

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 19<sup>th</sup> March, 2015

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

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

### PRAYERS

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

**The Speaker** (Hon. Ethuro): Order, Sen. Orengo! You must appreciate my courtesy to you, in particular. I was already on my feet then I saw you were about to enter the Chamber, but you could not so, I was allowing you to enter. Why not assume your seat and warm it? Whatever matter there is, I am sure it will still be covered after my Statement.

*(An orderly crossed the Floor while the  
Speaker was on his feet)*

**Sen. Orengo:** On a point of order, Mr. Speaker, Sir. Did you see the orderlies crossing the Floor while a distinguished Senator like me froze while you were on your feet? Is this not a demonstration that you have not taught your orderlies very well or am I wrong in bringing that point of order?

**The Speaker** (Hon. Ethuro): Sen. Orengo, you are right in bringing the matter to my attention. However, you are definitely wrong in assuming that I did not teach the orderlies what to do while I am on my feet. In fact, for them it is a matter of duty to obey and comply. I caution them that they need to do so. But I would not really want that to be a matter for the Plenary and that is why I still repeat my earlier assertion that you could still approach me so that we know how to deal with it. Let us leave it that way.

Hon. Senators, as you move towards your seat, you move with haste so that I do not freeze you where you are.

### COMMUNICATION FROM THE CHAIR

#### EXTENDING DISCUSSIONS ON A MATTER BEFORE A COMMITTEE OUTSIDE THE HOUSE

Hon. Senators, on Tuesday 3<sup>rd</sup> March, 2015, the Senator for Mombasa County, Sen. Hassan drew the attention of the House to an Article appearing in a Sunday

newspaper of 1<sup>st</sup> March, 2015 covering information allegedly divulged by the Chairperson of the Standing Committee on Education, Sen. Karaba. Sen. Hassan claimed that the information given to the media breached Standing Order No.88 of the Senate as it amounted to pre-empting or anticipating debate as the matter was being investigated by a Committee of the Senate, on disturbances facing the University of Eldoret.

Hon. Senators, although the Senator quoted Standing Order No.88 that relates to anticipating debate, the appropriate Standing Order is No.89 which states:-

“No Senator shall refer to the substance of the proceedings of a Select Committee before the Committee has made its report to the Senate.”

I wish to note that the above provision applies to debate within the House which gives the principle of application of the rule of extending discussions by Senators outside the House.

The question of Members of the House taking debate or commenting on matters pending before the House or Committees outside the House is not new. Therefore, as you can expect, there is a well developed path in terms of procedure which is codified through rules and practice, which as you are well aware, is uncodified and set by precedence mostly through Communications from the Chair. Let me remind Senators that the Chair comprehensively pronounced itself on the subject in the last Session and that position has not changed.

Hon. Senators, I have looked at the article in the newspaper referred to by Sen. Hassan titled “Senate Team Unearth Rot at Eldoret Varsity.” It is a report summarizing alleged problems confronting the institution that led to the unrest from the author’s perspective, in the course of their work of reporting Committee activities. It is not quoting or referring to a Statement issued by or attributed to a Member of the Committee or any other Senator, or indeed, including the Chairman himself. Therefore, arising from the foregoing, the Chair is satisfied that the reporters who filed the story were within the parameters provided by the Constitution and our rules of procedure and hence there was no breach of the rules by any Senator, nor by the newspapers.

Hon. Senators, I also applaud and commend Members of the Committee for staying the course and not being carried away and deviating from the task at hand, namely; making proposals that will assist the university back to its feet as the specialized agency of the House in education matters. I, therefore, wish to encourage all Senators, starting with Sen. Hassan, to be reading the stories more carefully before they bring the matter to the House.

Thank you.

**Sen. Sang:** On a point of order, Mr. Speaker, Sir. On several occasions we have had challenges sometimes when we do our work as Senators. However, in the process of doing this, members of the Fourth Estate report some of our proceedings and some of our processes. This is within their jurisdiction. I want to thank this particular reporter because although that story did not emanate from the Committee, it was quite close to the truth. We, as a Committee, later on, learnt that. I am sure when the report will be tabled in the House, we will be able to confirm that.

**The Speaker** (Hon. Ethuro): Hon. Senators, that matter has been given a direction and there is no amount of applauding the Chair that will change the position.

**PAPERS LAID****REPORT OF THE FINANCE COMMITTEE ON THE STATUS OF  
FINANCIAL ALLOCATIONS TO COUNTIES BY THE CRA**

**Sen. Billow:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table:-  
A Report of the Standing Committee on Finance, Commerce and Budget on the status of financial allocation to counties by the Commission on Revenue Allocation; the matter of ceilings on the Recurrent Expenditure for the Financial Year 2014/2015.

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

**ANNUAL REPORT OF THE GENDER AND  
EQUALITY COMMISSION**

**Sen. Madzayo:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the House:-  
A Paper on National Gender and Equality Commission Annual Report 2013/2014.

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

**The Speaker** (Hon. Ethuro): Next Order.

**STATEMENTS****EXPLOITATION OF YOUNG GIRLS BY TOURISTS**

**Sen. Madzayo:** Mr. Speaker, Sir, I have a Statement on sexual exploitation of young girls in the coast region by tourists. It was sought by Sen. Kisasa.

She sought to know the steps the Government is taking to protect young girls from being exploited by tourists along the coast region.

Bw. Spika, kwa ruhusa yako, ningependelea nisome hili jibu kwa lugha fasaha ya Kiswahili.

**The Speaker** (Hon. Ethuro): Order, Senator! Then you should have started in Kiswahili language; you started in English language and you must finish in it.

**Sen. Madzayo:** Mr. Speaker, Sir, I am sorry that I did not do that. However, with your kind permission, I beg for your permission to proceed in Kiswahili language.

**The Speaker** (Hon. Ethuro): Sen. Madzayo, the Speaker does not preside over the House in an arbitrary manner. However, he is still subject to the Standing Orders just like the rest of you.

**Sen. Madzayo:** Pole, Bw. Spika, ninaomba msamaha.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. Sen. Madzayo is a very close friend of mine and we consult quite often. I am aware that the Statement he has written in Kiswahili language. Can I request the indulgence of the Chair that you allow him to sit down to try and translate it, and then he can issue it after around ten or 20 minutes?

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Khalwale, I do not know who appointed you to be Sen. Madzayo's advocate. Secondly, the Senator was ready to proceed in Kiswahili language and so he does not need time to translate, unless you are saying that he wants to translate from Kiswahili to English, which is contrary to what he wanted to do.

**Sen. Madzayo:** Bw. Spika---

**The Speaker** (Hon. Ethuro): Order Senator! I appreciate your predicament. You did what your colleagues suggested to you. That is the only request that you would have asked me to grant you; that you go back and then, you will get another opportunity to start in the language that you prefer. You cannot be granted without your request.

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. I want to plead with my colleague, Sen. Madzayo to look at Standing Order No. 81(2) which reads that:-

“A Senator who begins a speech in any languages provided for under paragraph (1) shall continue in the same language until the conclusion of the Senator's speech.”

You have guided him very well; that he can request for your indulgence so that he can come back a second time and start his speech in the language that he prefers. However, as he is doing that, he is still repeating the same mistake. He had started in English language in his introductory remarks. However, in seeking the Speaker's indulgence, he is doing it in a different language. Is he in order?

**Sen. Madzayo:** Bw. Spika, naomba uniruhusu nijibu---

**The Speaker** (Hon. Ethuro): Order, Sen. Madzayo! I am afraid that even with a lot of guidance and patience; you have just refused to sit.

**Sen. Madzayo:** Okay, fine.

**The Speaker** (Hon. Ethuro): Order, Senator! You may make your Statement next Tuesday. We have squandered valuable time on what is a fairly straightforward matter.

**Sen. Madzayo:** Mr. Speaker, Sir, I am obliged.

**The Speaker** (Hon. Ethuro): Next Statement.

Please, proceed Sen. Fatuma Dullo.

**Sen. Adan:** Thank you, Mr. Speaker, Sir. I have two Statements to make. They are both in today's Order Paper. I hope that you will allow me to finalize both of them.

**The Speaker** (Hon. Ethuro): Let us start with one, and then, we will see if we have time for the other. So, prioritize, please.

#### STATUS OF THE SUSPENDED RECRUITMENT OF POLICE OFFICERS

**Sen. Adan:** Thank you, Mr. Speaker, Sir. The first one is by Sen. Khaniri in which he requested for a Statement regarding the status of management of National Police Service (NPS). The hon. Member particularly sought to be informed on the status of police recruitment exercise that was undertaken in 2014 and the fate of the recruits, since they have not yet reported for training.

Secondly, he asked for the structure and command of police officers who serve in the Very Important Persons (VIPs) Protection Unit. In response, the NPS recruitment was conducted on 14<sup>th</sup> July 2014. However, following claims of malpractices from members of the public and other stake holders, the NPS carried out internal investigations which

led to annulment of the exercise in some of the recruitment centers. However, a repeat could not be carried out after Independent Policing Authority (IPOA) obtained a court injunction stopping repeat of the exercise or reporting of the recruits to training colleges. The IPOA won the civil case and the recruitment was annulled. Consequently, the Attorney General and the National Police Service Commission appealed against the ruling. The judgment is coming up on 18<sup>th</sup> May, 2015.

The second point is that the Government has developed a VIP protection policy which recommends the establishment of a VIP Protection Unit, which will be mandated to handle the security of VIPs and State officers. The implementation of the policy is in progress. We have agreed with Sen. Khaniri, that if maybe he or any other Senator has recommendations, they can present them to the Committee. We will forward to the relevant department.

Thank you, Mr. Speaker, Sir.

**Sen. Khaniri:** Thank you, Mr. Speaker, Sir. I have a few clarifications to seek. I need your guidance on the first part of the Statement on the police recruitment exercise. She alleges that the matter is in court, the judgment is coming up on the 8<sup>th</sup> of May, 2015, which implies that the matter is *sub judice*. Therefore, we cannot discuss it here. I cannot ask further question on that first part. Our Standing Orders are very clear; that when a Member is alleging that a matter is *sub judice*, they must produce evidence of the proceedings or the court case number. Is she in order just to allude to the fact that the matter is in court awaiting judgment without tabling the evidence? It has to be on record.

**Sen. Adan:** Mr. Speaker, Sir, I think that this is public knowledge and it is in the public domain. However, if the Senator requires that, we can avail because we have not requested for that.

**The Speaker** (Hon. Ethuro): Order, Sen. Adan! I thought that you mentioned a case number.

Sen. Khaniri, you may proceed with the second part as I respond to that one.

**Sen. Khaniri:** Thank you, Mr. Speaker, Sir. The juicy part was the first one. On the second part of the Statement, I really want to thank the Chairperson for the information that she has provided to us. She says the Government has developed a VIP Protection Policy which recommends the establishment of a VIP Protection Unit. As they establish this unit, could she assure the House that they will recommend to the Cabinet Secretary to ensure that they improve on the allowances of these VIP protection officers? I appreciate that Parliament pays them a little allowance. However, I believe that these officers are entitled to some little VIP allowance from the various forces that post them to the VIPs that they protect.

Mr. Speaker, Sir, the other thing is that they should be given specialized training to enable the officers to deal with the new technology and crime. These officers need to be equipped with powerful weapons and bullet-proof vests. We all saw what happened to our fallen colleague, hon. Muchai and his security team. Could she assure us that all these factors will be included?

**Sen. Adan:** Mr. Speaker, Sir, as I said earlier, the Committee will present the recommendations given to us by Members. We will push for the allowances through with them. Right now, there is a training going on for the VIP security officers. We will also follow up to make sure that they are up to date and that it meets the requirements of Members.

**Sen. Kagwe:** Mr. Speaker, Sir, the history of VIP protection is crucial and we have seen results of not having good VIP protection in the death of prominent individuals, including Members of Parliament. I, therefore, want a clarification on the timelines because we cannot wait for a policy for people to be trained. What are the timelines that the Chairperson is referring in terms of this policy document? Secondly, is there a stop-gap measure where the current crop of people who are providing the VIP services can be retrained? Some of them have not shot a gun in the last two years.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I do not want to mention the issue of *sub judice* until it is determined. However, something closely related is that the recruitment of police officers, the tradition has been that it is done yearly. The matter which has been injuncted is the recruitment of the generation of youth of 2014. Could he confirm that there will be recruitment this year to take care of the people who have come of age for the year 2015?

Finally, the issue regarding the stipend given to the police officers attached to VIPs is okay. However, is the Chair satisfied that the stipend is able to cushion them up to and including their accommodation when they are out of Nairobi guarding the VIP?

**Sen. Leshore:** Mr. Speaker, Sir, the recruitment of the youth was supposed to be done last year. I understand the case is coming up in May. Could the Chair say whether this is sabotage by terrorists or by people who do not want the Jubilee Government to recruit over 10,000 youths? What is wrong with the other arm of the government? Why are they giving in to sabotage?

**Sen. Adan:** Mr. Speaker, Sir, I wish to respond to interventions by Senators, regarding the issue of timelines, I do not have the answer, but we can request the department to fast-track the process and make sure that they are finalized as quickly as possible.

Regarding the retraining of the current officers, this is also a matter that we can do a write up to the relevant department and request them to do so.

On the issue of recruitment for 2015, I do not have an answer for this. It is a matter that I can get from the relevant department and give further clarification. On the issue of cushioning of the VIP officers, especially on the issue of accommodation, it is an important matter when we do not have proper allowance for them. Sometimes, we get out of pocket allowance to support them. Since we are going to table a report by the Security Committee, it is a matter that we can consider in our report which is going to be done soon.

Regarding sabotage case, this is a matter I might not be able to answer because this is a different arm of the Government dealing with this matter. It is a matter that I might not answer.

**The Speaker (Hon. Ethuro):** Hon. Senators, there was a matter of *sub judice* raised by Sen. Khaniri. It is true that Standing Order No.92 (4) which states:-

“A Senator alleging that a matter is *sub judice* shall provide evidence to show that paragraphs (2) and (3) are applicable.”

Paragraph 2 says that a discussion of such matter is likely to prejudice its fair determination. Civil proceedings shall be deemed to be active when arrangements for hearing such as setting down a case for trial have been made until the proceedings are ended by judgement or discontinuance.

We have been given a date for judgment, but there is nothing to prove. We have been told that there are civil proceedings, but there is nothing to prove that.

Paragraph 5 states:-

“Notwithstanding this Standing Order, the Speaker may allow reference to any matter before the Senate or a Committee.”

The burden of proof is on the prosecutor. In this case, if the Chair was coming to use that argument, the responsibility would have been on the Chair to comply with the Standing Orders. Failure to do so, the Speaker cannot help the Chair. I want to believe it is in public knowledge, but our Standing Orders seem to be very elaborate. Therefore, I will allow limited debate or interventions on that matter. If there is a matter we feel might interfere with determination of a case, then I will rule otherwise. Given that there is not much the Chair has assisted the House in terms of prosecuting her case, we will allow Sen. Khaniri to seek for further clarifications on that matter.

**Sen. Khaniri:** Mr. Speaker, Sir, I want to seek for one clarification. The matter of police recruitment has caused a lot of agony to many families. There are young girls and boys who went through the process successfully in a fair manner without bribing anyone. They were recruited, but are now suffering the consequences because of unscrupulous people. What is being done to ensure that future recruitments are not marred by these kinds of irregularities?

