

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 29th July, 2015

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

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

PRAYERS

PETITION

ALLEGED LOSS OF RESOURCES THROUGH
BONYEZA USHINDE NA SAFARICOM
PROMOTIONAL LOTTERY

Sen. Mbura: Mr. Speaker, Sir, this afternoon, I have a petition, under the Constitution of Kenya Articles No.1, 2, 3, 42, 10, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 40, 43, 46, 47, 238 and 119 as read with Articles 93, 94 and 96.

This is a petition for the protection of the people and of the economy of the Republic of Kenya from unfair and detrimental activities of the foreign controlled mobile telephony operator, Safaricom Limited.

The undersigned is a citizen of the Republic of Kenya who is a taxpayer struggling to make ends meet and who has lost money to Safaricom Limited;

Concerned that some activities of Safaricom Limited are detrimental to the wellbeing of the Kenyan people and of the Kenyan economy, draw the attention of the honourable Senate to the following.

(1) THAT, I am a struggling poor person who was misled through a vicious media campaign by Safaricom Limited to believe that I could solve all my monetary problems and become an instant millionaire by participating in Safaricom's lottery branded variously as *Bonyeza Ushinde na Safaricom*.

(2) THAT, the lottery is most attractive to the struggling poor who are its main victims in their vain hope of putting all their hardships behind them by becoming instant millionaires.

(3) THAT, most recently, for a period of 64 days, starting 7th August to 5th October, 2014 and, again, for another period of 60 days from 7th November, 2014 to 5th

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January, 2015, the mobile telephony operator disguised a lottery for private gain as a promotion designed to reward participating subscribers with cash and other prizes.

(4) THAT, to enter the promotion, subscribers were required to send their names via SMS to code 29555. They would then accumulate points by answering simple multiple choice questions that require no skill to answer.

(5) THAT, these points were used in a draw to pick the daily, weekly and grand prize winners.

(6) THAT, each SMS sent to the 29555 code was billed at cash Kshs5.

(7) THAT, the points were allegedly awarded as follows; 100 points upon registration, 100 points for every correct response, 50 points for an invalid response which was neither "a" nor "b", 1,000 points for every 10,000 threshold points reached, for instance, at reaching 10,000, 20,000 and so on.

(8) THAT, the prizes were alleged to be as follows:

(a) grand prize, Kshs5 million and an Isuzu TFR, single cabin pick up;

(b) daily winners of cash would get Kshs1 million,

(c) that there would be 18,000 winners of Kshs1,000 each.

(d) That there would be 1,000 winners of cash Kshs100 Safaricom airtime.

(9) I have never been a gambler all my life and would not have gambled my hard earned money had Safaricom Limited not tempted me through media campaigns.

(10) The Lottery misled me into believing that winning chances increase the more time I *bonyeza* resulting in throwing away my hard earned money.

(11) There was no civic education conducted by Safaricom Limited to prepare the public of their own onslaught that does not spare children.

(12) The lottery is turning Kenya into a country of gamblers.

(13) Contrary to the Betting, Lotteries and Gaming Act, Cap 131 revised edition 2012, 1991;

(a) The Lottery is not restricted to designated places and has turned mobile phones and households into unlicensed and readily accessible gaming premises.

(b) The Lottery has turned our mobile phones into instruments, machines, contrivances or tools for hooking unsuspecting people, including children into gambling.

(c) The Lottery does not provide a statement of accounts for the participating public to know how much money has been raised.

(d) The lottery does not display its license or permit in an area where the grassroots masses that it targets can access hence there is no way of knowing whether it is a legitimate or authorized lottery or not.

(e) The lottery does not protect or shield children from gaming.

(f) The lottery spams mobile handsets or subscribers to Safaricom's telephony services with messages enticing them to participate in the scam.

(g) Safaricom Limited is not registered as a body, corporate under any law for purposes of promoting lotteries.

(14) Safaricom Limited sends out 10 questions daily to each player amounting to Kshs50 per registered mobile number.

(15) If any conservative figure of one million gamblers out of the many millions of Safaricom subscribers played the lottery per day, a colossal sum of Kshs50 million would accrue to Safaricom in a day raking-in some gross Kshs3 billion in the 60 days that each phase of the lottery lasts.

(16) THAT, in contrast to the huge earnings by Safaricom, the prizes offered to the brainwashed and exploited poor Kenyans do not amount to much although they are very attractive to the desperate struggling and deprived Kenyans who are the lotteries main target group and catchment class.

(17) THAT, the lottery is not being run for charitable purposes whereas the law requires that a specified proportion of greater than 25 per centum but not more than 45 per centum of the gross proceeds is devoted to the object for which the lottery is promoted.

(18) THAT, there is a direct correlation between the cash crunch being experienced in Kenya today with the vast amount of money which Safaricom Limited has mopped up and repatriated from the Kenyan economy.

(19) THAT, since the money is repatriated in hard currencies there is also a direct correlation of the removal of the money from the Kenyan economy with the fall in value of the Kenyan Shilling against the US Dollar, the Euro and the Sterling Pound.

(20) THAT, in a related development, Safaricom is promoting the emergence of a cashless economy through its *Lipa Na Mpesa* and similar campaigns.

(21) The cashless payment systems are mopping up money from circulation in the economy and concentrating it in one place under the control of Safaricom.

(22) Within a short time, the foreign controlled Safaricom will be in the all powerful position where it can hold the Kenyan economy hostage.

(23) The time has come for the Government of Kenya to intervene and save both the Kenyan people and the Kenyan economy from imminent calamity.

(24) THAT, my attempt to get relief from the communication authority, the competition authority and the Betting Control Board has been unfruitful.

(25) None of the issues raised in this petition are pending in any court of law, constitutional or any other legal body.

Therefore, your humble petitioner prays that the honourable Senate of the Republic of Kenya urgently inquires into the matter demanding all disclosures with a view of holding Safaricom accountable for its unfair, detrimental practices and activities which are crippling both the people and the economy of the Republic of Kenya.

Thank you.

The Speaker (Hon. Ethuro): Hon. Senators, pursuant to Standing Order No.226, I could allow comments, observations or clarifications in relation to the petition for not more than 30 minutes. I hope we will take less time.

In the absence of comments or observations, I have reviewed the petition as presented by the Senator and note that it raises a number of important issues for consideration by the Senate. These include:

(1) The appropriate regulatory framework for Gaming Controlling and Licensing in the Country and the need to reform the same to address new medium of gaming such as mobile phones which are now found in almost every household in the country.

(2) There is need for sufficient public education on gaming and lotteries and the effects on members of the public participating in the same.

(3) The need for full disclosure of the monies raised in such lotteries and how the same are applied; and,

(4) The impact on the Kenyan economy of public lotteries, particularly if (this is for the Committee to investigate) the proceeds thereon are repatriated out of the country.

I am also alive, hon. Senators, to the fact that under the Fourth Schedule of the Constitution of Kenya, the regulation of betting, casinos and other forms of gambling is now a devolved function. It may, therefore, be time for the Senate to consider coming up with an appropriate framework both for the national and county levels for the regulation of this important industry.

I, therefore, direct that the petition be committed to the Standing Committee on Legal Affairs and Human Rights, to consider the same and in terms of Standing Order No.227(2) to respond to the petitioner in not more than 60 days by way of a report addressed to the petitioner and laid on the Table of the Senate.

Sen. (Prof.) Lesan: On a point of order, Mr. Speaker, Sir. From the foregoing of the petition, I noticed the implication of the significance of information technology. With your indulgence, I thought that the Committee on ICT is involved as well.

Sen. Sang: Mr. Speaker, Sir, on behalf of the Legal Affairs Committee and Human Rights, I want to agree with Sen. (Prof.) Lesan. As we have always done, we can always have one Committee leading the process. However, in the process of consideration of the petition, we will definitely involve the Committee on ICT. Therefore, we should have some good working synergy like we have always done with regard to other petitions.

PAPERS LAID

Sen. Sijeny: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Wednesday, 29th July, 2015.

REPORT OF THE ROADS COMMITTEE ON BENCHMARKING VISIT TO TURKEY

Report of the Standing Committee on Roads and Transportation on a benchmarking visit to Turkey between 29th May and 4th June, 2015; and,

REPORT OF THE ROADS COMMITTEE ON BENCHMARKING VISIT TO LAMU AND NAKURU COUNTIES

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A report of the Standing Committee on Roads and Transportation on visits to Lamu and Nakuru counties between 14th to 17th May, 2015 and 8th to 10th June, 2015 respectively.

(Sen. Sijeny laid the documents on the Table)

REPORTS OF THE CPAIC ON THE VISIT TO
UASIN GISHU AND TAITA-TAVETA COUNTIES

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the House today, Wednesday 29th July, 2015:-

Report of the Senate Sessional Committee on County Public Accounts and Investments on the county visit to Uasin Gishu County from 21st to 22nd May, 2015.

Report of the Sessional Committee on County Public Accounts and Investments on the county visit to the Taita-Taveta County from 22nd to 24th March, 2015.

(Sen. (Dr.) Khalwale laid the documents on the Table)

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir. Through you, may I, please, request that Sen. Khalwale, the Chairperson of the County Public Accounts and Investments Committee gives us an indication of when we will get all these audited accounts because we are getting them piecemeal? We need to get a way forward on how we are going to deal with the audited accounts of counties.

The report for Murang'a County Government has not yet come and I can see that the reports are coming one by one. Even as he tables them, he has not indicated how his Committee will deal with them and how the individual Senator for each county is expected to be involved as pertains to the audited accounts of their specific counties.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, it is true that I had addressed myself to the first aspect of the particular question that the Deputy Speaker is asking. I want to stand with my answer at that. I am satisfied that the Auditor-General is doing so in his power to ensure that these reports come here timeously.

Mr. Speaker, Sir, as for the second aspect, we, as a Committee, have agreed that starting from today we will expeditiously deal with these accounts. We have moved away from what used to happen in the National Assembly; that is, considering all reports of all the Ministries by the Auditor-General and then tabling them in one report.

I want to report to the House that we have adopted a system that will make quick returns. When a county government comes, we will deal with it hopefully within three days and, at the end of three days, we write a report for that particular county government with recommendations and bring it to this House to adopt. So, we will deal with both the executive and assemblies.

Mr. Speaker, Sir, further to this, thanks to the recess that might start tomorrow, we will be working on Tuesdays, Wednesday and Thursdays, morning and afternoon.

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Hopefully, we will deal with them such that by the time we come back, now the House will just be dealing with adoption of those reports.

Thank you, Mr. Speaker, Sir.

REPORT ON THE SECURITY SITUATION IN MANDERA,
LAIKIPIA AND KAPEDO

Sen. Haji: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Wednesday 29th July, 2015:-

Report on the assessment of security situation in Mandera County, Laikipia County and Kapedo (Border town of Turkana and Baringo Counties) conducted between 19th January and 5th February, 2015.

(Sen. Haji laid the document on the Table)

Sen. Kanainza: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Wednesday 29th July, 2015:-

REPORT OF IMPLEMENTATION COMMITTEE ON VISIT TO MOMBASA,
KILIFI AND KWALE COUNTIES

Report of the Senate Sessional Committee on Implementation on the Visit to Mombasa, Kilifi and Kwale Counties to follow up on the resolution to support the Coconut industry.

REPORT OF THE IMPLEMENTATION COMMITTEE
ON VISITS TO SIAYA, KISUMU, KAKAMEGA AND
BUNGOMA COUNTIES

Report of the Senate Sessional Committee on Implementation on its county oversight and engagement visits to Siaya, Kisumu, Kakamega and Bungoma Counties from 19th to 22nd March, 2015.

(Sen. Kanainza laid the documents on the Table)

NOTICES OF MOTIONS

Sen. Sijeny: Mr. Speaker, Sir, I beg to give notices of the following Motions:-

ADOPTION OF REPORT OF THE ROADS COMMITTEE
ON BENCHMARKING VISIT TO TURKEY

THAT, this House adopts the report of the Standing Committee on Roads and Transportation on a benchmarking visit to Turkey between 29th May to 4th June, 2015 laid on the Table of the House on Tuesday 28th July, 2015.

