

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday 21<sup>st</sup> May, 2015

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

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

### PRAYER

### MESSAGE FROM THE COUNCIL OF GOVERNORS

#### THE LEASING OF MEDICAL EQUIPMENT FOR COUNTY GOVERNMENTS

**Sen. Hassan:** Mr. Speaker, Sir, I wish to present a message on behalf of the Council of Governors. This message is dated 4<sup>th</sup> May, 2015. It is signed by the outgoing Governor, the Chairman of the Council of Governors, His Excellency, Hon. Isaac Ruto.

Before I present this Message, I wish to congratulate the incoming Chairperson of the Council of Governors, Governor Munya---

**The Speaker** (Hon. Ethuro): Order Senator! That is not part of the Message.

**Sen. Hassan:** Mr. Speaker, Sir, on behalf of the Governors of the counties of the Republic of Kenya, I transmit herewith for noting and action to the Senate pertinent matters concerning county governments as outlined in this message. The message is issued pursuant to the provisions of Article 96 of the Constitution, wherein the Senate is constitutionally mandated to represent and protect the interests of the counties and their governments.

(a) The leasing of medical equipment for county governments -The relevant facts in relation to the leasing of medical equipment are outlined as follows:-

- (i) As per the Forth Schedule of the Constitution, health services excluding management of national referral facilities and health policies have been devolved to the county governments.
- (ii) Vide Gazette Notice of 9<sup>th</sup> August, 2013, the Transition Authority formally transferred to counties all health facilities, except national referral health institutions.

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- (iii) The national Government has signed a colossal deal with some service providers, ostensibly to provide certain medical equipment to selected medical facilities at the county level.
- (iv) The national Government has since drafted a Memorandum of Understanding (MoU) wherein it seeks to incorporate county governments in the transaction. A copy of the said MoU is attached.
- (v) In the said MoU the Ministry of Health has disclosed that it invited tenders for medical services equipment on 11<sup>th</sup> July, 2014. As at 11<sup>th</sup> July, 2014, the Ministry of Health had not executed the requisite inter-governmental agreement as required by Article 187 of the Constitution with respect to devolved health functions.
- (vi) The decision of the Ministry to invite tenders for devolved health functions on 11<sup>th</sup> July, 2014 was unilateral and no county was consulted.
- (vii) County governments have not been consulted in the entire transaction.
- (viii) Despite clear indications from county governments that the Ministry of Health is overstepping its mandate under the Constitution, the Ministry is pressuring counties to sign the disputed MoU.
- (ix) The Council of Governors states that:-
  - (a) Article 6(2) of the Constitution provides that the governments at national level and county level are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and corporation.
- (b) These provisions form the foundation of Kenya's cooperative form of devolved government which combines a certain measure of autonomy on the part of each of the levels of government, with a measure of joint and collaborative action and decision making by the two levels of government;
  - (i) Distinctness refers to the autonomy of the levels of government which connotes a number of things. Distinctness connotes a certain measure of autonomy for each of the orders of government as entities in their powers and function.
  - (ii) The autonomy is made even stronger in the sense that the nature of the powers and function is cast by Article 1 of the Constitution as being an exercise of sovereign power of the people which is shared among the two levels of government. Both levels of government and the 47 counties are creatures not of one level, but of the Constitution as the expression of the sovereign will of the people of Kenya.
  - (iii) None is a mere agent of the other and can be abolished by the other. Each level elects its own political structures and institutions which it controls. In this sense, each level of government is distinct from the other.
  - (iv) Distinctness as autonomy connotes exclusion of hierarchy in the relation between governments. This is an extension of the autonomy concept which ensures that in their relations, none of the Government is treated as a mere agent of the other, but as an equal partner. The county governments are autonomous and not mere agents of the national government.
  - (v) Distinctness as autonomy connotes exclusion of hierarchy in the relation between governments. This is an extension of the autonomy concept which ensures that in their relations none of the Government is treated as a mere agent of the other, but as an equal

partner. The county governments are autonomous and not mere agents of the national government.

(vi) Distinctness as autonomy also connotes separateness of the two levels of government with limited powers ensuring that none interferes in the constitutional functional areas of the other.

(v) Thirdly, distinctness as autonomy also connotes separateness of the two levels of Governments with limited powers ensuring that none interferes with the constitutional functional areas of the other.

Article 189(1)(a) of the Constitution emphasises this element of autonomy and non-interference in the affairs of the other.

(vi) It provides that the levels of Government must perform their functions and exercise their powers in a manner that respects the functional institutional integrity as well as the constitutional status and institutions of each other.

(vii) In sum therefore, the two levels of Government and distinction have the autonomy from each other in the sense that there is no subordination of one Government to the other as they coordinate to each other. The Government's are created and protected, their functions are signed and their financial resources are allocated by the Constitution.

(viii) The implication to this dispute is that when it comes to the provision of health services, county governments enjoy distinct autonomy.

(c) Article 186(1) of the Constitution provides that except as otherwise provided by this Constitution, the functions and powers of the national Government and county governments respectively are as set out in the Fourth Schedule.

The two levels of Government cannot exercise powers beyond the confines of the Constitution.

(d) Article 187(1) of the Constitution provides the instance where one level of Government can undertake functions of another level to the execution of inter-governmental agreements. Article 189(1) provides that the Government at either level shall perform its functions and exercise its powers in a manner that respects the functional integrity of Government and other levels and respect the constitutional status and institutions of Government at other level and in that case, of county government within the county level. Assist, support and consult and as appropriate implement legislation of the other level of Government and liaise with other Government at the level for the purpose of exchanging information, coordinating policies, and administration and enhancing capacity.

**Sen. Billow:** On a point of order, Mr. Speaker, Sir. The statement is very long. I seek your guidance because it appears that the Senator is reading a Statement that gives a conclusive position that has already been taken by a particular party on a transaction that involves two levels of Government and which should have been brought before the Senate for determination. I want your guidance on whether the Senator is doing it right.

**The Speaker** (Hon. Ethuro): Order, honourable Senators. This is a message coming to us. The message is being read as it is. This is somebody communicating their position on issues. The message is not final. You can take it or leave it but let us hear him.

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**Sen. Muthama:** On a point of order, Mr. Speaker, Sir. For this House to follow what is in this document, since it appears to be very long, is it possible and appropriate for copies to be given to us so that we understand what is contained? The details are very many and the document is also lengthy. We may not even understand what is contained in the document.

**Sen. Hassan:** Mr. Speaker, Sir, surely, as the Senate we should have the concentration to listen to someone reading a document of six pages.

**Sen. Okongo:** On a point of order, Mr. Speaker, Sir. Did you hear the Senator from Mombasa say that Senators must have the patience to listen to somebody reading a document of six pages whereas the distinguished Senator for Machakos directed a question to you for guidance? He sought guidance from the Chair and the Senator for Mombasa went ahead to say that Senators must have patience to listen to someone reading a document of six pages. Is he in order?

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. Further to the point of order raised, Standing Order No.225 paragraph 5 says that a Senator presenting a petition shall not speak for more than five minutes unless with the permission of the Speaker. Paragraph 4 gives the provision to table the petition. If it is very lengthy, I believe that is why paragraph 4 was put there. If it is very lengthy, the Senator can lay on the Table so that we go through it.

**The Speaker (Hon. Ethuro):** Order, hon. Senators. I disposed the point of order raised by Sen. Billow. There was also another one raised by Sen. Muthama and now Senator Khaniri. Sen. Okong'o did not give me the opportunity to respond to Sen. Muthama. He wanted me to respond to Sen. Muthama before Sen. Hassan made his intervention. Let me take all that in totality.

First, Sen. Khaniri, this is not a petition. This is a message. Therefore, the Standing Order that applies is 43, Messages No.2 from County Governors. The Senator presenting the Message has no choice but to present the message as brought to the House. That is what Sen. Hassan is doing. Unfortunately, we have no provision to summarise the message. Maybe that is something we should consider from today.

However, this is a weighty matter. It is quite similar to what you discussed yesterday on a point of order without any notice or reference to the Chair. This one came through the Chair and we planned on when it should be presented. We should just be patient as requested.

Sen. Hassan is in order to request other Senators to be patient with him. This is not an order. He was pleading and asking for your indulgence. I support that request. Let him finish. Being young and energetic, he could probably do it faster.

With regard to Sen. Muthama's request, yes, if you look at Standing Order No.43(6), you will see that the Message will be subject to three things. It can be dealt with now, appoint a date for consideration or I can refer it to the relevant committee. Of course, once it has been laid on the Table, the copies will be available to all of you.

Proceed, Sen. Hassan.

**Sen. Hassan:** Mr. Speaker, Sir, in the spirit of being fast, energetic and young, I am almost done with page 3.

**Sen. Sang:** On a point of order, Mr. Speaker, Sir. Further to your guidance, you quoted Standing Order No.43. The title says, Messages from County Governors. If you read through from one to six, it seems to suggest a Governor. However, the Message we have from Sen. Hassan is from the Council of Governors.

Does your direction, in this case, mean that a “Governor” also means “Council of Governors” or is the petition from the specific Governor who signed it?

**The Speaker** (Hon. Ethuro): That is an issue that has been with us for a while now especially in relevance to that message. I took the view that a Governor can act singularly or collectively. The spirit is the source, the Governor. So, Council of Governors represents the Governors. I admitted it on that basis.

**Sen. Hassan:** Mr. Speaker, Sir, I think we are developing extremely good traditions in terms of informing the Senate traditions.

The Memorandum of Understanding that the Ministry seeks to execute with the counties does not meet the requirements of Article 187 of the Constitution. (g) The national Government is not indicating the source of the money for the deal. It is not clear whether it is a conditional or unconditional grant to the county governments as provided for in Article 202 of the Constitution. (h) In implementing the project, the national Government has not consulted county governments as required by Articles 6(2) and 189 of the Constitution.

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. I really respect your ruling on the request put to you by Sen. Sang. However, look at part 2 of page 43, which says;

“A Senator shall read to the Senate any message from the Governor of his county to the Senate and such message shall be in writing and shall be signed by the Governor of the County.”

Mr. Speaker, Sir, are you convinced that is what Sen. Sang is doing?

**Sen. Billow:** On a point of order, Mr. Speaker, Sir. In view of the fact that quite a number of county governors, a substantial number if not the majority, have already agreed and signed for the equipment. Is it in order for the Council of Governors which represents all the 47 Governors to send a message that runs contrary to that position? We know that the majority have signed. There is nothing in the Constitution that prevents the national Government from buying something and donating it to hospitals. Private institutions and NGOs are doing it. I think the issue of autonomy and the manner in which it is being presented is not right. Many of them have already signed.

**The Speaker** (Hon. Ethuro): Order, honourable Senators. Some of these issues can be canvassed at the end of the message unless it is something to do with delivery of the message; I will deal with the matter at the end of the message.

In the meanwhile, Sen. Hassan Omar, let me see that message.

**Sen. Ndiema:** On a point of order, Mr. Speaker, Sir. The Constitution says that the Governments are distinct. Therefore, a petition that comes from the Governors – I assume – should be signed by all Governors individually for it to be acceptable because they are a distinct Government. Is it in order for a few Governors to purport to represent all Governors?

**The Speaker** (Hon. Ethuro): The other alternative we had was to ask each one of you to read the same Statement because the 47 of you are heads of delegations. You can see that that is not tenable.

The Chair signed and it was written and at the end of the Statement “On behalf of the Governors.”

When your Speaker says something on behalf of the Senate, it is not expected that each one of you will come to append your signatures to my letter or correspondence.

To me, this is a provision that we created in this House so that you can communicate with the county; either individually or collectively. This is the first time we are doing it in terms of the Council of Governors (CoG) communicating to us formally. So, I urge all of us to listen to the Message then issues like the ones raised by Sen. Billow and Sen. Ndiema will arise while interrogating the Message. For now, let the Message be read.

**Sen. Hassan:** Mr. Speaker, Sir, I will read the Message as fast as I can in the interest of my colleagues.

(11) The Ministry has not disclosed the contracts it has executed with medical equipment providers. Therefore, the CoG requests the Senate to inquire into the issue, particularly the following violations of the Constitution:-

(12) To the extent that the Ministry of Health has executed contracts with Shenzen Mindray Bio-Medical Electronics Co. Ltd, Esteem Industries Inc, Bellco S.r.I, Philips Medical Systems Nederland BV and GE East Africa Services Limited (the medical equipment services providers), herein, without consulting counties, the provision of Article 6(2), 189(1)(a) and (b) and 189(2) of the Constitution have been violated.

(13) To the extent of that the Ministry of Health has executed contracts with Shenzen Mindray Bio-Medical Electronics Co. Ltd, Esteem Industries Inc, Bellco S.r.I, Philips Medical Systems Nederland BV and GE East Africa Services Limited (the medical equipment services providers), to provide medical equipment to facilities managed by county governments without executing the requisite intergovernmental agreements, the provisions of Article 187 of the Constitution have been violated.

(14) To the extent that the Ministry of Health has executed contracts with Shenzen Mindray Bio-Medical Electronics Co. Ltd, Esteem Industries Inc, Bellco S.r.I, Philips Medical Systems Nederland BV and GE East Africa Services Limited (the medical equipment services providers), to provide medical equipment to facilities managed by county governments, a devolved function, the provisions of Article 186 of the Constitution have been violated.

(15) To the extent that the Ministry of Health has executed contracts with Shenzen Mindray Bio-Medical Electronics Co. Ltd, Esteem Industries Inc, Bellco S.r.I, Philips Medical Systems Nederland BV and GE East Africa Services Limited (the medical equipment services providers), to provide medical equipment to facilities managed by county governments without indicating whether the sum in question is a conditional or unconditional grant to county governments, the provisions of Article 202(2) of the Constitution have been violated.

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#### B. The transfer of funds directly to health facilities within counties

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(1) Further to the Council of Governors' letter to the Senate vide letter Ref: COG/6/40. vol 4 dated 24<sup>th</sup> March, 2015, (a copy which is enclosed) the Senate was asked to intervene and address the issue of the Ministry of Health transmitting funds directly to health centres at the counties. The Ministry has neglected and refused to sign the Memorandum of Understanding (MoU) on the flow of funds.

(2) It has now, and without reference whatsoever to county governments resorted to sending funds directly to dispensaries and health centres without even indicating what the monies are for. This completely undermines the Public Finance Management procedures, authority of the county governments and county treasuries, devolution and funds flow procedures to county facilities and institutions set by law for accountability at county level. Furthermore, the funds are not appropriated by county assemblies nor captured in county budgets. This has created serious accounting and auditing challenges and a dispute is in the making since counties will not be in a position to account for these funds as required by law.

(3) The Council is, therefore, concerned, first, that the Ministry has not yet signed the relevant MoU. Instead, it has gone back to a negotiated draft Tripartite Agreement that was revised based on the agreement between the Ministry of Health, the National Treasury, the World Bank, the CoG, the Commission on the Implementation of the Constitution (CIC), the Transition Authority (TA) and the Commission on Revenue Allocation (CRA). Minutes of this meeting have been forwarded to you.

(4) Second, the MoU signed by the 47 Governors provides for interim measures that would allow the World Bank Funds captured under the Ministry of Health Budget to be sent to county facilities through County Revenue Fund. By not signing this MoU and insisting on sending funds directly to dispensaries and health centres, the Ministry is breaking the law and its actions are in bad faith and meant to continue undermining the county governments' authority to manage health facilities as per the Constitution.

(5) Regarding the Funding Basket, the CoG is not aware of any Basket Funding that has been put in place by the national level funding to county facilities. The CoG is nevertheless aware of the Joint Financing Agreement (JFA) that has been entered between the Danish International Development Agency (DANIDA), the World Bank and the National Treasury representing the Government of Kenya in October, 2010. (The JFA attached for ease of reference). After devolution, the Government of Kenya funds for operations and maintenance to dispensaries and health centres were devolved. The Danida has also, since August, 2013, left the JFA; entered into an exchange of letters with the National Treasury and counties and send funds directly to facilities under the authorities under the county treasury as per established financial and accountability systems under the Public Finance Management (PFM) Act (exchange of letters is attached for reference). In this regard, the JFA is no longer valid. In addition, the JFA has been overtaken by the provisions of the Constitution and since health is now devolved, this makes the referred JFA repugnant to the provisions of the Constitution.