**The Speaker** (Hon. Ethuro): Those might be the kind of issues based on the court process. The difficulty here is in the technicality and substance. Sen. Khaniri, literally, recruitments are like an annual event. The month of May is not too far. If by that time nothing would have happened, I will allow you to prosecute the same Statement so that we do not confuse issues.

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

**The Speaker** (Hon. Ethuro): What is it, Sen. Haji? I hope you are aware that you had delegated the Statement to your Vice Chairperson.

**Sen. Haji:** On a point of order, Mr. Speaker, Sir. Is the Sen. Khaniri in order to demand an answer from the gracious lady, the Vice Chairperson when he knows that this kind of a delay is caused by people reporting cases to courts? That should not happen again. What powers does the Vice Chairperson or the Ministry, have, for that matter?

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Speaker, Sir. The subject at hand is very crucial and critical in Kenya. We are not talking about employment of teachers which can delay because there are no funds. We need to recall that we have a shortage of over 100,000 teachers in Kenya. We talk about shortage of nurses or medical officers. In this case, there is an acute shortage of officers who provide security to the people of Kenya. Suddenly, the Government has been held hostage because of how we have allowed the arms of Government to handle the case. Could the Chairman take this issue so seriously because most of the questions we ask, including the ones I am about to receive answers to, touch on the shortage of security officers to the extent that there is runaway insecurity in the whole country?

**The Speaker** (Hon. Ethuro): Order, Members! Let me hear from the Vice Chairperson first.

**Sen. Adan:** Mr. Speaker, Sir, I understand the urgency and importance of the issue of police recruitment that was cancelled. We, as a Committee, might not fast-track the process. However, in terms of structures or measures that we need to put in place, this

is a matter that we have to discuss with the National Police Service Commission (NPSC), so that we do not have a similar occurrence in future.

Mr. Speaker, Sir, on the issues that Sen. Khaniri asked, about the case number and the rest, we will provide an answer later because we were not given one by the Ministry. We will follow up on the same and provide him with an answer.

**The Speaker** (Hon. Ethuro): The Chairman has found an escape route. If you allege something and you are asked to prove, you can only request for a bit of time to the next sitting day. Sen. Khaniri, we can make use of that provision so that the Statement will be on the Order Paper on Tuesday. If she fails completely to produce anything, then, we will assume that the matter is not *sub judice*.

Sen. (Prof.) Kindiki, it is time for your Statement.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 24<sup>TH</sup> MARCH, 2015

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to issue the Statement under Standing Order No. 45 concerning the Business of next week, starting 24<sup>th</sup> March, 2015.

Hon. Senators, as you are aware, according to our Calendar, we have two more weeks. This Statement relates to the Business of next week. On Tuesday 24<sup>th</sup> March, 2015, we shall have the Rules and Business Committee (RBC) meeting as usual at 12.00 noon to schedule the Business of the week.

Subject to the directions by the RBC, next week, on Tuesday, the Senate will consider the Alcoholic Drinks Control (Amendment) Bill (Sen. Bill No. 5 of 2014) at the Committee of the Whole. The Senate will also continue with Business that will not be concluded in today's Order Paper, focusing on debate on Bills at the Second Reading stage; giving priority to the following Bills:-

1. The Public Service Values and Principles Bill (National Assembly Bill No. 29 of 2014).
  2. The Environmental Management and Coordination (Amendment) Bill (National Assembly Bill No. 31 of 2014).
- Both Bills have a Constitutional deadline.

Mr. Speaker, Sir, you may recall these Bills ought to have been passed sometime last year, but there is an extended timeline which expires on 27<sup>th</sup> May, 2015. Therefore, it is desirable that they are processed hopefully before the April recess.

Hon. Senators, on Wednesday, the Senate will continue with business which will not be concluded on Tuesday, including Bills that will not be concluded at Second Reading stage and further consider the Potato Produce and Marketing Bill (Senate Bill No. 22 of 2014) and the Public Fundraising Bill (Senate Bill No. 28 of 2014) at the Committee of the Whole. The Senate will consider any other Business that will be scheduled by the RBC.

On Thursday, 26<sup>th</sup> March, 2015, the Senate will consider Bills at Second Reading stage and deliberate on Motions and any other business that will be scheduled by the RBC.

I note with appreciation the commitment of Senators to ensure that business before the Senate is disposed of, especially consideration of Bills. As we approach our



recess in the next two weeks, I take this opportunity to, once more, appeal to you, hon. Senators, to continue to avail yourselves to dispose of pending business before the Senate. I reiterate that as reflected in today's Order Paper, two Bills before us have a constitutional deadline. I urge that we conclude business regarding them before the recess.

I also want to remind the Sessional Committee on Delegated Legislation to table its report on the draft Public Finance Management (National Government Regulations of 2015), the Draft Public Finance Management (County Government Regulations of 2015) and the Draft Legal Notice for Declaration of the National Government Entities (State Organs) as directed by the Speaker, on 17<sup>th</sup> March, 2015, to enable the Senate to dispose of the matter within the stipulated timeline.

I thank you and hereby lay this Statement on the Table of the Senate.

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

**The Speaker** (Hon. Ethuro): Next Statement by the Chairperson, Committee on Education.

REBUILDING OF SCHOOLS DESTROYED BY  
FIRE, WIND OR STORMS IN KISII COUNTY

**Sen. Karaba:** Mr. Speaker, Sir, this Statement was addressed yesterday by the Cabinet Secretary (CS) for Education who was here. Sen. Obure was also in attendance and has concurred that what he heard from the CS is final.

**Sen. Obure:** Mr. Speaker, Sir, it is true that I was present when the Cabinet Secretary responded to some of these issues. However, that does not remove the need for the Statement to be responded to in the House.

**The Speaker** (Hon. Ethuro): That matter arose yesterday and we made the observation that it was not a *Kamukunji*, but a Committee of the House where all Senators were invited. So, it still has the same standing as official business. If the issues were canvassed there and you are satisfied, that should be fair and okay. By the way, one of the reasons the Chair had to convene such a meeting and invite the CS himself, is because he wanted him to address those kinds of issues.

**Sen. Obure:** Mr. Speaker, Sir, you may not have been present at the meeting yesterday, but I want---

**The Speaker** (Hon. Ethuro): Order, Senator! This is a matter of fact. It is not "may"; I was not present.

**Sen. Obure:** Mr. Speaker, Sir, you were not present. However, if you could allow me to express some dissatisfaction with some of the statements and responses given by the CS in respect to the specific issues raised on this matter.

You will recall that I had specifically wanted to know if the Ministry of Education, Science and Technology was aware that a number of facilities in public schools, including classrooms had been destroyed. The CS, of course, acknowledges that was the case and they were aware of it. I also wanted to know if he was aware that this would impact negatively on teaching and learning in those institutions and what urgent interventions the Cabinet Secretary was making to restore the infrastructural facilities.

Since then, I have received a list of 52 schools out of the 750 schools in my county which have been affected and the Cabinet Secretary says he is not making any intervention. In the absence of any intervention, could the Chair confirm that learning in those institutions will definitely be affected?

**Sen. Karaba:** Mr. Speaker, Sir, certainly, the effects are there and the impact is great now that the roofs have been blown off. The hon. Senator was seated here and the CS was able to go through all the schools which are affected. He gave all the reasons he thought that the students are affected. That was the CS and now you are talking to the Chairman. Whom do you follow? You follow the CS.

**Sen. Obure:** Mr. Speaker, Sir, this raises very fundamental questions. We are in a system where the national Government provides free education to all public primary schools. If classrooms have been destroyed, then how do you provide that free primary education? Where will the students undertake their learning? Furthermore, you will see that the Ministry has been allocated funds for infrastructure development and maintenance. They were saying that despite the fact that they knew that was the case in county, nothing had been done. However, there is need for speedy response when destructions occur. Could the Chairperson then agree that there is need to transfer these funds from the Ministry of Education, Science and Technology headquarters to the counties or even the Constituencies Development Fund (CDF) committees, so that they can respond quickly when these situations occur?

*(Sen. Karaba spoke off record)*

Mr. Speaker, Sir, I am sorry, I did not get that.

**The Speaker** (Hon. Ethuro): Order! Order! This House cannot be reduced to two Members. Mr. Chairman, you owe it to the House because you have no capacity to avail any funds. So, even to promise when they are available is a promise that you cannot guarantee. The best is to take the concerns of the Member and make further inquiries. The Member has made a good case. He says there are already resources allocated for infrastructural development. Why were they not applied in the case of the schools in his county?

**Sen. Karaba:** Mr. Speaker, Sir, when a case similar to that of Kisii occurs, a Member who is concerned goes to Jogoo, fills some forms and makes a case. That case is then taken further to the relevant offices and the Government always responds to such distress issues. So, I would advise my friend, the Senator, to do the same. That money will be released as per the demand, if it is there.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. Is the Chairman of this Committee in order to assume that Senators are Members of Quality Assurance Department in the Ministry of Education, Science and Technology, which is supposed to be equipped, for purposes of quality assurance, with the availability of classes and learning materials? Must they wait for a Senator to go and apply, as if a Senator – if you allow me to use Kiswahili - *ni mtu wa mkono*? Could he tell us when they are going to build the requisite classrooms in all the primary schools in Kenya? Is he in order to mislead us?

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Speaker, Sir. Yesterday, the CS came here and confessed that they have Kshs180 million for infrastructure. When

such an emergency arises, it would be as easy as what the Chairman has actually indicated. The Chairman would quickly take this serious matter that the House has agreed upon and go and allocate a little money to restore the schools. Alternatively, they could divide the Kshs180 million among the 47 counties.

**The Speaker** (Hon. Ethuro): Order, Professor! You were on a point of order. Do not make it a debate.

Sen. Leshore.

**Sen. Leshore:** Mr. Speaker, Sir, is the Chairman of the Committee on Education in order to mislead this House that Senators are the ones who should be going to Jogoo House to fill forms? What is his duty as the Chairman of that Committee? What are the duties of the County Directors of Education in the county, if they do not submit such requests to the Ministry?

**Sen. Kanainza:** Mr. Speaker, Sir, is the Chairman of the Committee on Education confirming our fears that the national Government has failed in doing its function of building schools in our counties? If that is the case, they should relinquish that function and give it to the county governments.

**Sen. Sang:** Mr. Speaker, Sir, when emergencies and calamities of this nature visit some of our schools, I want to say this because two weeks ago, one of our schools had the same tragedy, where a whole dormitory was burnt down and we lost three boys in that incident. We, as leaders, need to have a better way of ensuring that schools that are visited by these challenges are assisted. In our case, we had to talk to the head teacher of the school who then had to transmit that request to the County Directors of Education who then follows the channel to the headquarters. Whereas I am glad that we have received commitment from the national Government and the Ministry of Education that the school will be supported, I think a better channel has to be put into place, so that a school that had this kind of challenge—

**The Speaker** (Hon. Ethuro): Order! It is not debating time.

**Sen. Sang:** Mr. Speaker, Sir, let me finalize, as I was saying, so that schools which have these kinds of challenges, some of the principals may not—

**The Speaker** (Hon. Ethuro): Order! Senator, you had already put your case, you gave an example of how you did it in your place, you have basically asked the Chair to consider a better mechanism that is good enough.

Proceed, Mr. Chairman.

**Sen. Karaba:** Mr. Speaker, Sir, speaking from experience, what I have seen is that if there is a tragedy of this kind, it is faster and more prudent for anyone from that area to walk to the Ministry and table the case. Otherwise, if you have to wait until the whole process is done, it may take another three or four months. That is my advice.

**The Speaker** (Hon. Ethuro): Order Chairman! Various Members have raised that issue, including Sen. Leshore, Sen. (Dr.) Khalwale, Sen. Obure and others, including the last intervention from Sen. Sang. The fact that a Senator has sought a Statement is a way of communicating to that Ministry. So, you cannot come here on the basis of your opinions or experiences to tell Senators on how to proceed with the national duty, when the CS has a responsibility to respond to you as the Chair of the House.

You pursue the matter with the CS and do not take it to any other person. This House will expect you to come with an appropriate response to the situation of that county and many other counties. In fact, according to Sen. (Dr.) Khalwale, you need to

look at all the schools in the nation and do so. Sen. Kanainza has challenged you to confirm from the CS whether they are unable to perform that national function and if they could give it to the county government. Those are very important issues which you need to follow.

*(Sen. Obure rose on his place)*

**The Speaker** (Hon. Ethuro): Order, Sen. Obure! We have taken a lot of your time and the Chair has assisted you in many ways. Just be satisfied with that for now.

**Sen. Obure:** Mr. Speaker, Sir, I want to appreciate that.

**The Speaker** (Hon. Ethuro): I have already determined your appreciation.

INSECURITY IN VILLAGES ALONG THE WEST  
POKOT-TURKANA BORDERS

**Sen. Adan:** Mr. Speaker, Sir, the Statement was sought by Sen. (Prof.) Lonyangapuo. The Senator Sought to be informed on:-

(i) Whether the Government is aware that on Tuesday 3<sup>rd</sup> March, 2015, a heavily armed group of cattle rustlers besieged a Manyatta called Kesses in Pokot North District and drove away all livestock belonging to the residents of that Manyatta.

(ii) Confirm that there are a number of cattle rustlers or bandits who loom along the border of the two counties and who are making the lives of the residents difficult.

(ii) Explain what the Government is doing to address these current problems.

(iv) State when the West-Pokot-Turkana County border will be clearly demarcated.

Mr. Speaker, Sir, on 2<sup>nd</sup> March, 2015, at about 6 p.m. an unknown number of bandits attacked Ombolion Manyatta in Kasei Division Ward and drove away 70 goats which were owned by Litudo Nameria. Police officers tracked the attackers and managed to recover the goats and repulse them. Although the Government is not aware of any bandits roaming along the border between West Pokot and Turkana counties, it is aware of the presence of armed bandits operating in the two counties, who are involved in cattle raids and indiscriminate attacks on innocent residents.

The Government has put in place the following measures to address the security challenges in the region.

(1) Enhancing foot and motorized patrol along the common borders.

(2) Specialized units have been strategically deployed to enhance police surveillance as follows:-

(i) General Police Service(GSU) Camp, Nakuamoru Village;

(ii) GSU camp Tukwel Village;

(iii) Anti Stock Theft Unit(ASTU) Camp Lorogon Village;

(iv) Administration Police (AP) Camp Turkwel Village;

(v) ASTU Camp Kainuk Village;

(vi) ASTU Camp Lochakula Akule Village;

(vii) Conducting inter-community peace meetings;

(viii) Holding joint county and sub- county meetings;

(ix) Deployment of vehicles to the security teams on the ground to improve their efficiency and effectiveness;

- (i) Mopping out of illicit arms is ongoing; and,
- (ii) The capacity of National Police Reservists (NPR) is enhanced through training.

Mr. Speaker, Sir, the various cycles of atrocities between the Pokot and Turkana communities revolve around sharing of natural resources, particularly water and pasture, with each claiming land beyond their county borders. While the security agencies are doing everything within their capacity to contain the situation in the short term, a long term remedy lies---

I do not agree with this part of the Statement because the Independent Electoral and Boundaries Commission (IEBC) is not involved in issues of boundary, but I can prove to you through the Motion that was brought by Sen. Mutula Kilonzo Jnr. and passed, we are also making recommendation in our report that, that has to be considered once the Bill is ready. However, in the meantime, there should be a deliberate and sustained political good will for the two communities to amicably share the disputed resources.

In addition to this, we, as a Committee, went to Kapedo and came across all these issues raised in this Report. This morning as our Committee, we deliberated on our Report and we beefed up on the recommendations. Most of those issues, Sen. (Prof.) Lonyangapuo is asking are in our Report.