ADOPTION OF REPORT OF THE ROADS COMMITTEE
ON VISIT TO LAMU AND NAKURU COUNTIES

THAT, this House adopts the Report of the Standing Committee on Roads and Transportation on visits to Lamu and Nakuru Counties laid on the Table of the House on Tuesday, 28th July, 2015.

Sen. Kanainza: Mr. Speaker, Sir, I beg to give notices of the following Motions:-

ADOPTION OF REPORT OF THE IMPLEMENTATION COMMITTEE ON THE VISIT TO
MOMBASA, KILIFI AND KWALE

THAT, this House adopts the Report of the Sessional Committee on Implementation on its visit to Mombasa, Kilifi and Kwale counties to follow up on the resolution of the House to support the Coconut Industry, undertaken between 25th to 28th April, 2015, laid on the Table of the House today, Wednesday, 29th July, 2015.

ADOPTION OF REPORT OF THE IMPLEMENTATION
COMMITTEE ON VISITS TO SIA YA, KISUMU,
KAKAMEGA AND BUNGOMA COUNTIES

THAT, this House adopts the Report of the Sessional Committee on Implementation on its county oversight and engagement visits to Siaya, Kisumu, Kakamega and Bungoma counties between 19th to 22nd March, 2015, laid on the Table of the House today, Wednesday 29th July, 2015.

STATEMENTS

RESUMPTION OF PROPERTY DEVELOPMENT AT THE JUNCTION
OF LORESHO RIDGE ROAD AND LOWER KABETE ROAD

Sen. Kembi-Gitura: Mr. Speaker, Sir, I rise under Standing Order No.45(2)(b) to seek a Statement---

(Loud consultations)

Sen. Obure: On a point of order, Mr. Speaker, Sir. Did you notice that we have enjoyed relative peace until the Senator for Elgeyo-Marakwet arrived?

The Speaker (Hon. Ethuro): I cannot agree more. Senator for Elgeyo-Marakwet, your presence has been noticed both by your neighbour, who was transacting some serious business and also across the divide. Please, hold your peace.

Sen. Kembi-Gitura: Mr. Speaker, Sir, I appreciate very much. The place was very peaceful before Sen. Murkomen walked in.

Mr. Speaker, Sir, I rise under Standing Order No.45 (2)(b) to seek a Statement from the Chairman of the Standing Committee on Land and Natural Resources regarding the resumed and now ongoing property development at the junction of Loresho Ridge Road and Lower Kabete Road on both sides of the river, near the Spring Valley Police Station.

In addressing the matter, the Chairman should:-

(1) Explain why the Nairobi City County has allowed the development to resume on this piece of land, which is riparian, which development had been stopped by the authorities following the intervention of Prof. Wangari Maathai, the late Nobel Prize Laureate. What circumstances have changed leading to the authorization, indeed one exists, for the resumption of the development.

(2) Give the name of the developer and date on which he acquired the title over the said piece of land, from whom and at what consideration.

(3) Produce documents on the current ownership of the said piece of land.

The Speaker (Hon. Ethuro): Where is the Chair of the Committee? Sen. Obure, now I can understand why you wanted to follow the debate in the House.

Sen. Obure: Mr. Speaker, Sir that is a very important request relating to a matter of great and national importance, especially for the residents of Nairobi. Our Committee will raise this matter and we intend to bring our response to the statement in the first week after recess.

The Speaker (Hon. Ethuro): It is so ordered, the first Tuesday.

SELECTION AND PLACEMENT OF STUDENTS TO MEDICAL TRAINING INSTITUTIONS

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I rise under Standing Order 45 (2) to seek a statement from the Standing Committee on Health regarding the selection and placement of students to medical training institutions in the country. In the Statement the Chairperson should:-

(1) Explain whether the Government is aware that the Kenya Universities and Colleges Central Placement Services (KUCCPS) selected and placed students in the various medical training centres in the country.

(2) Further explain whether the Government is aware that the Kenya Medical Training College (KMTC) also selected applicants and has since issued admission letters to the students selected by the college.

(3) Explain the fate of the students who were selected by the KUCCPS and have no admission letters to any of the medical training colleges.

COST OF FERTILIZER FOR TEA FARMERS

Mr. Speaker, Sir, I also rise pursuant to Standing Order 45(2)(b) to seek a statement from the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries on the cost of fertilizer for tea farmers.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. The hon. Senator has sought a statement from a Committee of this House. However, you have not yet ruled on that matter. He moved---

The Speaker (Hon. Ethuro): Order, Senator! Resume your seat. If I had moved to another Member then you should have raised that matter. He requested to issue the second one. My understanding is that I will deal with him after he has exhausted all his business.

Proceed, Senator.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, in the statement, the Chairperson should explain the following:

(1) Whether the Government can give an assurance of the availability of subsidized fertilizers to tea farmers.

(2) State the cost of a 50 kilogramme bag of fertilizer in each of the tea growing zones.

(3) Indicate the level of Government subsidy per 50 kilogramme bag of fertilizer.

(4) Explain the role of Chai Trading Company Limited in the importation, transportation and distribution of the said fertilizer, including the levies charged.

(5) Whether the Government is considering waiving the cost of handling storage and other charges levied on the fertilizer so as to ease the financial burden on tea farmers.

Sen. (Dr.) Machage: Mr. Speaker, Sir, my concern was that the hon. Senator---

The Speaker (Hon. Ethuro): Just proceed to respond.

Sen. (Dr.) Machage: Mr. Speaker, Sir that is what I am doing. The hon. Senator had sought a statement on admission of students to colleges. Would it not have been in order to direct that statement to the Committee on Education rather than the Committee on Health?

The Speaker (Hon. Ethuro): Sen. Sang, where does the Kenya Medical Training College (KMTC) fall?

An hon. Senator: Committee on Health

The Speaker (Hon. Ethuro): I have heard; it falls under the Committee on Health.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, the reason I am raising this question is the confusion caused by the fact that the placement of students to various colleges in this country is under the Ministry of Education, Science and Technology. However, the admission of students to KMTC is under the Ministry of Health. The Acts that permit them to work are contradictory. That is why I sought some clarification.

The Speaker (Hon. Ethuro): For now, KMTC is under the Ministry of Health. Therefore, it will go to your Committee. The Vice Chairperson is in the House and should take note.

Proceed, Sen. Kittony.

What is it, Sen. (Prof.) Lesan?

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I sought two statements. One from the Chairperson of the Committee on Agriculture, Livestock and Fisheries---

The Speaker (Hon. Ethuro): Order! I am restraining myself.

Proceed, Sen. Kittony.

Sen. Kittony: Mr. Speaker, Sir, yes, it would be prudent for my Committee to consider that statement and get back to this House.

The Speaker (Hon. Ethuro): It is so directed. The statement will be issued in two weeks' time.

Sen. Kittony: Mr. Speaker, Sir, most obliged.

The Speaker (Hon. Ethuro): Proceed, Chairperson of the Committee on Agriculture, Livestock and Fisheries.

What is it, Sen. Obure?

Sen. Obure: Mr. Speaker, Sir, with your indulgence, I wish to remind the Chairperson before he responds that the statement sought by my neighbour, the Senator for Bomet---

The Speaker (Hon. Ethuro): Order, Sen. Obure! Let the Chairperson respond. I will allow you to do what you want to do. Why are you anticipating the response from the Chairperson?

Proceed, Chairperson.

Sen. Ndiema: Mr. Speaker, Sir, I will respond in two weeks' time.

Sen. (Prof.) Lesan sought another statement. With your permission, I do not know whether he is ready to receive it today.

The Speaker (Hon. Ethuro): We will come to that at the appropriate time.

Proceed, Sen. Obure.

Sen. Obure: Mr. Speaker, Sir, the statement sought by the Senator for Bomet is important and of great interest to tea farmers all over the country. In addition to the information sought, I request the Chairperson of the Committee on Agriculture, Livestock and Fisheries to specifically respond by giving the advantage or whatever benefits being conferred to tea farmers now under the new arrangement compared to the previous one in which the Kenya Tea Development Authority (KTDA) imported fertilizer and distributed it to farmers.

The Speaker (Hon. Ethuro): I am sure that the Chairperson of the Committee on Agriculture, Livestock and Fisheries has heard Sen. Obure.

Let me see which statements are listed so that we give them priority.

Let us proceed with Statement (a).

RAMPANT CASES OF CHILD SEXUAL ABUSE BY
TEACHERS IN KENYAN SCHOOLS

Sen. Karaba: Mr. Speaker, Sir, I have a statement to issue pursuant to Standing Order No.208(3) and the Second Schedule of the Senate Standing Orders. The Committee is mandated to consider all matters related to education and training.

Pursuant to this provision, on Wednesday 1st July, 2015, Sen. Nabwala requested for a statement from the Chairperson of the Standing Committee on Education regarding the rampant cases of child abuse by teachers in Kenyan schools. The Senator requested responses to the following:

(1) Explain whether the Cabinet Secretary of the Ministry of Education, Science and Technology is aware of the ever increasing incidents of sexual abuse and child molestation by teachers and the reasons for such escalation.

(2) Provide details of such cases which have been reported to the Ministry or other agencies in the last five years, indicating the actions taken in each case.

(3) Confirm that some of the cases have been settled out of court and what the Ministry has done in such instances to ensure that those involved are apprehended and disciplined accordingly.

(4) Explain the measures taken by the Ministry to ensure the menace of sexual offences against students in schools is completely eradicated.

I beg to reply as follows:

(1) I am fully aware of the incidents of abuse and molestation of pupils and students by some of their teachers which have been reported through electronic and print media.

It is unfortunate that these heinous and barbaric acts are being perpetrated by the very persons entrusted with the care of the same children they are molesting. Apparently, most if not all cases of child molestation are never reported to the Ministry directly, maybe because of the nature of the crime requiring immediate action. Most are either reported to school heads where the learners go to school, the children's department or directly to law enforcing agencies for action.

However, the Ministry has consulted with the Teachers Service Commission (TSC) on the subject matter and established that though the reports have continued to feature in the media, incidents of child molestation has shown a decline in the data collected for 2014/2015 from the numbers reported in 2013/2014. This is informed by the measures taken by the schools management, parents, guardians and law abiding citizens where the perpetrators have been reported to law enforces, arraigned in court and charged; deterring many would be perpetrators from making such moves.

The Ministry, in its circulars to schools has and will continue to stress on the need for every head teacher to ensure that the learning environment is made secure and conducive for the children. Anyone found violating the rules, including the teachers, will be disciplined accordingly, including being jailed if not dismissed from the service.

(2) A copy of the data compiled by the TSC, being the custodian of data provided by the schools on cases of teachers reported to have abused and molested learners for the

last five years is attached. However, the list may not be exhaustive given that only those cases that were reported were recorded.

(3) Apparently cases settled out of court, if any, are never brought to the attention of the Ministry. The need to settle such a matter out of court is primarily an arrangement between the culprit and the parent or guardian of the child who was abused. The Ministry has further consulted with the TSC on the subject matter and established that so far, none of the cases reported to them has been settled out of court. However, disciplinary measures have been instituted against those teachers proved guilty to have committed the offences of child abuse within the prevailing laws and regulations governing the conduct and behaviour of teachers and the matrix of cases is also given. I will release the table.

(4) The Ministry has put in place the following measures to ensure that offences against pupils and students in schools are eradicated and disciplinary measures taken against those involved.

(a) Section 36(1) and (2) of the Basic Education Act, 2013 shields learners against torture and cruel, inhuman or degrading treatment or punishment in any manner whether physical or psychological. Abuse and molestation of pupils and students is, therefore, punishable under the law in addition to other disciplinary measures that can be instituted against culprits administratively. This reinforces TSC Circular Letter No.3 of 2010 which issued clear instructions to all schools with regard to sexual abuse to pupils and students by teachers or any other employee working in the institution of learning. A copy of the circular is hereby attached.