(6) In addition, and as indicated in the MoU, the World Bank credit that provides the funds to county facilities is under the additional financing credit signed in December, 2013, and that comes to an end in December, 2016 thus the CoG is not aware of this agreement. The previous credit extended to the additional financing credit indicates that

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the Health Sector Services Fund (HSSF) were 90 per cent disbursed. This credit is already obsolete as its expiry date was 31st March, 2015.

In this regard, the CoG requests the Senate to:-

- (a) Intervene and get the Ministry to finalise the signing of the MoU already in its custody and allow the established systems to be strengthened. This will stop the Ministry from derailing devolution;
- (b) Disclose all credit agreements signed after August, 2013, on health functions which is now a devolved to counties to understand the purpose of the funds availed under the credits.

On behalf of the county governors, I recommend that the Senate gives early and favourable consideration to the issues raised in this Message.

The letter is signed by Governor Isaac Ruto, (EGH), the Chairperson, Council of Governors.

A copy has been made to Mr. Jeremiah Nyegenye, Clerk of the Senate, Nairobi.

Mr. Speaker, Sir, I beg table this Message to this House. It is a very good Message.

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

**BCK**

**D.1 – 21.5.2015**

**The Speaker** (Hon. Ethuro): Order, Senators! I direct that the Message be forwarded to the Committee on Health.

**Sen. Abdirahman:** On a point of order, Mr. Speaker, Sir. While I support your decision to refer this matter to the Committee on Health, it would be very important for us to make a few Statements with regard to this particular Message that has been sent to the Senate by the Council of Governors. In fact, I will regard it as a dishonest position on the part of the Council of Governors because they are trying to rope in support from Senators at this particular stage, when we have gone close to a year down into this arrangement. It is very clear in our minds and to many Kenyans that there is a provision to do intergovernmental cooperation or create a memorandum of understanding---

**An hon. Senator:** You are out of order!

**Sen. Abdirahman:** I am not out of order; the Speaker has not said it.

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. Standing Order 43(6) gives the Speaker three options. It says:-

“When a Senator reports a message from a County Governor under paragraph (3) and (4), the message shall be deemed to have been laid before the Senate and the Speaker may-

- (a) direct that the message be dealt with forthwith;
- (b) appoint a day for consideration of the message; or,
- (c) refer the message to the relevant Committee of the Senate for consideration.”

There are three options and we cannot have all of them at the same time.

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**The Speaker** (Hon. Ethuro): Agreed. The Message is referred to the Standing Committee on Health. Let it remain there. But let me make it also abundantly clear that we, as a House, have been asking Governors not to go to court but come to the House. Now, if they decide on one matter, maybe they have seen the light. We cannot change our own position just because now they have hided to our call. So, the Message is properly before the House and the Committee of the House will deal with the matter, give us a report and all of us will have an opportunity to make whatever interventions we need at that particular time.

Let us proceed.

## PETITIONS

### REPORT ON PETITION ON PLIGHT OF RICE FARMERS AT MWEA SETTLEMENT SCHEME

**Sen. Karaba:** Mr. Speaker, Sir, following the successful tabling of the Report on the Petition which came through me from Mwea rice farmers by the Vice-Chair of the Committee on Agriculture, Sen. Ndiema, I rise to thank him and the Committee for doing a very good job. I am happy that, at least, the Mwea rice farmers, after reading the Report, will be able judge the merits and demerits of the actions that the Government will take. I

I also thank the former Chairman because he is the one who took over the Petition once it was tabled last year. I believe that he also did a very good job by visiting the Mwea Irrigation Scheme. He was able to interact with the farmers and advise them.

After perusing the Report on the Petition this morning, it is like the Committee is making the same prayer as mine, but they are not offering solutions to the prayers. Some of the prayers are very urgent, particularly on the issue of domestic water. In Mwea Irrigation Scheme there is not enough water for domestic purposes. As I speak, there are very many people who have suffered or are suffering from the outbreak of cholera. If this issue was addressed last year after the Petition was tabled, I am sure that my now that situation would have been arrested. There are also many other things that should be done immediately. Some require medium-term steps to be taken while others require long-term measures.

I, therefore, request the Speaker to direct the Committee to immediately attend to the urgent issues, particularly water shortage and pollution and the prices of rice which seems to be deteriorating through the importation of inferior quality rice from Pakistan and elsewhere. These are issues that should be arrested immediately by the Government. When the Report is tabled, giving suggestions of what the Government should do, the Speaker should further direct the Committee so that they can come up with immediate solutions to the immediate problems which are facing the farmers. The sanitation in Mwea Irrigation Scheme is bad and there are no toilets. These are the things which I expected the Committee to come up with. Otherwise, we are happy that the Government

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has provided us with subsidized fertilizers and machinery. But let us concentrate on what is immediate.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): The petitioners already made all those recommendations. So, the expectation is that they will be acted upon.

Sen. Mositet.

**Sen. Mositet:** On a point of order, Mr. Speaker, Sir. Sometime back I presented two Petitions before this House. One of them was with regard to Magadi Soda, which had petitioned this House, so that some refund can be done by the Kenya Revenue Authority (KRA). Up to now, we have never had any report.

The other one was a Petition by people from my county regarding Magadi Road. As I speak, Magadi Road is completely impassable and a report on that Petition has not been brought to this House.

**The Speaker** (Hon. Ethuro): Are you saying it was committed to the Committee?

**Sen. Mositet:** Mr. Speaker, Sir, both Petitions were committed to the appropriate Committees but up to now there are no reports.

**The Speaker** (Hon. Ethuro): So, the committees are yet to report?

**Sen. Mositet:** Yes.

**The Speaker** (Hon. Ethuro): We will look into it.

## PETITION

### PETITION TO THE SENATE BY RESIDENTS OF WAJIR COUNTY CONCERNING THE ALLEGED MISAPPROPRIATION OF FUNDS

**The Speaker** (Hon. Ethuro): Order Members, I have a Petition laid to the Senate by the following residents of Wajir County;

- (1) Mohammed Abikar
- (2) Abdi Birk Abdinur
- (3) Abdifatah Diriye
- (4) Ahmed Abdi Sabdow
- (5) Abukari Abdullahi Sheikh and
- (6) Johara A. Hussein

Hon. Senators, pursuant to Standing Orders No.220 (1) (a) and 225 (2) (b), I hereby report to the Senate that a Petition has been submitted to the Speaker through the Clerk, concerning the alleged misappropriation of funds by the governor and the County Government of Wajir. As you are aware under Article 119(1) of the Constitution states that:-

“Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation”

The petitioners, as I stated earlier, state that they are members of a lobby group made up of many residents in Wajir County known as the Wajir Anti-corruption and Justice Forum. In their Petition, the petitioners state the following:-

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- (a) THAT, in the year 2013-2014 Financial Year, the governor and the county government of Wajir misappropriated and misapplied public finances and resources amounting to slightly over Kshs1 billion;
- (b) THAT, this was done through;
- (i) Theft and pilferage of public resources for a period of 3 months upon assuming office in 2013; and
- (ii) single sourcing of contracts for the supply of goods and services to the county governments, whereby contracts were awarded to entities closely associated with the governor, his team, their close family members and to the members of the governor's clan;
- (c) THAT, in so doing, the governors and officers of the Wajir County Government acted in violation of various provisions of the law among them The County Government Public Finance Management Act(No.8 of 2013), the Public Procurement and Disposal Act(Cap 412) and Chapter Six of Constitution of Kenya on leadership and integrity;
- (d) THAT, the governor has failed to obey Article 27 of the Constitution, on Equality and Freedom from Discrimination by allocating more public resources and job opportunities to members of his clan and in the process disenfranchising other clans resident in Wajir County;
- (e) THAT, the governor has failed to employ qualified people in his government and this has led to the residents of Wajir County not getting value for the taxes paid;
- (f) THAT, the governor and the county government of Wajir have failed to adhere to the guidelines on remuneration and allowances of public officers as set by the Salaries and Remuneration Commission (SRC) thus causing severe pilferage of finances at the county government; and
- (g) THAT, the above actions have been made possible by the weak oversight mechanisms prevailing at the County Assembly of Wajir.

The Petitioners confirm that they have made efforts to have these matters addressed by the Ethics and the Anti-Corruption Commission of Kenya (EACC) without success. The issues raised in the Petition are not subject to any suit pending in court.

The petitioners petition the Senate to:-

- (a) Recommend the President to form a commission of inquiry to investigate the allegations made against the county government pursuant to Article 192 of the Constitution with a view to suspending the county government;
- (b) Review the accounts of Auditor-General of the accounts of Wajir County for the year 2013/2014 and recommend appropriate action on the recommendation of that report;
- (c) Resolve that no further development funds are to be released to the Wajir County Government until the audit queries raised under the said report and in the Petition are addressed; and
- (d) Order for a comprehensive human resource audit to be undertaken of the entire workforce of the county government including on the remuneration and allowances paid to the officers employed by the county government.

The Petition is signed by all the six Petitioners.

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Hon. Senators, pursuant to Standing Order No. 226, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

**Sen. Khaniri:** Mr. Speaker, Sir, allow me to thank and congratulate those patriotic Kenyans who have brought this Petition to this House for being vigilant. Amongst the accusations that have been leveled on the governor, is the issue of corruption or theft and nepotism. These are crimes that go against our Constitution that we swore to protect and they are very strong grounds for impeachment of the governor should it be found that indeed these accusations exist.

Pursuant to Standing Order No.227, we will recommend that you commit this Petition to the relevant Standing Committee, so that we can delve into this matter further. The Committee will advise the House accordingly on the action to be taken.

I thank and congratulate the Petitioners.

**Sen. Abdirahman:** Mr. Speaker, Sir, I represent the county in question with regard to the Petition from the residents. The matters raised are weighty and calls for, what I would imagine, beyond our committees alone because there are quite a number of issues that have been raised but just like my colleague Sen. Khaniri, I would suggest that we involve two committees, that on Devolved Governments and particularly that of Finance, Commerce and Budget because the matters raised are somehow related to their committees. Since the Petition belongs to the House, I will support the direction given by the overall Membership of this House.

**Sen. Ndiema:** Mr. Speaker, Sir, I also want to applaud the Petitioners for being bold enough to bring these issues which if found to be true, are serious. It is also a demonstration that the public and county assembly members are now realizing the role of the Senate that they can petition to the Senate directly. I would urge all county assembly members to explore this channel whenever they have issues of accountability.

When it comes to the assigning of the committees, I would propose that the Committees involve the relevant experts, the departments concerned, the Auditor-General and also the institution that is charged with the responsibility of ensuring equal opportunity. There is a Joint Committee on Equal Opportunities and National Cohesion which could also be involved when it comes to issues of clanism and nepotism.

**Sen. Kagwe:** Mr. Speaker, Sir, I also rise to say that it is good that this Petition has been brought from Wajir. I will emphasise two things. One, is the capacity of the Senators to oversight counties. It is very good that this morning, that is the issue that was at hand. As we move forward from this year to the next year, the amount of money allocated, the Kshs1billion allocated towards being more vigilant to the expenditure of the counties is not enough. When we go to next year we need to relook at the whole issue.

Secondly, the Budget and Appropriations Committee of the National Assembly should relook at how much money they are allocating at how much money they are allocating to the Auditor-General. This is because it is through the Auditor-General's Report that we will be more effective in terms of our oversight in the counties.

Finally, even as we oversight, it is important that what we say in this House comes to bear and to be. As we speak, we have a Governor who is in office yet this House has kicked him out. Therefore, the budget for legal action for the Senate, the amount of money that we ought to allocate to the Senate to carry out cases in the

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Supreme and High Courts towards the implementation of what we have passed in this House, should be enhanced so that we can be more effective.

**Sen. Mohamud:** Mr. Speaker, Sir, although I am representing a special interest in this Senate, I also happen to come from that county. As my colleagues have already said, I request that this issue be committed to the three Committees that have been suggested. As you are aware, this issue is not new. It has appeared in the daily newspapers for almost three times. It is a weighty issue. It is time we realised the effort of the Senate by interrogating this issue intensively and reporting to the Senate so that we do the necessary things that we are supposed to do.

**Sen. Boy Juma Boy:** Asante Bw. Spika. Waswahili husema, ukiona moshi, jua kuna moto chini na usipo ziba ufa, utajenga ukuta. Ukiiona moshi, moto utawaka. Tukiacha ufa huu, makabila yataanza kupigana kwa sababu ukoo mwingine unapewa vitu vingine ili tuje hapa na kusema fulani anachochea; wakati maneno yashaletwa hapa mbele yetu. Lazima tuchukue hatua ya kueleweka.

*(Laughter)*

**Sen. Billow:** Mr. Speaker, Sir, it is always very refreshing to hear the Swahili of the Hon. Senator from Kwale. This House will be inundated with Petitions from the county. It is an indication that all is not well within the counties. The concern of this Senate should be about the county assemblies. If, indeed, the assemblies were up to task, we would not be having all these. There are so many letters that we are getting from counties asking for this or that. I also request your office to probably guide at the time Petitions are being set so that Petitions can be more specific to one or two issues rather than have them so broad. They literally cover everything that happens in that county. It becomes difficult to deal with them because of the limitations the other institutions that we rely on like the Auditor-General's office and so on have.

Otherwise, this is an indication that things are not going right in the counties. The Senate needs to be concerned because we are here courtesy of the counties; to represent their interests to protect the counties and their governments. The fact that everyone is complaining every day about what is happening in the counties, clearly the Governors whom my dear friend from Mombasa was so keen to read their statement for hours are not up to task. We all come from counties and we know what is happening. It is very painful to see that the little money that we struggle – taxpayers in this country pay taxes - we struggle here day and night trying to get money to these institutions is wasted due to lavishness and conspicuous consumption.

The things that the national Government used to do in the 1980s and 1990s are now taking root in many of our counties. We need to send messages to many of these counties that if someone attempts to play with the resources, mismanage counties and kill the hopes of Kenyans on devolution they will pay a price. It is time we speak very clearly. There are few Petitions that have been referred to us – yesterday it was one, today it is one and tomorrow it may be another. We need to send a message so that Governors can read the writing on the wall, that it will not be acceptable for them to continue in that

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path and that they need to change. Otherwise we will not accept their messages. It does not help that you accuse---

**The Speaker** (Hon. Ethuro): Order, Sen. Billow! You are very eloquent in terms of protecting and promoting those interests which include the ones of the Governors. This House will hear all of them. It is for you to determine where you need help and where you need to punish.

Proceed, Sen. Lesuuda.

**Sen. Lesuuda:** Mr. Speaker, Sir, I want to add my voice and pick up from where Sen. Billow has left. All these Petitions show that people believe in two things. One, that devolution must work. They also know the role of this House. That is why they are bringing the Petitions to this House. Whether the assemblies are not doing their jobs, it is important for us to appreciate that the citizens now appreciate that devolution should have sorted out some of the challenges that we have been facing for a long time. It is unfortunate that counties that were previously marginalised are not benefiting from devolution. That is why the people from those counties are raising the kind of issues they are raising. It is up to this House and the Committee that this Petition will go before to urgently address the issue on behalf of the people of this county so that we are assured that we are on the right path. Finally, people will give the validation at the end of the five years to say whether devolution worked for them or not and whether also this House stood by them when the need was there.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, if there is a Committee that needs to be given more funds, it is the Committee on Finance, Commerce and Budget. We have many Petitions. I am happy to say that I have not seen Sen. (Prof.) Anyang'-Nyong'o who is the Chairperson of our sub-committee on Petitions. This is a wakeup call because in the recent past I have seen that the Kenyan public has woken up to the fact that the Senate is the only hope, including the fact that, Sen. Hassan has brought today those we considered "Saul." Now they become "Paul." We hope they will continue that way.

We have roughly five to six Petitions on irregularities in finances in counties. We should be having a minimum of 47 Petitions here because this exercise is going on everywhere. Therefore, what we ask you is to facilitate the Committee on Finance, Commerce and Budget so that we can call special auditors quickly. The challenge we had in Narok is that the Auditor-General took two months to give us a report. Even then we were not satisfied with what he gave us. Please facilitate us so that we can help this country and nation to get to the bottom of what is called financial mismanagement of the counties.