Thank You, Mr. Speaker, Sir.

**Sen. (Prof.) Lonyangapuo:** Thank you, Mr. Speaker, Sir. I want to thank the Chairperson for the detailed answer she has given to the effect that the bandits were repulsed and animals returned. However, many a times when cattle-rustling takes place there, I and Sen. Munyes, have always asked about the problems we have at the border and the quick answer the Government gives is that the Pokot and Turkana are competing for pasture and water. I want to say here that these conflicts have nothing to do with resources. Could they give us the true picture that we are asking for? We want the boundary to be clearly demarcated.

Secondly, Mr. Speaker, Sir, I call these bandits “roaming bandits,” because they are not stagnant in one place; they are roaming. However, the Chairperson is disputing this and is calling them “armed bandits.” I call them “armed, roaming bandits” because they are not found in one place. Now, since the Government knows that they are armed, what action are they taking other than telling me that “we have General Service Unit (GSU) camps?” Those camps are particularly fixed and they have been there for the last five years, yet the officers have never been stationed where these roaming bandits are. Could the Chairperson assure this House that she can go and rearrange where these camps are located and particularly move them to the zones where the roaming bandits are found?

For example, Mr. Speaker, Sir---

**The Speaker** (Hon. Ethuro): Order! Seek clarifications, Senator.

**Sen. (Prof.) Lonyangapuo:** Yes, Mr. Speaker, Sir. Further, to sort out this issue, can the Committee kindly visit this area so that we can show you where the active points are so that you can station your officers there? This way, the bandits can be removed.

**The Speaker** (Hon. Ethuro): There is one request for clarification from Sen. Abdirahman.

Make it brief, hon. Senator.

**Sen. Abdirahman:** It will be very brief, Mr. Speaker, Sir. Listening to the Chairperson, she spoke about a number of GSU camps that have been established in a number of villages, but that is only going to help us in the short term. I am glad she mentioned something about inter community peace meetings. Short term solutions are never good, but what are you thinking of the long term solutions? Unless you engage the communities in the long term to peace and security, you can even deploy millions of soldiers if you want, but it would not help. So what arrangements are you talking about in terms of community meetings and long term peaceful settlement of their issues?

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

**Sen. Billow:** Mr. Speaker, Sir, I want the Chairperson to clarify – because she used the term “bandit” and “armed bandit” – what the difference between the two is and whether a bandit is more or less of a criminal than any of the other criminals in the rest of the country. We usually do not hear the term “bandit” being applied to refer to criminals in the rest of the country; why is this term being applied only in response to criminals in the pastoralist regions?

Thank you, Mr. Speaker, Sir.

**Sen. Adan:** Mr. Speaker, Sir, I explained myself on the demarcation and I want to repeat it here. We were in Kapedo. We experienced the challenge of that area; it is bordering West Pokot and all those areas. This problem is not only in Turkana and West Pokot, but it is in most parts of this country. Of course, the challenge of resources is there, but we, as a Committee, discovered that the major problem there is about boundary disputes, especially in Kapedo and West Pokot. I agree with Sen. (Prof.) Lonyangapuo on that one. We are making recommendations to look at those boundaries to come up with a quick resolution on demarcating the boundaries. I believe that the Motion that was passed in the House will also help us sort out this problem, especially in Turkana, where we have a big problem, as we found out as a Committee.

Mr. Speaker, Sir, again, the issue of moving the GSU units is something we can request the Ministry because we are not aware of the specific areas that have challenges. Sen. (Prof.) Lonyangapuo can meet the Committee and give his recommendations, then we can discuss with the department.

As for peace meetings to be a long term solution, it is a matter that is very important because most of the time, you will find that it is done when there are issues. However, we need to inculcate this culture of peace meetings to be in communities for a very long time. When we were in Mandera County, for example, that is an issue we discussed as a Committee with the county government and also with the security agencies. I believe that will also appear in our report.

Finally, Mr. Speaker, Sir, is the issue of “roaming armed bandits.” Of course, bandits are armed. I just read the Statement we were given. As much as I am concerned, the bandits are all armed.

*(Sen. Billow spoke off record)*

**The Speaker** (Hon. Ethuro): Order, Chairperson! You can only communicate through the Speaker.

**Sen. Adan:** I am sorry, Mr. Speaker, Sir; he is the one who is actually talking to me from behind. I am sorry about that and I withdraw.

**The Speaker** (Hon. Ethuro): Order, Members! It is now a quarter to 4.00 p.m., and you, yourself need to make a Statement. So, spare these issues; there will always be some opportunities in the near future to deal with them. But I agree with you that she is yet to respond to the issue of the terminology in particular areas and not others.

I am requesting that all other Statements be pushed to the next sitting day, on Tuesday, and then we will just have one last one, 2(g).

Hon. Members, before I invite the Chairperson of the Committee on Finance, Commerce and Budget, there was a matter I had promised to look into on two words; “demeanour” and “misdemeanour.”

*(Laughter and loud consultations)*

Let me go ahead, because I think it is a minor issue.

### COMMUNICATION FROM THE CHAIR

#### CLARIFICATION OF THE WORDS “DEMEANOUR” AND “MISDEMEANOUR”

**The Speaker** (Hon. Ethuro): Hon. Members, I want to start by giving the definitions. A “demeanour” is a mien, facial appearance and behaviour. A misdemeanour is a minor offence.

*(Loud consultations and laughter)*

When the Senate Minority Leader, Sen. Wetangula, rose to seek a clarification from the Chairperson, Sen. (Prof.) Kindiki, he said:-

“Mr. Speaker, Sir, you heard the Chairman tell us and you could see from his demeanour--- That is the word he used; facial appearance; “that he did not even appear---”

Indeed, Sen. Wetangula even used the word “appear,” which was really being repetitive for purposes of emphasis;

“to believe in what he was saying; that our forest cover is 6.9 per cent. This is a big joke---”

And he continued.

Now, when the Chairperson rose to respond, he said:-

“Before I even proceed, I seek your indulgence. I am very disturbed that an hon. Member can stand and say: ‘reading from my misdemeanour---’

*(Laughter)*

“I take it that the Member hates some inherent trait of my personality and not only for today. I will need your protection because the personal grudge being brought under the table in terms of misdemeanour---”

*(Laughter)*

I challenged him as the Chair and the Chairman of the Committee responded;

“Mr. Speaker, Sir, I mean misdemeanour.”

The Senate Minority Leader retorted;

“It is demeanour and not misdemeanour.”

I pointed out to the Chair that he is the one referring to himself in the word “misdemeanour” That is not what the Senate Minority Leader said. He repeated saying that the key word here was “misdemeanour.”

So, I, therefore, direct that the key word “misdemeanour” was not part of the words used by the Senate Minority Leader. And that the two words are not related.

*(Laughter and applause)*

**Sen. Khaniri:** On a point or order, Mr. Speaker, Sir. There are two things here; one, you recall that the Chairperson refused to answer Sen. Wetangula’s question on that basis. I would wish that the Chairperson is ordered now to answer Sen. Wetangula’s question. Two, he must apologize to the House.

*(Sen. Billow spoke off record)*

**The Speaker** (Hon. Ethuro): Order Senators! What is it Sen. Dullo?

**Sen. Adan:** On a point of order, Mr. Speaker, Sir. I have an urgent request for a Statement on Kenyatta National Hospital (KNH).

**The Speaker** (Hon. Ethuro): Order, Senator! We are on a different matter all together. I am aware of your matter. Since you have made a request, I will grant you the opportunity to make the request. First, I am actually surprised that the Vice-Chairperson of the same Committee is so harsh on his boss.

*(Sen. Billow spoke off record)*

You do not punish people for difference in understanding certain words. That is why the appeal was made to the Chair to give direction, which I have given and it must end there. So, there is nothing to apologize about.

The only matter arising is the issue of responding to the clarification sought by Sen. Wetangula. As I said yesterday, he has no choice, but respond to it and I reiterate today that he will respond to it on Tuesday.

*(Applause)*

Sen. Adan, you may make your request and then we invite the Chairperson of the Committee on Commerce, Finance and Budget.



SUSPENSION OF RADIO THERAPY TREATMENT AT KENYATTA  
NATIONAL HOSPITAL ON 16<sup>TH</sup> MARCH, 2015

**Sen. Adan:** Thank you, Mr. Speaker, Sir. My request for a Statement is directed to the Chairperson of the Committee on Health. In the Statement the Chairperson should:-

(1) State and explain the circumstances leading to the suspension of radio therapy treatment at KNH on 16<sup>th</sup> March, 2015.

(2) State and explain the interim measures that the Ministry of Health is taking to ensure that patients who were on radio therapy treatment at the hospital before the suspension continue with their treatment as scheduled to avoid loss of lives.

(3) State how many lives, if any, have been lost so far as a result of the shut down and give an indication on when radio therapy treatment will resume at KNH.

(4) Explain why KNH is the only public radio therapy facility in the country and has only two radio therapy machines, which are now worn out and need to be replaced; explain why the Ministry of Health has not replaced or upgraded the machines and state when they will be replaced with new functional machines.

(5) Explain why Kenya has only one public radio therapy facility, that is KNH, despite the fact that cancer is a leader killer disease in the country; state measures that the Ministry of Health plans to take to ensure more radio therapy treatment centres are established countrywide to enhance access for Kenyans and prevent loss of lives due to unavailability or inaccessibility of the service.

(6) Finally, explain why radio therapy is classified as an outpatient treatment and therefore not covered by the National Hospital Insurance Fund (NHIF).

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Where is the Chairperson of the Committee on Health?

Proceed, Sen. (Prof.) Lesan, the acting Chairperson.

**Sen. (Prof.) Lesan:** Thank you, Mr. Speaker, Sir. On behalf of my Chairperson who was here a while ago, I want to undertake that the Committee will look at this issue. Hopefully, because it is urgent and concerns the lives of individuals generally in the country, we undertake to give an answer in two weeks.

*(Several Senators spoke off record)*

**The Speaker** (Hon. Ethuro): Order! Order, Senators! There is something in essay writing which states that the content of the essay must reach the same conclusion. You put the body so well, but the conclusion---

*(Laughter)*

**The Speaker** (Hon. Ethuro): When can you do it?

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, the question asked, as I understood from here, had about five parts and some of them need us to make inquiries then give a satisfactory answer considering that part of the answer would come---

**The Speaker** (Hon. Ethuro): Order, Senator! Your Committee is ordered to bring a response on Tuesday.

**Sen. (Prof.) Lesan:** I am obliged.

**The Speaker** (Hon. Ethuro): You have to look at the urgency of the matter. The issue of the number of parts is for those you will be inquiring from. You do not start by disempowering yourself.

What is it, Sen. Billow?

**Sen. Billow:** Mr. Speaker, Sir, in addition to the answer being brought here on Tuesday, because it is not just about the answer, it is about the crisis, could the Chairperson also undertake to have the CS take whatever action that is necessary to urgently restore services to that department at the KNH so that they can save lives?

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, I will ensure that the Chairperson gets the message. We will pass the message to the Ministry as it has been requested as soon as possible.

SETTING OF BUDGETARY CEILINGS FOR COUNTY  
ASSEMBLIES BY THE CRA

**Sen. Billow:** Thank you, Mr. Speaker, Sir. As I mentioned on Tuesday on that question by the Senator for Mombasa, Sen. Hassan, we also had a request in writing from the Speaker's Office to address the same matter. In addition, we also had a visit from the County Assemblies Forum Executive Committee on the same matter. So, we, as a Committee, decided to do a thorough investigation on the matter and do a report. The report was tabled for Members to have an opportunity to go through it. However, I will endeavor to answer.

I do not know how much time you will give me so that I can briefly highlight the background and then read out the recommendations to address your specific questions. I am sure the Senator already has a copy of this and there is a point by point answer in the report that he can look at both from the Committee and the Controller of Budget.

**The Speaker** (Hon. Ethuro): Order, Chairperson! The problem I have is procedural. There is a report to be discussed and there is a specific Statement. The beauty of having the report is that the matter is not active before a Committee and the House is already seized of it. So, that allows participation of the rest of the membership.

Two, use the report as a base as you are making references as Members are already seized of the matter. But just stick to the normal way of responding to the Statement. So, you do not have more than ten minutes.

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. Would I be in order to suggest that the Chair prepares a notice of Motion and a Motion, with your permission, so that we debate the Report substantially at a date to be designated by yourself? This will give us time to debate on the Report apart from the answer we will receive directly.

**The Speaker** (Hon. Ethuro): Are you are telling the Chairman, who is very competent, what to respond to? I think that should be the normal procedure.

**Sen. Billow:** Mr. Speaker, Sir, owing to the urgency of the matter, I thought it prudent to respond to the Statement. That is what is on the Order Paper for the day. Our Committee will have no difficulty in moving a Motion next week to discuss the Reports if Members deem it necessary. I would have thought that if this session finds it satisfactory, then the Report that has already been tabled could be the material to be used by Members to interrogate the responses I will be giving.

Mr. Speaker, Sir, I will proceed. Very briefly, on the background; on 22<sup>nd</sup> April, 2014, the Commission on Revenue Allocation (CRA) issued a circular addressed to all county governments recommending a ceiling on allocation for all county assemblies and county executives in the budget for 2014/2015. The basis for the circular was Article 216 of the Constitution which mandates them to make recommendations on financial management.

The CRA found it necessary to set the ceilings for both arms of Government so that there would be a structured determination of how new administrative structures' budgets in the counties can be shared out. This will eliminate, in their view, arbitrary allocation of funds between the assemblies and the executive and also ensure equitable utilization of resources. It was, therefore, according to the CRA, necessary to set the ceilings to minimize wastage of financial resources by both arms of Government.

In a meeting of our Committee in March, we established that the proposed ceilings are appropriate in maintaining financial discipline in counties and recommended an amendment to the Public Finance Management Act (PFMA) through the County Allocation of Revenue Act, 2014, to give the proposed ceilings the force of law. Subsequently, that law was passed by this House.

The Controller of Budget issued circulars addressed to the county governments demanding that the respective county assemblies' budget allocation should comply with a formation circular issued by the CRA. In so doing, the Controller of Budget stressed that failure to comply with the ceilings advised by the CRA would result in withdrawal of county revenue funds being declined.

Following the circular, some counties complied with the ceilings while others declined, expressing concern that they had already approved their respective Appropriations Acts. The Controller of Budget proceeded to decline requests of counties that did not comply with the ceilings. So, what did county assemblies do? The assemblies challenged the decision of the Controller of Budget in court through case No.368/2014 on the legality of the circular by CRA which sets the ceilings.

A consent order between the three parties which is the CRA, the Controller of Budget and the county assemblies allowed withdrawal up to 50 per cent, based on the ceilings, was filed in the court on 25<sup>th</sup> July, allowing counties to implement their respective budgets as they awaited their final ruling. Again, a further consent was entered in court on 30<sup>th</sup> January this year, allowing counties to withdraw up to 75 per cent. The final ruling of the matter was delivered on 20<sup>th</sup> February by the court and provided as follows.

A declaration that the circulars were null and void for all intents and purposes and should be quashed was not granted and was, instead, dismissed. Orders that the Controller of Budget should approve and disburse the assemblies' funds as provided for in every county government's budget estimates and as provided for in the Appropriations Acts of Counties was also not granted and was instead dismissed by the courts. The court also held that it was the duty of the Controller of Budget to oversee the implementation of the respective budgets.