There is some data here. It is not long. Between 2010 and 2011, 163 cases were reported. Out of this, 60 cases were terminated and deregistered, 45 cases were terminated and 53 teachers were suspended for a period of one to six months. Three were warned and two were revoked.

In 2011/2012, 133 cases were reported, 65 cases were terminated and deregistered, 40 were terminated, 26 were suspended for a period of one to six months, one was warned and one revoked.

In 2012/2013, 92 cases were reported. Out of this, 44 cases were terminated and deregistered, 26 were terminated, 19 were suspended for one to six months, one was warned and two were revoked. In the year 2013/2014, 38 cases were terminated and deregistered; 30 cases were terminated, 25 were suspended for a period of one to six months, three cases won and there are some eight pending cases.

In 2014/2015, 98 cases were reported, 14 were dismissed and deregistered, five were dismissed and five suspended for a period of one to six months.

We have four pending cases. The total number of cases that have been reported is 590. Out of this, 221 have been deregistered after they were dismissed; 146 cases have been terminated, 128 were suspended for a period of one to six months. Eight cases were won, five were revoked and 12 are pending.

Mr. Speaker, Sir, the TSC has sent several circulars. They have given the power to the county education boards. This is backed by the Boards of Management (BOM) in running the affairs of all schools.

Lastly, I would wish to inform the hon. Senators that the Ministry in collaboration with the TSC and other key stakeholders will continue to put in place appropriate measures that will deter, if not eradicate, abuse of pupils and students by teachers. This move will not be limited to schools alone. It must be appreciated that every child of tender age requires protection of all levels whether within or outside the school environment. Therefore, we shall endeavour to engage with other stakeholders and law enforcing agencies to ensure that the heinous vice of teachers and other individuals who engage children in sexual immorality are dealt with accordingly.

The Statement is signed by Prof. Kaimenyi, the Cabinet Secretary for the Ministry of Education.

Sen. Nabwala: Mr. Speaker, Sir, I am satisfied with the response. I am particularly impressed by the punishment which is given to the teachers who are molesting children.

Sen. Sijeny: Mr. Speaker, Sir, I need to comment on the answer. Personally, I am not satisfied even though I am not the one who asked the question. It is on record that the teachers are found guilty of molesting the children sexually. The Sexual Offences Act is clear. I do not see why transfers and deregistering and re-registering should be the punishment. The TSC should take the offence more seriously. They should give more serious punishment to the offenders which should work as a deterrent. Otherwise, they will be playing around with the children and endangering their lives knowing that they will be transferred or be deregistered and be registered later.

Sen. Elachi: Mr. Speaker, Sir, we know very well that a crime of rape or of molesting a child is a crime whose punishment has been stipulated very clearly in the Sexual Offences Act. We either do not take the teachers to court or we decide within the education sector. When President Obama was here, one of the things he really insisted on was that we must ensure we protect young girls. It is a pity that they are molested by teachers who are supposed to protect them. The Chairman should tell us the punishment that is being meted against these teachers. Are they being investigated?

Sen. Karaba: Mr. Speaker, Sir, it would be imperative to suggest that the answer that I have given was so little that the supplementary questions are covered in the answer. I stated that some teachers who were found guilty of offences in the TSC disciplinary committee were punished.

With regard to the question asked by the Chief Whip, I want to say that those who were found guilty had their services terminated while the others were arrested and taken to court or given warnings. There is a process. As we said earlier, reporting of such cases is sometimes difficult in some areas because some culprits can agree not to report the matter. That makes the TSC work very difficult.

However, the moment it is reported to the head or the management of the school, the management will always take the matter seriously. Once it is reported to the TSC, it has no way other than using the laws that have been made by legislators so as to make sure that such teachers are punished accordingly.

Sen. Sijeny: Mr. Speaker, Sir, even though the Chairman says that some teachers have been arrested, my bone of contention is, the time the teachers are being transferred

or deregistered, it means that they have been found guilty. What will be proper is to transfer or sack and apprehend the teachers and let legal action be taken against them. We know the definitions of the sexual offences. The teachers should go in for more than 20 years so that they stop molesting the children and the girl child.

Sen. Karaba: Mr. Speaker, Sir, it will be necessary to do so. As per TSC Act, the highest punishment for a crime which is found guilty is to sack.

The Speaker (Hon. Ethuro): Order, Chairman! I think you are missing the point made by the Senators who have contributed. The Parliament of the Republic of Kenya passed the Sexual Offences Act in 2006. It specified a number of offences and the sentences that apply. The TSC should do its bit, and then ask the other arms of Government to do their bit in terms of prosecution. Is it difficult for the TSC to recommend those cases to the other arms of Government to do the necessary?

Sen. Karaba: Mr. Chairman, Sir, the TSC would have done its bit. The other arms of Government enforcers will continue to do their bit. Consequently, if the same teacher is found guilty, particularly under the Children's Act, they can be jailed for the term stipulated in the Act.

Sen. Sijeny: Mr. Speaker, Sir, the Chairman ought to go back again and tell us the way forward of all the cases that they are referring to. Is it being referred to the State Law so that legal action can be taken? Transferring teachers is not enough. TSC cannot wash their hands away from this crime. It is serious and fatal. Children end up losing their lives because of the bad exposure.

(Sen. Karaba spoke off- record)

The Speaker (Hon. Ethuro): Give the Chairman of the Committee on Education a microphone.

Proceed, Chair.

Sen. Karaba: Mr. Speaker, Sir, the document I read was from the TSC itself. They have their own code of regulations which is contained in their own code.

The Speaker (Hon. Ethuro): Order, Chairman! Be relevant to the issues being sought. It is about criminal liability.

Sen. Karaba: Mr. Speaker, Sir, according to the Act and the Code of Regulations; that is the highest they can go in terms of meting out punishment to teachers who molest children. However, the other arms of Government can do their bit.

The Speaker (Hon. Ethuro): Order, Chairman. I direct that you respond to the issue of all those cases that have been given disciplinary measures by the TSC which confirms that they are reliable. How many of them have been prosecuted? That bit alone is what the House is asking from you.

Let us have a response to that, the first week when we resume.

I had already given the Floor to the Chairman of the Committee on Health to answer Statement 2(b).

OUTBREAK OF MALARIA IN THE WESTERN REGION

Sen. Kittony: Mr. Speaker, Sir, I rise to give a statement of the Committee on Health regarding the outbreak of malaria in western Kenya. At last, we have the response from the Ministry of Health. I am sure this will make the House happy.

The four counties in western Kenya are classified as malaria endemic zones, meaning that transmission of malaria occurs throughout the year. The malaria situation being experienced in the region is not an outbreak, but an upsurge of cases associated with environmental factors, including the long rains which have just ended. Below is the Ministry's position on the specific concerns of the Senate regarding the upsurge.

The Ministry together with the county governments from western region has taken the following measures to stop further spread of the disease:-

(a) Anti-malaria drugs have been availed to supplement existing stock for case management in the affected population. It is known that prompt and effective management in the affected population case management is necessary to reduce the burden and transmission of malaria.

(b) Over 330 Long Lasting Insecticide Nets (LLINs) have been distributed. The distribution continues. By the end of October 2015, nearly 2.8 million nets will have been distributed. This is in addition to the routine provision of bed nets at the maternal and child health outlets for under one year children and pregnant mothers.

(c) Following the upsurge, the Ministry released a team of experts to provide technical assistance to both the county and sub-county teams in the affected counties in order to build and strengthen county capacity to control disease. The Ministry, in collaboration, with other partners has enhanced public health awareness campaign through print and electronic media. The awareness campaigns focus on early diagnosis and treatment of malaria in order to curb transmission, accelerate treatment and prevent death.

Regarding the preventive actions taken by the Ministry to prevent outbreak of the same, in other parts of the country; strategic preventive interventions are the hallmark of malaria control. The Ministry, in collaboration with county governments and partners, has taken the following actions to prevent the spread of malaria in the country:

(1) In 2015, over five million of long lasting insecticide nets have been distributed to malaria endemic and epidemic prone counties. An additional, 8.6 million will be distributed to the targeted regions which include western Kenya before the end of the year. These nets complement other routinely distributed nets to children under one year and pregnant women in maternal health child outlets in endemic counties.

(2) The Ministry has distributed over 11 million doses of Artemether-Lumefantrine(AL) medicines countrywide and other medicines for the management of common malaria infections as well as 600,000 doses of Artesunate injection for the management of severe malaria. This intervention is informed by the knowledge that prompt and effective treatment of malaria reduces severe malaria, prevents death and reduces transmission significantly.

(3) The Ministry has trained over 10,000 health care providers in the management of malaria countrywide, while 23 county malaria coordinators have so far undergone a malariology course to further enhance their capacity and ability to coordinate malaria control activities. Funds are available to train malaria coordinators in the remaining 24 counties by December, 2015;

(4) The Ministry, in collaboration with the development partners, has continued to provide appropriate information to the public through print and electronic media. In addition, interpersonal communication between health workers and the population routinely takes place under the community health strategy focusing on disease prevention and control.

(5) The Ministry, in collaboration with the counties, has continued to build and strengthen surveillance skills and knowledge among health care workers through appropriate trainings. This is premised on the knowledge that the ability and the capacity to detect and respond to the disease outbreak is of public health importance - including malaria - and is critical to disease prevention and control. So far, health workers from 16 counties have undergone intensive surveillance training and health personnel in the remaining counties will be trained by December, 2015;

(6) The Ministry has continued to receive weekly surveillance reports from all the counties across the country.

Mr. Speaker, Sir, regarding the level of coordination between county governments and the Ministry of Health in diseases prevention, although the Constitution of Kenya, 2010, has assigned the health function to both the national and county governments, it has also provided mechanisms for the coordination of health issues through the intergovernmental forum for health.

In addition, counties have established disease based coordination structures that work closely with national health programmes in disease prevention and control. Through these structures, counties are able to quickly detect, report and respond to diseases of public health importance.

HEALTH STATUS OF CHILDREN MISHANDLED BY MEDICAL STAFF IN BUSIA COUNTY

Mr. Speaker, Sir, in respect to the medical status of children in Busia who suffered after they were administered with malaria drug, following media reports that 24 children developed partial paralysis after injection in Busia, the Ministry sent a multidisciplinary team of experts to investigate the occurrence on 16th July, 2015. In collaboration with county health personnel, the team was able to find and clinically assess 21 of the affected children.

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

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. Have you realized that the Vice-Chairperson has read this statement for over 15 minutes? How long should a statement be? Can it be briefer than that?

The Speaker (Hon. Ethuro): Please, conclude Vice-Chairperson.

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Sen. Kittony: Mr. Speaker, Sir, this is a Statement written by the Cabinet Secretary for Health. I will not stop reading it because it is long.

The Speaker (Hon. Ethuro): Vice-Chairperson, how many more pages do you have to go?

Sen. Kittony: Mr. Speaker, Sir, I am almost concluding. However, this is a statement written by the Cabinet Secretary. It is in the interest of the country to know the situation of malaria as it was asked. Therefore, I cannot stop it.

The Speaker (Hon. Ethuro): Order, Senator! I understand you, but I have to remind you to summarize.

Sen. Kittony: Mr. Speaker, Sir, the team established that each of the affected children had previously received intramuscular injection in one of the four different health facilities in the county; Akichelesit Dispensary, Ang'urai Health Centre, Moding Health Centre and St. Mary's Chelelemu Mission Hospital, since December 2014.

An assessment and management centre has been established at Akichelesit Dispensary for further assessment and regular follow up of the affected children for historical observations. It is known that a significant proportion of the people who receive post injection traumatic nerve neuritis recover from the condition. All the children have been put on appropriate rehabilitation through psycho physiotherapy in an established centre. The eight children with foot drop have benefitted from ankle foot orthosis to correct their deformities.

