senate.

I would like to support what hon. Orenge has said. Unless we establish who did what, we cannot pretend that we are doing the right thing. We want to know who did the alterations. We are accusing the office of the governor. What facts do we have that this was done by that office? The office of the governor has people who work for him. He should deny that he did not do this and explain to the county assembly who did it.

The person who saved the Turkana County Assembly and not only the county government, but also our Senate, is the Speaker of the County Assembly. That Speaker has given us a job and food for thought. We should know, all the time, that things can just happen. Therefore, the only way to protect the person who disclosed this matter to our Speaker and the Controller of Budget is the person we should make sure we do not put his political vision into jeopardy. The only thing we should do is to take back this report. The report should not be accepted by this House until we know who did what. This was not in the moon. How can we be expected to say "yes" and ask to do a, b, c and (d) without asking questions?

Put yourself in the shoes of a County Assembly Member of Turkana, the Speaker and think about the matter that was reported to the Senate through the Controller of Budget. That is wrong and we need to protect the person who reported this. I am not saying that the governor is wrong, because I have no evidence at all. Maybe even the governor is not aware, but here, the insinuation is that the governor may have been involved. We need to know the facts. Was the governor aware and who did what? We can only do that if we can give our Standing Committee another chance, within a week, to come back and tell us whether this matter was reported to the Criminal Investigations Department (CID) or they have established somebody who did something.

This is because my conscience will not be clear if I just stand here to say that maybe the governor or somebody did this or that, and yet, I have the authority to have this matter investigated. So, I need this matter to be investigated before we just say amen about this Motion. This will teach our Committee Chairs and Members a lesson; that you

are not just going to report to your colleagues. When you are the Chairman, you are in charge of the Committee and responsible to this House. Therefore, you have to behave like an appointee of this honourable House. We are not going to allow a matter to be treated this way. This is because even the governor himself, the county assembly members and the county executive members will wonder what kind of Senate this is. They will wonder if the report was presented and the Senate just accepted it with no facts. I think that we will be doing injustice to ourselves.

Mr. Temporary Speaker, Sir, therefore, I would like to oppose this Motion, and request the honourable House to get the truth. Let us get the facts of the matter. If an offence was committed, let us know who committed it. After that, we can decide to forget it or forgive him. Let us establish the facts, but not just to pass things blindly because they come from the Chairman of the Committee.

**Sen. Haji:** On a point of order, Mr. Temporary Speaker, Sir. Would I be in order to commend the most senior legislator in this House, Sen. G.G, for suggesting---

**The Temporary Speaker** (Sen. (Dr.) Machage): Are you on a point of order or point of information?

**Sen. Haji:** Mr. Temporary Speaker, Sir, I am coming to that. This information---

**The Temporary Speaker** (Sen. (Dr.) Machage): Let me know clearly. Are you standing on a point of information? We have given you permission on a point of information and so, carry on with the information.

**Sen. Haji:** Mr. Temporary Speaker, Sir, the information is that I think the Senator is quite in order to suggest that we should know who has done this, but not conclude that somebody should be prosecuted, because we can forgive these new people in the system.

**The Temporary Speaker** (Sen. (Dr.) Machage): I do not know whether that was really a point of information.

Continue!

**Sen. G. G. Kariuki:** Mr. Temporary Speaker, Sir, we are together. I do not quite understand what the hon. Senator wanted to say. Maybe he held back what he wanted to say.

Mr. Temporary Speaker, Sir, but I want to repeat what I said in a very short statement. We want this matter to be taken back to the Committee. Let us pass this Motion next time, when we know that the truth has been discovered and, therefore, also know who committed this crime. Let us not forget that we are dealing with political institutions.

Mr. Temporary Speaker, Sir, Turkana County Assembly is a political body. They have got their political enemies as we do have ours. Therefore, we want to clear the name of the speaker and governor. We want to see that the county assembly did its job, but somebody somewhere, in the executive committee, decided to commit this crime. Why should we cover him?

Mr. Temporary Speaker, Sir, I oppose this Motion and kindly request the hon. Senators who will speak after me to also oppose it.

**Sen. (Prof.) Lesan:** Thank you, Mr. Temporary Speaker, Sir, for this opportunity to contribute to this Motion.

Mr. Temporary Speaker, Sir, from the outset, I hesitantly support this Motion. First, it is because part of the Report contains a statement that says:-

“There were challenges in getting information.”

Mr. Temporary Speaker, Sir, it, therefore, means that all the information regarding this investigation was not found. I do not know how much of that information was not found. It could be a lot more information than we already have. Therefore, that alone makes me a bit skeptical about supporting this Motion as it is.

Mr. Temporary Speaker, Sir, secondly, although devolution involves a lot of other things, actually it rings around finances. Therefore, counties that are going to mishandle their finances, even if they do whatever else, are not going to succeed. Therefore, it is very important that when we are dealing with an issue like this, we are cognizant of some of the issues that we think are small but, in fact, very important. Therefore, I really think that we should look at this Report closely. Should it be necessary that we get some more information, then we can ask for it.

Mr. Temporary Speaker, Sir, there is a body called the Transition Authority, which was to provide capacity for the incoming county treasurers or officers to provide the information. Although it faced significant challenges, I think that it did its best. I say so because some of these problems that we are seeing now, are really not as a result of lack of capacity. We think these errors or mistakes are there deliberately. If they were not deliberate, when the speaker of Turkana County Assembly found out that there was an error, it would have been so easy to go back to the executive committee or whoever caused the error and correct it. Therefore, these errors which we are seeing here are not simply errors for lack of capacity. They are deliberate and intended to serve an interest. They are intended to serve a personal ego and raise the non-existent status of a certain individual.

Mr. Temporary Speaker, Sir, this is not the end of this story. We are soon going to deal with misapplication of funds. These are not going to be mistakes, but deliberate and intentional actions meant to serve certain purposes. Therefore, when we have an occasion like this, where we can deal with an issue, I think that we need to follow it to the final conclusion and correct it in the very early stage. In fact, as Senators, we have an opportunity here to actually put some of these things to rest by giving an example. We can use this example of Turkana to make it very categorical that we will take care of some of these deliberate errors that are put in by officers of the county.

Mr. Temporary Speaker, Sir, we have a lot of experience about these so-called errors. This does not apply only to the county governments. We have had experiences before where decimals have been moved and caused a lot of losses of money. One little deletion or insertion of a decimal could be worth Kshs10 billion. Therefore, we will not want to take some of these things as simple mistakes that we can ignore.

Mr. Temporary Speaker, Sir, wherever we will find mistakes committed by individuals at this very early stage, we would actually like to see that punitive action is taken against the individuals concerned. Since this involves money, I think that there should be some financial punitive action against the officers who have carried out this action. This is because we would want to cause deterrence here. We do not want this to happen again and, therefore, need to take certain deterrent actions. Therefore, we would

want to have this very first report dealing with finances treated with a lot of scrutiny. Action should be taken firmly to serve as an example to other counties or any other mistakes that we will find committed by other counties.

Mr. Temporary Speaker, Sir, with those remarks, this Report is not sufficient for us to adopt it. We would like some further clarifications and details. Specific actions should be recommended in this Report before we can adopt it.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. Chelule:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to this Report.

Mr. Temporary Speaker, Sir, I think that we all know that it is the responsibility of the county governments to prepare budgets. The Report that is with us today was not done by the relevant Committee, but the Controller of Budget. So, as much as I would want to support this Motion, I will not do it because of a few reasons. The very reason that makes me not support it, is because it is incomplete.