Mr. Speaker, Sir, as of 17<sup>th</sup> March, 30 counties had complied with the ceilings out of the 47 and are drawing their full budgetary provisions from the Exchequer. These include: Baringo, Bomet, Bungoma, Busia, Elgeyo-Marakwet, Garissa, Isiolo, Kakamega, Kiambu, Kirinyaga, Kisii, Kisumu, Laikipia, Mandera, Makeni, Migori,

Meru, Muranga, Nandi, Narok, Nyamira, Nyeri, Samburu, Taita-Taveta, Trans Nzoia, Uasin Gishu, Vihiga, Wajir, West Pokot and Marsabit.

An addition, 13 counties have held meetings with the CRA and agreed on a need basis where adjustments need to be done with regard to the amounts that have been allocated. These include Homa Bay, Kajiado, Kericho, Kilifi, Kitui, Kwale, Lamu, Machakos, Mombasa, Nyandarua, Tharaka-Nithi, Siaya and Turkana. Four counties which include Embu, Nakuru, Nairobi and Tana River, are the only ones which have neither complied with the ceilings nor held discussions with the CRA.

That is the status as I speak. I want to confirm to the House that as I speak, the total amount of money – this is provided for in this Report – that has been disbursed to the county assemblies up to 17<sup>th</sup> of this month - amounts to Kshs12.6 billion. The details for every county are there. This depends on the way the requisition has been made. So, you will find that some counties have taken almost three-quarters because that time has already gone and we are left with the fourth quarter. Some counties may not have taken all the three. However, there are figures for every county there to show that the Exchequer was released.

Lastly, I want to go to the recommendations of this Committee. I seek the indulgence of Sen. Hassan because the specific responses to his Statement are also provided and he has a copy of this. Our recommendation, in view of what I have said, as a Senate is that ceilings on the Recurrent Expenditure for the Financial Year 2014/2015 were lawfully issued, but not binding as per the court ruling. The courts had approved withdrawals of up to 75 per cent of the ceilings for the first three quarters for the remaining three months, April to June. In our meeting on that day, we also advised both CRA and the Controller of Budget to do so immediately on the same.

Secondly, we have directed the Controller of Budget the CRA and the TA, in consultation with the Director of Integrated Financial Management Information System (IFMIS), to immediately embark on allowing county assemblies to directly access or have their requisitioned funds credited into their operational accounts immediately after the Exchequer's release instead of passing through the accounts of the county executive. This, they have undertaken that they will give us their progress report within a month. It is now three weeks. In three weeks' time, we should know how far they have gone in that undertaking.

Mr. Speaker, Sir, we also recommended that for 2015/2016 Financial Year, where there is an Act of Parliament that already provides for CRA to submit a recommendation to this House for its approval, we are also recommending that the Senate should develop guidelines for approval of the recommendation of CRA. Our Committee will look at that so that there is a structured way of reviewing their proposal when it comes to the House so that it can be approved. We will recommend that that process includes an opportunity to sit with MCAs. In this regard, we had already advised CRA to sit with every county assembly in terms of determining allocations to each county assembly. They have already done so in a two day meeting, and their proposal will come officially.

This year the amount of money that is available for sharing out between the assembly and the county executive is Kshs45 billion for new administrative structures. Last year, it was Kshs30 billion. Out of the Kshs30 billion, a sum of Kshs17 billion went to county assemblies and Kshs13 billion went to the executive. This year the amount is Kshs45 billion and already the figures that the CRA is looking at is up from Kshs17 to

Kshs24 billion. This is part of the response to one of the questions that Sen. Hassan had asked; why the amount for last year and this year are not reconcilable? It is because the amounts provided for in this year's Division of Revenue Bill will be Kshs45 billion and not the Kshs30 billion we had last year, specifically for the new structures.

Mr. Speaker, Sir, one of our recommendations is that county governments should establish conflict resolution mechanisms and desist from encroaching on each other's constitutional mandate. Conflicts regarding fiscal and budgetary process should be settled in terms of Article 189 of the Constitution of Kenya by way of alternative dispute resolution mechanism. In this regard, this includes reference of disputes to the Senate which has the mandate to serve and to protect the interest of counties and their governments. We have already discussed with the County Assemblies Forum that, in future, it will be a good opportunity for them if anything similar to this comes up that they discuss with the Senate before going to court.

Lastly, it is the mandate of the Senate to protect county assemblies so that they can carry out their mandate or role in overseeing the county executive and also ensure that they are not compromised. In our fifth recommendation, we have said that funds requisitioned by assemblies should be released directly into the operational accounts and it is a matter that I said earlier we are enforcing. That is the brief response. I will see what other question will be raised on the same.

Mr. Speaker, Sir, in conclusion, the actual appropriated accounts; the budgets which were approved by the county assemblies were a total of Kshs26 billion last year. The amounts that were approved by CRA in the ceilings was Kshs17 billion. At that time, the intention of the CRA was that the Kshs9 billion would rather be used for service provision and for development. However, as I said, those numbers have been significantly reviewed for most of the counties that had the opportunity to sit with them.

**The Speaker** (Hon. Ethuro): Order, Members! I see a lot of interest. Do not make your interventions beyond two minutes. I will allow Sen. Hassan to start.

**Sen. Hassan:** Mr. Speaker, Sir, I hope to stick within the two minutes, but because of the length of the Report ---

**The Speaker** (Hon. Ethuro): I will allow you one more.

**Sen. Hassan:** Mr. Speaker, Sir, please, allow me two more minutes.

I do not know how to respond to this because there is a response to my question and, at the same time, Sen. Billow Kerrow referred very broadly to the substance of the Report. So, I will be a bit more specific because this Report actually validates a lot of the things we have been saying. It makes very scary assertions ---

**The Speaker** (Hon. Ethuro): Sen. Hassan, I had given guidance that the Report is a base document. You still need that opportunity that Sen. Murkomen has requested to debate the Report proper. Try not to quote it.

**Sen. Hassan:** Mr. Speaker, Sir, it will be very difficult because it was quoted very widely. The averments, particularly in response to my question as to why the Controller of Budget declined to recognise respective County Assembly Appropriations Act, that did not adhere to fiscal prudence and the ceilings issued by the CRA. Exactly my point is about franchises managing devolution in an adverse way. How can a circular even in the hierarchy of laws, take precedence over an Appropriations Act of a county assembly? You find averments here, that the circular on the ceilings on recurrent expenditures issued, were granted in that advisory capacity. However, the circulars cannot be quashed

subsequent to (a) above. I am just looking at some of the areas. However, the Report states that ceilings in the circular are not binding on county assemblies since they are not directed and can only be binding if adopted by this Senate, or Parliament for that matter.

If we make such averments in this Report which I got just about an hour ago, we need to build synergies with institutions like TA and the office of the Controller of Budget, which are legitimate. However, these are technical and advisory institutions. You find averments in this Report that the Committee noted the Controller of Budget has a duty to oversee the implementation of the respective budgets of various county governments by authorizing withdrawals.

The Controller of Budget enforced the ceilings set by CRA to promote prudence of pre-financial management and with concurrence of the Committee. How can the Committee concur without bringing any issue here for approval of this Senate? How can they act as a prefecture and give authority to such miscarriage of the law in the Constitution?

**The Speaker** (Hon. Ethuro): Order, Senator! Use your time more meaningfully.

**Sen. Hassan:** Yes, Mr. Speaker, Sir. Once it comes by way of report we will, probably, respond more greatly to this. However, the fourth recommendation is the one of interest to me. Ceilings on Recurrent Expenditure for the Financial Year 2014/2015 were lawfully issued, but not binding as per the court ruling. The courts had approved withdrawals of up to 75 per cent of the ceiling for the first three quarters. Therefore, the Senate directs that the Controller of Budget should, in consultation with the CRA, release adequate funds to county assemblies immediately for the fourth quarter. This is a totally contradictory recommendation. On one side, you say it is not binding, but on the other hand, the High Court has pronounced itself in the matter and then finally you say: "Go and consult further."

Let us not try to kill devolution. Let us act in good faith even as we do things in this Senate. We have crushed these county assemblies and their accountability streams have been frustrated. We cannot then give public relations recommendations that they need to be independent. Make them independent now. Once you tell me that an issue is not binding, how then do you direct me back? Rather than adhere to the Appropriations Act passed by a county assembly, we use some broad prerogative to erode Appropriations Acts that have been passed by county assemblies---. What kind of a recommendation can that be? The clarity I am seeking is if ---

**The Speaker** (Hon. Ethuro): Order, Senator! You have taken more time than I allocated you.

**Sen. Hassan:** Mr. Speaker, Sir, just to paraphrase for clarity, if an issue is not binding in law and this Senate has not approved it, why would you make a recommendation as a committee which is inferior to the decisions of this House to approve an illegality or a non-binding document which we have already referred to?

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

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I have to confess, I am in the Committee on Finance, Commerce and Budget. As Sen. Hassan was concluding his intervention, he said that the Committee committed an illegality by approving recommendations. Is he in order when the Chair specifically requested that this Statement be delayed until the report is tabled and discussed by the House for approval of whatever we, as a Committee, have made a decision on? That report is yet to be tabled in this House.

**The Speaker** (Hon. Ethuro): I can see there is a lot of interest in this issue. I am sure as others make their own interventions, some of those contradictions will be sorted out. Just keep listening.

**Sen. Leshore:** Mr. Speaker, Sir, I would like the Chairman to clarify whether CRA is mandated by law to issue circulars to county governments and county assemblies or it is a matter of abrogating itself that mandate illegally? I thought the Senate has been mandated to protect counties and---

**The Speaker** (Hon. Ethuro): Order, Sen. Leshore! I hope you are not attempting to answer the clarification you sought.

**Sen. Leshore:** Mr. Speaker, Sir, what is the Chairman and the other stakeholders doing to prevent the county assemblies rushing to courts on issues which they can solve?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, much as I sit on that Committee, I would like the Chairman to clarify the timelines within which the National Treasury is going to make those funds which we have recommended that they be released to the county assemblies to be made available?

Although I only have two minutes, allow me to make a general comment. If, indeed, we want to be seen to protect the county assemblies as well as the county executive arm, we must also protect the institutions that participate in the governance of devolution. In this case, we cannot leave the county while the MCAs and Speakers continue to think that CRA acted outside the law. The CRA actually acted within the law as per Article 216 where they are allowed to make recommendations to us.

Having made those recommendations, it is now for us to stand behind the Chairman and congratulate him for moving the Committee to recommend that this money that was released on the wrong perception by a recommendation of the CRA was actually a legal directive, it be corrected, and that creates the way forward.

**Hon. Senators:** It is an illegality!

**The Speaker** (Hon. Ethuro): Order, hon. Senators! You will have your bit. That is his opinion; you will have your opportunity.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I have never understood why people, including some of the Members of Senate, find reading this Constitution very difficult.

As the Chairman of the County Public Accounts and Investments Committee, it is my responsibility to inform this House that what drove CRA to rise to an urgent need for recommendations was the national outcry that accompanied the uncontrolled expenditure of public funds by some of the county assemblies in too many unplanned for trips overseas and within the country. It is up to us now to guide it so that we have the proper way of doing these things.

**Sen. Obure:** Mr. Speaker, Sir, first of all, the county assemblies play the critical role of oversight on county executives. Therefore, nothing should be allowed to take place which tends to undermine the authority or the capacity of the county assemblies to perform that important function. I, therefore, want to agree with one major recommendation made by the Finance, Commerce and Budget Committee Chairperson, that funds should be directly allocated to the county assembly accounts. This will ensure the county assemblies have the independence which they need.

I want to go, however, to the basics because I have not had the opportunity to read this Report. Is the Chairperson of the Committee satisfied that CRA acted within the law

in imposing these ceilings for county assemblies? If not, should these ceilings be respected?

Finally, is the Chairperson satisfied with the criteria applied in imposing these ceilings?

**The Speaker** (Hon. Ethuro): If Senators followed that kind of trend in seeking clarification; you can get much more within that limited period.

**Sen. Murkomen:** Mr. Speaker, Sir, Section 228(5) of the Constitution says:-

“The Controller shall not approve any withdrawal from a public fund unless satisfied that the withdrawal is authorized by law.”

The reason I read that section is because I know very well that CRA had a right to do circulars and pamphlets as we discussed the other day and that is within their own right. However, when did we as a country convert the Appropriations Act of county assemblies to be less in legal hierarchy yet being law, to be under or below the circulars of CRA, than the law? Because where there is a contradiction between an Act of a county assembly and a circular of whatever institution, including even the President which one should be followed? The Chairperson should tell us whether we should follow the law or a circular. That is the crux of the matter.

Secondly, he should tell us whether the county assemblies are not disadvantaged. Is it a coincidence that all the 47 county executives have never complained against the ceilings, but the county assemblies have complained? Does it not show that, therefore, because county executives are fully represented in IBEC meetings, they are have an undue advantage against the county assemblies?

Finally, when county assemblies accept certain appropriations as they have done, including my own county under duress and undue influence---

*(Sen. Murkomen was switched off record)*

**The Speaker** (Hon. Ethuro): Your time is up! However, as Chairman of Devolution, I will give you one minute.

**Sen. Murkomen:** Mr. Speaker, Sir, when they accept certain payments under duress, that does not validate them. If you go to Makueni County and many other counties, to ensure that people get their salaries because their money is coming through the executive, then in the meantime, the Speakers accepted what had been said as they follow the law.

Mr. Speaker, Sir, if we are going to abrogate our responsibility which is to approve everything to make it legal before we can use it, then we will undermine the authority and responsibility of this House in protecting devolution and the counties.

Thank you.

**Sen. Ndiema:** Thank you, Mr. Speaker, Sir. On the issue of the ceilings and the role of the CRA, reading the law, their role is to basically recommend. That recommendation goes to the assemblies, the President and the Senate. However, if my memory serves me well, this issue of ceilings being necessary had even come to the Senate. At that time, we all agreed here at the Senate that there is need for certain levels of ceilings. Are we really being consistent in telling CRA now, that they were wrong to set the ceilings? If the ceilings that were set, cannot work in the middle of the year, is



there no provision that CRA can reconsider and recommend to the Senate and the assemblies to adjust accordingly in form of revised estimates by the counties?

Lastly, on the issue of releasing funds directly to the counties assemblies, they are independent and this should have been done a long time ago. The Chairman should also clarify whether all county assemblies have been connected to the IFMIS system because as I am made aware---

**The Speaker** (Hon. Ethuro): Your time is up, Senator! Unfortunately, you are not a Chairman.

Please, proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. I have listened to the arguments here and it appears that Senators have not read the ruling of Justice Lenaola. I urge them to read it so that we educate this country and for us to also appear learned. The questions raised by Sen. Omar and Sen. Murkomen have been answered by the Judge. The fact is that the Judge said: - "The Act is in place and that is the law." As far as he is concerned, the question of ceilings was overtaken by events and was, therefore, not an issue. But for clarification, so that---

**The Speaker** (Hon. Ethuro): Order, Senator! You are participating in an illegality.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, secondly, so that we do not create a false impression, could he, please, clarify to the nation that in the recommendation number four that the Committee has made, the counties are not going to revise their budgets, to the extent that the budgets of the county assemblies; the ones that have agreed on the ceilings, would then increase by lowering the budgets of any other entity, so that we are not misquoted?