Mr. Speaker, Sir, this Statement is signed by Mr. James. W. Macharia, Cabinet Secretary, on 28th July, 2015.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order, Members! Before I allow Sen. (Dr.) Machage and other Senators to make interventions on that statement, I have a brief communication to make.

(Interruption of Statement)

COMMUNICATION FROM THE CHAIR

VISIT BY HON. SAMUEL ARAP NGENY TO THE SENATE

The Speaker (Hon. Ethuro): Hon. Senators, allow me to recognize the distinguished presence of Hon. Samuel arap Ngeny, who was the Deputy Speaker of the National Assembly from 1983 to 1988 in the Senate.

(Applause)

The distinguished former Deputy Speaker was first elected to Parliament in 1979 as the Member of Parliament for Aldai Constituency, in Nandi County. The former Deputy Speaker was an active Member of Parliament and made contribution to our nation. Due to his profound and strong belief in free, fair and transparent democratic

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election, he did not contest in the 1988 election owing to the *Mlolongo* voting style championed by the then ruling party.

I wish to commend him for his exemplary service to this Republic and, especially for choosing to come and witness the proceedings of the Senate, as he believes that it has an important role to play in devolution. I, therefore, invite Members to welcome him to the Senate in the usual manner.

Thank you.

(Applause)

What is it, Sen. Murkomen?

Sen. Murkomen: Mr. Speaker, Sir, I would like to recognize the presence of the former Deputy Speaker. I would like to confirm---

The Speaker (Hon. Ethuro): Order, Sen. Murkomen! When I recognize a guest, I do it on your behalf. Therefore, you can only join me in doing it.

Sen. Murkomen: Mr. Speaker, Sir, I join you in confirming that during our time, as a task force on devolution and in dealing with matters of devolution, Hon. Ngeny was very instrumental in Nandi County and North Rift. He played a pivotal role in informing the issues that went into the six Bills that we drafted and the draft policy on devolution plus the report of the task force. We benefitted immensely from him. I wish that many other former Members of Parliament would continue providing guidance, leadership and support in the various counties on matters of devolution.

We are very proud to have him here and glad that you elected a Senator here in the name of Sen. Sang who is very active and supportive of county issues. I also hope that Sen. Sang's Bill on the County Hall of Fame will be passed very quickly, so that Nandi County can recognize Hon. Samuel arap Ngeny in the Nandi County Hall of Fame.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. Murkomen, I do not think that you are doing hon. Samuel arap Ngeny a favour by recognizing him at the county. He is a national leader.

Please, proceed, Sen. Sang.

Sen. Sang: Mr. Speaker, Sir, I join you in congratulating and welcoming hon. Samuel arap Ngeny to the Senate. He and I come from the same constituency. When some of us were in school, in Kapsabet Boys, the track record that he left as the Principal speaks for itself. He is one the former principals of Kapsabet Boys that mentored many young people in this Republic. Long after he exited politics, he is still one of the most influential leaders in Nandi County. He is a respected farmer and elder. This is something that we need to learn from.

Mr. Speaker, Sir, looking and hearing President Obama address the African Union (AU) the other day; he mentioned something about clinging to power. Hon. Ngeny is one leader in this country who appreciates that there is a time for you to provide service to this country, make your contribution and give space to others. I am such one person who benefitted from his mentoring. I hope that we can continue having more Kenyans taking

active roles in contributing to this country and stepping aside when the time comes to support others.

Thank you, Mr. Speaker, Sir, I beg to support.

The Speaker (Hon. Ethuro): That is a bit dangerous for you, Sen. Sang.

(Laughter)

Please, proceed Sen. Kittony.

Sen. Kittony: Mr. Speaker, Sir, allow me to also join you in recognizing and saluting my old friend and age mate. He is a good example for the young people to see him still very energetic. I, therefore, ask the young generation like Sen. Sang, who was ably elected by hon. Ngeny to emulate and walk in his footsteps. *Wafuate nyayo za wazee kama hawa.*

Asante

Sen Obure: Mr. Speaker, Sir, I also join you in recognizing and welcoming Mr. Ng'eny to the Senate. I am one of those who served with him in the National Assembly between 1983 and 1988. I confirm that he was, in fact, the Deputy Speaker and guided us extremely well with firmness and fairness. Even after retirement, I understand he has continued to be a leading light, not only in Nandi County, but also other areas in the country.

I hope that many leaders who retire from Parliament will find a role in guiding this nation to greater heights of prosperity. I deeply appreciate and consider it a great privilege to have the opportunity to see Mr. Ng'eny here, strong and still visionary.

(Resumption of Statements)

Sen. (Dr.) Machage: Mr. Speaker, Sir, I beg that the Vice-Chairperson of the Committee of Health listens. The Government has distributed over 11 million doses of Artemether/Lumefantrine for the treatment of the common malaria infections. I believe we are talking of the falciparum type.

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

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

(1) Is the Government aware that resistance is developing on this medicine? Is the Government also aware that more medics are actually reverting to the older quinine for treatment of resistant cases in hospitals?

(2) After examination, 21 children were recorded to have suffered signs and symptoms that I would consider inappropriate administration of an injection. To me, it seems this injection was directly administered into the sciatic nerve on 21 children and hence causing the side effects of nerve injury. Will the Government compensate these

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children for the pain that they have endured, the incapacity that they are likely to endure for the rest of their lives and for absence from school?

Sen (Prof.) Lesan: Mr. Deputy Speaker, Sir, allow me to, first of all, sympathise with the children who have undergone this traumatic experience as a result of the injections that they had. These cases have only been reported in Busia County, but I believe there are other cases all over the country. This is a procedural mistake that has been made.

(1) Could I ask whether there are any other cases of such errors that were committed in other counties?

(2) When we went to counties, many county administrators considered everybody who wore a white coat a doctor. These are some of the results emanating from the fact that we are not very strict on training of personnel that are involved. I would like to know the level of training of personnel who carry out medical treatment for persons in Busia County, particularly those who gave this injection. This is an error in the procedure that has been used. I am sure it is, probably, something that may continue unless we look at the training of the individuals.

Sen. Kittony: Mr. Deputy Speaker, Sir, investigations have been established for the 21 children who were affected. Investigations show that they had been given an injection elsewhere and remedies have been taken according to the report that we have received. The Committee on Health has also planned to visit this centre and see whether it is there or not. The report indicates that the problem is environmental and not an outbreak. I am taking the report the way I have received it and it is good to do a follow up on the ground to establish what is exactly happening in this county in western Kenya.

The Deputy Speaker (Sen. Kembi-Gitura): Do I get you, Sen. Kittony? Did you say that the answer is not final and that you will visit the affected areas and then come and give another statement?

Sen. Kittony: Mr. Deputy Speaker, Sir, the Committee will travel on 20th August to western Kenya to gather more information.

The Deputy Speaker (Sen. Kembi-Gitura): I am specifically interested in the areas concerned. Do I get it that you will come back with a further response to this issue?

Sen. Kittony: Mr. Deputy Speaker, Sir, yes, we will report back after the visit.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, now that the Chairperson will have to give another answer to this House, I hope she will remember my first question of the doubts of efficacy of the medicines that are now used for the management of malaria in the country.

Could she also enlighten this House the position of the Government on the use of DDT (dichlorodiphenyltrichloroethane) in the eradication of the mosquito vector that transmits malaria parasite?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Machage, as a matter of interest, are you a Member of this Committee? I am asking because you are a doctor of medicine and, therefore, you should also help to add value to the situation because the question that you have raised is of great importance. As we get a response which is now

the property of the House, I think, your Committee which has a few medical doctors in it can also help us to find a final solution to this issue.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, my questions are purposeful and we have actually invited the Cabinet Secretary (CS) to our Committee, for some reason. I have just given guidance on the sort of line of investigation that the Committee will take. The Committee has three doctors inclusive of Sen. (Prof.) Lesan and so we are able. We will guide our Vice Chairperson on how to solve it.

The Deputy Speaker (Sen. Kembi-Gitura): That is the reason I wanted to know.

Sen. Kittony: Mr. Deputy Speaker, Sir, Sen. (Dr.) Machage is a Member of the Committee on Health. He is a qualified doctor. He has always assisted the Committee where necessary. I would like to appreciate the fact that being a doctor, he understands what we are looking for. We have invited the Cabinet Secretary (CS) to the Committee. We managed to get his response in writing after a long time. That is the much we could have done.

The Deputy Speaker (Sen. Kembi-Gitura): I appreciate that, but once a question is raised in the House, it becomes the property of the House. It does not really matter whether Sen. (Dr.) Machage is there or not. I asked that question because we have Sen. (Prof.) Lesan, Sen. (Dr.) Machage and Sen. (Dr.) Kuti in that Committee and they should be able to give us a true way forward on this important national issue. That is the reason I raised the issue with Sen. (Dr.) Machage.

If there is no other statement being sought then that is the end of Statement time. Let us now move on to the next order.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

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

The Temporary Chairperson (Sen. (Dr.) Machage): We are in Committee of the Whole to consider Order No.8, the Public Appointments (County Assembly Approval) Bill (Senate Bill No. 20 of 2014).

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PROGRESS REPORTED

Sen. Madzayo: Thank you, Mr. Temporary Chairperson, Sir. With tremendous respect and pursuant to Standing Order No.139, I beg to move that the Committee of the Whole reports progress on its consideration of the Public Appointments (County Assembly Approval) Bill (Senate Bill No.20 of 2014) and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Speaker (Sen. Murkomen) in the Chair]

REPORT

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

Sen. (Dr.) Machage: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the Public Appointments (County Assembly Approval) Bill (Senate Bill No.20 of 2014) and seeks leave to sit again tomorrow.

Sen. Madzayo: Mr. Temporary Speaker, Sir, I beg to move that the Senate do agree with the Committee on the said report.

Sen. Obure seconded.

(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. Murkomen): Next Order! Hon. Senators, we will prosecute the two Orders at once. We will go to Committee of the Whole for both Orders.

COMMITTEE OF THE WHOLE

(Order for Committee read)

[The Speaker (Sen. Murkomen) left the Chair]

IN COMMITTEE

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

THE FOOD SECURITY BILL
(SENATE BILL NO. 23 OF 2014)

The Temporary Chairperson (Sen. (Dr.) Machage): We are now in Committee of the Whole and we are doing both Order No.9 and Order No.10. We will start with Order No. 9, the Food Security Bill, (Senate Bill No.23 of 2014).

Clauses 3 and 4

(Question, that Clauses 3 and 4 be part of the Bill proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I will put the Question at the end.

Clause 5

Sen. Ndiema: Mr. Temporary Chairman, Sir, are we to proceed or---

The Temporary Chairperson (Sen. (Dr.) Machage): Yes, we are proceeding. I am actually waiting for the Mover to move the amendment. Is that what you want to do?

Sen. Ndiema: Mr. Temporary Chairman, Sir, there is a small misunderstanding here, but I will proceed.

The Temporary Chairperson (Sen. (Dr.) Machage): What misunderstanding?

Sen. Ndiema: Mr. Temporary Chairman, Sir, I will proceed.

The Temporary Chairperson (Sen. (Dr.) Machage): So, there is no misunderstanding? You know it has gone into the HANSARD. So, we have to make sure that it is corrected. So, if there is actually no misunderstanding, you can proceed.

Sen. Ndiema: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 5 of the Bill be amended in Sub-Clause (2) by deleting paragraph (J).

The Temporary Chairperson (Sen. (Dr.) Machage): What are your reasons? What we have here is indicating Clause 5 and you are talking of Clause (J). So, you are moving something else that has not been brought to my attention.

*(Sen. Ndiema proceeded to consult
With the Chair)*

Sen. Ndiema: Mr. Temporary Chairman, Sir, I withdraw the statement that I had an amendment on Clause 5. I request that the amendments be read by the Mover, who is the sponsor of the Motion, Sen. Elachi.