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Chelule, you have to be explicit. Are you supporting this Motion or not?

**Sen. Chelule:** Mr. Temporary Speaker, Sir, I do not support the Motion, because it is incomplete. This Report that is tabled before us today was not prepared by the Committee on Finance, Commerce and Economic Affairs, but by the Controller of Budget.

Mr. Temporary Speaker, Sir, there is a recommendation that was done by the relevant Committee. This is recommendation No.6 which talks about investigation. The relevant Committee is alleging that further investigation should be done. Who should do the investigation if it is not this Committee? This Committee represents this Senate, yet it is giving instructions for further investigations to be done. I would recommend that the relevant Committee summons the executive committee or finds a way of investigating the matter. The same Committee could visit Turkana County for further investigations.

Mr. Temporary Speaker, Sir, the alteration in the budget was done deliberately. I cannot agree that it happened due to incapacitation. Every level of government knows its roles. The county governments know their role because it is in the Constitution. Therefore, I think that this was done deliberately. As the Senate, we would really want to know why this was done.

Mr. Temporary Speaker, Sir, with those few remarks, I do not support the Motion that is before us.

**Sen. Wangari:** Mr. Temporary Speaker, Sir, I rise to oppose the Motion as it is. This is because this Report is very inconclusive.

Mr. Temporary Speaker, Sir, I want to refer to the role of the Senate, even from Articles 96 and 97. The Senate has the mandate of oversighting and protecting the counties and county governments. I know that the Constitution does not really itemize from whom we protect the counties, but I think that we need to even protect the counties from themselves. It will be a failure on our part if we just adopt this Report, the way it is, as reported by the Office of the Controller of Budget, and leave it at that.

Mr. Temporary Speaker, Sir, if you look at the Report of the Controller of Budget on page 16, which is very scaring, on the increases and decreases, you will be shocked to

realize that Turkana is where we are talking about natural resources and the fact that we have found oil and water in the area. That has been decreased. It is actually the second item on the decreases. It has been decreased by Kshs60 million whereas the expenditure for the office of the Governor has been increased by Kshs237 million which is about four times. This is the decrease in allocations to the energy, environment and natural resources category. It is not enough to say that we need further investigation. If you look at that Report, Part VI, they say that it has been established that laws have been bent, surpassed and the PMF Act has been ignored. We are saying that we are on a learning curve but it is not an excuse for anyone to hide under that and become mischievous and commit a crime. Punitive measures must be taken.

This being our first Report on this matter, we have 46 other counties that will learn from this precedent that we will set here. If we set the wrong precedent, it will be very hard for us to deal with the rest of the counties. We should not adopt this Report because we shall be failing as a House. We hope that the Standing Committee on Finance, Commerce and Economic Affairs will sit down and not just present to us the raw copy of the Report of the Controller of Budget but do a thorough report. Someone has to take responsibility. First of all, there is the personal responsibility. We must know what really happened. I know that we have had such scenarios in this country where certain documents are taken to the Government Printer and overnight, they are altered. This was a lesson to this country and we should not let it trickle to the counties. It has to be stopped immediately. We should know where the alterations took place and the consequences accompanying that action. I know that the integrity chapter of the Constitution is very clear. We are hoping that the Committee will be able to summon these officers; the Governor with the executive committee and fish out the answers. This must be treated as a very urgent matter because this precedent must be set right.

I oppose the Motion and I hope the Mover can move an amendment or be able to bring something substantial to this House.

**The Temporary Speaker** (Sen. (Dr.) Machage): Hon. Senators, before I call upon the next speaker, you should make sure your mobile phones are switched off because they are interrupting the proceedings of the Senate.

**Sen. Hargura:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to this important Motion knowing that we are in a new dispensation where we have the devolved governments and these are some of the problems we should expect. We all acknowledge that we are new to this but I do not think some of the issues which are being raised are because of that. From what happened between the executive and the county assembly, there is a problem of the budget making process at the county level. We have a case where the executive submits its budget, the county assembly discusses it and changes it. From there, the office of the Controller of Budget, from which this Report has originated has not given us the mechanisms of what happens after that. That is the one thing which is missing. If the County Assembly does not agree with the executive committee, what mechanisms have been put in place to deal with that?

If you look at this Report, the contention was actually between the budget of the Governor's office and the county assemblies. That is where the reduction and increase is

coming up. If you look at the Report, it says that the executive actually prepared the budget of the county assembly which was faulted. It states very clearly that it was the Clerk to the assembly who was supposed to have prepared the budget. This Report might not be addressing the real issues. It might not assist us to solve this situation. It is only that this Report is about Turkana, but I tend to think that it is a widespread issue and there is need for the Controller of Budget to give us a report on how the other 46 counties performed. The reports are supposed to be published and publicized but even in our own counties we are not sure of which budget is being implemented because we have not seen the budgets that have been submitted. So, I think this is a widespread situation which goes hand in hand with the fact that what the Governor submits is not what the county assembly has approved.

Mr. Temporary Speaker, Sir, the Controller of Budget should be able to tell us the mechanism of going about this when they disagree. Was there a ceiling for the county assembly budget? That is where the contention is. You can see that they were given about Kshs600 million and the budget that was submitted by the county assembly on 3<sup>rd</sup> May, 2013 was Kshs645 million. The County Assembly went ahead and changed their budget to Kshs1.2 billion. This shows that they introduced their own budget and that is where the reduction came from. I think there are issues with regard to the budget making process which the Controller of Budget can assist us by bringing it out in the Report.

Then there is the issue of the two arms of Government at that level and how they relate because there is the issue of who makes the budget and who approves. How does the county assembly make its own budget and then approve it? This will enable us weed out the issue of county assembly members voting for themselves what ought to have been approved by the Salaries and Remuneration Committee (SRC) in terms of car grants, mortgages and ward allocations because that seems to be what the Governor is trying to remove from the budget, although unprocedurally. The guidelines must be very clear from the beginning. If it was an oversight, then that is an area where the relevant authority must come up with very clear, easily understandable guidelines for the county governments to follow next time round.

The issue of publishing and publicizing the budget as required by law through the Public Finance Management Act (PFM) should be followed. We expect the Controller of Budget to assist us by informing the county governments to publicize these budgets before they take it to her because they could sneak in something which is not known by the public on the ground.

There is another issue which has come out in this Report which should be publicized for the county governments to know. This is the issue of the Vote on Account and the Appropriations Bill. The Report indicates that the county assembly actually had a Vote on Account approved before the Appropriations Bill and that is wrong. So, what is the way forward? Can they go ahead or repeat the process again? This is as indicated on page 11 (6) which states: "However, the approval of the Vote Account was not procedural since it was approved before the Appropriations Bill". I guess this is something that could be happening across the other counties.

Mr. Temporary Speaker, Sir, the Senate should come up with ways of being proactive and engaging the county governments at an earlier stage but not to wait until

one of them raises this issue. A lot of these mistakes could have been committed and by passed us. So, if they continue doing this quietly, then we will end up with a situation where we are not performing our oversight responsibility effectively. We should come up with some pro-active ways of engaging the county governments right from the budgeting stage so that we can correct these kinds of mistakes or develop a better working relationship between the two arms of Government at the county level.