Lastly, the reason I said that Senators should read this is because the court was very concerned that the county executives and county assemblies have not learned that funds are supposed to serve the public. However, these funds are being used for purposes that are not for services. Therefore, these are issues that Senators should read so that when they defend illegalities because we have passed here an Act of Parliament and now we look like we are reversing it like the proverbial Mussolini tank, we should then be accountable to the country for looking as if we are blowing hot and cold.

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. Is it in order for "The duke of Makueni", Sen. Mutula Kilonzo Jnr., to completely mislead this House and the nation that there is anywhere in this country we ever passed any legislation providing for ceilings of any county assembly? That is completely misleading.

**The Speaker** (Hon. Ethuro): Order, Senator! You are completely out of order. Sen. Mutula Kilonzo Jnr. sought a clarification from the Chair on certain specific things which will respond to your kind of situation. So, I do not think that he is misleading. In fact, I thought Sen. Murkomen wanted to be educated on the Mussolini tank.

*(Laughter)*

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, you are witnessing the exuberance, energy and the excitement of young lawyers.

I thank my Chairman for the clarity in which he has explained the matter. I just want him to confirm to this distinguished Senate that one of the cardinal feelings of the

Committee that will advise this House is that everything must be done within the law and the Constitution to ensure that we have financial independence of the county assemblies as houses of primary oversight on the county governments. We do not want to see situations where the county assemblies and assemblers are held hostage by governors simply because the funds that they get pass through the hands of the governors. This Committee will engage the Controller of Budget to ensure that the county assemblies are locked in the IFMIS system, and that funds available to them are directly remitted to their accounts so that they can exercise their independence.

**Sen. (Prof.) Lesan:** Thank you, Mr. Speaker, Sir. I only wish to seek one clarification from the Chairperson of the Committee. The Committee made a recommendation that the Controller of Budget and the CRA, release adequate funds for the fourth quarter. Are these funds going to be subjected to the same ceilings that have been used before? What are the time lines considering that some of the counties who have used their funds without following the ceilings are almost in a crisis and are, perhaps, not able to perform their responsibilities until they are due for the next funds? What are the timelines in which they can get these adequate funds?

**Sen. (Dr.) Machage:** Thank you, Mr. Speaker, Sir. My concern is on the Public Finance Management Act which stipulates that all the funds from the Treasury must be pushed to the county treasury and managed by the executive arm before they are given to the assemblies.

Sen. Wetangula has said that an arrangement should be made for the IFMIS system to be adjusted in a way that funds can be directly remitted to the assemblies. With that section of the law, how are we going to manage this? In any case, I find it as a sibling war between the executive officers and the speakers of the assemblies. Would you be ready to call the two from all the 47 counties and advise them on what to do?

**Sen. Nabwala:** Thank you, Mr. Speaker, Sir. I would also like to add my voice to the documents laid on the Floor of the House by the Chairman of the Committee on Finance, Commerce and Budget and also congratulate my Committee for what they have done. The matter of ceilings was brought to our attention in this House through the Chair because we had some counties which have not been given their money and they had gone to court. Four counties went to court although 13 counties had not been given their full monies. They petitioned the court and the matter was dismissed, although in the ruling---

**The Speaker** (Hon. Ethuro): Hon. Senator, this is not a debate. Your Chairperson has already spoken for you.

**Sen. Nabwala:** Mr. Speaker, Sir, I am supporting him because I sit in the Committee on Finance, Commerce and Budget ---

**The Speaker** (Hon. Ethuro): Order! We want to believe that when the Report was tabled, all of you supported it. Now, we want the ones who may be opposed to him.

**Sen. Nabwala:** In our recommendations, we said that funds should now be disbursed directly to county assemblies. The complaint that is coming out is that the executive is denying them use of funds, thus, compromising delivery of services.

**The Speaker** (Hon. Ethuro): Hon. Senators, before I call upon the Chair to respond, I have two Communications to make.

## COMMUNICATIONS FROM THE CHAIR

### WORKSHOP ON ACCOUNTABILITY AND OVERSIGHT

**The Speaker** (Hon. Ethuro): The Standing Committee on Finance, Commerce and Budget has organized a workshop for all the major players on accountability and oversight this weekend. Just to remind the Senate leadership that it is invited. All the issues we are raising here, the Committee has provided an opportunity for us to interrogate these kinds of matters.

### VISITING DELEGATION OF SPEAKERS OF COUNTY ASSEMBLIES

I am pleased to acknowledge the presence and to welcome to the Senate this afternoon a delegation of Speakers from various county assemblies accompanied by the Chief Executive Officer (CEO), County Assemblies Forum (CAF), who are seated at the Speaker's Gallery. I request the Speakers of the county assemblies that when your name is called out, you stand so that you may be acknowledged in our usual Senate tradition.

- |                                 |   |   |
|---------------------------------|---|---|
| 1. Hon. Jimmy Kahindi           | - | Speaker, Kilifi County                        |
| 2. Hon. Teddy Mwambire          | - | Deputy Speaker, Kilifi County                 |
| 3. Hon. Titus Mbiti             | - | Deputy Speaker, Kitui County                  |
| 4. Hon. Gideon Kimathi          | - | Deputy Speaker, Meru County                   |
| 5. Hon. (Dr.) Nuh Nassir        | - | Speaker, Tana River County                    |
| Assembly and Chairman of CAF    |   |   |
| 6. Hon. Hashi Mohamed           | - | Speaker, Lamu County Assembly                 |
| 7. Hon. Geoffrey Kipng'etich    | - | Speaker, Bomet County Assembly                |
| 8. Hon. Geoffrey Kaituko Eyanae | - | Speaker, Turkana County Assembly              |
| 9. Hon. Meshack Maganga         | - | Speaker, Taita Taveta County                  |
| 10. Hon. Aresmus Mwarabu        | - | Speaker, Taita Taveta County                  |
| 11. Hon. Haroun Mwasase         | - | Speaker, Kisii County Assembly                |
| 12. Hon. Evans Mokoro           | - | Kisii County Assembly                         |
| 13. Hon. James Mwangi           | - | Majority Leader, Nyandarua County<br>Assembly |
| 14. Ms. Roselyn Mungai          | - | Chief Executive Officer                       |
| 15. Mr. Wanyoike Mbuche         | - | Clerk, Lamu County Assembly                   |

Hon. Senators, I take this opportunity, on behalf of the Senate and on my own behalf, to wish the delegation a happy and fruitful visit in the Senate.

Thank you.

*(Resumption of Statements)*

SETTING OF BUDGETARY CEILINGS FOR COUNTY  
ASSEMBLIES BY THE CRA

**Sen. Billow:** Mr. Speaker, Sir, let me clarify from the outset that the Commission on Revenue Allocation (CRA) forwarded its recommendation for the ceilings for the 2014/2015 to this House. However, the recommendations came on 30<sup>th</sup> September and our Committee felt that it may be too late to table them because some of the counties had already done their budgets and appropriation accounts. I also want to clarify that CRA is mandated under Article 216 to give recommendations relating to financial management at any time. It is important that those recommendations include those that ensure prudent financial management by the counties.

Mr. Speaker, Sir, the court held that the recommendations by CRA, although they were not binding, were lawfully issued. That circular was legal. At no time did the court declare those circulars a nullity. However, our understanding that the ceilings are not binding means that the ceilings can actually be rediscussed or renegotiated. This is our understanding of the point. Therefore, when the court refused to declare those circulars null and void by dismissing the prayers, it is very clear that the courts were saying that the CRA was within its mandate to issue a circular in accordance with Article 216. The issue raised by Members that this circular is an illegality is not correct.

Mr. Speaker, Sir, when the CRA and Controller of Budget last year came up with those ceilings, we agreed with them that it is in keeping with prudent financial management and that it also provides a structured basis for sharing out that money for the new administrative structures. This year, it is going to come in the Division of Revenue Bill. There will be Kshs45 billion for new administrative structures including the governors' officer, county assemblies and all those new offices created. How do you share out this money?

Last year, there are assemblies that had asked for Kshs1.1 billion, others asked for Kshs900 million and others got only Kshs300 million. Therefore, to avoid that disparity, a structured basis for computing the figures was provided. That is why we agreed with them at the time that the ceilings were in order. In fact, we went even further and proposed an amendment to the Public Financial Management Act in that regard, which has since been adopted.

Mr. Speaker, Sir, the point raised by Sen. (Dr.) Khalwale is the timeline for the remaining quota from April to June. The timelines depend on the requisitions that will be met based on the returns that they submit. We have directed the CRA to ensure that they get adequate money; which means that they should review the amount of money they are getting. This is what has happened because they have already complied. Since it is not unlawful, it means you can go ahead and have it adjusted.

Mr. Speaker, Sir, that is our position but I want to emphasize one point to Sen. Hassan; the court process, I think we should not ignore, that they were two consents that were filed in the court by the 47 county assemblies, allowing them to draw, first the 50 per cent, then up to 75 per cent of the money. The withdrawal of this money was based on the ceilings. That court process, more than anything else, determined how the money was to be given out.

I think I have addressed the legality of the matter as raised by Senators. The Senator for Elgeyo-Marakwet, Sen. Murkomen, raised the issue of Appropriation Acts. Once an

act has been passed in the assembly, appropriating that money based on the budget estimates, can the circular from CRA nullify that? No. It is not the circular but the Controller of Budget. Can the Controller of Budget review? That is the question that they took to court and the ruling was very clear in that regard. I just want to read that part, with your indulgence. The court said:-

“It is also not bound to follow the respective county budgets which are themselves subject to national laws which include the County Allocation of Revenue. We have those laws at the national level and they are all subject to the national law. Therefore, the Controller of Budget can actually review or have powers to look at it based on those provisions of law.”

The judge said that no challenge had been made by the assemblies to these laws. That is the point I wanted to clarify. The question that Sen. Murkomen asked regarding county executives being members of IBEC and, therefore, using their weight does not arise. They use a structured process to look at a county assembly and see where there is a speaker and how many Members of County Assembly (MCAs) and staffs are there and what their benefits and allowances are. They work out figures based on this. The same thing is done to the county executive. There is the governor but they also have to know how many employees including the County Executive Committee (CEC) members are there. So, this is done in a structured basis and there is a complete report on that. I have also provided it in this Report. Therefore, the influence of IBEC does not really arise

I have responded to Sen. Ndiema’s question that the Commission on Revenue Allocation (CRA) can revise that because this is not binding. This year, the ceilings which will come to us from the CRA, if adopted by this House, will remain binding and will not be changed until the year ends. However, because this has not been approved by the House, that is why the court ruled that it is not binding and, therefore, can be amended. That is why Members, on a need basis, can have the figures reviewed. We have already directed the CRA and the Controller of Budget to do that.

Concerning the question of the Integrated Financial Management Information System (IFMIS) raised by Sen. Ndiema, according to the County Assemblies Forum (CAF), all county assemblies are already connected and working with the IFMIS. However, in the meeting that we had a couple of weeks ago, the Controller of Budget had told us that they will confirm with the Director of the IFMIS. That is why we gave them 30 days. Already, one week is down the road and in the next three weeks, we will know the status of the IFMIS. If it is workable, then, there will be no reason why county assemblies cannot activate their IFMIS and have money directly credited to their accounts.

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

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

In this regard, we will have an opportunity to meet all these people tomorrow. In fact, the Speaker, in his Communication, said that this will happen from this evening. So, all Chairpersons and Leaders of the House are welcome to participate because we will have the Chairpersons of all budget committees, Chairpersons of all Public Accounts Committees and Chairpersons of finance committees of all county assemblies. This is in

addition to all the oversight institutions at the national level including the Auditor-General, the Ethics and Anti-Corruption Commission (EACC) and all the others. So, it will be an opportunity to address some of these issues.

Lastly, Mr. Temporary Speaker, Sir, the point raised by---

**Sen. Ndiema:** On a point of order, Mr. Temporary Speaker, Sir. I am aware that Trans Nzoia County is not connected.

**Sen. Billow:** Mr. Temporary Speaker, Sir, that is why we asked the Controller of Budget to get in touch with the Director of the IFMIS in order to determine the status of connectivity and activation of the IFMIS in all counties. So, we will have the report as soon as possible.

Mr. Temporary Speaker, Sir, Sen. (Prof.) Lesan asked about the issue of adequate funds and I have explained that. I want to make it clear to Senators that, that is our Committee's determination. We have already done so but we will make it very clear again tomorrow so that Members can also appreciate; those who will be joining us. We want adequate funds to be provided to county assemblies so that they carry out their mandate completely unhindered; including the opportunity to travel, benchmark and do whatever is necessary so that they build their capacity.

That is why the amounts proposed this year are significantly higher. The House will have an opportunity to review and settle on whatever ceilings it deems necessary. In this regard, for the remaining quarter, we have also made it clear that they must release adequate funds. Therefore, we have asked the CAF to get in touch and ensure that they get whatever they require to complete their work for the remaining period.

Mr. Temporary Speaker, Sir, all the other points raised by other Senators have been addressed. Therefore, I rest my case.

**Sen. Hassan:** On a point of order, Mr. Temporary Speaker, Sir. At the very outset, Sen. Murkomen made an appeal to you for this Report to be tabled as a Motion so that the House can ventilate and pass resolutions. This is because this debate has been by way of question and a matter of opinion. Therefore, could you direct that the Motion be tabled next week on Tuesday when the House resumes next?

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, order Sen. Hassan. The document will be tabled when the Committee is ready.

**Sen. Hassan:** Pardon me, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Machage): You heard me right.

**Sen. Hassan:** Mr. Temporary Speaker, Sir, ---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order.

**Sen. Hassan:** On a point of order, Mr. Temporary Speaker, Sir. By having tabled the Document that shows that the Committee is ready. Therefore, we are just requesting that they bring it by way of a Motion.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Hassan. To my knowledge, you are not a Member of that Committee. So, you are not privy to that information.

Let us move to the next order.

*(The Temporary Speaker consulted  
with the Clerks-at-the-Table)*

I am deferring Order Nos. 8, 9, 10, and 11. We have Motions to be reallocated.

### MOTIONS

#### REVIEW OF EXISTING LEGISLATION ON HEALTH CARE TO MAINSTREAM AND ENHANCE CARE FOR PATIENTS WITH DEMENTIA

THAT, aware that currently there are approximately 44 million persons living with dementia worldwide, a figure that is expected to triple by 2050; acknowledging that caring for dementia patients can be a difficult experience; appreciating the contribution of family members and other care givers of people suffering from dementia across Kenya; noting with concern that mental healthcare does not seem to be a priority in the public health sector in Kenya since the allocation for mental healthcare is less than 1% of the total public health budget; acknowledging the importance of raising awareness of dementia and ensuring that people with dementia are treated with dignity and respect; appreciating the contribution of non- governmental organizations such as the Africa Mental Health Foundation and the International Institute for Legislative Affairs who provide a platform for sharing of views and experiences on care of people with dementia; noting the need to enhance awareness on and provide better care for patients of dementia; the Senate directs the Standing Committee on Health to immediately initiate review of the existing legislation on health care in order to mainstream and enhance care for patients of dementia and further that the Committee submits a report to the House on the matter within ninety (90) days.

*(Motion deferred)*

#### ISSUANCE OF IDENTITY CARDS TO ORPHANS AND VULNERABLE CHILDREN

THAT, cognizant that Article 12 of the Constitution guarantees a right to citizenship; noting that it is the right of every Kenyan attaining 18 years to register and be issued with a National Identity Card ; further noting that the National Identity Card is at the core in determining the extent to which an individual enjoys his or her fundamental rights and freedoms; concerned that Orphans and Vulnerable Children attaining the age of 18 years in children's homes have difficulties obtaining the National Identity Cards, the Senate urges the National Government to take remedial, policy, administrative and legislative measures to improve and expedite the process of registration for National Identity Cards especially for the Orphans and Vulnerable Children who live in children's homes and have attained 18 years of age.