(Sen. Ndiema withdrew his proposed amendment to Clause 5)

The Temporary Chairperson (Sen. (Dr.) Machage): Very well. Sen. Elachi.

Clause 5

Sen. Elachi: Mr. Temporary Chairman, Sir, I beg to move:-
THAT, Clause 5 of the Bill be amended in sub-clause (2) by deleting paragraph (j).

Mr. Temporary Chairman, Sir, this is a Bill that will take care of many Ministries. We already have Bills at the Ministry of Agriculture, Livestock and Fisheries that have been legislated on. We have to ensure that we do not have duplication of the same. That is why we are deleting paragraph (j).

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Let us move on to the next Clause because we will vote at the end.

Clause 6

Sen. Elachi: Mr. Temporary Chairman, Sir, I beg to move:-
THAT Clause 6 of the Bill be amended in –

(a) in sub-clause (2) by---

The Temporary Chairperson (Sen. (Dr.) Machage): Could you start well, please? You should say that you propose.

Sen. Elachi: Mr. Temporary Chairman, Sir, I beg to move:-
THAT Clause 6 of the Bill be amended in-

(a) in sub-clause (2) by –

(i) deleting paragraphs (c), (d) and (e) and substituting therefor the following new paragraph –

The Temporary Chairperson (Sen. (Dr.) Machage): You may say that you are proposing the amendment as per the Order Paper. That will save you a lot of time.

Sen. Elachi: Thank you, Mr. Temporary Chairman, Sir.

Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 6 of the Bill be amended in –

(a) in sub-clause (2) by –

(i) deleting paragraphs (c), (d) and (e) and substituting therefor the following new paragraph –

(d) advise and collaborate with the relevant agencies and public entities on matters relating to, -

- (i) domestic production of diverse foods including the cultivation of traditional crops and the accessibility of food to persons in areas affected by food insecurity;
- (ii) production of diverse foods including the cultivation of traditional crops and that such food is accessible to person in areas affected by food security; and
- (iii) establishment of programmes that ensure that famers have adequate farm inputs and implements to carry out food production;
- (ii) inserting the following new paragraphs immediately after paragraph (j)

(ja) implement, in collaboration with the relevant agencies and public entities, programmes for the support and protection of small scale farmers including the provision of subsidies;

(jb) adopt sustainable food security measures so as to graduate food poor persons to persons who are able to participate in food production and distribution;

This is because you will realise that the word “production” was bringing a conflict with the Ministry of Agriculture, Livestock and Fisheries. Therefore, it was important to ensure that we do not have conflict of interest in terms of production in agriculture.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): We will put the question later. Next!

Clause 7

(Question, that Clause 7 be part of the Bill proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next!

Clause 8

Sen. Elachi: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 8 of the Bill be amended-

(a) in sub-clause (1) by deleting the word “their” appearing immediately after the words “governments shall to” and substituting therefor the word “the”.

(b) in sub-clause (2) by inserting the words “including school feeding programmes,” immediately after the words “implement programmes”.

Mr. Temporary Chairman, Sir, this Clause brought issues of implementation. Therefore, as a Committee, we felt that it was important to ensure that the words “implement programmes” are put in so that when the school feeding programme is carried out, it will be very clear who is supposed to implement, be it county governments or the national Government.

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(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next!

Clauses 9, 10 and 11

(Question, that Clauses 9, 10 and 11 be part of the Bill proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next!

Clause 12

Sen. Elachi: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 12 of the Bill be amended in sub-clause (1) by –

(a) deleting paragraph (b);

(b) inserting the following new paragraph immediately after paragraph (g)-

(ga) identify food insecure counties and develop affirmative action measures for ensuring that food security is realized in the identified counties; and

(c) inserting the words “county food security committees” immediately after the words “feedback to all” in paragraph (h).

The reasons for moving this amendment is that the Clause deals with the functions of the Authority. Therefore, this is the critical part of the Bill. We felt that it was important to align it based on the functions of the Authority.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next!

Clause 13

(Question, that Clause 13 be part of the Bill proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next!

Clause 14

Sen. Elachi: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 14 and substituting therefor the following new clause-

Board of the

Authority 14.(1) The management of the Authority shall vest in a Board which shall consist of -

(a) a chairperson appointed by the President with the approval of Parliament;

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- (b) the Principal Secretary responsible for matters relating to agriculture or the designated representative;
- (c) the Principal Secretary responsible for matters relating to livestock or the designated representative;
- (d) the Principal Secretary responsible for matters relating to finance or the designated representative;
- (e) the Principal Secretary responsible for matters relating to the co-ordination of national government or the designated representative;
- No.24 of 2013 (f) the chairperson of the National Assistance Authority appointed under section 5(1) of the Social Assistance Act or the designated representatives;
- L.N No. 171 of 2011 (g) one person nominated by the National Drought Management Authority established under paragraph 3 of the National Drought Management Authority Order,
- (h) two persons nominated by the Non-Governmental Organizations Co-ordination Board established under section 3 of the Non-Governmental Organizations Co-ordination Act from amongst non-governmental organizations which support efforts towards the achievement of food security;
- (i) two persons nominated by the Council of County Governors; and
- (j) the Director General who shall be an ex-officio member, the secretary to the Board and the chief executive officer of the Authority.
- (2) The persons nominated under subsection (1)(g), (h) and (i) shall be appointed by the Cabinet Secretary by notice in the Gazette.
- (3) A person shall be qualified for nomination and appointment under subsection (1) (g), (h) and (i) if such person has knowledge and experience in matters relating to food security and nutrition.
- (4) The designated representatives of the members referred to under subsection (1)(b), (c), (d) and (e) shall have authority to exercise the powers and functions of the designating authority in relation to matters before the Board.
- The reason is that we felt that we were contravening the law by bringing in the management of the Authority. Therefore, the amendment will ensure that it is aligned to what the Management of the Authority will do.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): Next.

Clause 15

Sen. Elachi: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 15 of the Bill be amended-

(a) in paragraph (a) by deleting the word “masters” appearing immediately after the words “holds a”; and

(b) by deleting paragraph (c) and substituting therefor the following new paragraph –

(c) has knowledge and experience in matters relating to –
 (i) agriculture or livestock;
 (ii) land and agrarian reforms;
 (iii) public health;
 (iv) public administration; or
 (v) economics, sociology, disaster management or such other relevant knowledge and experience as may be considered necessary; and

Mr. Temporary Chairman, Sir, this Clause was meant to deal with the qualifications and the appointment of the chairperson. Therefore, the Committee felt that it would be important to ensure somebody who is qualified to do that is appointed.

(Question of the amendment proposed)

Clause 16

(Question that Clause 16 be part of the Bill proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next!

Clause 17

Sen. Elachi: Mr. Temporary Chairperson, Sir, I beg to move:-
 THAT, the Bill be amended by deleting Clause 17 and substituting therefor the following new clause-

Remuneration of the Board.	17. There shall be paid to the members of such remuneration, fees or allowances as the Cabinet Secretary shall, in consultation with the Salaries and Remuneration Commission, determine.
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This is meant to ensure that we realign the remuneration of the Board but not just that of the chairperson alone as it was the case in the original Bill.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next!

Clauses 18, 19, 20, 21 and 22

*(Question, that Clauses 18, 19, 20, 21 and 22
 be part of the Bill proposed)*

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The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next!

Clause 23

Sen. Elachi: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 23 of the Bill be amended in sub-clause (2) by –

(a) deleting the word “doctorate” appearing immediately after the words “holds a” in paragraph (a) and substituting therefor the word “masters”; and

(b) deleting the word “security” appearing immediately after the words “the food” paragraph (b).

Mr. Temporary Chairperson, Sir, this is to ensure that the Director-General is also an *ex-officio* member of the management team. Therefore, this will ensure that the Director-General has no right to vote in that Board.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next!

Clauses 24, 25, 26, 27, 28, 29, 30 and 31

(Question, that Clauses 24, 25, 26, 27, 28, 29, 30 and 31 be part of the Bill proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next!

Clause 32

Sen. Elachi: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 32 of the Bill be amended-

(a) in sub-clause (1) by deleting paragraphs (b) and (c) and substituting therefor the following new paragraphs –

(b) the county executive committee member responsible for matters relating to agriculture who shall be the secretary to the committee;

(c) the county executive committee member responsible for matters relating to livestock;

(ca) the county executive committee member responsible for matters relating to social services;

(cb) the county commissioner or a designated representative of the commissioner;

(b) in sub-clause (2) by deleting paragraph (a) and substituting therefor the following new paragraph –

(a) holds a certificate of secondary education;

Mr. Temporary Chairperson, Sir, this is to bring in the County Food Security Committee. We also felt that issues of livestock are not supposed to be handled by the same.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next!

Clause 33

Sen. Elachi: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 33 of the Bill be amended—

(a) in sub-clause (1) by deleting paragraph (i) and substituting therefor the following new paragraph -

(i) spearhead the formation and operationalization of food and nutrition committees at the sub-county and ward levels and in schools and health centres within the county;

(b) by inserting the following new sub-clause immediately after sub-clause (1) –

(1A) The county food security committee shall, in the performance of its functions under subsection (1), decentralize its services to the lowest administrative unit within the county as it shall consider appropriate for the purpose of ensuring food security within the county.

Mr. Temporary Chairman, Sir, this is to ensure that the functions and roles of the County Food Security Committee are in line with what it is supposed to do.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next!

Clause 34

(Question, that Clause 34 be part of the Bill proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next!

Clause 35

Sen. Elachi: Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 35 of the Bill be amended –

(a) in sub-clause (1) by inserting the words “ agriculture, livestock, meteorology” immediately after the words “disaster management”;

(b) in sub-clause (3) by deleting the words “matters related to special programmes” appearing immediately after the words “responsible for” and

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substituting therefor the words “the implementation of programmes relating to persons with special needs”.

Mr. Temporary Chairman, Sir, this will ensure that the information mapping system is brought in. However, we wished to add in other services that were not included before.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next!

Clause 36

(Question, that Clause 36 be part of the Bill proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next!

Clause 37

Sen. Elachi: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, the Bill be amended by deleting clause 37.

Mr. Temporary Chairman, Sir, the reasons are that this is where the powers of the President in a situation of food emergency are. This is not a function of the counties, but it is to be dealt with at the national level. The Ministry of Agriculture, Livestock and Fisheries is responsible for that.

(Question, that Clause 37 be deleted proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next!

Clauses 38, 39, 40, 41, 42, 43 and 44

*(Question, that Clauses 38, 39, 40, 41, 42 and 43
be part of the Bill proposed)*

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next!

Clause 45

Sen. Elachi: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 45 of the Bill be amended by deleting the words “five million” appearing immediately after the words “not exceeding” and substituting therefor the words “ten million”.

Mr. Temporary Chairperson, Sir, this is to add fines that we had put earlier.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next!

Clause 46

Sen. Elachi: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 46 of the Bill be amended by deleting the words “two million shillings or to imprisonment for a term of three years” appearing immediately after the words “not exceeding” and substituting therefor the words “ten million shillings or to imprisonment for a term not exceeding eight years”.

Mr. Temporary Chairman, Sir, this is because of the same reason; to ensure that we have a better penalty for anybody found guilty.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next!

Clauses 47, 48 and 49

(Question, that Clauses 47, 48 and 49 be part of the Bill proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next!

Clause 50

Sen. Elachi: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 50 of the Bill be amended by inserting the following new paragraph immediately after paragraph (g)-

(h) promote public awareness on the advancement of food security.

Mr. Temporary Chairman, Sir, this is to ensure that we have public participation.

(Question of the amendment proposed)

Clause 51

(Question, that Clause 51 be part of the Bill proposed)

First Schedule, Second Schedule

(Question, that the First Schedule and Second Schedule be part of the Bill proposed)

Clause 2

Sen. Elachi: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 2 of the Bill be amended in the definition of the term –

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(a) “Cabinet Secretary” by deleting the words “devolution and planning” appearing immediately after the words “related to” and substituting therefor the words “food security”;

(b) “essential foodstuffs and commodities” by inserting the word “meat” immediately after the words “beans, wheat, rice”;

(c) “emergency foods assistance” by deleting the word “humanitarian” appearing immediately after the words “occasioned by”.