**Sen. Hargura:** Thank you, Mr. Speaker Sir. This kind of Petition shows that the public is aware of their responsibilities in making sure that the funds allocated to the counties are used in their best interest. Once they realize that things are not going in the right way, they have made the attempt of taking this issue up with the Ethics and Anti Corruption Commission (EACC) which unfortunately is not meeting the expectations of the public. That is why they went there and there was nothing moving and they have moved to the Senate. That puts a lot of responsibility on us and we have to make sure that we sustain this kind of trust from the public. That will require that the Committees who

are assigned these Petitions, to make sure that they do a thorough job. It requires proper facilitation so that we sustain that trust from the public.

**Sen. Mositet:** Thank you, Mr. Speaker Sir. I congratulate the patriots from Wajir County, knowing that it is one of the counties that is well known in this country because of using bucket disposal systems--- I do not know whether the Senator for Wajir County will accuse me for saying this. However, I can simply say that the area is so marginalized to an extent that the best systems they have for disposing waste are buckets. So, when we send funds there, and hear that they are being misappropriated by the people who we expect to take care of the funds and make sure that services are offered to the citizens there, are enriching themselves, we are left in shock.

I know that our members of county assemblies (MCAs) in the counties were really demoralized by what happened in Embu County. I feel that we still need to encourage them, that they should continue to bring more Governors here by way of impeachment. We will also impeach them and even if the courts will maybe do what they did with Governor Wambora's case again, the message will have gone across.

Thank you, Mr. Speaker Sir.

**The Speaker** (Hon. Ethuro): Order, Sen. Mositet! This is not a lynching place. Governors can only be impeached when they merit it. I want to conclude by giving three last chances to Senators to contribute for not more than two minutes each. I will give chance to Sen. (Prof) Anyang'-Nyong'o, Sen. Hassan and finally, Sen. Sang. If I see new interests; they will be for another occasion.

**Sen. (Prof) Anyang'-Nyong'o:** Thank you, Mr. Speaker Sir. I will be very brief. I just want to thank my colleague Sen. Mututla Kilonzo Jnr. who is a Member of our Committee on Finance, Commerce and Budget. I assure the House that being the Chairman of the sub-committee on Petitions; we see them as something that is enshrined in the Constitution. It is a right of any citizen in the Republic of Kenya, to petition either House; the Senate or the National Assembly on any issue of concern to that citizen. Therefore, the Senate Committee on Finance, Commerce and Budget, will act as a court of law; very impartial, ready to listen to the rationale behind every petition and to make extremely judicious decisions

I would, therefore, like to assure those in the county government that when there is a petition before the Senate, those petitioning should not be regarded as either enemies of the county government or county assemblies. I know that there have been situations where petitions have been brought to the House and the petitioners have more or less been lynched by certain elements in the county Government. They must understand that petitioning is a constitutional right. The House fulfils its function to receive these petitions, listen to them impartially and deliver judgment in the interest of the people of Kenya.

**Sen. Hassan:** Thank you, Mr. Speaker Sir. Let me also add my voice to congratulate those who have decided to pursue a constitutional path towards petitioning this Senate. It is an accountability mechanism that is provided within the Constitution and I think that every Kenyan is well within the purview of their rights. However, as I said, we want those committees which are going to execute this Petition to exercise the highest

level of professionalism, neutrality and impartiality, so that the Senate can also redeem itself as a house where fairness deems.

Lastly, there is a crosscutting issue that is coming out in literally every petition, which is about Governors influencing recruitments, thorough unfair practices, of kinsmen and political supporters. If you look at the inspectorates today, they are almost turning into private militia. This is because all they do is to employ Governors' "boys". What I am asking for is also on our own volition to look for systems to strengthen the independence of the county service boards and the county assembly service boards. In these two boards, lies the crisis beneath it. These boards are appointed under the patronage of Governors and probably the county clerks or speakers. These boards are manipulated in terms of outcome and that explains why the outcomes are almost predetermined.

Mr. Speaker, Sir, I request the Committee on Legal Affairs and Human Rights to pursue amendments to strengthen service boards and the county assembly service boards, so that we can nip this issue at the bud. That is where the crisis lies in particular.

**The Speaker** (Hon. Ethuro): Finally, Sen. Sang, you can contribute on this matter.

**Sen. Sang:** Thank you, Mr. Speaker Sir. I join my colleagues in congratulating members of the public from Wajir County. We will continue receiving a lot of these petitions and this is an indication that we need to relook at the capacity of our county assemblies. We know that the first institution to carry out oversight over county governments is the county assemblies. It is therefore the responsibility of the Senate---I must congratulate the Senate for having taken time over and over again to support the county assemblies in enhancing their capacity.

Mr. Speaker, Sir, a Motion will come to this Senate for us to look into the budget ceilings of the county assemblies. We need to look at the funding for the county assemblies and the capacity building. We should receive petitions that have already been processed by the county assemblies. If these things are not dealt with at that level, then the Senate becomes the sort of appellate level. It is therefore important for us to support our county assemblies so that they deal with these issues under at the local level before they come to the Senate.

I beg to support.

**The Speaker** (Hon. Ethuro): Order Senators! These Petitions will, therefore, be committed to the Standing Committee on Finance, Commerce and Budget and the Committee will be required, in not more than 60 days, to respond to the petitioner by way of a report addressed to the petitioner and laid on the Table of the House.

I also have two other things to do. The first one is a Message.



## COMMUNICATION FROM THE CHAIR

## FAILURE BY SENATORS TO VOTE OR REGISTER ABSTINENCE

**The Speaker** (Hon. Ethuro): Hon. Senators, I have a communication to make. During the sitting of Tuesday, 19<sup>th</sup> May, 2015 the Senate voted for the following three Bills to be read a Second Time:-

- (1)The Public Audit Bill (National Assembly Bill No.38 of 2014)
- (2)The Fair Administrative Action (National Assembly Bill No.10 of 2015)
- (3)The Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014)

At the conclusion of the voting, there were variations in the number of Senators voting culminating into a point of order raised regarding Senators who did not vote as it is in violation of the Standing Orders. In particular, I wish to recognise the alacrity of the Senator for Vihiga, Sen. Khaniri, on such matters. I directed that we establish the Senators who did not vote. Subsequently, from the division list print out, Sen. Fatuma Adan Dullo and Sen. Daniel Karaba, did not vote for the Public Procurement and Assent Disposal Bill (National Assembly Bill No.40 of 2014) while Sen. Fatuma Adan Dullo, did not vote for the Fair Administrative Action (National Assembly Bill No.10 of 2015).

As canvassed by Sen. Khaniri, Standing Order No.80 provides for decorum during division and it states:-

“(1)No Senator shall be obliged to vote in a division, but those present and not voting shall either-

- (a) in the case of electronic vote, press the “abstain” button; or
  - (b) in the case of a roll call vote, record the abstention with the Clerk.
- (2)It shall be disorderly conduct for a Senator to fail to record his or her abstention in a division.”

I looked at the Standing Orders and what is provided for is “gross disorderly conduct”. This one is not gross.

*(Laughter)*

But it is still a breach of the Standing Orders. However, it is also worth noting that several Senators have been experiencing challenging with using the electronic system, sometimes without their knowledge. It is therefore necessary to continue reminding Senators of the above provision and to encourage those in doubt on whether they have voted to consult the Clerks-at-the-Table, otherwise sanctions will ensue if this persists. That is a warning for now and we can establish whether you voted or not.

**Sen. Hassan:** On a point of order, Mr. Speaker, Sir. That particular day when Sen. Dullo came into the Chamber, she was very furious and protesting about something. She said that she would not vote. Could that have been a protest?

**The Speaker** (Hon. Ethuro): Sen. Dullo, this is an opportunity for you to try this gadget. I am not seeing your name here.

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**Sen. Bule:** On a point of order, Mr. Speaker, Sir. I stand in defence of Sen. Dullo. Sen. Dullo is always here and so to say that she had some reason is not correct. The failure of a Senator to vote is not the fault of that Member. It is the fault of the system. The gadgets are not working. In fact, yesterday, we voted manually.

**The Speaker** (Hon. Ethuro): Order, I am sure Sen. Dullo has sufficient capacity to defend herself. So, you and Sen. Hassan are completely out of order.

Regarding the failure by the system, I have already acknowledged those challenges but you cannot say that it is an absolute one because other Senators still voted. Therefore, it was not the entire system that failed. It could be individual gadgets that failed.

**Sen. Adan:** Mr. Speaker, Sir, I do not want to address the point raised by Sen. Hassan because you have defended me. I would personally defend myself by saying that when the vote was taken, I was in the other side. That is the reason why I did not vote. Again, I need to defend myself; I am always very attentive and alert in the House. There is no single time I have failed to vote or participate in the House business. I am sorry for this. Thank you.

**The Speaker** (Hon. Ethuro): Well done, Senator. This is definitely not a statement about your general performance. So, Infotrak should not try. This was just an issue that was raised on that material day. I had actually allowed it to die but I realized the Members to my left were a bit agitated and rightly so. I have a duty to defend and promote the Standing Orders of the House. That is why I felt it is important to raise the matter. That is why I have not also put any sanctions because there are mitigating circumstances including your steadfastness.

#### VISITING DELEGATION OF MEMBERS OF NANDI COUNTY ASSEMBLY

**The Speaker** (Hon. Ethuro): Hon. Senators, I am pleased to acknowledge and welcome to the Senate this afternoon the Members of Nandi County Assembly who are seated in the Speaker's Gallery. I request that when their names are called out, they stand so that you may acknowledge them in our usual Senate tradition.

- (1) Hon. Pius Kiprop Murei
- (2) Hon. Mark Kipkoech George
- (3) Hon. Pauline J. Sing'oe
- (4) Hon. Isaac Kiplagat Choge
- (5) Hon. Kapkurui S. Chepkwony
- (6) Hon. Emily Cherobon
- (7) Hon. Eunice J. Sing'oe
- (8) Hon. Koros Eric Kiptoo
- (9) Hon. Sally Cherubet Lelei
- (10) Hon. Demtula Jemaiyo Rop
- (11) Hon. Francis Kiprop Kemei
- (12) Hon. Simeone Bor
- (13) Hon. Joslyn Jerop Bett

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- (14) Hon. Monica Jekemboi
- (15) Hon. Jane Jepkorir
- (16) Hon. Philemon K. Maiyo Nengo
- (17) Hon. Julius Kibet Gwambok
- (18) Hon. Karen C. Mutai
- (19) Hon. Jenipher J. Martim
- (20) Hon. Rhoda J. Chepkwony
- (21) Hon. Emmanuel Kipkoech Rotich
- (22) Hon. Frederick Kemboi
- (23) Hon. Phillip K.M. Sang
- (24) Hon. Baruch Suge

Hon. Senators, I wish to take this opportunity, on behalf of the Senate and on my own behalf, to wish the Members of Nandi County Assembly a happy and fruitful visit to our Senate.

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

**The Speaker** (Hon. Ethuro): Sen. Sang, please remember it is not an entitlement.

**Sen. Sang:** Mr. Speaker, Sir, thank you for recognizing and welcoming the Members of the County Assembly of Nandi. As the Senator for Nandi and on their behalf, we want to thank the Senate. The issues we have discussed here, maybe the reason why we have not seen a petition coming from Nandi County is because the County Assembly of Nandi is doing a good job. Thank you for the opportunity that you continue to give the County Assembly of Nandi and the other county assemblies to enhance their capacity and for them to learn from the Senate. I hope that they will have fruitful engagement with us.

## PAPERS

### REPORT OF THE MEDIATION COMMITTEE ON ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION MANAGEMENT BILL (NATIONAL ASSEMBLY BILL NO. 31 OF 2013)

**Sen. Kivuti:** Thank you, Mr. Speaker Sir. I beg to lay the following Paper on the Table of the Senate today, Thursday, 21<sup>st</sup> May, 2015:-

Report of the Mediation Committee on Environmental Management and Co-ordination (Amendment) Bill (National Assembly Bill No. 31 of 2014).

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

## NOTICE OF MOTION

### APPROVAL OF THE REPORT OF THE MEDIATION COMMITTEE ON ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 31 OF 2014)

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**Sen. Kivuti:** Thank you, Mr. Speaker Sir. I beg to give notice of the following Motion:-

THAT, this House approves the report of the Mediation Committee on Environmental Management and Co-ordination (Amendment) Bill (National Assembly Bill No. 31 of 2014), pursuant to Standing Order No. 155, laid on the Table of the House Thursday, 21<sup>st</sup> May, 2015.

## STATEMENTS

### PLANNED DEMONSTRATIONS BY YOUTH IN VOI TOWN OVER ALLEGATIONS OF YOUNG MEN TRANSPORTED FROM TIGANIA TO WORK ON SGR IN TAITA TAVETA COUNTY

**Sen. Mwakulegwa:** Asante Bw. Spika. Ningependa kutoa taarifa kupitia Sheria za Bunge Nambari 45(2)(a). Natoa taarifa hii kwa sababu ninavyozungumza sasa, vijana katika mji wa Voi wanapanga njama za kuleta rabsha na matata barabarani. Hii ni kwa sababu mwanzo wa wiki hii, magazeti na vyombo vya habari vilitoa habari kwamba vijana zaidi ya 100 kutoka Tigania kule Meru, wameletwa katika mji wa Voi ili kuchukua kazi za vibarua katika reli inayojengwa sasa katika Kaunti yangu ya Taita Taveta.

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

**Sen. Njoroge:** On a point of order, Mr. Speaker Sir. I do not know whether I am in order to say I was expecting an answer of a Statement which I had sought?

**The Speaker** (Hon. Ethuro): You are completely out of order. Sen. Njoroge, Sen. Mwakulegwa is seeking a Statement.

Sen. Mwakulegwa, proceed.

**Sen. Mwakulegwa:** Bw. Spika, tunajua kwamba kazi ni za Wakenya wote lakini hizi ni kazi za vibarua na vijana zaidi ya 100 kuletwa mji wa Voi Jumatatu asubuhi, basi wananchi walipigwa na butwaa. Walishangaa kuona watu hao wamefika katika *bus station* na hawajui mahali pa kwenda. Walipoulizwa na wananchi, walisema wameitwa kuandikwa kazi katika mradi wa reli. Cha kushangaza ni kwamba, inasemekana waliletwa na Mbunge wao wakiwa wameambiwa wanakuja kuandikwa kazi hapo. Walisema kila mmoja alilipa shilingi 1,500 ili kuandikwa kazi hiyo. Maswali ninayouliza mimi kama kiongozi wa Taita Taveta ni kwamba, kina mama wa Taita Taveta wamezaa vijana wengi sana. Vijana ambao hawana kazi ni zaidi ya 50,000. Kwa hivyo, waliopanga njama na kula pesa za vijana na kuwaleta ---

**The Speaker** (Hon. Ethuro): Seneta, uliza maswali. Kuzaa kwa akina mama tunaelewa.

*(Laughter)*

**Sen. Mwakulegwa:** Bw. Spika, maswali yangu ni kama ifuatavyo:

(1) Je, kama akina mama wa Taita na Taveta kweli wanazaa na wana vijana, kwa nini wasiandikwe kazi za vibarua?

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(2) Njama hizi hazijaanza leo. Kuna barabara inayotengenezwa kutoka Taita Taveta kuja Mwatate na malori na mabasi yanaleta watu kila usiku. Ninauliza hivi---

**The Speaker** (Hon. Ethuro): Seneta, samahani! Uliomba kutoa taarifa kupitia Sheria 45(2)(a). Kwa hivyo sio maswali ni kuongea. Endelea.

**Sen. Mwakulegwa:** Asante, Bw. Spika, nilikuwa najua sheria hiyo na ndio maana nilikuwa ninafuata mkondo huo.

*(Laughter)*

Siku za mwizi ni arobaini. Na siku arobaini zilifika siku ya Jumatatu tuliposhika watu waliokuja kwa wingi kuchukua kazi za vibarua. Mshangao ni kwamba, vijana hawa walilipa pesa, wakadanganywa ati kuna kazi nyingi kule Voi. Sasa imeleta shida kati ya sisi viongozi wa Kaunti ya Taita Taveta na vijana wetu. Wanasema kwamba kazi zao zimeuzwa na kwamba watu wanaletwa ili wao wafutwe kazi. Hali kwamba kazi za wale wenye ujuzi tunasema: “Hewala! Wakenya wengine wachukue.” Lakini kazi ya kupakua na kupakia mchanga na kufagia, hata hizo pia mtu anatolewa Meru kuja kufanya kazi Voi. Huu ni uonevu wa aina gani kwa watu wa Kaunti ya Taita-Taveta?