*(Motion deferred)*

ESTABLISHMENT OF NACC COUNTY OFFICES

THAT, cognizant that the core mandate of the National AIDS Control Council (NACC) is to develop strategies, policies and guidelines relevant to the prevention and control of HIV and AIDS in Kenya; noting that the operational structure of NACC has not been aligned to the Constitution of Kenya 2010; acknowledging the objects of devolution as set out under Article 174 of the Constitution; recognizing that under the Fourth Schedule, the health function has been devolved except for the health policy and referral hospitals; concerned that an estimated 1.2 million Kenyans are infected with HIV/AIDS and a 100,000 are infected annually; recognizing the need to achieve an “*AIDS free society*” by stepping up the fight against the pandemic at the County level, the Senate urges the National Government to set up the National AIDS Control Council (NACC) County offices in all County Headquarters with the National Headquarters providing overall co-ordination and that the resources allocated for the fight against HIV/AIDS be disbursed and managed at the County level.

*(Motion deferred)*

ESTABLISHMENT OF RESCUE CENTRES IN  
KENYAN EMBASSIES

THAT, aware that many Kenyans migrate out of the country for employment especially as domestic workers; concerned that they work under deplorable conditions in those countries they go to; cognizant of the grave danger this poses to them and their families, the Senate calls upon the National government to establish rescue centers in all its Embassies and Missions abroad.

*(Motion deferred)*

The Temporary Speaker (Sen. (Dr. Machage): Next Order!

**BILLS**

*Second Reading*

THE NATURAL RESOURCES (BENEFIT SHARING) BILL (SENATE  
BILL NO. 34 OF 2014)

*(Sen. (Dr.) Zani on 4.12.2014)*



*(Resumption of Debate interrupted on 18.3. 2015)*

**Sen. Ndiema:** Thank you, Mr. Temporary Speaker, Sir, for allowing me to contribute to this important Bill. Natural resources have, up to now, not benefited communities that reside within the areas where resources are exploited. When I refer to resources, what comes to my mind are forests, minerals, water, wildlife and even fisheries. It is not fair, equitable, and it is contrary to the Constitution for some people or organisations to continue exploiting resources which belong to other people without giving them any form of compensation or support. Where some of the resources are located, the communities have suffered historical injustices. For example, their land, in some cases, has been forcefully taken by the Government for the purpose of either conservation or exploitation of the resources.

Mr. Temporary Speaker, Sir, we have cases like the use of forests. We have communities whose only home has been areas where forests are. When forests were delineated, those communities were not considered for any form of compensation. Whenever resources are being exploited, whether timber or any other resource, the communities have never been considered for any share. This has been going on for a long time and communities there like the Dorobo have been suffering.

Mr. Temporary Speaker, Sir, in a county like Trans Nzoia, for instance, on the slopes of Mt. Elgon and Cherangany Hills, where forests are, the communities had to surrender their land. Sometimes, they are forced to “surrender” because they were forced to do so. They have also been playing a part in the conserving, but the reward that they have gotten is intermittent evictions from these forests. They have also been accused of interfering with the natural resources. Even when it comes to the shamba system, they are not given special attention.

Mr. Temporary Speaker, Sir, the residents of Trans Nzoia, for instance, are not benefiting from the exploitation of forests because the licensing of saw millers is done in Nairobi. No percentage whatsoever has been reserved for the local people, yet they are the ones who tend the trees up to maturity. They are also capable of exploiting this resource. Unfortunately, these resources are transported in terms of crude raw material, for example, as logs without adding value at the point of exploitation. This ends up denying our youth employment because it is created elsewhere. I want to thank Sen. (Dr.) Zani for coming up with this Bill that seeks to correct some of these injustices.

Wildlife is a good natural resource that has proved to be a revenue earner to the economy. The economy has substantially benefited from it, but if you look at the communities living within those areas where wildlife conservancies and game reserves are, they are very poor because they do not derive any form of benefit from their heritage. The wild animals also continue to cause havoc to their farms and crops. Sometimes they even lose lives as a result of attacks from wildlife, yet they do not benefit. In fact, those who enjoy this resource are people from, perhaps, thousands of miles away.

There is a policy by the Government and it is indeed stipulated in the Constitution that there must be citizen participation. The local communities should be involved in the conservation of the environment, wildlife and so forth. But, unfortunately, the communities do not understand why they are called upon to conserve yet they earn

nothing from these resources. So, by approving this Bill, we will ensure that, at least, the local communities gain from whatever suffering that they have endured.

When we talk about benefits, we are referring to the monetary benefits. The communities living near the natural resources should be assisted financially to undertake public projects that will assist them. These include bursaries, roads and water. I recently visited a school in my county that borders Mt. Elgon Forest. Pupils sit on the floor because they do not have desks, yet they are next to a forest because they are not allowed to harvest any timber to make desks. This is very unfortunate and I thought at that moment that I must come to support this Bill that seeks to assist them. Even to extract basic necessities like firewood and water, the process that the community has to undergo to get the necessary approvals is very tedious. No wonder the local communities view these reserves as being of no value to them.

Mr. Temporary Speaker, Sir, in the past, agreements for the exploitation of resources like minerals were done in a haphazard way. They have been subjected to discretionary decisions by those who have been given the authority to make those decisions. This is not healthy for investors. This Bill seeks to ensure that there is uniformity in the application of the law. When an investor comes, he will know exactly what is to be done, especially in terms of the sharing of royalties.

I am a Member of the Committee that came up with the Bill. We moved around the country and noticed that there are some companies or organizations which have done commendably well in providing services and supporting the communities in the spirit of corporate social responsibility. However, others have done completely nothing. This Bill does not seek to do away with the corporate social responsibility, but to also ensure that those who do not do it at the moment must do, at least, the minimum which is set out.

Mr. Temporary Speaker, Sir, regarding the royalties that are currently payable and collected by the national Government, there is no portion assigned to conserve that particular resource. There is no provision for sustainable conservation or replenishment of the resources. This Bill seeks to ensure that the portion of the royalties go for the purpose of that resource, you plough it back so that, that resource can push us further.

The sovereign fund that this Bill seeks to establish has not been there because the resources we have are finite. Some resources like minerals for, maybe 30 or 50 years and yet we owe it to future generations that they also benefit because it is of no use for this generation to exploit it and deny future generation. This Bill is sensitive to that and has made a percentage for a sovereign fund, a certain provision of royalties to be deposited in a sovereign fund whereby future generations will draw the benefit.

Mr. Temporary Speaker, Sir, the decisions as to how much royalties should be paid in the administration of that fund to ensure that it goes for the proper use as envisaged in the Bill is no longer a discretionary matter of one person. The Bill seeks to establish an institution comprising of several players who represent different interests, including the local communities and the counties because there is devolution; matters of natural resources are not a preserve of the national Government. The county government has a stake. The county government now has a forum or a place where they can have their representative and this national board can therefore make decisions as far as royalties are concerned.

The issue of collection of these royalties has been a matter of concern because some institutions collect and some contract out to certain firms. This Bill seeks to place it in the authority that is mandated to collect any other levies or taxes.

With those few remarks, I support.

**Sen. Mositet:** Mr. Temporary Speaker, Sir, thank you for allowing me to contribute to this Bill. Allow me to congratulate Sen. (Dr.) Zani for having thought deeply into the many things that can assist Kenyans and they will be happy and appreciate.

Let me also congratulate the entire Committee for working tirelessly because I know it worked very hard to an extent that they visited countries outside this country, so that we can borrow the experience that those countries have, so that we can have the best. This can be a good example to our county assemblies so that whenever they are accused of going out of the country, they should always go for a good cause. Being a Member of this Committee, I am very happy because some Members visited some countries and they brought a lot of wisdom and made a lot of input to this Bill.

This country is endowed with a lot of natural resources, and we can start with the good fresh air that we have, the waters, the trees, the animals and also the beautiful people.

Mr. Temporary Speaker, Sir, you will realize that when you are outside the country and you see somebody dressed in the red *shukas* in a photo, you will appreciate that the person must be from Kenya. That is also a resource on its own. I do not know how the Masaai will gain from that. Hopefully, Sen. (Dr.) Zani, will see how to polish it more. I know there are some areas---

**The Temporary Speaker** (Sen. (Dr.) Machage: Are you suggesting that the red colour belong to the Masaais?

**Sen. Mositet:** Yes, from creation, that is our colour.

**The Temporary Speaker** (Sen. (Dr.) Machage: So, can Parliament benefit because of the chairs?

**Sen. Mositet:** Mr. Temporary Speaker, Sir, you know also Nairobi was named by the Maasai, so we are in the heartland of the Masaai. When it is red and this is where power is exercised, I think we appreciate that.

Allow me to say that Sen. (Dr.) Zani did a good a job. Regarding Clause (3), I wish to say that instead of itemizing petroleum, natural gas, minerals, maybe we could come up with some like the geothermal, wind and solar power; some trees, so that we can define them just like the way you have defined others.

When it comes to the issue of minerals, I understand that some sand is also defined as mineral, like the building sand which is a natural resource. We know that the entire of Nairobi has been built with sand from Machakos and Kajiado, and I believe it is a resource. If the counties from where it originates can get something, the communities and the counties can really benefit.

Our own county is endowed with a lot of minerals, for example, soda ash and salt. That is why we have Magadi. Magadi started way back during colonial times. The British investors went and settled there and apart from the social responsibility they plough to the communities there, the community and the county hardly benefit. It is just the other years when the rates were revised, otherwise, they used to pay the local authority at that time

about 15 cents per acre. You can imagine that kind of exploitation but at least I know with the passage of this Bill, the county and the community there will benefit a lot.

It is also sad to note that when it comes to a natural resource like wind, you find some areas which are very well known that they are in the county and belong to some community, due to some laws, they are owned by Kenya Forest Services like the Ngong Hills, where we have a resource of wind. It is a good resource. I believe KenGen and the people who are harnessing wind to get power need to pay for exploitation of that resource, so that the communities and counties where the resource is being harnessed can gain.

There are quite a number of resources like sand and being a natural resource, I believe the areas that are classified as arid areas or semi-arid areas can also benefit out of this. I also appreciate the fact that we have an authority here that will try to come up with the guidelines and also control the way these minerals or natural resources are extracted.

Mr. Temporary Speaker, Sir, there is quite some impact coming up after the harnessing of these natural resources. For example, in the Ngong Hills, where wind is extracted and out of that, we get power, you will find that there are some serious impacts which were not anticipated when the assessment was done. I have two very good examples; one, you will find that after the turbines were erected by Kenya Electricity Generating Company Ltd. (KenGen) and after the lines were connected to the transmission systems, the mobile cellular network within that area has been seriously affected. Two, we have wildlife in that hill, like buffaloes and others and every time the turbines are running, the animals tend to run away maybe because of the noise generated and the blinking of the lights. Because of that, of late you may even find some buffaloes in Ngong Town at around 8.00 a.m., and, as a consequence, children within those areas are afraid of going to school.

These are some of the consequences which were not anticipated. So, with such an authority, I believe we will be doing some serious research and out of that, before any implementation of a project like this, they will make sure that there are some ways to arrest the situation.

Mr. Temporary Speaker, Sir, you will also find that with these kinds of natural resources and the way, maybe, the investors will come, our counties and our communities will benefit a big deal, because you will expect also the issue of unemployment to be addressed within those areas. You will also expect, within those areas, the communities to train their people or their people to go to school to learn the skills which will be used to extract those natural resources. I believe, for example, if it is in the coast region, where we have very good gems, we should expect a good institution where our young people can train in courses about gemstones and the natural resources which are found there so that they can be employed there. This will also ensure that good methods of extracting gemstones can be employed so that our people can get employment and also so that the value of what is extracted can be obtained.

In conclusion, Mr. Temporary Speaker, Sir, the Bill is coming at the right time. In fact, it is one of the best Bills which I believe our counties and our communities will reap something out of it. I believe this Bill will change this country and it will take wealth back to the communities rather than the way the investors just go in, invest, extract the minerals and other resources, fly off with the wealth and the poor people are just left

there. But with the passage of this Bill, at least wealth will be ploughed back to the communities.

With those few remarks, Mr. Temporary Speaker, Sir, I beg to support.

**Sen. Billow:** Thank you, Mr. Temporary Speaker, Sir. I also want to take this opportunity to add my voice to this very important Bill and from the outset, I want to support it. This issue of sharing natural resources has been one of the most vexatious issues in the world; not just in this country. In every nation you go to, it is one of the issues that people raise. When you look at the disparities, inequalities and skewed allocation of resources, one of the issues that people always raise is; “look, here we raise a natural resource, but we do not benefit from it.”

Mr. Temporary Speaker, Sir, as the Committee on Devolution, we recently visited Mexico and we had an opportunity to meet with some academicians who run the universities in the main state which produces oil. But the interesting thing they told us is that although it is the only source of oil in that country, it is the poorest state in that country for the simple reason that they do not have a system for sharing the benefits of those resources in the country. They were surprised when we told them that we are working on the Natural Resources (Benefits Sharing) Bill and they could not hide their excitement. They asked us to give them a copy of that Bill because they had no idea, 50 or 60 years after they discovered oil, it has been flowing to the centre and when they share out revenues, they have never benefitted from it.

So, to a larger extent, the very idea that we are developing this Bill just when we are in the process of developing some of the key natural resources in the mining sector like oil and so on, and so forth, I think it has come at a very opportune time. This will help us not to fall into the poverty traps that some of the countries that have these resources have fallen into, like Nigeria and many others.

Mr. Temporary Speaker, Sir, I have gone through the various provisions of this Bill, including Section 3 of the Bill, which identifies those resources which fall within the meaning of the Act – petroleum, natural gas, minerals, forests, water resources, wildlife and fisheries. I want to say two things; one, for you to identify these resources in your county, there has to be an investment in the first place in infrastructure in that area to enable investors to go in and even identify whether that potential exists. This is one of the challenges we have faced in my county.

There is a town, for instance, called El Wak in Mandera County where, many years ago, the Mining Department – which is now the Ministry of Mines – conducted a study where they confirmed that we have about three billion tonnes of gypsum. Gypsum is used for, among other things, the manufacture of cement, fertilizer and many other things. Today, as we speak, much of the gypsum that we use is sometimes largely imported, especially in the decorative industries.

Mr. Temporary Speaker, Sir, I got a team of engineers from the United States of America (USA) in 2005 to visit El Wak and to discuss the possibility of exploiting that resource. The main issue they raised was that of lack of infrastructure. For example, if you are to develop a factory there, the energy that is required there, you must be on the national power grid. Similarly, a road is needed to transport those minerals out of that region. So, from the outset, even before you talk of the sharing formula, the very fact that we are underprivileged in terms of the development of the infrastructure puts you straight away at a disadvantage. You have a resource there, you can see it but investors cannot

come and work on it because of the challenges of infrastructure. That is why I think it is important and it is the reason why the framers of the Constitution, in their wisdom, had come up with such things as the Equalization Fund so that those counties that do not have infrastructure can be brought up to that level. It is in this regard that some of us think that the Government and the Treasury in particular, should not drag its feet in providing that money so that the counties can come up.