This Report is not clear. Other than just addressing that case, it does not tell us how we can avoid this situation in future as much as there is also the issue of who should take responsibility; I would rather that this is a learning process rather than a punitive process. We should concentrate on how we can streamline the budgeting process at the county level instead of concentrating on who should be punished because maybe the procedure is not clear. The Governor might have thought that the county assembly was apportioning to itself more than it deserved and so he decided to reduce their allocations and silently submit it. If many have done that, then it should clearly come out that that is not the procedure.

**Sen. (Dr.) Khalwale:** On a point of information, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Machage): Do you accept to be informed?

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

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir. I would like to agree with the engineer who is my good friend that we should not be too punitive at this stage, but also inform him that there is nothing that will hurt if the Senate then calls the Governor and his county executive to explain what really took place and then at that stage, we forgive them.

**Sen. Hargura:** Mr. Temporary Speaker, Sir, it is actually necessary to get it from those who committed the mistake with a view to making them learn and then others could learn from them. However, this process should be made very clear. Maybe the process is not very clear and that is why after his budget was altered, he thought there was no other way out. So, we need to know whether the Governor does not have any recourse; how does he get his idea back to the House?

Mr. Temporary Speaker, Sir, I support the report but I expect that next time this Committee will go into such kind of investigation with a view of sorting out the problem and not just giving us a report without telling us what happens after the report.

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, thank you for giving me a chance to contribute to this debate. There are many issues that have been raised in the report and I think some of them are excuses. The question we should ask ourselves is whether the officers, that is, the county assembly and the executive knew what they were doing when they did what they did. The answer to that is, yes. Each one of them was conscious. If they were able to pinpoint and make amendments in certain areas, then they knew what they were doing. It was deliberate they were trying to address certain situations.

Mr. Deputy Speaker, Sir, it is true that county assemblies do not have capacities in certain aspects but on this particular issue, having prepared the Budget and then amended a second one and submitted it, definitely, it was not an issue of capacity. Even the issue of the “poor” Integrated Financial Management Information System (IFMIS) has been dragged in. I do not know what part IFMIS played to amend the figures. Some

of us have done budgets before when there were no computers. We used to type it and if you go wrong, you re-type it manually. In those times, there were no errors. After the computers came in, we started assigning errors and blaming it on the computer. I think we should spare IFMIS from blame.

Counties have new officers and the county assembly members are new. Some of them do not know the budgeting process. The executive is new and I support the idea that all of them must undergo crash programmes to train them on all aspects of legislation and also financial management, including budgeting. That should have been done. That was the work of the Transition Authority (TA) but I do not know whether that has been done. This problem cuts across all counties. I am not saying that amendments have been done in all counties but problems are there and something should be done.

Mr. Temporary Speaker, Sir, the roles of the two arms of government in the counties must be understood by both sides in the context of the Constitution. What does the Constitution say? There could also be areas like we have seen in this House where the Constitution may not be clear or there is a lacuna that may need to be looked at. I want to believe that what has happened here is not a question of bad working relations between the county assembly and the executive. In any case, the majority of the executive were just appointed the other day by the county assembly. So, it may not be exactly that. The problem could be the system itself; how do they share the revenue that is available? What are the mechanisms and what are the percentages?

For instance, what is the role of the county assembly in the budget making process? We could as well be having a situation here where the governor and his team of executives have an idea of how to spend the money but the county assembly says that they are the final authority and have the final say. I want to believe that there is much we are not being told in this report. The thing that is clear is that the two arms of government are not agreeing. If they are not agreeing, then what is the mechanism of that dispute resolution? If the executive disagrees with the county assembly, what is the recourse? What is the role of the Senate? Can the Senate be an arbitrator? Is it provided for in law or in the Constitution? Perhaps we need to look at the Constitution. We have also had our issues here where figures are agreed upon but at the end of the day, it does not come out the way we expected. Is it the Constitution or the way we pursue things? These are weighty issues that can be avoided.

Mr. Temporary Speaker, it would be good if we heard the side of the Governor. Maybe, the Governor had to do what he did to save a certain situation knowing very well that at the end of the day, he will reverse the thing. That is the way most politicians would do. They would pass the budget as it is then later on know how to go about it. Maybe governors have been held at ransom to approve certain things as a condition for their budgets to be approved. After approval, the governor realizes that they even included things which should not have been included in the budget in the first place.

Mr. Temporary Speaker, Sir, there is also the issue of timeliness. The time set out for preparing the budget is too tight and yet it is a long process. We have to look at how the budgeting process can commence early enough so that things are not done the last minute. Certain budgets may even be approved on condition that it will be amended later. Those are temptations which may bring problems.

It may be necessary that this Senate has an office for oversighting. We should have a secretariat that can assist the Senate to obtain information from counties and give it to us in good time. I have heard many Senators say that they have never seen the budget for their counties yet they are supposed to oversight. We have offices in the counties. We do not have the Constituencies Development Fund (CDF) and bursaries so what do those offices do? Our role is to oversight. So, those offices could be provided with qualified personnel who can provide information to Senators. The Senate office here should also gather information even for the Committees. We may be blaming Committees here for not having done enough but they rely on information from other offices. Just as it is necessary to establish certain offices within Parliament, it is time we had a full-fledged office or department within the Senate to assist us in oversighting.

Mr. Temporary Speaker, Sir, with those remarks, I want to say that I would not support this Motion as it is because we need to go into the root cause and find out what the problem is. I do not want to apportion blame to the governor or to the county assembly. Maybe, if the budget of the county assembly was not tight, we would not have had this amendment. We need to go and see what is ailing the budgeting process in the counties.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, thank you very much for allowing me to contribute to this Motion. I want to oppose the Motion because of the mode in which it appears. If this Motion is passed, it is going to set a bad precedent to other counties and we are going to scare the remaining 46 counties as they start off the devolution process. This is a defeatist kind of Motion where we are going to be judged wrongly. We all know that we are supposed to be overseers of counties and make sure that the money which is allocated to various counties is well budgeted for and the budgets are up to standard. We are also supposed to make sure that the money is spent prudently. This is, therefore, tantamount to pointing an accusing finger at the Senate that we are unable to control the county assemblies. This is one example.

So, for us to single out Turkana as the first county which is going to be a victim for making such a big variance is a clear indication that we are also lost. We should have come up with another county and not Turkana because of the way we know about it. We want to blame them that they are unable to budget. I think we are condemning them too early. This is something that we should not allow. What I mean is that these people might not have had the capacity to do what others were doing and they can be excused for not knowing because we are still learning, as people have said here.

We need to know why that had to happen. Maybe, they did not even know what was happening. So, a clever person came up with that amorphous figure of Kshs30 million but what is of interest is that on page 6; the figures changed so much. We are talking about Kshs200 million or Kshs300 million in increases or decreases. It is like they were trying to balance but were unable, thus ending up with a shortage of Kshs30 million. That was fraud; and if that is what they did and if that is what they can do to what we call a county which we know of; having been given the adjectives of being marginalized; of not being developed, of not doing this, but with the discovery of oil, of late could be the reason why they could now hide these figures so that somebody could pocket that money.

But there must be a reason why these variances are coming about. Is it as a result of not training these people to handle the figures? Do we, therefore, say that even the people in the Executive of Turkana County are as marginalized as the county? Are they not able to make a sound budget like other counties? Do we have other counties that we can compare to Turkana so that we can see whether this is true or whether it is a true reflection of what Turkana is up to? I think something is missing. What is missing, therefore, is what should not be allowed to pass through here, and that is why we are opposed to this. What happened to the Kshs30 million? O, so it got misplaced towards the end and we are just about to end the year – we are already going to October and after that, December. In January and February, the people will start planning for the 2014/2015 budgetary allocations and proposals.