Bw. Spika, mji wa Voi ni mji ambao makabila yote 43 yanaishi hapo. Zaidi ya nusu ya wapiga kura wa Voi ni watu kutoka bara la Kenya. Kwa hivyo, vijana wanapotaka kufanya maandamano, ndio maana natoa ombi kwanza kwa vijana, kwamba tuachieni sisi viongozi wenu. Tutazungumza na wakuu wa *Standard Gauge Railway (SGR)*, uchunguzi ufanywe ili ijulikane ni maneja gani huyu ambaye aliagiza vijana waletwe? Vijana hawawezi kuamka asubuhi na kupanda basi wakijua kwamba kazi ziko. Kuna mtu aliwalaghai na amefanya hivyo mara nyingi. Vile nimesema kwamba siku za mwizi ni arobaini, mwizi tutamfichua.

Langu ni kuwaomba vijana watulie. Sisi viongozi na mimi kama Seneta wa vijana wa Kaunti ya Taita Taveta nitawatetea; kwamba haki ya kazi ya vijana wa Taita Taveta wataipata. Kama kazi zilikuwa zimezidi, tungetegemea Kaunti za karibu kama vile Kwale, Kilifi na Makueni wachangie, wala sio watu kutoka zaidi ya kilomita 1,000 kuletwa pale kwa kazi za vibarua.

Ombi langu ni kwamba hao vijana watulie wala wasilete shida. Sisi viongozi, tuko, tutafanya mazungumzo na tutayakabili mambo haya.

**The Speaker** (Hon. Ethuro): Order, Members! Look at the Order Paper. Order No. 10 will come after Order No. 7.

#### THE CONTINUED DESTRUCTION OF MAU FOREST

**Sen. Khaniri:** Thank you, Mr. Speaker Sir. I have two Statements to request, pursuant to Standing Order 45(2)(b). I seek a Statement from the Chairperson of the Standing Committee on Land and Natural Resources regarding the continued destruction of forests in particular, Mau Forest. In the Statement, the Chairperson should:-

(1) Explain why up to date, Mau water catchment area is still inhabited by people even after the Government committed itself and spent tax payers' money to relocate persons occupying the forest.

(2) Explain when the relocation exercise will be finalized.

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(3) State why logging and charcoal burning in the forest continues unabated.

(4) Explain the measures that the Government has taken to ensure use of more environmentally friendly sources of cooking fuel like bio gas and liquid petroleum gas (LPG), in order to retain the gains that are made through afforestation and re-afforestation.

Thank you.

**The Speaker** (Hon. Ethuro): That should be for the Committee on Land and Natural Resources. You are the Vice Chairperson, are you not?

Any Chair around? I can see Sen. Mwakulegwa.

**Sen. Mwakulegwa:** Mr. Speaker, Sir, I am a Member of the Committee. We will undertake to reply in two weeks' time.

**The Speaker** (Hon. Ethuro): So ordered.

CONSTRUCTION OF PETROL STATION AT  
KONATE JUNCTION IN NYAMIRA COUNTY

**Sen. Okong'o:** Mr. Speaker, Sir, I rise under Standing Order No.45(2)(b) to seek a statement from the Chairperson of the Committee on Land and Natural Resources regarding the construction of a petrol station in a riparian area at Konate Junction, Bonyamatuta Ward, West Mugirango Constituency in Nyamira County.

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

- (a) explain whether the National Environment Management Authority (NEMA) carried out an impact assessment of the project, and if so, whether the project was approved;
- (b) explain why the project is being carried out in a riparian area; and,
- (c) explain the measures that the Government has put in place to reclaim the riparian area and protect the environment.

Thank you, Mr. Speaker, Sir.

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

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

**Sen. Khaniri:** Madam Temporary Speaker, I rise pursuant to Standing Order No.45(2)(b) once again to seek---

**Sen. Okong'o:** On a point of order, Madam Temporary Speaker. You have not directed on the committee that will look into the request that I have made.

**The Temporary Speaker** (Sen. Ongoro): Sorry for that oversight. I was just taking over the Chair and that escaped my attention.

Is the Chair on the Committee on Land and Natural Resources around? If he is not around, is there any Member of the Committee in the House?

**Sen. Khaniri:** I am here, Madam Temporary Speaker. I am sorry I was not paying attention to the Statement. However, going by the tradition of the House, we will look at it and see if we could come up with a response in two weeks. Should we not be able to do that, we will report the outcome to the House.

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**The Temporary Speaker** (Sen. Ongoro): Are two weeks okay with you, Sen. Okong'o?

*(Sen. Okong'o nodded)*

Okay, that is so directed.

Sen. Khaniri, you can now make your request.

#### THE NEW NHIF RATES

**Sen. Khaniri:** Thank you once again, Madam Temporary Speaker. I rise pursuant to Standing Order No.45(2)(b) to seek a statement from the Chairperson of the Standing Committee on Labour and Social Welfare regarding the new National Hospital Insurance Fund (NHIF) rates. In the Statement, the Chairperson should:-

(1) explain the efforts by the NHIF management to educate the public on the benefits of the new enhanced contributions;

(2) explain the process of ensuring proper implementation of the new contributions;

(3) explain the process of claiming benefits; and,

(4) explain how the NHIF management plans to improve healthcare provision in the country, given that hospitals that are supposed to provide the services under the fund are not well equipped and staffed.

**The Temporary Speaker** (Sen. Ongoro): The Chairperson of the Committee on Health.

Sorry, it should be the Chairperson of the Committee on Labour and Social Welfare.

**Sen. Madzayo:** Madam Temporary Speaker, I undertake to come with a response within the next two weeks.

**The Temporary Speaker** (Sen. Ongoro): Sen. Khaniri, is that okay with you?

**Sen. Khaniri:** Yes, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): So ordered. The response should come in two weeks' time.

**The Temporary Speaker** (Sen. Ongoro): Sen. Lesuuda, do you have an intervention?

**Sen. Lesuuda:** No, Madam Temporary Speaker. It is a reply to a Statement.

**Sen. Njoroge:** Madam Temporary Speaker, I am expecting a reply to a statement which has really---

*(Sen. Khaniri spoke off record)*

Madam Temporary Speaker, I am addressing you yet Sen. Khaniri is---

**The Temporary Speaker** (Sen. Ongoro): Sen. Khaniri, the Chair is listening attentively.

However, Sen. Njoroge, I was in the House when the Speaker ruled on that. Your request has already been overtaken by events. I will consult on that before I give my final ruling. Meanwhile, we will take a Statement from Sen. Lesuuda.

#### STEPS TO AVERT ADVERSE EFFECTS OF FLOODS IN KENYA

**Sen. Lesuuda:** Madam Temporary Speaker, I would like to give a response to a request for a Statement which was placed before the Sessional Committee on Devolved Government on measures put to avert the adverse effects of floods in Kenya.

Madam Temporary Speaker, we got a response from the Cabinet Secretary who says that regarding the request from the Sessional Committee on Devolved Government on the measures put to avert the adverse effects of floods in Kenya, specifically, the Ministry had been requested to respond to the following questions:-

- (1) To state what the Ministry of Devolution and Planning is doing in conjunction with affected counties as part of the emergent response to avert further disaster from ongoing.
- (2) What Nairobi City Council is doing to reclaim Nairobi Dam which is a major water reservoir as it is currently invaded by the water hyacinth plant.
- (3) What sustainable measures the Ministry of Devolution and Planning has taken in conjunction with the Nairobi County Government Physical Planning Division to curb developers from developing structures on wetlands and water causes.

The response is as follows:-

We would like to inform the Committee and, indeed, the Senate that the Council of Governors (CoG) has protested the practice of the national Government Ministries reporting on matters that fall within the ambit of county governments as provided under the Fourth Schedule to the Constitution.

With regard to question 1, the mandate of the Ministry, in so far as emergency response and disaster management, is limited to early warning and drought management, famine response and humanitarian relief support in terms of food and non-food items in cases where disaster occurs. The Ministry has humanitarian assistance in places such as Nairobi and Narok where floods have occurred. Further, the National Youth Service (NYS) has been deployed as backup support in places affected by such flooding and other disasters due to availability of manpower and relevant equipment utilised in the ordinary activities. However, in terms of disasters and emergencies response, coordination and national disaster management policy, the mandate falls under the Ministry of Interior and Coordination of National Government.

With regards to questions (2) and (3), about Nairobi County, the Ministries that are tasked with these under Executive Order No.2 of 2013 are the Ministry of Environment, Water and Natural Resources and the Ministry of Land, Housing and Urban Development respectively.

Finally, Madam Temporary Speaker, there is a copy of the letter from the CoG that is enclosed. Reference has been made to it and the Statement is signed by the Cabinet Secretary, Ms. Anne Waiguru.



**The Temporary Speaker** (Sen. Ongoro): Sen. Njoroge, you will get an opportunity after Sen. Kittony.

Were you through, Sen. Lesuuda?

**Sen. Lesuuda:** Yes, Madam Temporary Speaker, but I want to put a rejoinder to the Statement.

Probably, we will seek direction from you. From this Statement, it is clear about what the Cabinet Secretary has said, that some of the questions could be directed to other committees of this House so that we get comprehensive answers to some of the questions in this Statement.

**The Temporary Speaker** (Sen. Ongoro): All the answers are within the Committee's mandate and they are able to give us all the answers. Senator, when are you getting us the answers?

**Sen. Mwakulegwa:** Madam Temporary Speaker, I am the one who asked for that Statement. I just wanted further clarification.

**The Temporary Speaker** (Sen. Ongoro): Was this a response to a Statement and are you satisfied?

**Sen. Mwakulegwa:** Madam Temporary Speaker, that is why I am actually standing. The reason why sought for that Statement is because Kenyans have been losing property and lives. Every rainy season we have had floods. Now that we have county governments in place, I thought the county government in conjunction with the Ministry will actually undertake adequate measures to make sure that all structures that have been put up in water paths are demolished. That has not been responded to.

Secondly, we are being told that there is a Bill which was passed in 2013 but to date, nothing has been done so far. I wanted to know the specific remedies that have been undertaken to reduce suffering of Kenyans especially during the rainy season. What she has answered is general knowledge known to everybody. I was looking for the specific actions that have been taken. For example, what are we going to do to Nairobi Dam? Even if the issues are cross cutting I expected the Committee to involve the other committees so that we get a very comprehensive report.

**The Temporary Speaker** (Sen. Ongoro): I think that is a considerable position because we cannot ask one question and direct it to different committees. It is the main Committee that is concerned with the bulk of the main Statement to then coordinate with other line Ministries and consolidate everything. Is that in order?

**Sen. Lesuuda:** Madam Temporary Speaker, it is in order. As a Committee we would like to request the Member who sought it and also this House to give us a further two weeks because we realize that this is a matter that is cross cutting, so that we can involve the other committees that have been mentioned and also the relevant Ministries so that we can come up with a comprehensive response. I agree that this is a matter that actually needs attention.

**The Temporary Speaker** (Sen. Ongoro): Senator are you satisfied?

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

**The Temporary Speaker** (Sen. Ongoro): A further two weeks to the time that you had already been allocated.

Sen. Njoroge, it is now time for you to make your intervention.

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**Sen. Njoroge:** Madam Temporary Speaker, I was expecting an answer from the Committee on Health and the Senator who was supposed to give an answer to that has actually left the Chamber. I think by the time I was ruled out of order it was because it was not yet Statement Hour. However, the Chair should have given me the answer to the Statement last week. For now, allow me to leave it at that point because the Chairperson has already left the Chamber.

**The Temporary Speaker** (Sen. Ongoro): It is a very unfortunate situation. Is there any Chair or Vice Chair of a Committee to undertake when Sen. Njoroge will possibly get the answer? Sen. Sijeny you are a Vice Chair of a Committee, can you undertake to tell us when Sen. Njoroge will get this answer from the Committee on Health? You should look for the Chair and inform him.

**Sen. Sijeny:** Madam Temporary Speaker, I undertake to inform them and he could get an answer in the next two weeks.

**The Temporary Speaker** (Sen. Ongoro): Is that okay with you Senator?

**Sen. Njoroge:** Madam Temporary Speaker, Sir, I think I am a bit confused because there is no Member from Committee on Health. I can wait for those two weeks because I have already waited long enough. This answer was supposed to be delivered last week. Sen. Kittony had indicated to me that she was ready to give an answer but since she is travelling, I think I will wait until next week.

**The Temporary Speaker** (Sen. Ongoro): Senator, you have been requested to wait for two weeks is that okay with you?

**Sen. Njoroge:** Madam Temporary Speaker, one week would be okay with me.

**The Temporary Speaker** (Sen. Ongoro): Sen. Sijeny, communicate to the Chairperson of the Committee on Health that in one week's time before we go on recess we need that answer.

**Sen. Njoroge:** Madam Temporary Speaker, Sen. Kittony has just left a Statement which she wanted to read out and I do not know whether it is in order for me to lay it on the Table. I do not know how it is done because I have never done it before.

**The Temporary Speaker** (Sen. Ongoro): That is the end of that matter. I can see an intervention request from Sen. Mungai.

**Sen. Mungai:** Madam Temporary Speaker, I want to bring to your attention the fact that the promises that have been given to the Statements sought here have been that they will be delivered after two weeks. However, I am aware that we will be going on recess from next week whereas you are talking about two weeks. I wanted to bring that to the attention of the House because if a Statement is being sought and it is of urgent need, the period is supposed to be shortened.

**The Temporary Speaker** (Sen. Ongoro): That is a good observation, but the people who sought the Statements were in the House when they were told that the answer would be given in two weeks and they were comfortable with it. I want to believe that all Senators are aware of our calendar and that we should be going on recess in a week's time. Let us let it rest at that because they already accepted the two weeks. That means immediately we come from recess, they will get their answers.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY 26<sup>TH</sup> MAY 2015

**Sen. Billow:** Madam Temporary Speaker, the Statement on the business of the Senate for the week commencing 26<sup>th</sup> May 2015.

Hon. Senators, pursuant to the provisions of Standing Order No.45, this is to present to the Senate business for the coming week.

Tuesday 26<sup>th</sup> May 2015, the Rules and Business Committee will meet on Tuesday 26<sup>th</sup> May 2015 at noon to schedule the business of the Senate for the week. Subject to further directions by the RBC, the Senate will continue with business that will not be concluded in today's Order Paper primarily focusing on debate and division on the report of the Mediation Committee on the Environmental Management and Coordination (Amendment) Bill, National Assembly Bill No.31 of 2014). This is one of the Bills with a constitutional timeline of 27<sup>th</sup> May 2015.

Then on Wednesday 27<sup>th</sup> May, the Senate will continue with business not concluded during Tuesday's sitting with priority being given to the Report by the Mediation Committee on the Division of Revenue Bill (National Assembly Bill No.11 of 2015). The Senate will consider any other business scheduled by the RBC on that day.

On Thursday 28<sup>th</sup> May, the Senate will consider Bills at Second Reading and any other business scheduled by the RBC. Further, the Senate will debate a Motion the Adjournment of the Senate to a day other than the next normal sitting day subject to the Senate calendar.

Let me take this opportunity to commend you all for your continued support for availing yourselves to consider and pass Bills. I note with gratitude that yesterday alone we passed three Bills with a constitutional deadline, namely the Public Audit Bill (National Assembly Bill No.38 of 2014), the Public Procurement and Assets Disposal Bill (National Assembly Bill No.40 of 2014) and the Fair Administrative Action Bill (National Assembly Bill No.10 of 2015).

In conclusion, I once again appeal to you to continue to make yourselves available and prosecute Senate business. Kindly note that this week, we shall be considering and voting on the reports from two mediation committees.

I thank you and hereby lay the Statement on the Table on behalf of the Senate Majority Leader.

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

**The Temporary Speaker** (Sen. Ongoro): We are through with Statements. Earlier on, the Speaker made a ruling that we will skip Order Nos.8 and 9.