Mr. Speaker, Sir, the second thing is about these resources which have been identified in Clause 3 of the Bill. We have talked about petroleum, natural minerals and so on, and so forth. But I also want the sponsor of the Bill to think about a resource like a harbour in the case of Mombasa and Lamu, because that is a very important natural resource. If you have a harbor that can be developed into a port and the benefits accruing from that port are not shared, then you stand at a disadvantage. A good example is Mombasa where not less than between 60 to 80 per cent of our national revenue particularly Custom Duty and Value Added Tax (VAT) are in fact, collected at Mombasa yet when it comes to allocation of revenue for expenditure, Mombasa does not benefit because that factor is not considered.

There is a lot of damage to infrastructure and the environment in that town considering the amount of investments people have to put in to carry out port activities, yet that county does not stand to benefit from a single penny when revenue is allocated. In my view, that is why the definition of resources here needs to be expanded to consider that kind of a natural harbour that provides opportunity for a port, which should also benefit those two counties. The income and proceeds from that port be shared in the same way. Those are just examples.

When I saw fisheries, I almost said--- Well, anyway, people export fish. But in some of the pastoralist communities, you might start thinking of other things. The Bill provides for an opportunity to add more because natural resources are not specified in that clause.

Mr. Speaker, Sir, on Clause 7 of the Bill on the structure of the Authority that will manage the resources, I am glad that the Bill includes the community. It states that we have three persons nominated by the Council of Governors (COGs) and three persons nominated by the Forum for the County Assembly Speakers representing communities; then, of course we have the representatives from the national Government. The fact that we have included these people is very important because without representation on the ground; without representation of communities, then, in fact, the whole meaning of benefits sharing will be lost.

As we get to the Third Reading of the Bill, we might consider the possibility of adjusting numbers so that we have adequate representation by the communities and the counties to determine what actually happens in the Authority so that we do not lose the opportunity at the outset.

Mr. Speaker, Sir, the other clause I found to be of significant interest is Clause 26 of the Bill, which talks about the revenue sharing ratio. The proposal that 20 per cent of the revenue collected from these natural resources be set aside and paid into a sovereign wealth fund established by the national Government is a brilliant idea because we have to talk about the future. We have to think about our children and the generations to come. We cannot collect and spend everything today. This is why even in fiscal responsibility when you are determining tax, you have to look at the burden on the future. The fact that

the future generations carry the debt burden of today is because the infrastructure we are enjoying today is based on the debt that will be paid by people who will come tomorrow and it is important that we invest for them. The creation of that sovereign wealth fund is a very important provision in the Bill.

Mr. Speaker, Sir, the proposal to share the remaining 80 per cent on the ration of 60:40 between the national and county Governments is also significant. That pay off of 40 per cent to a county government where that resource have been discovered could not have been a better gift to the people of that county. Here they are with resources in their area and you might, in fact, displace them in order to exploit these resources, like we have seen in the titanium mines in Kwale. So, the fact that people will be displaced, their livelihoods may be disrupted and the fact that these resources are found in their areas; for them to benefit at least from 40 per cent of the proceeds from these resources is a very good thing.

What goes to the county government should also be shared between the county government and the communities that live there. We have seen that; if you go to Maasai Mara, whatever is collected as revenue from the tourist park fees and so on, and so forth, there is a 19 per cent that has been given out for many years now to the communities around the park. One advantage of that is to ensure conservation of wildlife in that area. Two, is to compensate them because they cannot use those areas of the park for grazing their livestock. So, in the same way, it is an important thing to compensate the communities directly. They can use that amount of money for their cultural purposes, educational or any other activity. That percentage is very important, that out of the 40 per cent which goes to the county, at least 40 per cent of it should go to community projects.

Mr. Speaker, Sir, the other thing which is important is the money which goes to the county governments. In addition to what they get from the national revenue, they will now have access to money that comes to them from here. So, the demand for accountability, integrity, prudent financial management and good governance in our counties becomes even more necessary because of this kind of funding which will go there. If a county government today is unable to spend properly Kshs.4 billion or Kshs.5 billion, if we do not build the capacity of those county governments, if they end up with Kshs.20 billion or Kshs.30 billion tomorrow, we will get into a crisis. This is why it is essential for the Senate to take their mandate seriously to ensure that counties develop capacity to manage their affairs, to utilize resources efficiently and effectively so as to assist their areas.

Mr. Temporary Speaker, Sir, Clause 27 about the benefits sharing agreement and the fact that it will now reside in the county government is also important. The benefit sharing agreement says in Clause 27(1): "These organizations that are exploiting those minerals or resources will enter into county benefit sharing agreements with the respective county government." This is important; what happens now and what happened before is that these things were done in the Ministries here. So, if you come from Europe and you want to do some mining in Mandera, first, you have to get into a deal with those guys. This denies the people of the county the opportunity to be involved, be engaged and to know what is going on and even that transparency is lacking.

There are many countries today where you do not even know what is in the benefit sharing agreement between the national Government and those companies that are exploiting resources there. It is the same thing in this country. If you ask today about

Turkana, who has got the details relating to the benefits sharing that has been signed with the Government? The same agreement was in Uganda when Tullow Oil discovered oil---

*(Sen. Billow spoke off record)*

**Sen. Mugo:** Mr. Temporary Speaker, Sir, thank you for the opportunity for me to support this very important Bill. We all know that unless people living in an area; citizens or communities are convinced that the resources around them belong to them, they will not take care of them. It is also a fact that unless the resources are properly taken care of, they cannot be properly managed for the benefit of people.

Therefore, I rise to support this Bill, first of all because I believe that the people who live in the area must benefit from the resources. It does not matter whether the resources should be exploited by the national or the county governments. We must ensure that the local communities benefit. There should be a law or regulations to guarantee that a certain percent of the revenue goes back to the community. However, we must ensure that the management of those resources is done correctly. The proceeds of these resources are not benefitting the people who are supposed to benefit.

We must take care of the environment. Most of the resources depend on the correct environment; an environment that is taken care of. Who is best placed to take care of our natural resources if not the communities living in the specific area; be it wildlife or other resources that are mined? We now have water and oil. There are many resources including forests. The best people to take care of these resources are the local people.

It is disappointing that we keep on talking about increasing forest cover so that we do not experience the kind of droughts we are experiencing due to climate change. However, if you go round the country, you will find areas that used to have forests are now clear. The trees have been cut down. I would like to suggest that as we set up regulations for local communities to share certain amounts of the resources; including those from forests, we also create programmes to replant the trees which have been cut. This is a very sad situation. We have been talking about increasing our forest cover to 20 per cent or even 10 per cent. However, for a long time, it remained at 2 per cent. I understand that it could be worse now. Soon, we will be living in a concrete jungle in this country.

Mr. Temporary Speaker, Sir, the leaders of each area have a responsibility to educate their people about the values of resources. People should not say that certain resources belong to the Government. We should say that the resources belong to us. I believe that there is room to educate our children in school so that they grow up knowing how to take care of their resources. I know that we used to have programmes where schools would have tree planting days. I am dwelling on trees because I was shocked to see some areas which used to have thick forests very bare. If you look inside, you will find that the tree cover is only found along the road.

Therefore, I commend the Mover of this Bill because it is very timely. I also want to call on national and county governments to conduct civil education and teach our people the value of resources; be it wildlife or any other resource. We should not look at wildlife as the enemy that eats our crops. It is the responsibility of the county governments and even the national Government to ensure that wild animals are secured and do not ruin crops. This is what makes villages want to get rid of wildlife. They also



feel that the animals are dangerous to human life and livestock. We must co-exist in a friendly atmosphere with the wildlife which brings a lot of foreign exchange through tourism.

Tourism may have gone down but I believe that this is temporary. I believe that tourism will be coming up again especially when our “so called friends” remove travel advisories. I believe that Kenya is much more secure than many other countries where we do not see advisories being given. Therefore, we call upon our friends and the West to remove travel advisories against Kenya and that will bring in more resources from tourism which can be shared amongst the people who live in those areas. Without tourism, places like Maasai Mara or any other place, counties will not have enough revenue to support the people they want to support.

As we address the issue of resources, we must realise that it is very wide. It talks about how to preserve the resources, how to take care of them, how to educate our people so that they get the true value of the resources. Our people should appreciate that these are their resources and do not belong to anyone else. Our people are the Government. They own the Government.

I know that there are several Acts of Parliament that touch on this issue but which concentrate on different resources or aspects. I believe that it is good to try and bring these laws into one Act of Parliament so that it is easier to implement them. We discussed this at another forum. I know that Sen. Zani is very capable in this area. I hope that there will be some amendments to ensure that we bring all the laws under one Act of Parliament so that we do not have many volumes of reference to check on different laws. People living in a certain area should have an easy way of implementing the law. Those who are doing the monitoring should also do it in a more professional way.

I thank the Senator and beg to support.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. Since I see no other interests, I will call the Mover to reply.

**Sen. (Dr.) Zani:** Thank you, Mr. Temporary Speaker, Sir. I beg to reply. I thank Senators for all their contributions which have really brought new perspectives and many ideas into thought. I think they are going to be very critical even as we move the amendments that are very necessary in this Bill. Those comments and contributions are not going to be taken for granted.

As we go into the Committee of the Whole, we are going to take into consideration the deliberations that have been made to ensure that at the end of the day, we finally put into place an Act that will help to benefit Kenyans in line with Article 69(h) that aims to ensure that societies benefit from their resources. This is such an important thing because people feel that they own and they are part of these natural resources. I am of the feeling that if they do not benefit from them, sometimes it causes a lot of the conflict that we see but can be actually avoided. It is very critical that as we enact this law, we think about the natural resources; how they will benefit people and also ensure that conflicts are reduced.

I will briefly go through some of the comments that were made by various Senators, highlighting specific areas and also thinking about the areas that will be amended, probably at the Committee of the Whole. Sen. (Prof.) Anyang’-Nyong’o talked about the importance of royalties and the need for communities to benefit broadly. Sen. Mutula Kilonzo Jnr. brought this into perspective even better when he gave the example

of Tanzania and how they were able to protect their parks. I find that the easiest way to mobilise communities is to educate them about their natural resources and empower them to take care of those natural resources. When they feel that they have something that they will get back, then, surely, they will do that. It gives them a reason to protect those resources.

Sen. Mutula Kilonzo Jnr. also mentioned the importance of earned currency, especially the Authority and the financial report that is going to be given at the end of the financial year to the Senate. The proposal in the Bill is that this Report is given to the President and the Senate. However, we can also look at Clause 36 as he recommended and also anchor the Senate in both Clauses 36 and 37 to strengthen the role of the Senate.

He also mentioned the importance of insulating the Authority and this is a concern that was raised by various Senators because we do not want to have an Authority that will run amok, become corrupt and trickle this corruption back to the counties. We want an Authority that will follow the laws. The Authority that has been put in place is bottom heavy; five members from the community including the Chair who will be nominated by the President, Principal Secretaries (PSs) in the mining, Finance and Treasury. However, I think it is very important because especially in this Bill, the Authority has a lot of responsibility in ensuring that they are able to do the various agreements and execute them well and coordinating the processes from the Authority to the county committees and the community forums. So, they have a very key role to play.

With devolution and sometimes with the lack of transparency that we have seen in terms of people accounting for funds, I think this is where the concern was coming from. We need then to think about ways to ensure that when that report comes to the Senate, we have a chance to scrutinize it properly and ensure any loopholes are immediately covered.

Sen. Murungi talked about the need and the differentiation between CSR and royalties which is very key. I remember when we visited some of the counties, this issue came up and some investors were very quick to say that they were already giving back in terms of corporate social responsibility. We are very keen to suggest and to make it very clear that corporate social responsibility is fine. In fact, even with the benefit sharing agreement in place, it is still okay to engage in corporate social responsibility. However, corporate social responsibility does not bind both the investor and the community and so it is very important that we have a benefit sharing mechanism that will enable us to do exactly that.

Mr. Temporary Speaker, Sir, even in the Bill, apart from the monetary aspects, we also have non-monetary aspects. As this particular Authority goes about its work, it should put together ideas about how the community can actually gain either through educational programmes or value addition to the natural resources so that, for example, they are not transported in their raw form. That would create employment that some of the Senators spoke about. Benefit sharing is not about tokenism; it is actually about giving back to the community. The whole idea of ensuring that this happens is key.

Clauses 5 and 6 are important because they set the Benefit Sharing Authority which is a key organ which will be in charge of most of the processes. Many Senators also looked at Clause 3 of the Bill and suggested that we need a more expanded definition of the natural resources. Even from the stakeholder participation, hon. Senators talked about Article 260 of the Constitution that also has an elongated list of the natural resources. Even though in Clause 3(2), we have actually incorporated other natural

resources, the feeling is that we incorporate all the natural resources that are known so that if others are discovered, then the meaning of 3(2) is actually based on the new ones rather than the ones that are already in place.

Mr. Temporary Speaker, Sir, the whole idea of ensuring that there is control of funds and corruption was stipulated very clearly by Sen. Muthama because this Bill is going to create wealth in the counties. For as long as we do not seal corruption loopholes, then we are going to have a situation where we are only going to benefit some people and not those who we are targeting. At the end of the day, we will have something that has failed. One of the ways to ensure this is to have those same communities speak to what they exactly expect to be the direction of the funds. In the various discussions we have had, some communities thought about it in terms of monetary value being given to them directly, but we told them that it was impossible because finally, if we allow those resources to trickle down where everybody gets, for example, Kshs2, it is not going to help. There should be a mechanism to ensure that social development projects are put in place and this seemed to be the way forward.

If different communities realise that this money is for specific use coming from various resources within our counties, they themselves can be in charge and ensure that those schools and hospitals are built and well run. One of the disappointing aspects in terms of the implementation of the Constitution is the part about public participation. That is the greatest oversight that we can ever have in this country and, therefore, it is very important to put that into place.

Sen. (Prof.) Lesan also talked about the importance of ensuring that corruption is curtailed but also moved to what Sen. Mugo and Sen. Ndiema have talked about and that is reconstruction or reforestation of the natural resources. When this Committee visited Australia, we got to a super pit where a lot of mining had taken place and now it had been laid bare, but plans were being put in place to rehabilitate it including constructing a fishing pond in that place so that it can still be of use.

Sen. (Prof.) Lesan also warned against the oil curse which can be very unfortunate. In areas such as Turkana where oil has been discovered, the hope and dream that finally this is going to change the whole community is very real. I know many people have rushed to Turkana County to buy land and benefit from the gains of oil extraction. It is very important that at the end of the day, we do not allow this to become an oil curse like in the case of Nigeria.

The issue about management and ensuring that everything is streamlined in an appropriate way is going to be very critical. At least, we are warned that it is critical to ensure---We have examples of countries like Nigeria and so, we can avoid that. Avoiding conflicts becomes very critical. Sen. Omondi indicated that some of the groups; specifically the youths and people with disabilities had been left out, that is important. The necessary knowledge and where people are going to generate and gains from this Bill have to be expanded to all sectors.

Mr. Temporary Speaker, Sir, issues of transparency and accountability were raised by Sen. Kanainza. Sen. Mungai also talked about corporate social responsibility (CSR) and communities benefiting. They also talked about geothermal and wind power as aspects that we need to include. Sen. Nabwala emphasized the issue of marginalization and ensuring that as a result of marginalization, communities do not end up being disadvantaged. Most of the Senators who spoke; including Sen. Mugo, Sen. Ndiema, Sen.

Hargura, Sen. Mositet, Sen. Billow and Sen. Melly, focused and refocused on the whole idea of ensuring that we have proper infrastructural development in the first place and ensure that we can actually anchor and exploit the specific resources. They talked about the importance of making sure that at the end of the day, the cultural value--- Sen. Mositet talked about this; that this value is not completely lost in the process.