Mr. Temporary Chairperson, Sir, this is to do with definitions.

(Question of the amendment proposed)

Title, Clause 1

(Question, that the Title and Clause 1 be part of the Bill proposed)

Hon. Senators, we will have the progress reported and then immediately move to the next Bill.

PROGRESS REPORTED

THE FOOD SECURITY BILL (SENATE BILL NO.23 OF 2014)

Sen. Elachi: Mr. Temporary Chairman, Sir, I beg to move that the Committee of the Whole reports progress on its consideration of the Food Security Bill (Senate Bill No.23 of 2014) and seeks leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

The Temporary Chairperson (Sen. (Dr.) Machage): We will not go into Plenary, but just move on to the next Bill. That reporting will be done tomorrow.

We will now move to Order No.10 to consider the Mining Bill (National Assembly Bill No.8 of 2014).

THE MINING BILL (NATIONAL ASSEMBLY
BILL NO.8 OF 2014)

The Temporary Chairperson (Sen. (Dr.) Machage): Again, we will look at the clauses, but not go into Division, as we have just done in the former Bill.

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Clause 5

Sen. Kivuti: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 5 of the Bill be amended by inserting the words “and the principles of leadership and integrity set out under Chapter Six of the Constitution” immediately after the words “of the Constitution”.

(Question of the amendment proposed)

Clause 6

(Question of the amendment proposed)

Clause 6

(Question, that Clause 6 be part of the Bill proposed)

Clause 7

Sen. Kivuti: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 7 of the Bill be amended in subclause (2) by inserting the words “in consultation with the Mineral Rights Board” immediately after the words “in the Gazette”.

(Question of the amendment proposed)

Clause 8

(Question, that Clause 8 be part of the Bill proposed)

Clause 9

Sen. Kivuti: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 9 of the Bill be amended by inserting the following new subclause immediately after subclause (1) –

(1A) The Cabinet Secretary shall, immediately upon receipt of a report under subsection (1) issue to the person an acknowledgement in writing of the receipt of the report.

(Question of the amendment proposed)

Clauses 10, 11, 12, 13, 14 and 15

*(Question, that Clauses 10, 11, 12, 13, 14
and 15 be part of the Bill proposed)*

Clause 16

Sen. Kivuti: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 16 of the Bill be amended in subclause (3) by inserting the words “in consultation with the Mineral Rights Board” immediately after the words “Cabinet Secretary shall”.

Mr. Temporary Chairperson, Sir, you will realize that in all these clauses we do not want the Cabinet Secretary to be dealing with the licenses alone, but in consultation with the Mineral Rights Board. This is repeated in several of the clauses which are being amended.

(Question of the amendment proposed)

Clauses 17, 18 and 19

*(Question, that Clauses 17, 18 and 19
be part of the Bill proposed)*

Clause 20

Sen. Kivuti: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 20 of the Bill be amended by inserting the following new subclause immediately after subclause (4) –

(5) A person whose land or property is damaged as a result of the exercise of the powers of the Director of Mines under subsection (1) is entitled to fair, prompt and full compensation for such damage in accordance with this Act.

(Question of the amendment proposed)

Clause 21

Sen. Kivuti: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 21 of the Bill be amended by inserting the following new subsections immediately after subsection (2) –

(3) In exercising the powers under subsection (2), the Director or a duly authorised officer shall ensure that as little damage or inconvenience as possible is caused to the legitimate owner or lawful occupier of the land in respect of which the powers are exercised.

(4) A person whose land or property is damaged as a result of the exercise of the powers of the Director of Geology under subsection (1) shall be entitled to fair, prompt and full compensation for such damage in accordance with this Act.

Mr. Temporary Chairperson, Sir, the authorization by the authorized officer should not be left at the mercy of only one authorizing officer, that is, the Cabinet Secretary. We would like the authorizations to be extended.

(Question of the amendment proposed)

Clauses 22, 23, 24, 25, 26, 27, 28 and 29

(Question, that Clauses 22, 23, 24, 25, 26, 27, 28 and 29 be part of the Bill proposed)

Clause 30

Sen. Kivuti: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 30 of the Bill be amended by deleting subclause (2) and substituting therefor the following new subclause (2) –

(2) The Mineral Rights Board shall comprise of –

(a) a chairperson with demonstrable knowledge and experience of the minerals and mining sector, who shall be appointed by the President;

(b) the Principal Secretary responsible for matters relating to mining;

(c) the Principal Secretary responsible for the National Treasury;

(d) one person who shall be nominated by the Council of County Governors from amongst the Governors;

(e) the Chairperson of the National Land Commission;

(f) the Director of Mines who shall be the secretary to the Mineral Rights Board;

(g) the Director of Geological Surveys; and

(h) two persons with professional qualifications and experience in the mining industry who shall be appointed by the Cabinet Secretary.

Mr. Temporary Chairman, Sir, since mining is a devolved function, the Committee felt that it is very necessary to have a representative of the Council of Governors in the board.

(Question of the amendment proposed)

Clauses 31 and 32

(Question, that Clauses 31 and 32 be part of the Bill proposed)

Clause 33

Sen. Kivuti: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 33 of the Bill be amended by deleting subclauses (7) and (8).

Mr. Temporary Chairman, Sir, we are deleting subclauses (7) and (8) which must be in unison with the other amendments which we have done before, to effect the composition of the board.

(Question of the amendment proposed)

Clause 34

Sen. Kivuti: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 34 of the Bill be amended in subclause (4) by deleting paragraph (a).

(Question of the amendment proposed)

Clauses 35 and 36

*(Question, that Clauses 35 and 36
be part of the Bill proposed)*

Clause 37

Sen. Kivuti: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 37 of the Bill be amended in subclause (1) by deleting the words “A prospecting and” appearing at the beginning of the subclause.

Mr. Temporary Chairperson, Sir, this is just to amend the language. There is some repetition in the beginning of the sentence.

(Question of the amendment proposed)

Clause 38

Sen. Kivuti: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 38 be amended in subclause (1) by deleting the word “un-alienated” appearing at the end of paragraph (b) and substituting therefor the word “unregistered”.

Mr. Temporary Chairperson, Sir, the word “un-alienated” is not correct. The correct wording should be “unregistered land.”

(Question of the amendment proposed)

Clause 39

(Question, that Clause 39 be part of the Bill proposed)

Clause 40

Sen. Kivuti: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 40 of the Bill be amended by deleting sub clause (1) and substituting therefor the following new sub clause –

(1) The Cabinet Secretary may submit a request under section 107 of the Land Act for the compulsory acquisition of land or rights or interests in land, to vest the land or area in question, or rights or interests in such land or area, in the Government or on behalf of the Government, where the consent required under sections 36, 37 or 38 is

(a) unreasonably withheld; or

(b) the Cabinet Secretary considers that withholding of consent is contrary to the national interest.

The import of this amendment is that the first draft that we got from the National Assembly purported to give powers to the Cabinet Secretary for Mining to deal with compulsory land acquisition which definitely would contravene other existing laws. We had to remove that.

(Question of the amendment proposed)

Clause 41

Sen. Kivuti: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 41 of the Bill be amended- in sub clause (2) by deleting the words “which recognise the uniqueness of procurement and tendering process of minerals” appearing at the end of the sub clause.

The uniqueness of procurement and tendering procedures is also included in other existing laws, particularly the Procurement and Disposal Act. We had to amend this particular clause to be in tandem with other existing laws.

(Question of the amendment proposed)

Clauses 43, 43, 44, and 45

*(Question that Clauses 42, 43, 44 and 45
be part of the Bill proposed)*

Clause 46

Sen. Kivuti: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 46 of the Bill be amended in sub clause (3) by deleting the words “number of expatriates per capital investment” appearing immediately after the words “shall serve”.

Mr. Temporary Chairperson, Sir, it is very important that when we limit the number of expatriates that a big miner may bring to Kenya; we had to consider how to monitor that aspect.

(Question of the amendment proposed)

Clause 47

Sen. Kivuti: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT Clause 47 of the Bill be amended in sub clause (1) by inserting the words “members of the community and” immediately after the words “in employment to”.

We had special considerations of members of the community affected by mining. We had to define such community areas.

(Question of the amendment proposed)

Clause 48

(Question that Clause 48 be part of the Bill proposed)

Clause 49

Sen. Kivuti: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT Clause 49 of the Bill be amended in sub clause (2) by deleting the word “four” appearing immediately after the words “exchange within” and substituting therefor the word “three”.

Mr. Temporary Chairperson, Sir, we want to reduce the number of years of the activities listed in this clause. The amount given was so much; we want to limit it to three.

(Question of the amendment proposed)

Clause 50

Sen. Kivuti: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT Clause 50 of the Bill be amended in paragraph (b) by inserting the words “members of the community and” immediately after the words “offered by”.

This is further consideration of community interests where the miners may come to mine.

(Question of the amendment proposed)

Clause 51

Sen. Kivuti: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT Clause 51 of the Bill be amended –

(a) by deleting sub clause (2) and substituting therefor with the following new sub clause –

(2) The Cabinet Secretary shall not unreasonably withhold consent to assign, transfer, and mortgage or trade a mineral right and shall inform an applicant of the decision within thirty days of receipt of an application to assign, transfer, mortgage or trade a mineral right.

(b) By inserting the following new subsection immediately after subsection (8)–

(8A) The Cabinet Secretary shall, in consultation with the Mineral Rights Board, prescribe criteria for the conditions required to be met by an applicant for an assignment, mortgage or trade in a mineral right.

Mr. Temporary Chairperson, Sir, we noticed that in the Bill, the Cabinet Secretary held powers to listen to cases, adjudicate cases; and even appeals would still come to him. We did not find this to be good in law. So, we had to change that clause.

(Question of the amendment proposed)

Clause 52

(Question that Clause 52 be part of the Bill proposed)

Mr. Temporary Chairperson (Sen. (Dr.) Machage): I see no interventions.

Clause 53

Sen. Kivuti: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT Clause 53 of the Bill be amended –

(a) in sub clause (1) by inserting the words “and the Kenya Revenue Authority” immediately after the words “the Cabinet Secretary”; and

(b) inserting the following new sub clause immediately after sub clause (1) –

(1A) The Cabinet Secretary shall submit to the National Assembly and the Senate, an analysis of the audited annual financial statement submitted under subsection (1).

Mr. Temporary Chairperson, regarding the audit reports that are given by the miners, the Committee felt that we may not be sincere if they are not connected to the taxes that the miners pay. Therefore, we required that such reports be furnished to the Kenya Revenue Authority.

(Question of the amendment proposed)

Clauses 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66

(Question that Clauses 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65 and 66 be part of the Bill proposed)

Clause 67

Sen. Kivuti: Mr. Temporary Chairperson, Sir, I beg to move:-
THAT Clause 67 of the Bill be amended in sub clause (1) by deleting paragraph (e) and substituting therefor the following new paragraph –
(e) inform and consult on an ongoing basis with the national and county government authorities and communities about the reconnaissance operations that require physical entry onto the land within their jurisdiction;

Mr. Temporary Chairperson, Sir, although earlier on we looked at reconnaissance service as not a necessity to get actual land owners because reconnaissance may be too expensive, but nonetheless the Committee felt that there must be consultation with the county government authorities and communities where such reconnaissance is being done.

(Question of the amendment proposed)

Clauses 68, 69, 70, 71, 72, 73, 74, 75, and 76

(Question, that Clause 68, 69, 70, 71, 72, 73, 74, 75 and 76 be part of the Bill proposed)

Clause 77

Sen. Kivuti: Mr. Temporary Chairperson, Sir, I beg to move:-
THAT Clause 77 of the Bill be amended in sub clause (2) by deleting the words “by the Cabinet Secretary” appearing at the end of the sub clause and substituting therefor the words “Regulations made under this Act”.