If this thing was therefore allowed to go through, and these people have only managed to get Turkana as an example, I am sure they are going to get more others who are going to give us a headache for nothing. So I am, therefore, proposing that more investigations be carried out by the relevant Committee and more thorough amendments should be tabled here.

Mr. Temporary Speaker, Sir, you will agree with me that budgeting for Kshs9 billion – according to what I have seen here – is not an easy thing. Some of these people have never known what a billion is, and I am sure the figures involved are too much, and they did not know to what level or how far to jump up or down. That is why we have a very big variation in increases and decreases in terms of hundreds of millions – Kshs300 million or Kshs400 million – I do not know whether you are reading page 6. An increase of Kshs200 million or Kshs300 million is impossible; if we are going to have that as an example of a county which has done well in budgeting, then we are doomed!

Mr. Temporary Speaker, Sir, I believe that as a Senate which is mandated to look into this – we are mandated to look into all these figures ourselves – we should not, therefore, blame Turkana. We should blame the Senate if we are going to pass this thing. We must blame ourselves because I am supposed to make sure that, in my county, something like this should not pass. I should be more involved in it from the first stage to the last stage as it comes to who is going to be the drafter, how much money will be allocated to this item, and so forth. We should itemize all the proposals to see which vote head is carrying more than the other one. There should be some foot notes to explain why such a vote head has been allocated so much money.

This is what is missing here; all that we are treated to here are figures. The figures have been tabulated very nicely and we can see the missing gaps where there are pluses and minuses leading to the plus or minus Kshs30 million. To me, that is not a small figure. It is a lot of money and I am sure many other counties are facing similar challenges. So, what we should, therefore, be saying here as we reject this Motion is that we mandate further or we remind the Senators to go back to their counties, sit down with the governors, speakers, accountants or the “Ministers of finances” and let them come up with an understanding and a way forward so that such mistakes will not occur again. If we do this, we are going to be seen as the people who are guiding the counties and we are capable of doing that. Why should we, therefore, blame a county which does not perform? Why did we even pick on a county which is not known? Why could we not pick

a county like Kiambu, Nyeri or, maybe, for the sake of that, Kirinyaga, where you are thought to be very good?

*(Laughter)*

Because if Kirinyaga was weak, I am sure this team would have been proved wrong. So why go to Turkana? Because they know even the computers are not there---

*(Loud consultations)*

Protect, Me, Mr. Temporary Speaker, Sir, because it is like there is a monologue with some people here.

*(Laughter)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! You are protected. Be orderly, please.

Continue, Sen. Karaba.

**Sen. Karaba:** So, what I was saying, Mr. Temporary Speaker, Sir, is that we have inadequacy of manpower in manning some of these offices, and that is the problem with the counties. It is the problem of the Senate. So, if the Senate is unable to man offices in such places; if we are even unable to get there and see--- I do not know how even these people go there. I am told that it is a problem to go to Turkana, and even to fly there, I am told that you have to fly through Uganda to get to Turkana.

*(Laughter)*

If you cannot fly Senators there, how then do you expect to get a good report if we cannot go there and see it for ourselves? So, I would have expected the---

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Machage): What is not in order?

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, is the Senator in order to mislead the House that to fly to Turkana, you have to go through Uganda, when he knows that there are regular Kenya Airways (KQ) and Fly540 flights that go to Lokichoggio? Is he in order?

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. (Dr.) Khalwale, that is his route and preference.

*(Laughter)*

**Sen. Karaba:** For security reasons, that is the route followed by the planes and even the vehicles, which have to go to Uganda before you get to Turkana. I think it is true.

*(Laughter)*

Sen. G.G. Kariuki, who was the Minister for Internal Security those days can agree with me that to get to Turkana from Nairobi, you have to drive to---

**The Temporary Speaker** (Sen. (Dr.) Machage): Let us go to another point, otherwise I will use Standing Order No.1 on you for repeating what is irrelevant.

**Sen. Karaba:** Which will be too bad, Mr. Temporary Speaker, Sir, because for me, I am forthright and I am trying to articulate a point which is very serious here.

What I am trying to articulate, Mr. Temporary Speaker, Sir, is that the Committee here picked on a county which is so disadvantaged---

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

**Sen. Karaba:** I do not need to be informed.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Machage): What is not in order, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, with all due respect to Sen. Karaba, is he in order to mislead the House by giving the impression that a decision was made to choose and land on Turkana when the truth is that a complaint was raised by the Speaker of the County Assembly of Turkana – and a copy of that letter is contained in this report – and it is on the strength of that particular complaint that the Office of the Controller of Budget then decided to investigate Turkana County? Could he declare whether he has read the report or not instead of misleading the House?

**The Temporary Speaker** (Sen. (Dr.) Machage): You have been challenged, Sen. Karaba. Have you read the report?

**Sen. Karaba:** Mr. Temporary Speaker, Sir, you are aware that I have read through it. I am even referring you to page 6, which is only here; because I have seen the variances which are already indicated and it is something that I suspect never happened, because if it happened, then the Senator for Turkana should have spoken about it ahead of the report coming here. In any case, Mr. Temporary Speaker, Sir, what will happen is that somebody can lie to the Senate. That is what we are discovering in the counties as we interact more with the Members of County Assemblies (MCAs). What is happening is that if a speaker in some of those counties is not in good books with the MCAs or even the governor, some of these things are likely to happen. So, the only body which can investigate further is the Senate. But for the Senate to investigate through a Committee, I was imagining that it is the Senator himself who should have gone to that county and played his role to find out whether the allegations are true.

**Sen. Okong'o:** On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Machage): Yes, Sen. Okong'o?

**Sen. Karaba:** Are you informing or---

**The Temporary Speaker** (Sen. (Dr.) Machage): Sit down, Sen. Karaba!

*(Laughter)*

**Sen. Okong'o:** Mr. Temporary Speaker, Sir, is my good friend, *Mwalimu* Karaba, in order to cast aspersions on the Senator for Turkana by saying that he never played his role correctly on this issue?

**The Temporary Speaker** (Sen. (Dr.) Machage): I think Sen. Karaba has done no mistake. He just made a comment that he wishes he was here to shed more light.

**Sen. Karaba:** Yes; that is what I said; and a slip of the tongue can be excused.

*(Laughter)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Karaba! Are you accepting that you---

**Sen. Karaba:** No---

**The Temporary Speaker** (Sen. (Dr.) Machage): Then withdraw and apologize.

**Sen. Karaba:** No, I am not apologizing because it was not intended.

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Karaba, withdraw and apologize.

**Sen. Karaba:** Over what? Over the remarks?

*(Laughter)*

Okay; I withdraw and apologize.

Mr. Temporary Speaker, Sir, as we go on, we are going to have these cases coming to the Senate more often, and that is why we need to be more careful when we make a decision on this case. That is why I am saying; that from my point of view, that if I was the one to decide on what should happen, I would oppose. I rest there.

*(Applause)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Karaba, are you opposing or supporting?

**Sen. Karaba:** I am opposing.

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Okong'o.