**MOTION****MEASURES TO MITIGATE HUMAN-WILDLIFE  
CONFLICT BETWEEN KINNA COMMUNITY OF  
ISIOLO AND WILDLIFE AT MERU NATIONAL PARK**

**Sen. Adan:** Madam Temporary Speaker, I beg to move the following Motion:-  
THAT, aware that the Fourth Schedule to the Constitution assigns the responsibility of protection of the environment and natural resources to the National Government;

ACKNOWLEDGING THAT Section 5 of the Wildlife (Conservation and Management) Act, 2013 mandates the Cabinet Secretary to formulate innovative measures for mitigating human wildlife conflict;

FURTHER ACKNOWLEDGING THAT Section 19 of the said Act empowers the County Wildlife Conservation and Compensation Committee to develop and implement, in collaboration with community wildlife associations, mechanisms for mitigation of human wildlife conflict;

AWARE THAT in the spirit of mutual co-existence, Section 75 of the Wildlife Conservation and Management Act, 2013 advocates for recognition of the rights and privileges of communities living adjacent to conservation and protected areas in decision-making and determination on the matter of conservation and management of the wildlife resource;

NOTING WITH CONCERN THAT human-wildlife conflict between the Kinna Community of Isiolo County and wildlife at Meru National Park has escalated over the years;

FURTHER NOTING WITH CONCERN THAT the above conflict has led to tension between the community and the Kenya Wildlife Service (KWS) which the community accuses of kidnapping, shooting, torturing, wounding and even killing members of the community;

ALARMED about the latest alleged report that on 18th May, 2015 KWS rangers clashed with the Kinna Community demonstrators, shot and killed one demonstrator and wounded several others;

THE SENATE DIRECTS the Standing Committee on Land and Natural Resources to conduct a fact-finding mission regarding the conflict in the area with immediate effect and report back to the Senate within thirty days.

Madam Temporary Speaker, there are a lot of extrajudicial killings especially where the community is adjacent to Meru National Park. Several people have been apprehended and killed since 2013. I have a list of people who have disappeared since 2011. They are Abdi Guyo (2011), Mohamed Mursale Alio (2012), Ibrahim Kabelo (2012), Mohamed Abduba Ade (2013), Boru Sora Boru (2013), Adan Bille (2013), Gilimpe Jaba Gufu (2013), Abdi Hassan Dagalle (2014), Adan Kashune (March, 2014), Hassan Diba Konsicha (2014), Abdullahi Golo Abdi (2014) and Kalicha Halakhe Dima.

All these people have disappeared and nobody knows where they have gone. Their families are frustrated because they cannot trace their whereabouts and the fingers

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are actually pointing at the KWS. It is important for this matter to be investigated to establish what is happening to these people and where they have gone.

Again, over 14 people have gone missing since 2013 under mysterious circumstances; allegedly kidnapped by the KWS. These include three persons who were on a motorbike registration No.KMDJ101D. They were waylaid on their way home to Duse, a ward in Isiolo County, a few kilometres from Kinna Town, by KWS rangers on Saturday 9<sup>th</sup> May, 2015. They have not been seen up to date. This incident was witnessed by community members living in the vicinity. They are: Ismail Adan Gedi, Kalicha Halakhe Dima and Godana Guyo Dobe. It is really frustrating because these people were picked in broad daylight and up to now, nobody knows their whereabouts. People are pointing fingers at the KWS because the situation is really very bad.

The KWS rangers shot and killed one person and injured several others during a peaceful demonstration, again, on 18<sup>th</sup> May, 2015 by community members. The injured included students aged between 18 and 25 years. The ones who are in hospital are: Hassan Intalo, shot in the leg by KWS; Sala Diba Abduba, shot in the right leg; Abduba Mukta Rungiti, shot in the right leg; Mohamed Hassan Duba; Golicha Mohamed Sheriff, shot in the leg, Hussein Fugicha Boru; Mustafa Huka, shot in the leg and Mohamed Guyo Wang'a, shot in the right leg. All these youth were shot by the KWS rangers after the demonstration. One of them was killed during that particular incident. It is important to note that these youth were not armed. It is sad that the KWS rangers used live bullets on innocent youth who were demonstrating peacefully. So, we have to take serious action against those who are behind all these and come up with an amicable resolution.

Many residents have been tortured and sustained permanent body injuries at the hands of the KWS rangers. They include Sarite Dido, who has a fractured hand; Waqo Liban, who has a rib fracture and multiple body cuts and Abdullahi Wario Goliche, who is castrated. This is really very serious because he is now *kaput*. There is also Abdullahi Jillo who is disabled; Waqo Guyo Tillo, who is bedridden and Okotu Jillo, who has multiple fractures. What is happening in this particular area is really serious. We need urgent attention from the Government and this Senate to make sure that we have resolved the conflict between the communities and the KWS. These people border the national park and need to benefit from the resources accruing from that national park. Instead, they are being tortured and even killed.

The residents are harassed by rangers and are subjected to constant unlawful surveillance, where they harass members of the community and this must stop. The few casual staff hired from the community to work in the park are continuously harassed by the management, some have been arbitrarily sacked or transferred to distant areas and denied permanent jobs.

Madam Temporary Speaker, it is important that these communities benefit from the national park but unfortunately, they do not. They are only getting frustrations for being in the neighbourhood of the national park. The management of the park is disinterested in meeting local leaders to solve the issues and has constantly ignored overtures by the leaders. When there are issues, it is important for the communities and leaders of the park to sit and come up with an amicable solution to the problem that they are facing. Unfortunately, the Kenya Wildlife Service (KWS) officers are not ready to

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come and resolve these issues with the members of the public. This is very critical, the community wildlife forum was deliberately weakened and later abolished by the Meru National Park management, resulting in the abolishment of any coordination and cooperation between KWS and the community. This is something that affects the whole country because if there is no proper structure in place to make sure that wildlife and the communities live harmoniously, then it means the wild life is going to be killed. There is no proper conservation that is taking place and as a country, we are going to lose revenue because this is very difficult.

Madam Temporary Speaker, there is urgent need to bring the communities together with the KWS. The pastoralists are denied an opportunity to graze their livestock in the national park during the drought season. They should be given an opportunity to graze their animals within the park. It is important if KWS can come up with mechanisms to allow the pastoralists graze their livestock in the park.

This has been practiced in other countries and it is very important. Right now, the situation is very bad. In fact, the community is saying that KWS is not going to pass within that particular ward because of the tension that is there. There is no working relationship between the people of the park and the community.

I am appealing to this Senate to take very serious action by moving to the ground and make sure that they come up with a proper report which will address the bad relationship between the community of Kina and Meru National Park, so that they can also benefit because they are adjacent to it and the benefits must come to them.

Madam Temporary Speaker, I give this opportunity to Sen. Mutula Kilonzo Jr. to second.

**Sen. Mutula Kilonzo Jr.:** Madam Temporary Speaker, in the first instance, I want to thank Sen. Adan for this important and well detailed Motion. The statistics that I have in front of me about the extrajudicial killings, the people who are missing, the people who have sustained permanent body injuries, others who have been threatened and others who have been maimed, it is very saddening. To say that this is a crisis would be an understatement in every sense of the word.

As I rise to support this, I must say that I relate to the events, sufferings and mistreatments of residents and the illegalities perpetuated by the KWS, particularly from my county Makueni because they are doing the same. In the case of Makueni, a young girl was beaten up by KWS rangers, it is now four months and the Director of Public Prosecution has been unable to prosecute the persons who did this to a young girl in Kibwezi. Therefore, when I saw this Motion, I thought it appears to be a blessing in disguise because I relate to every suffering. The community in Isiolo has been suffering in the same way other communities are suffering, in the sense that KWS who are supposed to protect wildlife have become an enemy of the people.

Madam Temporary Speaker, it appears that the prosecution system has failed or they are in bed with KWS who have taken the law in their own hands and nobody appears to deal with these people. While we appreciate that wildlife is a national treasure and that this country is making a lot of money from it, there is no place in this Constitution where wildlife has been given priority to human life. If we must say so for them to hear, let them hear because I want to say it. The Constitution says that every

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person has a right to their dignity and life, unless taken away through due process. KWS or any other person does not have that right and will never have it provided that the law of the jungle has not been substituted in Kenya.

Madam Temporary Speaker, the Act assented to in 2013 by His Excellency the President has not helped. The reason is that somebody somewhere who is required by law to make regulations that would ensure that part of the Acts that require some of these things that Sen. Adan is talking about would be put into perspective has not done his job. For example, if there is a complaint by a person in Isiolo or Makueni on a KWS ranger who has caused the disappearance and kidnapping in the case of Isiolo, there is no method provided in the Act itself for a complaint. However, if the regulations that were contemplated in the Act were then put into place, it would be possible for Sen. Adan, the people of Isiolo and many other places in this Republic, to make a complaint. That complaint will then cause the police to take action against KWS because I have said before that KWS rangers together with many other agencies of security in this Republic are not above the law. The law of this country requires that if you are going to take away life and to injure somebody using unlawful method, there must be sanctions.

I think we do not need to belabour the point, if Sen. Adan had spoken to me, I would have said that 90 days is too long but since I am now seconding the Motion, let us deal with the 90 days that are proposed here, that the Senate Committee on Land and Natural Resources conducts a fact-finding mission regarding the conflict in the area with immediate effect and report back to the Senate. I would have added with recommendation for prosecution where necessary against the persons who are found to have committed these offences, some which appear to be murder, grievous assault and kidnapping under the penal code, so that in Isiolo and Makueni County, this would be the last time the KWS rangers would take the law into their own hands. They should stick to their mandate to protect our wildlife. As they continue harassing the people of Isiolo, elephant tusks are being found in Singapore and many other places. Shame on you, KWS. You have let us down and we need to tell you loud and clear, that you should stick to your mandate, protect our wildlife and let the people of Kenya live peacefully.

Madam Temporary Speaker, I second.

*(Question proposed)*

**Sen. Lesuuda:** Madam Temporary Speaker, I would like to thank and congratulate my colleague, Sen. Adan, for raising this very important issues and Sen. Mutula Kilonzo Jnr. for eloquently putting in the issue and facts concerning the Kenya Wildlife Service (KWS) and its role but most importantly, the allegations that have been put forth by Sen. Adan.

The KWS and other security officers are supposed to protect Kenyans. When we hear allegations of kidnapping, shooting, torturing, wounding and even killing members of a community, this is something that needs our urgent attention. Probably 90 days are too many. As it has also been stated in the Motion, there is tension amongst those communities. We do not want to see more lives being lost. The quicker we get moving –

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the relevant Committee starts the inquiry, the better in terms of calming the communities and assuring them that this House is in charge.

Madam Temporary Speaker, I would also like to let this House know that this is not only happening in Makueni and Isiolo counties but in most of the counties which have wildlife as a resource. As I am seated here, there are Kenyans who are watching us. Many of them are sending me text messages saying that it is also happening in Laikipia County in some of the ranches where there is wildlife. There are allegations that there was a meeting with the County Commissioner, the leadership there and the community to speak about the same issue. There are about eight people who are alleged to have disappeared. I am sure the Senator for Laikipia will speak to this if he has any information about it. People from Marsabit are also raising the same issue. I can see Sen. Hargura nodding. This means that he affirms that even people in Marsabit County are aggrieved. This is something that needs urgent attention.

I am sure the Committee will also look at other very important issues. Why do we have young men being harassed? If they are unarmed, why can they not be arrested and then charged in a court of law? When they are killed, one would suspect that there is cover up for other things. We are told that two poachers were killed while there were no investigations done to establish the truth of those allegations. These people are not even charged for us to know whether they are involved in poaching or not. It could be a cover up for a bigger plot and scheme for those who have continued to kill and make use of our wildlife. How do we explain it? Every other day, several tonnes of elephant tusks are found in Singapore. We burn elephant tusks here but those tonnes of elephant tusks always find their way out of our country.

It is time that the issue of KWS, how it protects our wildlife and how it should approach communities or sensitises them on the importance of taking care of our environment and wildlife is addressed. We need to look at the approach that we are using so that we can be true to ourselves. The KWS should carry out its mandate to protect our wildlife and people against wildlife.

We have also seen different communities or people taking the law into their hands by killing elephants and lions because of the effects that these wildlife has had on them and probably their farms. It is the role of KWS to protect the lives of the people even against attacks by the wildlife. This is very important and is something that we need to talk about. We have been talking about peaceful co-existence and the need to come up with a comprehensive approach to ensure that communities live together. Some of the issues that we have been raising in this House can be articulated and implemented. It is in the same breath that we need to protect our wildlife. We also need most importantly to safeguard the lives of Kenyans.

Madam Temporary Speaker, as a country, we need to learn to respect life. The right to life is very important. Whether someone is a suspect or has been alleged of committing any crime, he is presume innocent until proven guilty. If that person is not causing any harm or threat to the law enforcers, they should arrest the culprits and follow the law. We cannot live as if we are in the jungle where everyone decides what to do while families and communities continue to suffer.



It is important to note that this issue does not only affect KWS. We have also had people who were demonstrating over the disappearance of other young people yet they were killed in the process. This is something we continue to see when people demonstrate yet it is their right. There have been peaceful demonstrations in this country. There was an incident once in Maralal in Samburu County where we lost a university student yet they were just demonstrating over cattle rustling and insecurity in the area. Young people or people who would like to exercise their right to demonstrate or highlight some of the issues which they are not happy about end up being killed. We also saw it in Narok when the MCAs were demonstrating over leadership and governance issues in that county, we lost lives that day. It is important that if demonstrations are peaceful, there is no reason why live ammunitions should be used against demonstrators. They should be allowed to demonstrate.

I thank Sen. Adan for bringing this Motion so that we can get started. It should be expanded not only to address Isiolo County but all the counties that members are aggrieved and those which border wildlife or those which have national reserves around them. It is important for this Committee to come up with a comprehensive report on the management of our wildlife and how the communities have been treated. These are very serious allegations.

I agree with what Sen. Mutula Kilonzo Jnr. said that it should not end at just bringing the report here. Investigations should be done and the Director of Public Prosecutions (DPP) should take up the matter. It is not fair that law enforcers always get away with killing even when it is evident that a demonstrator was unarmed. It takes very long and gets very frustrating for the families of the people who have been killed to seek justice. This also instills fear in the public when exercising their constitutional rights if they feel aggrieved.

Madam Temporary Speaker, I support this very important Motion. I hope that within the stipulated days, 30 and not 90 days, which are sufficient, we will have a preliminary report on these killings so that we can then decide as a House what action needs to be taken thereafter.

**Sen. (Prof.) Anyang'-Nyong'o:** Thank you, Madam Temporary Speaker. This is an extremely important Motion that Sen. Dullo has brought before us. Listening to my colleagues; Sen. Mutula Kilonzo jnr. and Sen. Lesuuda, they continue to underline the importance.

One, I think that it is not correct to say that matters of wildlife and environmental control are entirely in the hands of the national Government. This is because, if you look at the division of functions, county governments, in Part II, Section 6, are allocated the function of animal control and welfare including licensing of dogs and facilities for the accommodation, care and burial of animals. The main phrase there is "animal control and welfare." So, if you are controlling animals and looking after their welfare including--- The inclusion was to emphasize the rule of dogs. I do not know why, but this is a very colonial mentality that local authorities look after dogs. The most important thing is that county governments are in animal control and welfare. So, Kenya Wildlife Service (KWS) cannot keep county governments away from their purview because apart from KWS, the welfare of the animals is the function of the county government.

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Madam Temporary Speaker, secondly, if you look at the division of functions, Section 10 of Part II, it says that county governments are also in charge of the implementation of specific national Government policies on natural resources and environmental conservation including:-

- (a) soil and water conservation; and,
- (b) forestry.

Animals live in forests generally though a few live in houses like rats. If the responsibility of county governments is implementation of specific national Government policies on natural resources and environmental conservation including solar and water conservation, it is therefore very important that KWS works very closely with the county governments, so that they can fulfill their functions. The same Constitution says that the two levels of Government shall work in cooperation and interdependently in matters of wildlife conservation and environmental conservation. This is because, in any case, it is in the counties where the environment is, it is not in the mid air. It is also in the counties where the wildlife is; there is no wild life in mid air.