The reason for this amendment is that we expect regulations to govern the Act. This should not be in the domicile of the Cabinet Secretary alone.

(Question of the amendment proposed)

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Clauses 78 - 105

(Question, that Clauses 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104 and 105 be part of the Bill proposed)

Clause 106

Sen. Kivuti: Mr. Temporary Chairman, Sir, I beg to Move:-

THAT, Clause 106 of the Bill be amended by inserting the following new paragraph immediately after paragraph (i) –

(j) such other information as the Cabinet Secretary may consider necessary.

Mr. Temporary Chairman, Sir, we found that we could not list all the circumstances or all the sources of information that may reach the Cabinet Secretary. That is why we added sub-clause (j).

(Question of the amendment proposed)

Clauses 107 - 116

(Question, that Clauses 107, 108, 109, 110, 111, 112, 113, 114, 115 and 116 be part of the Bill proposed)

Clause 117

Sen. Kivuti: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 117 of the Bill be amended in subclause (5) by deleting the word “Parliament” appearing immediately after the words “submitted to” and substituting therefor the words “the National Assembly and the Senate”.

Mr. Temporary Chairman, Sir, when we said that audit reports and other reports should be brought to Parliament, we wanted to distinguish that Parliament means the Senate and the National Assembly. We made sure that we repeated that whenever it appeared to avoid a situation where we have cases which we already know whereby matters are referred to the National Assembly only without reference to the Senate.

(Question of the amendment proposed)

Clauses 118 and 119

(Question, that Clauses 118 and 119 be part of the Bill proposed)

Clause 120

Sen. Kivuti: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 120 of the Bill be amended in subclause (2) by deleting the word “Parliament” appearing immediately after the words “submitted to” and substituting therefor the words “the National Assembly and the Senate”.

Mr. Temporary Chairman, Sir, the reasons for this is exactly the same as that of Clause 117.

(Question of the amendment proposed)

Clauses 121 - 148

(Question, that Clauses 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147 and 148 be part of the Bill proposed).

Clause 149

Sen. Kivuti: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 149 of the Bill be amended by deleting subclause (3) and substituting therefor the following new subclauses –

(3) All immovable assets of the holder under the mining licence shall vest in the County Government from the effective date of the surrender or termination of the license upon payment of the book value of the assets by the County Government.

(3A) Where the County Government is unable to pay for the assets under subsection (3), the assets shall vest in the National Government from the effective date of the surrender or termination of the license upon payment of the book value of the assets by the National Government.

Mr. Temporary Chairman, Sir, when a license expires and when mining stops, the equipment which remains is supposed to be taken over by the national Government. The Committee felt that this is improper because mining is done in the county. We should give the county governments the first option to acquire such equipment.

(Question of the amendment proposed)

Clauses 150 - 225

(Question that Clauses 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224 and 225 be part of the Bill proposed).

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Clause 4

Sen. Kivuti: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 4 of the Bill be amended –

(a) by deleting the definition of the word “community” and substituting therefor the following new definition –

“community” means a people living in a ward or wards within which minerals are situated and who are affected by the exploration of the minerals or mining operations with respect to the minerals;

(b) by inserting the following new definition immediately after the definition of the word “corporation” –

“Council of County Governors” means the Council of County Governors established under section 19 of the Intergovernmental Relations Act;

(c) by deleting the definition of the word “strategic minerals” and substituting therefor the following new definition –

“strategic minerals” means minerals declared as such by the Cabinet Secretary with the approval of the Cabinet and by notice in the *Gazette*;

Mr. Temporary Chairman, Sir, there are three reasons for this amendment. One is to define what we mean by community because it was not defined. Community could traverse beyond a county or a ward. So, we had to come up with a definition of the affected wards. Since we introduced the issue of the Council of Governors (CoG), we had to define what we mean by the CoG which is a standard definition.

Finally, on the strategic minerals, we found that the definition was not befitting because it was generalized and specific only to a few minerals. We had to come up with a definition which must be gazetted after the President decides on the strategic minerals.

(Question of the amendment proposed)

First Schedule

(Question that the First Schedule be part of the Bill proposed)

Second Schedule

(Question that the Second Schedule be part of the Bill proposed)

Clause 2

(Question, that Clause 2 be part of the Bill proposed)

Clause 3

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(Question, that Clause 3 be part of the Bill proposed)

Title

(Question, that the Title be part of the Bill proposed)

Clause 1

(Question, that Clause 1 be part of the Bill proposed)

PROGRESS REPORTED

THE MINING BILL (NATIONAL ASSEMBLY
BILL NO. 8 OF 2014)

Sen. Kivuti: Pursuant to Standing Order No.139, I beg to move that the Committee of the Whole reports progress of its consideration of the Mining Bill (National Assembly Bill No.8 of 2014) and seek leave to sit again tomorrow.

(Question Proposed)

(Question put and agreed to)

(The House Resumed)

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

REPORTS

THE MINING BILL (NATIONAL ASSEMBLY BILL NO. 8 OF 2014)

Sen. (Dr.) Machage: Madam Temporary Speaker, I beg to report that the Committee of the Whole is considering the Mining Bill (National Assembly Bill No. 8 of 2014) and seek leave to sit again tomorrow.

Sen. Kivuti: Madam Temporary Speaker, I beg to move the Senate do agree with the Committee on the said Report.

Sen. (Prof.) Anyang'-Nyong'o seconded

(Question Proposed)

(Question put and agreed to)

(Sen. (Dr.) Machage walked out of the Chamber)

The Temporary Speaker (Sen. Ongoro): Chair, you have to remain in the House to report progress on the Food Security Bill, (Senate Bill No. 23 of 2014) before you leave because you were the Temporary Chair.

THE FOOD SECURITY BILL
(SENATE BILL NO. 23 OF 2014)

Sen. (Dr.) Machage: Madam Temporary Speaker, I beg to report that the Committee of the Whole is considering the Food Security Bill, (Senate Bill No. 23 of 2014) and seek leave to sit again tomorrow.

Sen. Elachi: Madam Temporary Speaker, I beg to move that the Senate do agree with the Committee on the said Report.

Sen. (Prof.) Anyang'-Nyong'o seconded

(Question Proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. Ongoro): Next Order!

BILLS

Second Reading

THE CLIMATE CHANGE BILL
(NATIONAL ASSEMBLY BILL NO. 1 OF 2014)

(Sen. (Prof.) Kindiki on 28.7.2016)

(Resumption of Debate interrupted on 28.7.2015)

The Temporary Speaker (Sen. Ongoro): The last Senator to speak on this was Sen. Murkomen. He is not in the House right now, but I see a request from Sen. (Prof.) Anyang'- Nyong'o, the Senator for Kisumu County.

Sen. (Prof.) Anyang'-Nyong'o: Thank you, Madam Temporary Speaker, for giving me the opportunity to contribute to this Bill. When Sen. Murkomen was contributing to it on Tuesday, 28th July, 2015, I was very keen to follow and add my voice to its support.

Madam Temporary Speaker, climate change is one of those phenomena in the current world which must be well understood by humanity. This is because as days go by, we see that the patterns of rainfall and temperatures in our country are not as we had

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known them before. At times, it rains in such a heavy manner that we begin experiencing floods in areas that never had floods before. Further, traditionally, when the climate was stable and predictable, agricultural practices followed certain traditional calendars that prompted farmers to plant their seeds at a certain time uniformly in particular areas.

These days, as years come and go by, it is extremely difficult to predict the climate on the basis of previous experiences. It, therefore, requires a much more scientific knowledge to determine and inform our people about the patterns of climate from time to time, especially in a country which is so heavily agricultural. The backbone of our economy for a long time has remained agricultural. We hope that we shall be a medium income country by 2030, although we have formally been declared so. For a long time, agriculture is going to continue accounting for a substantial part of our Gross Domestic Product (GDP).

Madam Temporary Speaker, at the same time, we also know that at the moment, 70 per cent of our fuel provision especially in the rural areas is based on wood fuel; cutting down of trees to provide wood for fire or to use wood to make charcoal which is a traditional form of energy in the rural areas. This cannot continue for long because this in itself is hazardous to the climate and the environment. We, therefore, need laws like this which will enable the Government to have more power, especially in county governments since the function of the environment is devolved; to understand, make use of and control the effects of climate change.

The other issue that we need to understand is the global aspect of climate change. A lot has been said of global warming; but there is not much understanding by ordinary people what it means. Least of all, is that there should be good understanding among policymakers on what global warming is and how public policies should take into account the phenomenon of global warming.

Madam Temporary Speaker, we therefore need as a Government and the society as a whole, policy measures to incorporate the effects of global warming in our public policies. Further, I notice that we have just passed the Second Reading of the Bill on mining and not too long ago in this House; we passed a Bill initiated by Sen. (Dr.) Zani on how to use royalties from mining. We underpinned the fact that the royalties should be shared from the village to the national level. We have just dealt with the Mining Bill, which is very important. However, the relationship between mining, environment and climate change is very important.

Madam Temporary Speaker, I have noticed in my county, for example, that there is a lot of mining going on, although we do not understand it as mining. A lot of people are digging the ground and scooping the soil to make bricks, leaving huge holes and sometimes even canyons in the countryside, without any compulsion whatsoever to replenish the environment from which they have taken the earth to make bricks. There is even further interference with rocks and stones where gravel, *kokoto* and other such materials are made. Taking from nature and not replenishing is an extremely hazardous enterprise that human beings are involved in. Such harassment of nature does affect the climate.

The Temporary Speaker (Sen. Ongoro): What is it, Sen. Ong'era?

Sen. Onge'ra: On a point of order, Madam Temporary Speaker. Did you hear the distinguished Senator for Kisumu County use the word “*Kokoto*”?

The Temporary Speaker (Sen. Ongoro): That escaped my attention.

Sen. (Prof.) Anyang'- Nyong'o, did you use any such word?

Sen. (Prof.) Anyang'- Nyong'o: Madam Temporary Speaker, yes, I did use such a word.

The Temporary Speaker (Sen. Ongoro): Senator, I also do not seem to understand the word “*kokoto*” What does it mean?

Sen. (Prof.) Anyang'- Nyong'o: Madam Temporary Speaker, my mind is not quite ready to translate that word into English.

The Temporary Speaker (Sen. Ongoro): Do you mean ballast?

Sen. (Prof.) Anyang'- Nyong'o: Madam Temporary Speaker, yes, ballast is the word. There is a new material called Wikipedia where I think you will find it sooner rather than later. So, I hope that the Senate will contribute to the Wikipedia vocabulary so that the word can be used officially.

The Temporary Speaker (Sen. Ongoro): Please, proceed, Senator.

Sen. (Prof.) Anyang'-Nyong'o: Madam Temporary Speaker, extraction from nature without human beings replenishing it is tantamount to interfering with the climate. Therefore, a law like this should really deal with such issue and that is why I am linking this Bill to the other ones on mining, because we cannot really talk about climate change if we do not talk about environmental degradation and conservation.

Madam Temporary Speaker, lastly, on the issue of preserving our water and forest resources, you will notice that Lake Victoria, the biggest fresh water lake in the world, has for quite some time been dying from below. When I was working with the African Academy of Sciences in the late 1980s and early 1990s where we worked closely with the International Center for Insects Physiology and Ecology (ICIPE), under the late Prof. Odhiambo, we carried out a study on the environmental degradation in Lake Victoria and it was confirmed that the great lake was dying from below.

This does not just adversely affect the aquaculture in the lake but the climate as well. This is because as we know from our early Geography lessons in primary and secondary schools, rainfall is affected by evaporation from large water resources, like Lake Victoria. During the day, the vapor rises up, goes to the mountains, then when it cools, there is precipitation. However, when there is ecological change in the lake affecting both the water and aquaculture in the lake, it adversely affects the climate.