**Sen. Okong'o:** Thank you, Mr. Temporary Speaker, Sir. Much has been said by my colleagues about this Motion. From the outset, I am going to oppose this Motion by saying that, in this country, we have had a cancer of altering documents, as seen in several Parliamentary Committees which had members like Sen. (Dr.) Khalwale, who served in the other Parliaments. We have seen reports coming to Parliament, pages are missing and nobody has taken responsibility.

*(Applause)*

The Government Printer has done this many a time; the Registrar of Political Parties has also done this on several occasions; the Independent Electoral and Boundaries Commission (IEBC) has also altered documents and changed names.

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*(Applause)*

Mr. Temporary Speaker, Sir, the role of the Senate, especially in safeguarding the interest of the counties must, from day one, be very clear. We must send a message, loud and clear, to the county governments that the constitutional mandate of the Senate is to oversight, and I commend the Speaker of Turkana County for seeing those glaring inequalities in adjusting and reallocating funds to relevant functions.

But I want to also take issue with our Committee. The Committee on Finance, Commerce and Economic Affairs is one of the strongest committees in any parliamentary assembly. We have very prominent people in that Committee; my friend, Sen. Billow is here; they may have overlooked some issues, and that is why we are requesting that we do not pass this Motion until they come up with clear information about who did what. We should name them, and after naming them, we can either decide to shame them or forgive them; if the relevant agencies decide not to take action, that is a different issue.

Mr. Temporary Speaker, Sir, some county executives in the county governments have become fiefdoms; they have become private properties of individuals. The county assemblies are not consulted; elected leaders from those regions are not consulted in matters pertaining to service delivery in those counties. It is with those reasons that we should help this Motion.

Mr. Temporary Speaker, Sir, if you look at page 10 of this report, you will see that the Nairobi Liaison Office of the County of Turkana is allocated Kshs34 million; Kshs34 million for a liaison office! We all know what Turkana is all about. This House must send a clear message to all the counties, including my own county of Nyamira that nobody was consulted. We are at a point where county assemblies are at war with the executive, for instance, on the issue of the appointment of executive officers. When the Cabinet was also set up, no one was consulted.

I concur with the sentiments of one Sen. G. G. Kariuki, Sen. (Dr.) Khalwale and others who opposed the Report.

I also oppose the Report.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I beg to move that the Motion be amended as follows.

(a) By deleting the word “adopt” in the first line and inserting the word “notes” in place thereof.

(b) By inserting the following words immediately after the figures 2013/2014 in the fourth line; “and recommits the matter to the Committee for reconsideration and preparation of a Report with specific observations and recommendations on those responsible for the illegal alteration.”

The Motion as amended shall read as follows:-

THAT, the Senate notes the report of the Standing Committee on Finance, Commerce and Economic Affairs on the investigations carried out by the Controller of Budget on irregular alterations to the Budget Estimates for Turkana County for Fiscal Year 2013/2014 and recommits the matter to the Committee for

reconsideration and preparation of a Report with specific observations and recommendations on those responsible for the illegal alteration.

The amended version of the Motion will allow the Senate Committee and the whole House, later on, to understand what may have happened in the preparations of budgets of our various counties. This particular county has shown some of the anomalies that may have taken place. The Kshs30 million deficit that has been detected has made the Senate realise some of the detailed inner things that may have taken place in our respective counties. Most of our colleagues have said that their budgets were not brought to their attention and yet we represent our counties. We are supposed to protect our counties and hence, should stand by those budgets.

Mr. Temporary Speaker, Sir, page 16 shows that there are increases that were discovered and decreases that were noted. The increases total to Kshs675 million and the bulk of that – if you will allow me to read – falls directly under the purview of the governor. For example, the Office of the Governor has an increase of Kshs237,750,000. Two, the Finance and planning budget which falls under the Office of the Governor was increased by Kshs144,539,342. The second last one is on Public Services, Decentralized Services and Disaster Mitigation which was increased by 147,250,000. Those items total to Kshs529 million which is a 78.5 percentage increase falling under one office. The Department of Education among others did not even benefit. This tells us a lot. We could be losing direction in terms of devolution, looking at the way we have begun.

The Governor or the person who works directly in that office should have put the money appropriately to some of the development agendas that have made Turkana to be the county it is today. This is a county where people have no food. We expected to have more money going into that and not into buildings. We expected the fisheries machine in Lake Turkana, which collapsed a long time ago, to be revived so that they start exporting fish. We expected a myriad of activities but not an individual office to benefit.

I have also heard of something else although I have not seen it, that we now have a Public Liaison Office. That is an office for the Governor in Nairobi. I hope that my governor does not have an office like that one here in Nairobi. The Senate should move with speed and close those offices. Why should a governor fly first class from Lodwar to Nairobi to sit in that office and then go back? No wonder so many of them are in Nairobi almost every weekend when they are supposed to be at home.

This is a very serious anomaly and I want to thank the Turkana County Assembly and all other counties that may have stood their ground to bring this to the forefront. We must move forward, as suggested in this Motion, to study and go deeper in identifying the key people in this. Was it the Transition Authority (TA) that failed to provide the officers necessary to work and prepare the budgets? If yes, we need to deal with them fairly and squarely. Was it the Treasury that did not second officers who are conversant with IFMIS? What is IFMIS? I was an Accounting Officer for five years and I know that this is a complicated system that you cannot experiment on people who have not used it.

The Treasury should have sent officers but not to inherit or upgrade the former county council accountants to be in charge of such huge amounts of money. You will also make an interesting observation on page 12, paragraph ix; that the investigating team that was sent by the Office of the Controller of Budget established that the approved budget

was not published nor publicized as required by the law. This is contrary to Section 125 of the Public Finance Management Act (PFMA) 2012. These revelations are so massive that I wonder whether we have sent any money to Turkana. How is the Turkana County Government operating if the budget was not approved or put in the Kenya Gazette? If it was not publicized as it is required by law, what does that mean? That means that there are people operating in that county who do not follow the law. There could also be people who do not know what they were supposed to do and yet they are in charge of our finances.

I note with concern that governors are political appointees. They have never been in charge of parastatals or departments and, therefore, they do not know these processes and procedures. The Transition Authority is now strictly on the map, because it should not have allowed this to proceed without bringing it to the attention of the governor and county government.

Mr. Temporary Speaker, Sir, our role in the Senate, as stated clearly in Article 96 (1) of the Constitution, is to represent the counties and serve to protect the interests of the counties and their governments. I do not know what type of role or permission we need for the Senate to rein in and stand so firmly to see to it that things run in our counties. For example, there is a Bill that is going round and I have already seen governors running around, just because they heard of a proposal to have county development boards. Every organization has a board. A school has a board of governors, a university has a council and parastatals have boards of directors.

Therefore, by virtue of our role of representing the counties, it means that the Senate has a footing in the counties anytime, anywhere, to see that their operations are so directed and supervised by the governors on the ground. We also serve to protect, so that we do not come here on hearsay. If these boards or such a forum, for example, were in place, Sen. Munyes, who is not here, already would have detected this in advance and raised the red flag, including being the mediator between the county assembly and the governor, because I am told in this Report that they do not see eye to eye. I do not know whether they are now facing or staring at one another.

Mr. Temporary Speaker, Sir, it is true that we must play our role to safeguard this. As we look for funds from the national Government, we need to know that this money that has gone to the ground has gone to capable hands. We trust the people who were elected, but the implementation should involve everybody, so that we know what is taking place. We should not have cases, for example, where some Constituencies Development Fund (CDF) projects overlap with those identified by the county. If there was a board or forum, those projects would have been aligned, so that no repetition whatsoever takes place, including having some Non-Governmental Organizations (NGOs). We have NGOs and development partners who are dealing directly with some counties, but we need to put them together and know who is doing what. We expect these types of things to come, but we must stand on our feet and make sure that things are put in order.