Madam Temporary Speaker, what is happening in Isiolo County, which has been very ably articulated by Sen. Dullo, shows that there is a failure of interdependence between the county governments and the national Government, when it comes to relationship between wildlife and human beings. KWS is behaving as a predator. In other words, it is there to just look after the animals or protect their so called animals. Even when they are harming human beings, it is the human beings who are wrong. You saw the other day, in one of the newspapers when the Maasai morans had killed a baby elephant to protest against the wildlife encroachment into their environment and the damage that the wildlife would bring to crops and to their own properties. They took the law into their own hands and meted justice according to them on a baby elephant. The picture was horrible in the newspapers. However, as it were, the Maasai morans were so angry with the KWS because there they are hosting these animals in their counties, but the body responsible for ensuring that there is a harmonious relationship between the human beings and the wildlife was not doing its job.

Madam Temporary Speaker, listening to Sen. Lesuuda say that when individuals; Kenyan citizens, people who live in counties and elsewhere, demonstrate their disgust with certain ways in which Government policies are implemented, they are doing so, using their rights under the Constitution. No entity should take it upon themselves to again exercise destruction or killing on these people, because they are simply expressing their constitutional rights. The most extreme thing, which is an impunity that has pervaded this nation, is that if you are a law enforcement agent or agency, that responsibility including taking life for any reason; in other words, the extreme form of law enforcement is to punish before somebody is proven guilty. They take the extreme form; that is taking away life.

There are very strict laws built on how death sentences can be given in this society. In many civilized societies, death sentences have been abolished. Notwithstanding the fact that the death sentence is still here in this country, you cannot exercise the right to punish somebody by death outside the purview of the courts. That is just against the Constitution and the law. What happened in Isiolo, when our Committee

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goes to investigate, I think that it should be taken that any law enforcement agent, be it from KWS or any other, who was responsible for taking away life, should be charged with either murder or manslaughter. This is because there was no court of law that sat down anywhere to decide that responsibility is given to any law enforcement agency to take life even if those people were demonstrating.

Madam Temporary Speaker, if any of those people that Sen. Dullo has mentioned, had been caught killing a KWS officer, I am quite sure that they would have been in the headlines of the newspapers and arraigned in court the next day. All kind of things would have been done and within no time, a sentence would have been delivered either for manslaughter or murder of that person. I have witnessed cases where security agents guarding the homes of Very Important Persons (VIPs) in this county, when at night they suspect that somebody is coming to attack and they take the initiative to defend themselves and fulfill their responsibilities after that, they are always put under such duress to prove that what they did was for defense and security. This is a very clear case where the Senate should be very tough.

Thirdly, I think that it is our responsibility to interpret this Constitution and come up with regulations to make sure that the provisions of this Constitution are properly implemented. I have said this in this House so many times before and I hope that the Committee on Delegated Legislation, Chaired by the able Senator for Nandi County, Sen. Sang, whom I hope is listening to me---One of the things that the Committee should do urgently, is to look at this division of functions. This is because when the Fifth Schedule of the Constitution was written, these were laws that were to be implemented within a specific timeframe given for the implementation of the Constitution. The Fifth Schedule did not exhaust the whole list of laws that this House and the "Lower" House should pass regarding the implementation of this Constitution.

Therefore, some of these functions which are laid out in then the Fourth Schedule border between what the national Government and the county government do. This House should come up with laws and regulations telling exactly what the responsibility of the Government is in this matter. We have to because if we do not, then we come up with a situation like Isiolo and we do not know exactly what law to refer to.

I have just said that when it comes to the controlling of animals and the relationship between Kenyan citizens and wildlife in this country, that responsibility lies between the national and the county governments. The national Government cannot say that it is their preserve because the Schedule says what the responsibilities of the county governments are. I think precisely because it is in counties like we have seen in the Petition from Narok--- Narok as a county has all these conservancies where wildlife is, and that wildlife cannot be taken as a responsibility of the Government because they are in Narok. First and foremost, any person working for Kenya Wildlife Service (KWS) and working in Narok must report to the government of that area which is the County Government in Narok.

Madam Temporary Speaker, let me come to my own count of Kisumu. We have a whole wildlife presence in the lake. They come in form of hippopotamus and crocodiles. These animals do not just live in water. There is a time when they come to the land to feed. The crocodiles come to the land because they know at certain time, human beings

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go to bath in the lake and they would like to get a good dinner from human beings. Quite often, they catch some. My own uncle died because he was caught by a crocodile when he went fishing.

When it comes to hippos, when they come out to feed on maize, vegetable or potato plantations, they ruin everything. The laws regarding compensation when wildlife destroy your crops are complete pitiful laws because you are compensated in a way that is not commensurate to the loss you have incurred. So it is not compensation but an abuse. They never take into account that in order to recover your maize plantation, you may have to wait for three months before the next season. In the meantime, what are you going to eat?

It is for us in the Senate, through the Committee for Sen. Sang to look at some of these laws and find out to what extent is there going to be proper compensation when wildlife destroy crops around the lake. The other thing is compensation when life is lost. The other thing is the extent to which residents of counties where wildlife is and how they engage in policy making and implementation regulation by KWS.

Madam Temporary Speaker, I remember when we talked to KWS in the then Kisumu Rural, they agreed with us that because Ndere Island had been turned into a conservancy, they would be responsible for building roads that lead to the island. They also agreed that the community will be involved in doing those plans and in getting part of the revenue. First of all, the extent at which KWS went in to develop all those things was wanting in the end. So, the residents felt like going to court to stop what KWS was doing. This was regarded as hostility from the residents but they were only saying that since they do not get sufficient engagement from KWS, then they could only resort to the courts for arbitration.

Madam Temporary Speaker, we now have a new Constitution which, to me, is very social and democratic. It sets out these issues very clearly. At the same time, this Constitution gives broad principles of governance but it does not write the laws under which those broad principles will be realized in actual fact. That is why we have the Committee on Delegated Legislation so that those broad principles are translated into law, brought before this House so that we can pass them. I am not giving all the responsibility to the Committee but the initiative should come from it. If they think that another committee should help in writing the law, so be it. That leadership must be taken by the Committee.

Madam Temporary Speaker, finally with regard to Isiolo, I do hope that this is something that will be done expeditiously. I do hope that those names that Sen. Dullo mentioned today, the law enforcement agencies will take them seriously, the Criminal Investigation Department (CID) should investigate and do their work. The Government machinery should be set in Motion so that justice is done and is seen to be done in the county of Isiolo.

With those few remarks, I beg to support.

**Sen. Bule:** Madam Temporary Speaker, thank you for giving me this opportunity. First and foremost, I want to thank Sen. Dullo for bringing this important Motion which has really touched me.

The issue of human-wildlife conflict is all over this country. It is an issue which can be addressed and solved by Kenyans and this nation. The issue of KWS officers and their engagement with Kenyans cannot be addressed unless we come up with concrete laws which will protect innocent *wananchi* who are butchered by KWS officers.

Madam Temporary Speaker, since I was elected, over 30 men from my county are missing. I cannot name them by name today but I can table them in two weeks time. The KWS officers are employed by the Government of Kenya but they act like bandits. They act like terrorists. They act like *Al Shabaab*. In my place, we do not fear *Al Shabaab*, we do not fear bandits; we know how to deal with them because we know each other, but the KWS officers even go to pick people from their houses. That person will disappear. They butcher him and take the meat to wildlife. The human flesh is being feasted upon by lions. That is what we heard and it is real.

*(Loud consultations)*

Madam Temporary Speaker, could you lend me your ears---

**Sen. Murungi:** On a point of order, Madam Temporary Speaker. Have you heard the hon. Member say that they do not kill each with *Al Shabaab* because they know each other? That is a very dangerous statement to make that they know each other with *Al Shabaab* and that is why they do not kill each other. Could the hon. Member confirm if that is what he intended to say? If he knows *Al Shabaab* members, it is his duty as a loyal citizen of this country to report to the police.

**The Temporary Speaker** (Sen. Ongoro): Order, Senator!

**Sen. Lesuuda:** On a point of order, Madam Temporary Speaker. It is on the same note Sen. Murungi has raised. I think Sen. Bule said that they do not fear *Al-Shabaab* or the bandits because they know how to deal with them and they actually know them. I think those are very grave statements from an honourable Member. You may want to give guidance on this.

**The Temporary Speaker** (Sen. Ongoro): Order, Senator! I was on the Chair when you made that statement and I heard you say it. I was going to ask you to substantiate, give us more details or withdraw because that is a very extreme statement.

**Sen. Bule:** Madam Temporary Speaker, may I say I withdraw but they misunderstood my words.

**The Temporary Speaker** (Sen. Ongoro): What exactly did you mean?

**Sen. Bule:** Madam Temporary Speaker, we are in a remote area and I know Tana River is one of the counties with the fewest people. We know how to manage ourselves and we can recognise easily who is not one of us. You can say that in Tana River County we are few and we can recognise if there is any stranger because we know each other. In fact, we have never had such a problem. We only had small clashes within us but we never had the presence of such people. We have ways of identifying a stranger. If you went to Garsen or Hola today, it will be said that there is a "brown" lady around. That is our way of identifying any criminal in our county. These guys are serious---

**The Temporary Speaker** (Sen. Ongoro): Before you proceed, have you officially withdrawn your earlier statement which was misunderstood?

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**Sen. Bule:** Madam Temporary Speaker, I have withdrawn the misunderstood issue.

Regarding the issue of “bandit” officers, I do not know who employed them but it is something which has really brought problems in our area. We need security officers where they should be and we also need justice and protection.

I even fear these fellows. When I go to look after our animals, they confront us. Sometimes they steal animals, abduct herders and you have to give them money for them to release your animals. Sometimes they drive the animals from Tana River to Tsavo. When you hear that “suspected poachers” have been killed, it is the KWS wardens pretending that they are protecting wildlife but the same wardens are the smugglers of ivory that is being sold abroad. If we are here to protect and represent the people from our counties, we need the guidance. This is a challenge and we have to come up with a concrete solution to this burning problem.

I support.

**Sen. Billow:** Madam Temporary Speaker, I rise to support this important Motion. The issue of wildlife is very important to this country and we appreciate it as Kenyans. That is why we have very many national parks and reserves, and we have had a history of wildlife conservation that I think is unmatched in the region. Of course, we are also aware that wildlife is the main tourist attraction in this country and, therefore, very significant to our economy.

Historically, we have also had challenges in terms of dealing with not just wildlife, but those people who have been mandated to deal with wildlife. I know in the 1980s when poaching was rampant in this country, KWS had been mandated in some regions to act in exactly the same way they are now acting in Isiolo. Groups of KWS officers, complete with their transport, were roaming literally as bandits, picking up suspected poachers and instead of taking them to court, they literally executed, tortured and punished them. That exercise was the reason for the infamous burning of part of Garissa. One of those suspects was subjected to such painful torture that he ultimately ended up killing several security officers. What followed was the infamous attack on Bula in Garissa, in which Government security forces rounded up many people and burnt up the area. That history is a very dark one that we should not go back to.

Madam Temporary Speaker, we should not allow KWS to behave in the manner that they are behaving. First, KWS should appreciate that their role should not just be regulatory; it should be facilitative because this is a venture that is supposed to benefit the economy. We have wildlife living side by side with humans—farmers and other people and the fact that they are living peacefully with animals is the reason why you need to reward those people. In fact, KWS needs to have corporate social responsibility which it does not have. They are literally trained as security officers who are there merely to punish. You cannot conserve wildlife when you have people whose mandate includes nothing but to torture, punish and kill. That is not the way to conserve wildlife.

For ages, humans have learned to live with wildlife and there has been no problem. They learned to share even before these governments and national parks were created. I think the manner in which KWS is now exercising its mandate by behaving in

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the manner that it is behaving – causing the kind of suffering and pain that has been mentioned in this Motion – is regrettable.

Madam Temporary Speaker, first and foremost, KWS should know that they have failed Kenyans. In fact, that institution is the single most important failure in this country today. If this Government was to act – unfortunately it does not – on those institutions which are non-performing and have failed to deliver, it is the board of the KWS that would have been dealt with. This is because in the last few months, we received reports daily of thousands of animals being killed particularly elephants and rhinos.

In the research that has been done by KWS itself, it is clearly documented that over 80 per cent of the poaching is, in fact, taking place in the private parks and reserves. Not even in the public parks and yet members of those private parks or reserves are the people who sit in the board of KWS. They know when the time is good; when the prices of ivory are high. Therefore, you cannot rule out the possibility that all the extensive and massive poaching of wildlife going on could be an internal matter. There is a possibility that some people in the Board of the Kenya Wildlife Service (KWS) are accomplices in this. Whether the KWS use its officers or not cannot be explained. The level of poaching continues unabated every month despite all the pledges. Every day, we hear that thousands of tonnes of ivory have been found in Mombasa, Singapore, and other places. How many animals are those?

The KWS is an institution that has failed. However, I am glad that recently the Board appointed one prominent Kenyan, Dr. Leakey, to be the Chairperson. During his days, the KWS was being run properly. I hope he brings back sense to the institution.

If I were Dr. Leakey, I would not sit in the Board with the people who were there before. I would demand that they go and an audit of the officers of the KWS be done because in the recent years, there has been reshuffle. They have been trying to get rid of people who have experience in matters of security in the KWS. Not less than 30 senior people, particularly from pastoralist communities, who have extensive experience in matters of wildlife, trained during the time of Dr. Leakey were either suspended, expelled, removed or fired by the Board in the last two years. The reasons are unexplained but many of us could guess. They wanted to get these people out of the way. That is why you see poaching at the level that it is today.

Madam Temporary Speaker, I urge the President to form a national taskforce to investigate this matter. He should form an inquiry into poaching in this country. As the Senate, we must demand that the President establishes an inquiry into poaching in this country because this is no longer regular but unusual.

Having said that, the KWS must appreciate that the lives of Kenyans is more important than the lives of wild animals. You cannot equate the lives of animals to the lives of human beings and start killing people for sport and punishing them simply because you suspect them. There is law and order. If you suspect someone, you should arrest him and take him to court. There is no institution in this country – the KWS or any other institution, be it the police or wherever they are – that has the mandate to shoot to kill. That is illegal. It is the law of the jungle.

Unfortunately, in our country, extrajudicial killings by our security forces annually exceeds – if you read reports by international human rights groups – the number of

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people killed by criminals in this country especially in the last few years--- Where are we headed to when we start shooting and killing our people extrajudiciously when there are courts of law? The Constitution is very clear that you have to establish evidence. If they have to be hanged, let the Government do so after due process has been followed.

These kind of action by the KWS are inimical to its interests. If the KWS is concerned about conservation, the fact that it harasses people including torturing, killing and kidnapping means that the public, the people or the communities who live next to the parks will start getting concerned. They will lose interest and start to develop negative attitudes towards wildlife conservation. They will start killing animals. Is that what the KWS wants that communities residing in areas neighbouring parks to start turning on the animals since they suffer because of the animals?

Madam Temporary Speaker, Meru National Park is notorious for one thing, wildlife there has been destroying agricultural crops in many areas like Tharaka-Nithi and many other areas in the neighbourhood. The KWS should be ashamed because the park does not add any value significantly to the economy of this country. It is not one of the famous tourist circuits; there are no hotels or developed facilities that could encourage Kenyans to drive there. It does not generate income. It is one of the parks that should be closed instead of keeping animals there to terrorise farms and neighbouring people.

We must keep wildlife for the purpose of benefiting the economy of the country. Wildlife must attract Kenyans or tourists. It is not just a matter of locking them up there to start punishing people.

Madam Temporary Speaker, this Motion is very important. However, because it touches on security and people have been killed, tortured or kidnapped, it is important that we bring in the Committee on National Security and Foreign Relations.

Madam Temporary Speaker, I propose amendments on the last paragraph where it reads that “The Senate directs the Standing Committee on Land and Natural Resources.” After the word “Resources”, I would like to insert the following words:-

“and the Standing Committee on National Security and Foreign Relations.”

The import of this is that the Standing Committee on Land and Natural Resources and the Standing Committee on National Security and Foreign Relations will be jointly conducting a fact-finding mission and reporting back to the Senate in the next 30 days.