I think that at the end of the day, the strength of this Bill is that it moves on to talk about an important aspect, that is, the distribution. In Clause 26, where the distribution is stipulated, it ensures that we are moving to a point where we know that royalties, money and fees charges are collected. However, we are saying that we need to find a mechanism for the redistribution. It does not matter which natural resource; we need to find a redistributive mechanism.

Some of the Acts and Statutes, as Sen. Mugo suggested, need to be merged together. However, we need to be very careful to ensure that at the end of the day, all of them are merged in such a way that the redistributive aspect is not lost. The idea of putting all the legislation together to make it easy for reference and implementation, is a good idea but we also need to remember that the various sectors are quite diverse and there is a lot of variance in the way these particular sectors are run and operated. This is something for us to think about even as we continue moving forward. I think with that and the comments and feedback that has come, I am sure we will move forward towards producing a very good Bill from the Senate of Kenya.

Mr. Temporary Speaker, Sir, with those remarks, I reply. Thank you.

**The Temporary Speaker** (Sen. (Dr.) Machage): You have forgotten to say something at the end.

**Sen. (Dr.) Zani:** Pursuant to Standing Order No. 54(3), I request that the putting of the question be deferred to an opportune time when we are able to vote.

Thank you Mr. Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. Time will be allocated next week for the Division.

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

I will defer Order No.13 and No.14 to next week.

Proceed to next Order.

*(The Temporary Speaker (Sen. (Dr.) Machage) consulted the  
Clerk-at-the-Table and the Senate Majority  
Leader (Sen. (Prof.) Kindiki))*

After consultations with the Senate Majority Leader, I reinstate Order No. 13 due to constitutional deadline on the 27<sup>th</sup> May 2015.

*Second Reading*

THE ENVIRONMENT MANAGEMENT AND  
CO-ORDINATION (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO.31 OF 2014)

*(Bill deferred)*

*Second Reading*

THE PUBLIC SERVICE (VALUES AND PRINCIPLES) BILL  
(NATIONAL ASSEMBLY BILL NO.29 OF 2014)

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move that the Public Service (Values and Principles) Bill (National Assembly Bill No.29 of 2014) be read a second time.

This Bill is among the three or four Bills that this House or this Parliament must pass before the expiry of the extended period of 27<sup>th</sup> April, 2014. That means that I will not go to a lot of details but I will provide adequate overview---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order. For purposes of record, is it 27<sup>th</sup> April, 2014 or 27<sup>th</sup> May, 2015?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): It is 27<sup>th</sup> May, 2015. Thank you for the correction. In accordance with the calendar that was adopted by this House, we will proceed on recess in early April and we will not be back until late April. So, it is important that these Bills are disposed of considering that when we resume, it is expected there will be other Bills for 27<sup>th</sup> August deadline.

Having said so, I want to provide a general overview of this Bill. This is a brief Bill; it has about 17 sections. Basically, this Bill is aimed at giving effect to Article 232 of the Constitution. This article basically talks about the Public Service Commission and the need to have a law to be enforced by the Public Service Commission on the ethics, principles and values that should guide all public servants. There has been a lot of concentration on state officers but this Constitution envisages that just like state officers, public officers must be held accountable for the administrative actions they take.

There must be a system of promoting integrity and good values in the public service among public servants. This Bill does three things: First, it provides for a code of values for public servants; secondly, it provides for public participation by the society generally on how to promote good values and principles in the public service; thirdly, it provides for a mechanism of reporting the status of implementation of values and principles in the public service.

Mr. Temporary Speaker, Sir, the law applies to all state organs in the national and county governments and also to all officers who work in state corporations. Clause 5 of this Bill provides that every public officer must maintain high professional standards and professional ethics. This is the software of our public service. By software, I mean the values and the issues that you will not find in the training that people get in universities. We have engineers, lawyers, doctors, sociologists but there is need to have that knowledge in engineering, law, medicine and sociology being infused with the soft values that help those public servants to deliver.

As you build a road if you are a county engineer for roads or director of survey in the Ministry of Lands, you have the scientific knowledge but you are required to have certain values on how you interact with the people you work with including consumers of your service or suppliers. The values that are envisaged include honesty, integrity,

patriotism, transparency, respect for other people, objectivity and observance of the rule of law, among others. Any person who is a public servant under this Bill and who is also a professional is supposed to also adhere to professional requirements regarding their registration and continuous professional development of the profession they belong.

In other words, if you are a valuer working for the national Government, some parastatal or county governments, you must also be of good standing in accordance with the professional body that regulates valuers in Kenya. If you are a lawyer and you work for the State Law Office or you are a county attorney, you are supposed to be a lawyer of good standing with the Law Society of Kenya (LSK) which governs the professional conduct. You must be registered and participate in professional development like any other lawyer. That will ensure public servants do not rust and leave their profession and start dealing with ordinary administrative actions.

Mr. Temporary Speaker, Sir, if somebody is a doctor like you are, it is assumed that you were a public servant under this Bill, then, you must be a registered medical practitioner and keep up to date with the continuous education requirements of that profession.

**The Temporary Speaker** (Sen. (Dr.) Machage): Your Speaker is, even now, registered and licensed.

**The Senate Majority Leader** (Sen. (Prof. Kindiki): Mr. Temporary Speaker, Sir, I suspected so. I see the kind of confidence that you exude in this House. I take that with a lot of pride. Likewise, the Senate Majority Leader is a lawyer of good standing with the LSK and participates every year in all the continuing legal education programmes of the LSK. This is what this Bill is trying to build in public servants.

Likewise, any person who is a member of a professional association must be subjected to the disciplinary processes of those professional associations. This is a good thing so that they serve the public well. You should know that if you are a lawyer, you must be a good lawyer in the public service the same way lawyers in the private service are subjected to disciplinary processes in the event of professional misconduct.

Mr. Temporary Speaker, Sir, Section 6 relates to the use of public resources. A public officer is under obligation to ensure effective and efficient use of economic resources under their control. It is an offence to occasion loss or destruction of resources.

Under Section 7, public servants are under duty to ensure that they provide services promptly, efficiently, impartially and in an equitable manner. This will put aside nepotism, favouritism and all manner of ills that have bedeviled our public service in the past. The same clause obliges public servants to ensure that there is no unreasonable delay in the provision of service. If a parent wants to register the birth of their child and they ask for a birth certificate, there must be no undue delay in the provision of that service.

Clause 8 of the Bill is about the need for a public officer to give accurate information. When information is sought from a public officer, this should be accurate and timely must be given so that somebody does not ask about the process of getting an identity card and they cannot get an answer, or the ID comes after one year as it has been the case in many cases.

Mr. Temporary Speaker, Sir, Clause 9 is about the need for the Public Service - public institutions and public officers - to be accountable for their actions. This is achieved through the following:-

- (i) by keeping accurate records of all administrative acts of public servants in each institution; and,
- (ii) each public officer is required to maintain an accurate record of the administrative actions that involve them. The record of relevant documents prepared by a public officer must be maintained. Each institution must establish a system of addressing complaints arising from administrative actions.

Mr. Temporary Speaker, Sir, Clause 10 provides that a public officer shall be appointed and promoted on basis of fair competition and merit. This Bill is reiterating our national value; that this is a meritocracy. We must respect and honour merit but it makes four exceptions on the issue of merit. I think this is a sensitive thing for a country like Kenya.

The first exception is to ensure that a community which has been excluded from public service is included progressively. This is because if we go by merit all the time, there are some communities in Kenya that will be left out. It could be religious, social or whatever other community that could be excluded.

Secondly, there is the issue of gender balance. Sometimes if we go for merit all the time, we might have a situation where we are not able to attain our objectives for gender balance under international and national standards.

The third issue is ethnic integration. I think the Public Service Commission did an audit last year and it was discovered that there are communities in this country where there could be many people in terms of population, but their number in the public service is minimal, and where they exist, it is in the lower cadres of the public service, like clerks and sweepers. They are casual labourers and so on. Therefore, merit is important but we must also ensure that we integrate all ethnic groups in Kenya. Finally, persons with disability must also be included, even as we go by merit. So, merit is the rule and the four are the exceptions.

Mr. Temporary Speaker, Sir, I want to quickly look at Clause 11 which says that the public service shall facilitate public participation in the promotion of values and principles of public service. This is done through public fora and village councils which are established under Section 53 of the County Governments Act. The citizens' fora, according to the Bill, include faith-based organizations' representatives, boards of management of learning institutions, welfare and residents associations, self-help groups, *et cetera*. The public service must develop guidelines on the involvement of the people in the policy making process. There is need for public participation in the promotion of public values and principles. In other words, there could be fora where public servants can perform their work better, what kind of values are needed to have an efficient and proper public service at national and county government level. This can be inputted into the already existing code of national values and principles.

Mr. Temporary Speaker, Sir, Clause 13 talks about complaints. If a person alleges that certain values and principles of public service have been violated, they can complain and there are several points where these people can complain to; one is to the supervisor of the officer who has violated the code or values. The other one is the head of department of that relevant department in the institution or a department in any service commission. In our case, it will be the Parliamentary Service Commission. There is also the Teachers Service Commission, Police Service Commission and all the other Commissions that are established under Chapter 15 of the Constitution.

The Bill says that the complaint can be made in several ways. It makes it easy for citizens to complain. You can make the complaint in person, through a relative, personal representative, legal representative, citizens' forum, village council, Member of a County Assembly or Member of Parliament, which includes Senators. Of course, the governors are not included here, because I believe they are members of the executive. There must be a register of complaints by every institution and every year, there must be annual reports by every Commission on how they are implementing public values and principles.

I want to mention the last thing before I request Sen. G.G. Kariuki to second this Motion.

Clause 15 of the Bill talks about the need for a system of feedback in the public service so that it can influence compliments, commendations, honours and rewards in the public service.

Mr. Temporary Speaker, Sir, one of the things that have demoralized public servants for a long time, is the fact that honours, merits, rewards and commendations are given, in many cases, in a casual manner, except recently when I saw this House passed a system of giving national honours.

There are people who work very hard for this country and at the national level including doctors at Level 3 hospital saving lives, a county commissioner somewhere who is working in very difficult conditions in the Northern Frontier Districts (NFD) saving lives and keeping the security of this country, having to confront *Al Shabaab* and all these dangerous forces but there is no system of giving such people commendation, recognizing them, honouring or even complimenting them.

Clause 15 says that, there must be a record for the public to give feedback on how public servants are performing. That feedback must be recorded and on the basis of that input from the public, public servants either in county governments, national Government or in state corporations should be complimented, rewarded, commended and honoured.

Mr. Temporary Speaker, Sir, there are so many cases of men and women of this county who have refused to take bribes to allow foreigners enter our country to destroy it, yet these are people who are paid very low salaries and are working in very remote conditions. The chances of being caught are minimal, yet they have refused to take bribes because they love Kenya and they think their duty is to make sure that our country is safe and protected from its enemies. These are the people that need to be appreciated. This Bill therefore provides for a system not only of complaining when the public servant does the wrong thing but also appreciating them so that they can be rewarded and commended.

Mr. Temporary Speaker, Sir, with those remarks, I want to summarize by saying that this is an important Bill that provides for the software of running our country and brings the value system that helps public servants deliver to the country using the knowledge they have learnt in the university but now integrating values that help them deliver proper and adequate services to the people of Kenya.

With those few remarks, I beg to move and request Sen. G.G Kariuki, Senator for Laikipia County, to second.

**Sen. G.G Kariuki:** Mr. Temporary Speaker, Sir, I want to thank the Senate Majority Leader, Sen. (Prof) Kindiki, for requesting me to say something about this Bill and also to second it. I cannot claim to have read this Bill fully but the little I have read, I am convinced that this is the best Bill which is expected to drive the civil service in the right direction and also to give opportunity to all of them, men and women, as opposed to



what it is today, where you have a lot of problems like nepotism, tribalism and others. This Bill is expected to do away with this kind of behavior in our institutions. If you are all clean as you are supposed to be – especially in the Legislature, in the Judiciary and, of course, in the Presidency – everybody else will fall in that category. But since we have no law which will give warning to our activities, I think we will continue having this problem.

Mr. Temporary Speaker, Sir, this law is almost a copy of what is contained in the Constitution because Article 232 has given authority to this Parliament to provide this kind of legislation. I am very glad that my honourable friend here, the Senate Majority Leader---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. G.G. Kariuki! You stand advised that you must conclude your seconding so that I can propose the question; otherwise if it is not allocated time next week, it will die.

**Sen. G.G. Kariuki:** Mr. Temporary Speaker, Sir, I do not think I follow what you are saying.

**The Temporary Speaker** (Sen. (Dr.) Machage): I advise that you try and conclude your seconding in the next---

**Sen. G.G. Kariuki:** Oh, before 6.30 p.m.?

**The Temporary Speaker** (Sen. (Dr.) Machage): Correct.

**Sen. G.G. Kariuki:** Thank you, Mr. Temporary Speaker, Sir. In fact---

**The Temporary Speaker** (Sen. (Dr.) Machage): You should conclude before 6.29 p.m. so that I may propose the question.

**Sen. G.G. Kariuki:** Thank you, Mr. Temporary Speaker, Sir. I concur with your ruling. There is not much actually to say here because it is all what we ought to do. This is human; the way you can organize people and the way people are expected to behave. In fact, this may called a natural law because there is no way you can get somebody to behave the way you want. But if you can convince them and change them using a law like this one – for those who fear to be involved – maybe they might change.

Mr. Temporary Speaker, Sir, I think I need to stop there so that you can do the needful. With those few remarks, I beg to second.

*(Question proposed)*

**Sen. (Dr.) Zani:** Thank you, Mr. Temporary Speaker, Sir. I stand to support this Bill, which is very timely. This Bill is timely especially at a point where the public service, which is a key sector – and at this point I think everybody interacts with the public service – for a long time has operationalized itself and operated in a way that is just meaningful for itself. It is, therefore, very important to put into perspective Chapter 13 and also Chapter 6 on leadership and integrity – which I think also borders on the way people perform – and also Chapter 4 on the Bill of Rights, which is about the whole issue of equality, human dignity, taking care of marginalized groups, which are also important. Therefore, it is very important that rules are put into place. When we have a situation where there is a possibility of conflict between personal issues and public duty, it calls into cognizance the need to put laws into place so that people know what to do, when and exactly how to go about it.

Mr. Temporary Speaker, Sir, with this Bill, we have a situation where nobody will ever come and say “I did not know what was expected of me” because everything has been laid out very clearly and expectations have been put out very clearly for everybody to follow through and have a regulatory system that creates a commonality. It creates a general code, public participation and also a reporting status where people can actually report. For many organizations where they have introduced the whole issue of customer service, it has enhanced public participation and the giving of that particular service. That way, people can come to complain, say what went wrong and how they expect it to be rectified and made better.

Mr. Temporary Speaker, Sir, just like the Mover of the Motion, Sen. (Prof.) Kindiki said, it is very important to have high standards of professional ethics, which are usually enacted in the different bodies. But specifically in the public service, it becomes very critical that these high standards are maintained---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Sen. (Dr.) Zani, you still have 13 minutes.

### ADJOURNMENT

**The Temporary Speaker** (Sen. (Dr.) Machage): Hon. Senators, it is now time to interrupt the business of the House. The Senate stands adjourned until Tuesday, 24<sup>th</sup> March, 2015, at 2.30 p.m.

The Senate rose at 6.30 p.m.