Mr. Temporary Speaker, Sir, we need to start well with this county that lately, coincidentally, has been in the news, because of the discovery of oil and huge amounts of underground water. I am keen to see that Turkana County and West Pokot County that

neighbour each other live peacefully. I, therefore, expected to see a substantial component of money set aside by the County Governor of Turkana to purchase vehicles that will assist the police to provide security and open up roads in the areas neighbouring the counties that are experiencing these problems. For example, yesterday, there was a problem that erupted between the border of West Pokot and Turkana, where people were killed and livestock stolen. The police cannot reach the place because there is no road and boosters for communication. Those are some of the things that I would have wanted to see. We should have had a line item to say: We are providing this so that we can have peace for once with our neighbours.

Mr. Temporary Speaker, Sir, I beg to move this amendment and ask Sen. Melly to second.

**Sen. Melly:** Thank you, Mr. Temporary Speaker, Sir, for giving me this chance to second the amendment as moved by the Senator for West Pokot.

Mr. Temporary Speaker, Sir, according to the Report of this Committee, I want to believe that these are the recommendations of the Controller of Budget and not those of the Committee. This is because the Report just highlights what has already been done by the Controller of Budget. We need the Committee to come up with its own recommendations. The Constitution gives this House powers to oversight the county governments on matters devolution.

Mr. Temporary Speaker, Sir, I would be surprised if I am told that the Uasin Gishu County Government does not have the capacity to make budgets, yet it has people who have graduated with Doctor of Philosophy (PhD) and Masters degrees. This Report says that some counties do not have capacity; that we lack human resource to prepare budgets. I do not believe that is the case. I think that one of the core functions of the county assemblies is to ensure that they come up with budgets, because this is what will run the counties in terms of development and recurrent expenditure throughout the year. The budget will always determine what should be done. But when we say that the county governments have no capacity to handle issues of budgets, it raises a lot of concern.

Mr. Temporary Speaker, Sir, on the recommendation for further investigation to be done, I want to request that the Committee of the Senate revisits it. They should go back and try to give this House the right information. There is no other person who will do this job apart from this Committee. We do not expect the governor or somebody else to do this. The Committee, mandated by the Constitution, under the Standing Orders, should investigate and bring to this House accurate information regarding issues of expenditure.

Mr. Temporary Speaker, Sir, the Senate may not actually do the oversight function. This is because if we have a board, as proposed in a Bill by one of the Senators, where the governor, Senator and all elected leaders sit down and come up with a formula for doing the budget--- At the end of the day, we, as the Senate, will not feel like we are doing our oversight job. A number of times some of us do not know what is going on in the counties, and that is why we are coming up with that recommendation; that we should all sit down and prevent such problems from arising. We want to see the office of the Senator having capacity In terms of facilitation and human resource so that every other

time we have experts who can do a good budget. The Senate has that role but unless we put in place a legal framework, then we still have challenges.

With those few remarks, I second the amendment.

*(Question of the amendment proposed)*

**Sen. (Dr.) Khalwale:** Thank you Mr. Temporary Speaker, Sir. I rise to support the amended Motion. Allow me to draw the attention of the House to a quote from the letter that was written by Hon. Geoffrey Iyanae Kaituko, Member of the County Assembly of Turkana and Speaker of that Assembly to the Controller of Budget. He says:-

“Finally, Members of the Turkana County Assembly, if necessary, are prepared to pursue all possible avenues which include, but are not limited to, litigation in ensuring that only the approved budget estimates which were done in accordance with the law are funded”.

If this is what this Speaker of this county assembly is saying – a very patriotic Kenyan – it means that if this Senate does not do what many Senators have proposed here, it will end up being an indictment on the Senate that we are not capable of protecting our county assemblies, our county governments and the people of our counties. Therefore, I want to call upon the Chairman of the Committee and the entire membership of the Committee to take it within their stride the fact that we are recommitting this matter to them.

As they do so, I want to specifically ask them to look at the following points: First, as you call these people to come before you, use the investigations of the Controller of Budget as a template or a working document that will help you to interrogate them further. Look at what they are saying in that Report on page 11(7). They are saying that a whopping Khs5.2 billion meant for development expenditure and a whopping Kshs2.9 billion meant for recurrent expenditure was brought to the Controller of Budget for recommendation by the executive committee in the Governor’s office and when the Controller of Budget made inquiries from the Members of the County Assembly, they established that neither their input nor their approval was sought in those alterations.

That is a serious statement on corruption. It is a serious statement on impunity. It is a serious statement on where we are headed to. We are headed to creating 47 African big men who will be saying “I am the boss”. In fact, these days, I hear some of them saying that they are the Presidents of the counties. We must refuse that as the Senate. When we were young people like Sen. Melly, waging wars at the university, we were not doing it for any other reason; we were doing it so that we could fight poverty in the rural areas. We were doing it so that we could cause development to go to all the corners of Kenya and we are not going to do it if this is going to be the start that we shall entertain.

The second point I want the Members of the Committee to interrogate is on page 12 (8) where the executive committee is trying to give an excuse that the reason why they slashed the budget of the county assembly by over a half a billion was because the car grants and mortgage that was meant to go to Members of the County Assemblies was disallowed. That sounds prudent, but refer them back to the law. What does the law say? The law says that you cannot amend the budget of the county assembly even if you are

the governor. The PMF Act says that the only person who makes the budget is the Accounting Officer of the County Assembly and that person is called the Clerk and not the governor. So we are allowing impunity to go on by excusing them when they say they were doing the right thing to remove that money because the cars had been disallowed.

The third point is on page 12. It says: "The investigation team established that the approved budget was not published nor publicized as required by the law". This is contrary to the Public Finance Management Act which provides that this kind of information must be made public through publication. So, if we do not interrogate the Governor, he will be sitting--- Sen. G.G. Kariuki reminded me when we were seated there that if we do not stamp our foot--- We are lucky we had a good Speaker in Turkana who complained, but supposing he was a corrupt man, he would have colluded with the Governor and they would have shared these billions of shillings and nobody would have known.

Mr. Temporary Speaker, Sir, I want to hold brief for my colleague, distinguished Senator for Turkana, Sen. Munyes. Possibly what has happened in that county---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Has he allowed you to hold brief for him?

**Sen. (Dr.) Khalwale:** May I rephrase and say that regarding the suggestion by a contributor earlier that Sen. Munyes should have known this, we should all know that probably what has happened there could as well be happening in our counties. Maybe our speakers could be colluding with the governors. I want to ask President Uhuru's Government to make sure that they fund the Office of the Auditor-General. He should be given equipment, human resources and money to make sure that he audits the 47 counties thoroughly so that this information can then come to us. I want to urge the Speaker of the Senate to move with speed in the amendment of Standing Orders that we hope will bring in oversight committees namely, the County Investments Committee and the County Accounts Committees so that they can be doing oversight for us. I am sure if they were there, they would have analysed these figures one by one and the people responsible would not get away with it.