This is a very important Motion. I urge Members of these Committees to take this matter seriously because it is concerned with the lives of people. Already those of us from Mandera, Wajir and Garissa are concerned. People are being kidnapped but nobody knows where they are. Residents have been complaining. The same complaints are now being raised in Isiolo; the KWS is doing the same thing. About the other ones, we are told that police are doing so because they are suspected terrorists. Is what happening in Isiolo suspected terrorism? If you find people poaching, why should you kidnap them instead of arresting them?

Madam Temporary Speaker, I support this Motion with those amendments. Someone should second because I proposed an amendment. Sen. Sijeny should second



the amendment that I have proposed that the Standing Committee on National Security and Foreign Relations be included.

Thank you, Madam Temporary Speaker.

**Sen. Sijeny:** Madam Temporary Speaker, I second the amendment because it is very important. This is not just an issue of land and natural resources. We have seen that there are security issues. It is not fair and in order for such things to happen. In fact, it is unbelievable that such things have been happening in our country where people who are supposed to provide protection, not only to the animals, but also to human beings around them are the ones who are engaged in extra-judicial killings. If they do such heinous activities, it is the duty of the state – through the Senate and the Standing Committee on National Security and Foreign Relations – to investigate and public officers found to be responsible should be brought to book. These are criminal activities. If anything, you cannot differentiate what officers of the KWS are doing and terrorists. Why would they kill innocent Kenyans? There is law. We have state organs that deal with anyone found to have violated any laws.

If officers of the KWS claim that they are trying to contain poaching, they should not enter people's houses. They should report and arrest them instead. We have enough prisons. If they feel that the ones we have are not enough, they should construct others or expand the existing ones if they feel that there are more poachers to be arrested. They should not kill them or take the law in their hands.

It is saddening that they do such things. Young men – people who are supposed to participate in developing and building this society – are losing their lives.

We have heard the hue and cry that extrajudicial killings are happening in very many places where there is wildlife as a natural resource. This means that the killings are countrywide.

There was a time we had problems in the Nairobi National Park where animals would wander to residential areas and cause mayhem but that was contained. If they could do so in other areas within the city, why can they not do so within the other counties? They should not apply double standards. If they are afraid that perhaps they are doing it to confuse Kenyans not to know that they are involved in poaching and they know who is involved in poaching, they should pinpoint them to the authorities, then together as leaders, we will come up with better ways of dealing with poaching. We are down on our knees because of tourism. We do not even have enough resources to sustain our tourism sector. The people who heavily depended on tourism like those from the coast, Maasai Mara and other areas have been hit hard. There is already the problem of insecurity in the country and when they now hear that there are tonnes of ivory which has been smuggled from Kenya, it creates a picture that it is not only insecurity that is affecting us but Kenyans are destroying the wildlife that they so much admire.

We even saw Chinese nationals being arraigned in court because of poaching and being in possession of ivory. We must have strict laws. Implementation should be to the latter so that we reserve our natural resources. We were once rich in tourism and wildlife but now they are getting finished when other countries are trying to import wildlife so that they can continue breeding.

With those remarks, I support the amendment.

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*(Question of the amendment proposed)*

**Sen. Hargura:** Madam Temporary Speaker, Sir, first, I would like to pass my condolences to the families of those who have met their deaths in these kinds of situations. These are Kenyans who are supposed to be responsible and who must have been taught about the importance of human life and yet they are the ones taking lives of human beings.

Madam Temporary Speaker, I stand to support the Motion with the amendments because I know the importance of wildlife to our economy. For us the communities areas where these animals are found have sacrificed a lot. We are pastoralists and part of those parks actually form the original community pastoral lands. Communities have even gone ahead to come up with conservancies. Isiolo is not new to wildlife conservation; it is one of the counties which benefits very much from wildlife. They have major parks like Sarova and Shaba which are manned by rangers from the county and not KWS. These people know the importance of these animals. They even have other conservancies where it is the community which takes care of the wildlife. These communities have already sacrificed a lot to make sure that wildlife is conserved. Some of those parks have been attracting many tourists. So, these communities know the benefit of wildlife. When it comes to a situation where the KWS, whose work is being performed by these communities, is again kidnapping and killing human beings, then we fail to understand who is supposed to be assisting who.

These communities have sacrificed a lot. They share what they have with wildlife and it is high time that the KWS realized that they need to plough back whatever benefits they get from wildlife conservation to these communities so that they can feel the benefits. In my own county, there are two national parks. One is the Sibiloi National Park which we normally have a lot of clashes with the KWS because when pastoralists are looking for pasture and it is only available in the park, they do not understand that at times, they need to open up the parks so that the communities can graze there because they have to survive. When it starts raining, they can move out of the parks. That way, they will recognize the importance of that conservation and protect the animals. We have had cases even in Sibiloi National Park where herdsmen were killed by the KWS without any evidence that these people killed animals. It was just by the mere fact that they grazed their animals in the park because that is where there is grass they were shot. This practice has been going on for a long time.

Madam Temporary Speaker, they should come up with development projects for the communities around the park, for example, schools and hospitals. That will endear the community to the conservation idea because they would know the benefits of the wildlife. They should get a share of what is generated from the wildlife conservation. That is what most conservancies are doing in Isiolo, Samburu and parts of Marsabit. The communities are the ones taking care of the animals and we have not had much in terms of poaching in those conservancies which are not manned by the KWS.

I remember two years ago, we had a lot of problems because senior officers from my county and even parts of northern Kenya were being suspended from their work.

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These people have sacrificed their time. Some of them joined KWS as rangers and they have risen up the ranks to become assistant directors, but they are being sacrificed because somebody wants to take over the establishment because what they are doing is not in the interest of those who want to take over that system. That is what we have been going through. Already, we are getting disenfranchised as communities who are sacrificing their lives and their land for these wildlife.

What is now happening is that communities around the park are being kidnapped and killed by the KWS. When people demonstrate because of what is being done to them, the same KWS comes out and shoots you. I wonder who is supposed to contain law and order in towns when people are demonstrating. Is it the Kenya Police or the KWS? How does KWS control a demonstrating crowd? That shows the kind of impunity which is practiced in some parts of this country where anybody who has had some training in the disciplined forces feels they can do anything to people in parts of this country. That is unfortunately what we have been going through. The earlier this kind of impunity is stopped, the better for us and wildlife because wildlife is not found in the densely populated areas in this country. If this is the kind of attitude the organization which is supposed to take care of wildlife has towards the public, then they are not helping themselves or this country but making things worse for us.

Madam Temporary Speaker, it is in the public domain that poaching is going on unabated and animals are being killed. That is why we are exporting ivory disguised as Kenyan tea. The other day, we were told that exhibits which are impounded at the port still find their way to the market. The whole system including the courts, the KRA and many agencies are involved in the system. The earlier Kenyans took their responsibilities seriously, the earlier the KWS realized that they are better off with the public on their side. I am sure they will have easy time if they engage with communities next to the park. They should engage with the communities next to the park. The communities are sacrificing a lot. If they are farmers, they are losing their crops to these animals. If they are pastoralists, they face problems from marauding lions. We should understand that we need to protect wildlife. But if the organization which is supposed to protect is the one which is again turning the public against the wildlife by punishing them for being next to a national park, then I am sure that we will have a lot of problems with our conservation strategies. So, the earlier the Kenya Wildlife Service (KWS) Board looks into this issue and develops citizen-friendly policies, which will allow the citizenry to participate in the conservation and benefit directly, the better. It should not only be stated in the national budget that tourism is one of the main foreign exchange earners, but they should feel that earning as a community living next to the park.

Madam Temporary Speaker, I support the idea that the Senate has to take it upon itself to send these two Committees on a fact-finding mission regarding this conflict and report back, preferably with ways of making sure that KWS is restructured in such a way that they always have the interest of the public at heart instead of just being protectors of wildlife against even the public to the extent of killing a human being. But if that human being kills an animal, then he is taken in.

I support the Motion and hope that from this fact-finding mission, we will go ahead and propose amendments to even the laws which govern this sector, so that we

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have a better way of dealing with human-wildlife conflict. We should limit what the KWS rangers can do, because they have exceeded their limits and taken upon themselves to kill Kenyans at will in the name of protecting wild animals, which are dying in numbers and we busy exporting their parts.

I beg to support the Motion with amendment.

*(Question that the words to be inserted,  
be inserted, put and agreed to)*

*(Question of the Motion as amended proposed))*

**Sen. G.G. Kariuki:** Madam Temporary Speaker, this Motion is very important. This matter was raised 20 years ago, but nothing has ever been done. If you look at the HANSARD, you will realise that almost everything that has been said here was said many years back. Kenyans are wondering for how long Kenyan leaders are going to continue weeping about a situation that they can resolve.

Madam Temporary Speaker, I remember it took me nine months to bring a Bill to Parliament, which was very important for this country. During my journey to create that situation, I found out that this matter is so involving. We can speak about wildlife here, but there are people outside Kenya who will never allow Kenyans to enjoy this wildlife. Some foreigners want to own these animals in this country and some of them support their welfare but some are just making money out of it. That is why you will find the KWS rangers even killing people purposely. They do it because of the impunity. Nobody can stop them from doing what they are doing, because there has never been a national policy on this matter that is accepted by Kenyans. I really sympathize with my colleague who has brought this Motion. I can feel her pain because Laikipia has the same problem. In fact, we have more wildlife than Amboseli and other national parks. About 25 per cent of the tourists who come to Kenya from overseas visit Laikipia, because we have more wildlife than most national parks in this country.

Incidents of people being killed and crop destruction is not news to the people of Laikipia, because this happens almost every other day. As leaders of this country, we continue talking about something that we can, perhaps, take a decision on. With the new Constitution, it is easier for us to formulate an acceptable policy. Before the new Constitution, there was no way you could play around with issues to do with wildlife. If wildlife is our resource, as we are told, what change has it brought to the people who live near the parks? Why is the KWS not able to fence the areas where wildlife live, so that they do not get into conflict with human beings? The killings by wildlife are happening because there is no policy. It will be unmanageable until the day we will have a clear policy over the management of wildlife. If we could pass this Motion and come up with a Bill which we can pass into law, maybe we could manage the situation. But what we are saying now is what we said many years back. We need to know that all the national parks in this country only benefit the county governments in those areas. They have large scale farmers, private conservation and they make good money. It is not news to them when the animals kill people. When I was listening- and knowing the journey we have taken, to

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where we are now, I hope an angel will come and convince the entire system that there is life in people, not just in wildlife. For example, in Laikipia, they do not care about those who have been killed by wildlife but if one elephant is found dead, they come with helicopter gunships just to look for those people who are in the forest.

Madam Temporary Speaker, I have no words regarding this matter because I have seen, talked, researched and brought a Bill here over the same. When the Bill was accepted by the House, we were tricked by the then Minister for Tourism. When the Bill was taken to Mombasa for assent by the President, the Minister had no shame to tell the President that the Bill was very shallow and that within three months, we had to bring a comprehensive Bill. That time he was followed by a chain of others who claimed to own the wildlife. It took seven years for the Government to amend the Act which is currently in use. Before that law which they brought the other day, if a human being is killed by an elephant, he or she was paid Kshs30,000. Now, they have increased it to Kshs200,000. For ordinary persons to get that money, they spend almost the same amount of money before they get a penny from it.

I want to support the Senator for bringing the Bill with amendments to make this a little wider than it was. It is important that we meet, investigate this matter and do the same things that have been done before but the only difference would be, if we pass a law to deal with it. I still doubt whether it will be given assent because I know who owns the wildlife in this country. It is for us to talk about it but when we are told it is a sustained tourism- there are no countries that can sustain the economic development through tourism. It is a business which is very good today and tomorrow, it is not, depending on whether an aircraft has been shot somewhere or something has happened. Tourists can refuse to come because there are many other countries which they can go to.

Let us try to be open and stop being so diplomatic all the time in our undertakings and deal with this matter perpendicularly the way it is supposed to be.

I thank the Mover and my friend who amended this Motion. I am a member of the Committee on National Security and Foreign Relations and I will give my support 100 per cent, hoping that something will come out. I am not trying to be cynical about this because it is a problem. I would want hon. Members to see it that way. It is not a matter of passing it and expecting it to be accepted but with the new Constitution, God willing, it will go through.

**Sen. Murungi:** Madam Temporary Speaker, I thank you for giving me this opportunity to contribute to this important Motion. First, I have to declare that I come from Meru, and Meru National Park is part of Meru County. It is very unfortunate that this incident occurred in Meru National Park. I want to send my condolences to all those who may have lost their lives during this unfortunate incident.

I most welcome a fact finding mission by the Senate Committee on Lands and Natural Resources beefed up by the Senate Committee on National Security and Foreign Relations. We believe that these two committees will fully investigate this incident and go to the root of the causes of these killings on a historical plain. Meru County has not benefited from Meru National Park. It was a vibrant park in the 1970s.

I remember it hosted the world famous Joy Adamson for whom movies and books have been written about the adopted lions, Elsa and her cubs. We used to have a lot

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of tourists when I was in high school. Indeed, we were competing with Maasai Mara but today, Meru Park is in a sorry state, we have very few local and international visitors. The Mulika Lodge which was then a four star lodge in the 1970s was burnt to the ground. We were the only park with white rhinos which were imported from South Africa. Unfortunately, all those rhinos were shot dead by bandits and Meru National Park became a no go zone for both locals and tourists for a long time until Dr. Richard Leakey became the Director of Kenya Wildlife Service (KWS) in 1980s. He is the one who rescued this park from criminals.

Madam Temporary Speaker, we are very happy as Meru County because Dr. Richard Leakey has gone back as the Chairman of KWS. We believe that the past glory of Meru National Park is going to be restored like it was in 1970s. One way of doing that is to restore security in Meru National Park. The Meru County Government has very ambitious plans for this park. We want to increase the bed capacity. As it is now, we have only two small facilities; the Leopard Rock and the Elsa Kopje. We cannot accommodate more than 30 visitors in this park. These are very high end facilities. Indeed, this national carrier, Fly 540 flies twice to Meru National Park but they are all booked either in Europe or in a place that we do not know. If you want to sleep in Meru National Park, you will not know how to get there. I have been there as a Member of Parliament (MP) and I could not be served in the two facilities because I was not booked.

Madam Temporary Speaker, time has come for us to make this resource available to the locals. We intend to build a museum in the Meru National Park in honour of Joy Adamson. We have talked to the foundation which is willing to support us in constructing this park and also create an animal rescue centre like we see in South Africa. The rhinos have been brought back to Meru National Park. It is the only park with tarmac roads now. In fact, even Tsavo and the others do not have tarmac roads that we have in Meru National Park. We are just looking at a new gate of opportunity for opening up this park. With the kind of insecurity that we are seeing looming around, there is a real threat that our ambitious plans for the park will not be implemented.

We have had issues with our neighbours, especially from Isiolo County. We have a boundary issue which we are trying to resolve but it is not within the park. It is outside the park. Sen. Adan will confirm that we have agreed that our two governors produce surveyors and pay them while the Office of the President will supervise the marking of the boundary between Meru and Isiolo counties, so that we can once and for all eliminate the border skirmishes that are frequent within that region. The Governor for Meru has appointed the surveyors but unfortunately, the Governor for Isiolo has not. So, I am using this privilege that I have in the House to request our colleagues in Isiolo and especially the Governor for Isiolo also to appoint the surveyors so that the boundary between Meru and Isiolo can be marked as quickly as possible. We will cooperate. We want to be friends because there are many people in Meru who work and live in Isiolo. They are our brothers and sisters, and we want to continue our friendship with them. We welcome the Borana Community who are in Meru. There are some who are already working and living there to continue enjoying and living in Meru. We want to promote good neighbourhood between these two counties but we should not allow issues which do not concern the individuals to be the ones causing tension between us.

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Madam Temporary Speaker, regarding the park, I would like to request our brothers and sisters from Isiolo also to respect the boundaries of this park. We appreciate that there are sometimes when it gets very dry and the animals have to be taken wherever there is grass but, surely, not in the national park because they will be competing there with other resources. We need wild animals in the park. We need elephants, lions and giraffes. These animals also need grass. Tourism will not succeed if we allow livestock into the park. *Wazungus* do not come here to see cows because they have cows in their own countries. They come here to see animals which are not in Europe and in the United States of America (USA). Let us keep animals out of the Meru National Park. This is my sincere plea for our colleagues in Isiolo: Please, keep off Meru National Park. I am not saying that they should be killed. I know that when poachers are killed nobody talks about them but as a human rights person, I am against death penalty for any person.