Mr. Temporary Speaker, Sir, I want to end my contribution on this issue by again drawing the attention of Members of the Committee to page 16 of the report. Allow me to read:-

"An analysis of the revised budget estimates shows that the county executive committee budgeted for the county assembly which is contrary to the provisions of Section 129(3) of the Public Finance Act."

If you allow the county executive committee to budget for themselves and then go on and budget for the other areas including an independent arm like the county assembly, then you are breaching the constitutional principle of separation of powers. What will happen then is that the county assembly will now be the good old councillors who used to run to the office of the chairman of the council to be given handouts. Therefore, they will stop oversighting. They must have their own independent budget.

Mr. Temporary Speaker, Sir, I would like to draw your attention to page 12 under the general warrant. The Controller of Budget confirms that the budget was not subjected to approval of the county assembly. The Office of the Governor awarded itself Kshs376

million and went further to award the deputy governor, who is an officer within the office of the governor, another whopping Kshs110 million. I was the chairman for Public Accounts Committee (PAC) for five years and I can tell you that this is where you are going to find foolish expenditures like entertainment, buying of flowers in the office and so on. This is the money that these guys pocket. We must stamp our authority. Let me annoy you further. When you look at that warrant, they are saying that they are allocating Kshs26.3 million to a dubious committee called Lodwar Town Management Committee. Which one is this?

Mr. Temporary Speaker, Sir, on the same page, they are saying that they are allocating Kshs34 million to Nairobi Liaison Committee. So that the Members of this House can realise the depth of this corruption, you remember that a whole Committee of the Senate and that of the National Assembly has a budget of Kshs16 million for the whole year, so how can a small office here in Nairobi with a secretary and an office messenger, have a budget of Kshs34 million? By the way, even if they deserve that money, what is the Governor of Turkana coming to do in Nairobi and yet we want him to sit in Turkana and come to terms with the challenges of the people of Turkana?

I want to support this amendment and hope that one day in this country we will have men and women who will refuse to go to their graves and leave their children with money which they got from public coffers; men and women who will find honour in living a decent life. By the way, all these money people are scrambling for, do they want to spend these billions in the second life? If it is in the current life, the money I have that affords me six beers in the evening is far much more than I need. Why should you steal all these millions?

I beg to support.

**The Temporary Speaker** (Sen. (Dr.) Machage): This is an amended Motion and all of you have an opportunity to contribute.

**Sen. G. G. Kariuki:** Mr. Temporary Speaker, Sir, I want to thank you once again for allowing me to make some statements on this amendment. I think we have done a credible job in this House today because we refused to allow the Senate to be used as just a passing cloud. I want to congratulate all the Senators who have supported this amendment and also those who rejected the Motion as it was. It is true that we were going to pass something which was not clear. Our Committee which is supposed to be vetting the county government on our behalf failed in their duties this time by assuming that they will come and tell us what to do. I am happy that when I was talking to the Vice-Chairman, he was equally very concerned with what has been reported but he had no choice other than moving the Motion because it was agreed upon by the Committee unanimously.

Therefore, we want to go a little further and say as follows: If the governor, the speaker and the clerk connive to take Kshs1 billion from their committee---

**The Temporary Speaker** (Sen. (Dr.) Machage): Before you continue, Sen. G. G. Kariuki, you made a remark that the Vice-Chairman of that Committee came here just because the other Committee Members had adopted that report; then he should have registered his dissent. Otherwise, he should not make that statement because he is part of the whole thing.

**Sen. G. G. Kariuki:** Mr. Temporary Speaker, Sir, I said that but it was not public and it was not the property of the House. That was a private discussion between me and him and, therefore, does not warrant to be treated as if it is a statement which was made.

**The Temporary Speaker** (Sen. (Dr.) Machage): Then withdraw that statement that the Vice-Chairman made.

**Sen. G. G. Kariuki:** I said he had no choice because it was unanimous for him to bring it here. Not even the Chairman has the choice if the Committee decides to bring the Motion here.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. Sen. G. G. Kariuki who is my senior, knows very well that a committee is controlled by the Chair through a vote. So, if it is true that in this report, they were left with no choice but to bring it here, could he substantiate, whose decision it was for this report to come here if it was not the Chair? I can see that the report is signed by the Chair. Could he substantiate?

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. G.G. Kariuki, could you withdraw or substantiate?

**Sen. G.G. Kariuki:** Mr. Temporary Speaker, Sir, I am being required to withdraw something which is very clear to me.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. G.G. Kariuki! You see now you are arguing with the Chair.

**Sen. G.G. Kariuki:** Mr. Temporary Speaker, Sir, I apologize.

**The Temporary Speaker** (Sen. (Dr.) Machage): Withdraw and apologize.

**Sen. G.G. Kariuki:** Mr. Temporary Speaker, Sir, Sir, I withdraw and apologize.

**The Temporary Speaker** (Sen. (Dr.) Machage): Thank you very much.  
Continue.

**Sen. G.G. Kariuki:** What I am trying to say here is that the decision was made by the Committee which is appointed by this House. Committees always have the Chair and the Members, and my assumption is that it was unanimous.

**The Temporary Speaker** (Sen. (Dr.) Machage): We heard that; just continue. Do not revisit that issue again.

**Sen. G.G. Kariuki:** Okay.

Mr. Temporary Speaker, Sir, what I am trying to say is that we have to be extremely careful when we are dealing with the new Government. We have had the central Government for many years and we have not managed to control the kind of corruption which is taking place in the national Government. The national Government has now been devolved and we have about 47 county governments. If we are not capable of dealing with the national Government to stop corruption, which has been spread all over, we have to be more energetic to manage and to make sure that corruption is not going to be spread all over the counties.

So, the important thing here is that we do not want to appear as if we want to manage the county governments, because that is not our role. In fact, even the board we are talking about – and I do not want to anticipate debate – we have to be extremely careful whether we are trying to interfere with the management of the county governments. But this House, being the protector of the county governments, I think we

are legitimately within our own right to make sure that the county governments are given the support they need from us. I hope we will make---

*(Sen. Orengo consulted loudly)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Orengo! You had all the time outside to discuss---

**Sen. G.G. Kariuki:** Yes; he just came in and started---

*(Laughter)*

Anyway, Mr. Temporary Speaker, Sir, that is your role to discipline him, not me.

But what I am saying here, Mr. Temporary Speaker, Sir, is that let us appear – not just appear – let us be seen to be above these county governments because we are there to assist them to succeed in the new dispensation; that is our job. We should not to try and appear as if we want to manage their day to day business.

So, Mr. Temporary Speaker, Sir, no one in this Senate would want to be seen as if the Senate is being controlled by a certain force outside the Senate. Equally, county governments are political bodies and, therefore, they should also be given the respect they deserve. They need to be supported by the Senate to enable them do the job they are mandated to do. The only thing we should be concerned with is when they try to get out of their mandate or what the Constitution says. We need to exercise that mandate without fear or favour, and that is the only way our people will know that the Senate is there for a purpose, because most people today have not been able to understand.

What if a Senator does not have the money to give the public like in the form of the Constituencies Development Fund (CDF) and they are not also there in the counties, where billions of shillings have been sent from the national Government? Unless we appear to be managing that money from here to make sure that something is done and we are associated with that kind of management, it is going to be very difficult for the Senate. That is why I am saying, from the word go, that what we did by trying to ask that this Motion be amended, I think we did the right thing. It was a very good thing for this House that we had this opportunity to talk about the powers that we do have. We are not going to be used either by the county governments or by any Committee of this House. This House will remain supreme for all the Committees, because that is the only way we can be seen as if we are here for a purpose.

So, Mr. Temporary Speaker, Sir, just imagine in Laikipia, for example, the county governor, the chief secretary or the Clerk and the speaker himself, if they decide to take this kind of money and they agree in-house that that they will take Kshs500 million, who is capable of discovering that among us? There is no Senator, Controller and Auditor-General or even the Government or Government officer who will be able to investigate the county, the way I know this country has invested in corruption. None of the people will be able to do that; and that Kshs500 million will just go and disappear. Our duty here today is to make sure that since we were given this responsibility by the people, let us

make this House a powerhouse in terms of management and success of the county governments.

If we do that, we shall carry with us a lot of support in the next stage; and I think this is the time. This is the most appropriate time for us to receive this kind of Motion requesting this House to move a certain report; a report that we just doubted whether it was critically investigated, and we found that it was just a mere reporting of what the Director-General has written. So, this has given me, as a Member of the Committee on National Security and Foreign Relations and the Committee on Implementation, something to digest; that this House will not just be used. If I am required to bring a report here which I have gone through, I am satisfied by whatever I have said and I can stand by it, but not today; the Auditor-General did not do anything--- No; not Auditor-General, he has another name.

**Sen. Orengo:** Controller of Budget.

**Sen. G.G. Kariuki:** Yes, the Controller of Budget. The guy did not do any job; any person would have done it---

**Sen. Orengo:** A lady!

**Sen. G.G. Kariuki:** Whether it is a lady or a man---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Orengo! Please, desist from doing that.

**Sen. G.G. Kariuki:** Any person, Mr. Temporary Speaker, Sir, would have done it; you do not have to become an accountant to detect this mistake. So, actually, there was no job done by anybody except the Speaker of the County Assembly; the person who just said there is a problem here and I am sending it to my seniors. He knows for sure that the Senate is their senior, and that is why he reported the matter to us; by writing to the Controller of Budget and also copying it to the Speaker of the National Assembly. He understood that he had to inform the people who are in charge of the county governments, and that is exactly what he did. But we sort of let him down; we just collected the figures and told him to go ahead. Supposing now the same county assembly sits down and says: "Why were you accusing the county executives, is it, may be, because you are fighting with them?" But, here, we want to give him teeth to bite by saying we want to know who altered those figures. He is capable of saying "it is so-and-so;" that is all the investigation seeks to unravel. We want to know who altered those figures. We want to know who is culpable. If we are not told, then the entire county, the Governor and the Executive Committee should be held responsible for this mistake. Let us set a good example.

Let the Standing Committee of this Senate start moving around to make sure that there is an officer specifically to deal with the money that is being sent down there and to connect with other people who are responsible for this money.

Once again, Mr. Temporary Speaker, I thank you for allowing me to say a few words. I apologise for any mishaps. Thank you.

**Sen. Abdirahman:** Mr. Temporary Speaker, Sir, I stand to support the amendment which gives us more opportunity to ventilate the matters before us.

I support it mainly because we expected much more to be done by the Committee on Finance, Commerce and Economic Affairs. The Committee has a good number of

people who are well learned, not only those that we call “learned friends”, but people who are learned in other disciplines like finance, law and several other areas.

There are glaring discrepancies in the Report from the Committee and not from the Controller of Budget. This gives an extensive view of the action that should be taken now and even in future. This is just like copying and pasting. So, to the one who suggested the amendment, I appreciate it.

On the part of the Controller of Budget, there seems to be some complacency. The Report recommends further investigations but does not narrow down to what specific action would have been taken or what agencies the case should have been referred to. We will recommend that the Committee gives us the agencies that this case should be referred to and to what extent we should pin down the actual culprits. We expected the Committee to dwell a bit more on the pitfalls of the budget-making process if any and how each of the stakeholders should have participated.

We know that the County Assembly approved this. However, it should have gone a little bit deeper to examine whether the necessary checks and balances were undertaken. It should also have identified the useful lessons and experiences that the Senate and the County Assembly can learn because the County Assembly acts on behalf of the Senate. We want them to do a detailed analysis on the merits, demerits and the possible solutions for us to avoid such situations in future.

I support the amendment.

**Sen. Orenge:** Mr. Temporary Speaker, Sir, when I first spoke on the main Motion, I anticipated an amendment like this. I thank the Mover of the amendment, because then, the Senate will be doing something on the basis of specific action to be taken and a clearer report on this issue.

Mr. Temporary Speaker, Sir, I was coming in when my brother, the Senator for Laikipia, was speaking and cannot have any doubt that he knows what he is talking about. This is because Sen. G.G Kariuki is a man of tremendous experience in the workings of the Government. As was suggested earlier by Sen.(Dr.) Khalwale, that the records of the deliberations of this particular Motion be made available to the county governments and assemblies, I think that the highlights of the speech by the Senator for Laikipia would be instructive and informative on how things should be done. I believe that Sen. G.G Kariuki understands more than anybody else what excesses and abuse of power means. This is because he is a victim of excesses and abuse of power. But by the grace of God, he survived and is here.

One of the reasons I think people like Sen. G.G Kariuki have survived is that when public leaders--- Whether we like it or not, each one of us will eventually be audited. We will live by our sins or what we have done well in. I am saying this particularly because there are people in the generation of Sen. G.G Kariuki, who actually really suffered because their sins caught up with them. But I know that Sen. G.G Kariuki, even before Independence and during the first Government, went through a lot of good and hard times. I was an assistant secretary in Ministry of Lands when Sen. G.G Kariuki was an Assistant Minister for Lands. Therefore, you can see how far I have come with this gentleman, although there was a time when I thought that he was part of the problem.

But with tremendous respect, he is everyday part of the solution and that is an improvement.

Mr. Temporary Speaker, Sir, for this Senate not to be taken for granted and; more than any other action that we have taken in any other Motion, I think that this is really the first time that we are demonstrating that it will no longer be business as usual. At the end of the day, we must audit every report that comes to us. I do not want to talk about Sen. G.G Kariuki a lot, but I know that in our Committee on Implementation, if you are in a meeting in which documents are brought before he has read them, then he will not be prepared to discuss those particular documents. So, sometimes, reports are brought to us and we come to the Plenary when we have not read them. We, therefore, end up passing things that we later on live to regret.

Mr. Temporary Speaker, Sir, in this particular instance, we have gone the extra mile to make sure that, not only in terms of the Committees, but also the constitutional bodies, things are done the right way. We are telling even our Committees, including the Committees that I belong to, that the Plenary is not going to accept any reports that do not show that you have done what we are required to do. It is not just about holding meetings in the Coast or Kisumu, getting our allowances and then, assuming that we have done a good job. I think that the Senate is showing that it is a House of depth and tremendous commitment, when it comes to consideration of business before it.

Mr. Temporary Speaker, Sir, if this amendment is approved, then it will require the Committee to do a thorough job, but also act very expeditiously because the consequences of not having a report and making the appropriate recommendations, particularly to the Office of the Controller of Budget, may make the people of Turkana suffer for sins that are not their own.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Senator! You will have five minutes tomorrow.

### ADJOURNMENT

**The Temporary Speaker** (Sen. (Dr.) Machage): Hon. Senators, it is now time for interruption of business. The Senate, therefore, stands adjourned until tomorrow, Thursday, 3<sup>rd</sup> October, 2013, at 2.30 p.m.

The Senate rose at 6.30 p.m.