There should be legal ways of keeping those cattle herders outside the park. They should also respect the law. In the old colonial days, I think it is Sen. (Prof.) Anyang'-Nyong'o who was talking about these draconian colonial tactics. Some of them worked, for example, they used to detain the animals and take them away from the herders. Sometimes they took them to the Kenya Meat Commission (KMC) for slaughter. We should look at those alternatives so that we can send a very clear message that the park is not for domestic animals.

Madam Temporary Speaker, I do not want this to be seen as conflict between the Meru and the Isiolo communities. The issue before us is between the members from Isiolo County and the KWS but if the theatre of that war is in Meru, then obviously, we have to come in. Our message is very clear: Please keep off Meru National Park.

I have made my point, and I thank you for this opportunity. When the Committee is formed, we shall have a big delegation to come and make its own submissions.

**The Temporary Speaker** (Sen. Ongoro): I now call upon the Mover to reply.

**Sen. Adan:** Madam Temporary Speaker, I thank you for giving me this opportunity to reply. I do not intend to take a lot of time because I know that my sister, Sen. Sijeny, is on her toes.

First and foremost, let me take this opportunity to thank all the Members and my colleagues who have supported this Motion. It is very important for us to be on board about all the issues and the concerns raised by my colleagues. The critical aspect that I want to mention in this is the relationship between the communities and the wildlife. That has to be dealt with. Of course, prosecution is the best option instead of shooting somebody. We have laws in this country and it is important for us to enforce the laws but not to take the law into our hands.

The other aspect is that if people are killed or tortured, there is no way they will respect the wildlife as my colleague Sen. Billow has said. There must be ways of dealing with this so that people can appreciate the wildlife and benefit from it.

Again, there are pertinent issues that were raised by Sen. Billow on the aspect of the Board. That is a critical issue that KWS needs to deal with. As a country, we need to support that particular aspect.

Finally, I want to talk about the issue of the grass in the park. As my colleagues have said, sometimes the locals may not understand these laws. It is important for them to

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sensitize the communities around them. We need to understand these communities. As I said earlier, this has been done in other countries. We need to find ways of helping the communities also. Sometimes they are forced to graze in these parks because they have no option whatsoever especially when there is drought. We cannot close our eyes and say that “Keep the animals away from there.” We need to have ways of dealing with this because it is a problem that is affecting the communities and once they get in; it is a problem that affects the KWS. This is because they cannot be running up and down chasing members of the community from the park. We need to come up with a solution. The amendment is also really very critical because it is quite a while since amendment was made to this particular Act and it is important for us to have an Act that is in tandem with the Constitution.

Madam Temporary Speaker, finally, on the issue of the boundary between Isiolo and Meru, if I am not wrong, Sen. Murungi, there was a Motion that was brought before this House by Sen. Mutula Kilonzo Jnr. Land is a sensitive issue, so it is important if we use that platform to sort out the issues of Isiolo instead of us doing our own surveys.

Madam Temporary Speaker, I beg to move.

*(Question of the Motion as amended, put and agreed to)*

*Resolved Accordingly:-*

THAT, aware that the Fourth Schedule to the Constitution assigns the responsibility of protection of the environment and natural resources to the National Government;

ACKNOWLEDGING THAT Section 5 of the Wildlife (Conservation and Management) Act, 2013 mandates the Cabinet Secretary to formulate innovative measures for mitigating human wildlife conflict;

FURTHER ACKNOWLEDGING THAT Section 19 of the said Act empowers the County Wildlife Conservation and Compensation Committee to develop and implement, in collaboration with community wildlife associations, mechanisms for mitigation of human wildlife conflict;

AWARE THAT in the spirit of mutual co-existence, Section 75 of the Wildlife Conservation and Management Act, 2013 advocates for recognition of the rights and privileges of communities living adjacent to conservation and protected areas in decision-making and determination on the matter of conservation and management of the wildlife resource;

NOTING WITH CONCERN THAT human-wildlife conflict between the Kinna Community of Isiolo County and wildlife at Meru National Park has escalated over the years;

FURTHER NOTING WITH CONCERN THAT the above conflict has led to tension between the community and the Kenya Wildlife Service (KWS) which the community accuses of kidnapping, shooting, torturing, wounding and even killing members of the community;

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ALARMED about the latest alleged report that on 18th May, 2015 KWS rangers clashed with the Kinna Community demonstrators, shot and killed one demonstrator and wounded several others;

THE SENATE DIRECTS the Standing Committee on Land and Natural Resources and the Standing Committee on National Security and Foreign Relations to conduct a fact-finding mission regarding the conflict in the area with immediate effect and report back to the Senate within thirty days.

## BILLS

### *Second Reading*

#### THE PARLIAMENTARY SERVICE (AMENDMENT) BILL (SENATE BILL NO. 21 OF 2014)

*(Sen. Murungi on 5.5.2015)*

*(Resumption of Debate interrupted on 19.5.2015)*

**The Temporary Speaker** (Sen. Ongoro): This is a resumption of debate interrupted on Tuesday, 19<sup>th</sup> May, 2015. Sen. Muthama was on the Floor but he is not in the House and I see no requests. However, the Mover is in the House. Sen. Murungi, are you ready to reply?

**Sen. Murungi:** Yes I am, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): Very well. The Mover can reply.

**Sen. Murungi:** Thank you, Madam Temporary Speaker. I want to make a fairly short reply because this Bill has been extensively discussed and debated by Members of both sides of this House.

I take this opportunity to thank all the Hon. Senators who have given their tremendous support to this Bill during their contributions. It is very clear that the Senators want to have operational autonomy of the Senate. I think that we have also made it very clear that this Bill does not intend to change in any way either the structure or the composition of the Parliamentary Service Commission, which is a constitutional body. All that the Bill intends to do is to introduce some administrative changes and create division of labour for the Parliamentary Service Commission (PSC). The Bill intends to create two committees of the PSC; one committee to be in charge of the affairs of the National Assembly and the other of the affairs of the Senate.

Madam Temporary Speaker, the National Assembly Service Committee will be chaired, as the Bill makes it very clear, by the Speaker of the National Assembly and managed through the Clerk and the staff of the National Assembly. It will be in charge of the human resources and facilities to facilitate the Members of the National Assembly. The Senate Service Committee will be chaired by the Speaker of the Senate and managed by the Clerk and the staff of the Senate, who will be separated from the staff of the national Assembly.

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It is expected that once we clarify what the budget for Parliament is, the portion which is due to the Senate will be administered by the Senate Service Committee. It will be in charge of paying our mileage allowances, constituency offices, committees and many more. The same will be done by the National Assembly Service Committee for the Members of the National Assembly. This is going to increase the efficiency in the provision of services to both Houses of Parliament. It is also going to reduce some of the tensions that we see between the two Houses especially where the Members of the Senate feel that they have been shortchanged and that they have not been allocated proper offices in the counties, by equalizing them with the Members of the National Assembly and many other issues.

Madam Temporary Speaker, we do not expect our brothers in the National Assembly to raise any issues which would otherwise undermine this very important Bill. This is because it is also good for the National Assembly. As it is now, the Clerk of the National Assembly does not sit in the PSC. Similarly, the Speaker of the Senate does not sit in the PSC. Therefore, these two critical offices are left out of that very important Commission. However, through these administrative measures, we are going to bring the Clerk of the National Assembly to be fully in charge of the National Assembly. We shall also make our Speaker to be fully in charge of the Senate. So, we do not expect any disagreements on the contents of this Bill.

There is only one issue which has been raised and which we are going to address at the Committee Stage; membership of the two service committees. One, it has been proposed in the Bill that a Member of the National Assembly sits in the Senate Service Committee and similarly one Member the Senate to sit in the National Assembly Service Committee. I think that does not make sense and I agree with the Members who have pointed this out to me. This is because if it is a Senate Service Committee, then it has to be manned by the Senators. Members of the Parliamentary Service Commission who are Senators would be sitting in the Senate Service Commission. So, we are not duplicating their role. We are going to recognise their services fully. Similarly, Members of the Parliamentary Service Commission of the National Assembly would sit in the National Assembly Service Committee. So, no Member of the Senate is going to sit in the National Assembly Service Committee and vice versa. We are going to remove the tensions that may arise as a result of that provision during the Committee Stage.

Madam Temporary Speaker, as I said, the Bill received tremendous support from all the Members. I want to thank them for their efforts in strengthening the Senate. This taken along with what we discussed today about enhancing our oversight role under Article 96 through the Kshs1 billion fund, I think the Senate is going to be a different place. I want to thank Members because the Senate being the apex institution of devolution in this country needs to manage its affairs in a very effective and efficient manner which this particular Bill intends to bring.

With those few remarks, I beg to move.

**The Temporary Speaker** (Sen. Ongoro): Senator, you are aware that the next step is voting and we do not have the numbers. Are you going to make a special request?

**Sen. Murungi:** Thank you, Madam Temporary Speaker, for drawing my attention to that.

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I would like to make a request under Standing Order No.54(3) to defer the putting of the Question on this Bill to Tuesday next week when the situation in the House would have changed and we can vote for it on that day.

**The Temporary Speaker** (Sen. Ongoro): That is in order. We will defer it until Tuesday next week at 2.30 p.m.

*(Putting of the Question on Voting deferred)*

*Second Reading*

THE REPRODUCTIVE HEALTHCARE BILL (SENATE BILL NO.17 OF 2014)

**The Temporary Speaker** (Sen. Ongoro): Sen. Sijeny, the last time you were on the Floor you had some minutes remaining.

**Sen. Sijeny:** Madam Temporary Speaker, I wish to continue. I had already engaged to some extent last time. As I had said before, the gist of this matter is to ensure that this issue of having high maternal and infant mortality rate to be a thing of the past. Kenya is at a stage where we are reviewing laws. The Millennium Development Goals (MDGs), Vision 2030 and maternal and infant healthcare is very paramount. All over the world, the reproductive healthcare is an issue which has to be determined. Why are we losing lives? There are many reasons: One of them is the so-called unsafe abortion. This is a major killer for women and young girls. Unless we handle this, we cannot succeed. We must have this law, passed and implemented to the latter to ensure that these women; young and old, within the reproductive age, who happen to find themselves in this ugly situation are saved.

This Bill, having consulted widely, starts with the words “termination of pregnancy on demand is not permitted unless as provided under this Act.”

**The Temporary Speaker** (Sen. Ongoro): Order, Senator. I will use the provisions of Standing Order No.30 and make a ruling that for the convenience of the House, I think it is in the interest of the House, to allow Sen. Sijeny the five remaining minutes to conclude her submission so that we can move to the next stage of the Bill. So, you have five minutes.

**Sen. Sijeny:** Thank you, Madam Temporary Speaker, most obliged. Various researches have been conducted both at the national and international level. I have some reports on incidences and complications of unsafe abortion in Kenya conducted by the Ministry of Health. The Republic of Kenya has also done some research on women’s lives matters including preventing unsafe abortion in Kenya. I also have various reports which I wish to table. I have another one by the World Health Organisation giving statistics on the rate at which women are dying and the causes. One of the major reasons is unsafe abortion. There is no way of providing health services to them because they do not get proper health facilities or services. Therefore, the recommendation is that there is need for legislation to ensure that the medical practitioners are able to treat women and young ladies. This also ensures that the women protect themselves. I wish to table.

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*(Sen. Sijeny laid the documents on the Table)*

Madam Temporary Speaker, the Government of Kenya has also done a lot. They have come up with standards and guidelines for reducing morbidity and mortality for unsafe abortion in Kenya. This is the report of the Ministry of Health in September, 2012. I know things have changed and especially after I tabled this Bill. There is a lot which has been done within the medical fraternity. I also wish to table this report.

*(Sen. Sijency laid the documents on the Table)*

Madam Temporary Speaker, the Bill is harmonized with the Constitution of Kenya and it does not violate any law. It only states the circumstances when termination of pregnancy is allowed. Termination does not necessarily mean abortion. When the life of a woman is in danger and there is existence of an emergency, you can terminate and save both the mother and the child. It is only that you should not allow them to reach these dangerous situations. You will find that complications do arise especially with the young girls who due to obstructed labour and many other things are not able to deliver properly. The Bill gives these instances when it can be done and who can do it. These include medical practitioners and their kind of training. It should be adequate so that they can protect the lives of Kenyans.

Madam Temporary Speaker, the Bills talks about health facilities. This is to ensure that Kenyans get quality healthcare services and are able to access proper medical practitioners who are well-trained and provided with all the important resources that they may need.

Research was conducted by the Kenya National Commission on Human Rights (KNCHR) on the realizing sexual and reproductive health rights in Kenya: Is it a myth or a reality. What we are saying is that it has to be a reality and once this Bill is passed, it will enable Kenyans to access quality healthcare facilities. They will also be able to access health institutions like Level 5 in every county. There will be enough ambulances and the hospitals will be well equipped, that is, once this Bill is enacted. This research was carried out extensively and it will help Kenyans achieve this dream. It will no longer be a myth. This is a report which was conducted in April, 2012 and it clearly states the gaps. I also wish to table this report.

Madam Temporary Speaker, there is the issue of the adolescents and confidentiality. Confidentiality must be maintained. The issue of adolescents brought an uproar. We have adolescent friendly reproductive healthcare centres which exist in the Kenyatta National Hospital (KNH) and others. The Government has provided many policy documents regarding adolescent pregnancies. The only advantage we have so far, the person who is going to second my Bill, Sen. (Prof.) Anyang'-Nyong'o, was once the Minister for Medical Services and who approved the adolescent care policy. I also wish to table the policy reports by the Ministry of Health.

*(Sen. Sijeny laid the documents on the Table)*

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I have defined what friendly reproductive healthcare services are in adolescents. They are services which will ensure that mentorship is provided to the youth, moral and spiritual guidance, counseling against early sexual intercourse before marriage, abuse of drugs and so on. They will learn the skills of becoming adults or generally how to survive. You mentor them and nurture their talents so that they are able to survive on their own. What the Bill encourages is to ensure that these young Kenyans grow without being over-dependent on the white-collar jobs.

Madam Temporary Speaker, as the Government is concentrating on the National Youth Service (NYS), that is, adults from 18 years and above, there is a constituency of adolescents who should not be left out. It is not a place where they are going to be provided with condoms or such things because it is not there place. We want them to forget and delay because abstinence has never killed anyone and we are telling them that the right time will come when they are able to take care of their actions and deal with the aftermath. As of now, we want them to concentrate on their studies and become good citizens.

**The Temporary Speaker** (Sen. Ongoro): You need to conclude in one minute.

**Sen. Sijeny:** Madam Temporary Speaker, I have also looked at adolescent reproductive healthcare development policy which was done sometime in 2003. There was an implementation assessment report done by the Ministry of Health together with other sponsors. This was done in May, 2013 and it shows that what I am talking about is real and not imagined. It just needs to be improved. I wish to table both the policy and the assessment report.

*(Sen. Sijeny laid the documents on the Table)*

Madam Temporary Speaker, I have based my research on the adolescents from Nandi, Samburu and Busia. These are reports conducted by various institutions that support the fact that these children have been exposed to a lot of suffering. There is also a study done in Korogocho. These reports will be useful for this Bill.

Madam Temporary Speaker, I had indicated about the tribunal but after a lot of consultation and consideration, the tribunal shall be deleted in this Bill because the medical practitioners have given me feedback that they have enough institutions which can handle any disputes according to the law.

I wish to state that if this Bill is implemented, it is the best for this country. The adolescent deals with wholistic health and economic issues. We know that a healthy nation is a wealthy nation. We cannot address the issues as to why people die without addressing this particular group and without taking care of the health of the people.

With those few remarks, I beg to move that the Reproductive Healthcare Bill (Senate Bill No.17 of 2014) be read a Second Time.

**The Temporary Speaker** (Sen. Ongoro): When it is next on the Order Paper, it will be time for Sen. (Prof.) Anyang' -Nyong'o to second.

## ADJOURNMENT

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**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, it is now time to interrupt the business of the Senate. The Senate, therefore, stands adjourned until Tuesday, 26<sup>th</sup> May, 2015 at 2.30 p.m.

The Senate rose at 6.40 p.m.