Madam Temporary Speaker, we, therefore, need to have laws like this which help us preserve our water resources to the extent that environmental changes that occur in these water resources do not adversely affect the climate. The same goes for our forest resources; the flora and fauna. It has been lamented that a very small percentage of the land surface in Kenya is covered by forest. The latest figure that I got is about 10 to 12 per cent. This is very serious especially when the small percentage covered by forest resources is also being depleted very fast.

It was quite tragic that when in the Coalition Government under the former Prime Minister, Hon. Raila Amollo Odinga, took the initiative to recover Mau Forest, it

attracted adverse political reaction from the so-called stakeholders who are nothing other than political entrepreneurs, to turn an otherwise very honourable project into a disastrous campaign against the former Prime Minister's initiative. However, this did not stop the urgency of preserving the Mau Forest. The very people who opposed this initiative are the ones who are crying that this initiative should continue and succeed.

Madam Temporary Speaker, when it comes to issues of environment and climate change, let us not be unreasonably partisan on certain measures that have been taken purely for parochial and chauvinistic political reasons. This does not augur well for both the national and global interests of human kind because in the final analysis, the preservation of the environment and survival of human kind are both very intertwined.

One very interesting thing that the Deputy President said recently was that we, in Kenya, are the only people who are justified on the face of the earth to welcome the rest of the humanity home, because Kenya is the home of human kind. The first human being was discovered here; *Kenyapithecus zinjathropus* and no one knows whether he was a monogamous or polygamous human being. Therefore, the idea that population growth is also a danger to the environment is neither here nor there. It really depends on the policies that we have towards environmental use and control, that in the final analysis may even determine the number of human beings that we are prepared to tolerate on the face of the earth. That, of course, is very closely related to the economy. A nation that looks fairly well after its environment is likely to be a nation that is very conscious of progressive economic and population policies.

Madam Temporary Speaker, we must understand that when we do not have progressive technological development, we are likely to misuse and abuse our environment. That is one of the reasons the kind of energy that we use in rural areas still depends on wood fuel, because we have not progressed so well in terms of technological development. At the moment, I think that Kenya is taking very good steps of investing in green energy; geothermal, wind and solar energy. This is good because it means that if this energy becomes more accessible to the ordinary Kenyan, and we begin using it more progressively in cooking and other energy needs in the rural areas, we shall depend less on wood fuel.

That means that we should preserve and renew our natural resources – water and forests – much more than we are doing at the moment. I would like to add my voice to the report of this Bill that has been brought to the Senate. I hope that we will pass it along with the Mining Bill and Sen. (Dr.) Zani's Bill on royalties. This will then mean that we will also use the earnings that we get from our mines to invest in rural areas so that we create wealth right from villages to the top.

Madam Temporary Speaker, in the final analysis, it means that the call that we have been making especially in the Senate for our resources to go to counties, we must add that they are used accountably, responsibly and in the interest of the people and not be turned into personal and primitive accumulation by a few technocrats or politicians in our counties.

I beg to support.

The Temporary Speaker (Sen. Ongoro): Today, the House is very interesting because of all the Senators in attendance, 85 per cent are female Senators taking their work very seriously.

(Applause)

Sen. (Dr.) Zani: Thank you, Madam Temporary Speaker, for recognizing women Senators in this House. We rarely get such accolades and we need them more often. We assert ourselves in this House and continue to do our duties diligently as Senators.

Two or three days ago while in Mombasa for our meeting with Members of County Assemblies (MCAs), my son sent me a message saying that there were hailstones in Nairobi. I told him that it was impossible. I asked him to send me a photograph of what he was talking about. On looking at it, it looked like snow. I told him that one day it will snow in Kenya and Africa.

This is the impact of climatic change that we have now become aware of. It is very real. The sort of temperatures and the way the environment and seasons were formulated have completely changed. Apart from raining havoc, for example, farmers may not know the season to plant because it is not very clear when it will rain or not. It is also not clear when there is going to be a storm or flooding. I know efforts have been made towards disaster reduction because that creates a problem. Climatic change has been most vulnerable and affected the very poor. It is easy for the privileged to adjust but not the poor.

Madam Temporary Speaker, I congratulate the originator of this Bill which, I think, is overdue. I know lots of efforts have been done in climate change but there has been very little coordination. In fact, when it comes to disaster risk reduction which is also related to climatic change efforts in a way, there has not been a lot of coordination; only theoretical material that has been discussed. However, when it comes to actionable plans on who should take charge of what, that has not been very clear. It is, therefore, very important that this Bill that hopes to address matters of coordination, planning and action be put in place.

This Bill establishes creation of a climatic change council that is very broad and clear in terms of its mandate. Therefore, they will be able to deliver. It also sets up a climatic change directorate which is key. More important, it seeks to give climate change response measures and actions. This is critical because for as long as we do not find a way to respond, sometimes there is very little that we can do about changes especially those which become disastrous. However, the idea is to plan in advance and we are able to do so. For example, The Netherlands is surrounded by water but they have found a way to ensure that they are not submerged. They have learnt to keep the water away and keep their environment safe.

Madam Temporary Speaker, the same applies to climatic change. We can actually look for ways and means. If we know, for example, as a result of climatic change we will have longer dry periods, we can then plan for that by having more irrigation initiatives and even changing planting seasons. As much as we are not God and we are unable to

control seasons, we can preempt it using technology since this is something that we can use in terms of what can be done by the Meteorological Department. They can forecast and inform us in advance exactly what sort of weather we should expect and come up with the necessary plans, strategies and policies. This is exactly what this Bill seeks to establish comprehensively.

In terms of its objective, the Bill aims to ensure that decision making and implementation plans are done in advance. It is important that this Council that has been put in place and which will be chaired by the President plans and gives information in advance. The Bill also seeks to mainstream and reinforce climate change and disaster risk reduction into strategies and actions of public and private entities. I know that many initiatives have been put for Disaster Risk Reduction (DRR), but over time, we found that they have been very disjointed.

Recently I attended a workshop on DRR in Uganda that brought various people across the globe and specifically from Africa. The main thing was that there is no education on how to reduce the risk. There was also the issue of how people can propel and put finances in the right places. Another issue was on how people can respond to those disasters in order to reduce their effects as much as possible.

Madam Temporary Speaker, another issue that came out in that workshop was the issue of inter-generational gender equality. Women play a key role in terms of DRR, and I gave the example of the late Prof. Wangari Maathai who planted trees in order to ensure that we had a solid ground and hence less erosion. That affects climate and it will determine whether we will have rains or dry spells. The main issue was not only focusing on one aspect of the lens in terms of having the general approach.

The strategy that I advocated for was to have very clear gender mainstreaming. This is because women understand the environment more than anybody else since they are the ones who fetch water from rivers and collect firewood. Therefore, when it comes to mitigating measures and putting actions into place, they need to be put into focus. Again, this process has to be from one generation to the other. The emphasis in this Bill that the inter-generational gender equality aspect will be taken into consideration will be very critical. That way, from one generation to another, the key tenets of what it means to ensure that we do not suffer as a result of climatic change are put into place.

Madam Temporary Speaker, another important aspect of the Bill is ensuring that there will be public participation in climate change responses through awareness creation. At the end of the day, communities will discuss. Most communities have had a historic and age old ways of coping with climatic change. Some of them include relocation to safer grounds at the time of danger. Carrying out public participation and education, therefore, becomes critical.

The Bill also advocates for a lot of research to go into climate change and responses to disaster so that at the end of the day, there is a sense of knowledgeability that has been passed on, for example, the key indicators of climate change and how to plan for them in advance in order not to be caught in a difficult situation.

Another aspect is that of mainstreaming the principle of sustainable development. One of the things that makes climate change one of the key topics is the destruction that it

causes. A whole decade of development can be wiped away just overnight. For example, if it snows and we are all not ready and about 50 per cent of us die as a result, it will erode all the development that we have. It is so key and can actually take you back 100 years. It becomes critical to focus on the key tenets.

Madam Temporary Speaker, I have looked at the composition of the Council that has been put into place and I am impressed with the various people who will sit in that Council that will be chaired by the President. There will be the directorate comprising of a secretariat and then the Cabinet Secretary (CS) who, for the time being is in charge of environment and climate change who will also sit in the Council. However, it also extends to other members who will be appointed by the President.

I will not go through all the members but just the key ones. One is a representative from the academia who will be nominated by the Commission of University Education (CUE). I would like to add that this has to be somebody who is very well versed with issues of climatic change and bring in the theory and actual sense of good practice from other countries that have been in this situation. There will also be a representative from the private sector, civil society and one from the Council of Governors. I think this cascades the issue of looking at it in terms of the actionable plan not just at the national level but even to counties and wards. That way, they will be prepared at various moments so that they can have a quick reaction.

One of the ways that it will be cascaded that has been put in the Bill is to ensure that at county levels, we have people who will consistently have a feedback mechanism into the Council. I expect that at the implementation level, apart from the Council at the national level, we need to cascade this to various levels at the county so that matters of climate change can be handled quite appropriately. Also, as part of the functions of the Council, advising the national and county governments on legislative policy and other measures to be taken. This brings it together and sums it up in a way that helps the key issues to be addressed in the most appropriate way and time.

Madam Temporary Speaker, the Bill also outlines the various functions and what the directorate will be responsible for, as well as serving as a national knowledge and information management centre. This is very critical for climatic change because by the time a disaster occurs as a result of adverse climatic change, there would have been patterns. Remember when there was a tsunami, all animals and living creatures apart from people had already migrated. In climatic change discourse, they always say that extreme climatic change that will lead to disaster will always come with prior warning. Collating information, verifying and redefining this knowledge will help people to come up with a better response mechanism at any one time to enable them to have a way to respond.

The Bill is arranged very well. In Clause 3, the climate change response measures and actions have been clearly stipulated and versed. I think Hon. (Dr.) Otichilo did his homework as he drafted this Bill. Let me stress on strengthening the approaches to climatic change research and developing training technology transfer.

There is also the need to recommend and review duties of public and private bodies on climate change so that the work that had been done prior to this by both public

and private sectors becomes a way to inform the future. This is one of the sectors where there is no winner or grandmaster. Everybody needs to be brought on board so that people are brought to a situation where they can be able to save themselves especially in a situation of drastic climatic change and use the right technological interventions and innovations that are being put into place more and more. As a result of that, it will ensure that we have more employment opportunities coming on board so that people can play their roles at various stages. We should be able to cascade international laws dealing with climatic change to the national level and then the county level.

Madam Temporary Speaker, the issue of public participation has been covered extensively in this Bill. This is going to be at each level of government. We are going to streamline it from the national Government to the county government. I think as a result of public participation, we will ensure that climate change becomes something that we can be able to deal with effectively through legislation.

Sen. (Prof.) Lonyangapuo: Madam Temporary Speaker, I also rise to contribute to this Bill. I would like to thank hon.(Dr.) Otichilo who worked tirelessly to come up with this Bill which in essence will assist us in the area of climate change, having seen the effects that come as a result of not having this Bill or Act in place. I look at the Bill and see its objects and purposes have been stipulated in Clause 3. The Act shall be applied for the development, management, implementation and regulation of mechanisms to enhance climate change resilience and the law carbon development for the sustainable development of Kenya.

There is no meaningful development if you do not pay attention to the effects of climate change. Some of the physical things that have fast tracked and brought a lot of problems with climate change particularly here in Kenya is the effects and the type of havoc that man has brought to the environment like the destruction of forests which has been a menace. Today, the forest cover in Kenya is almost nil. We have gone into devolution and we expect this to improve. It is essential that sand harvesting which has led to fights in Machakos County should be controlled. Burning of charcoal contributes to the destruction of the climate because of the gases that are released into the environment.

Madam Temporary Speaker, it is important that this is looked at properly so that our people who live in the rural areas begin to know. One Member talked about public participation and people being educated on what this Bill is all about. This means that we need a body that is going to coordinate this. This is what is proposed in this Bill. For policy coordination and oversight, there is need to establish the National Climate Change Council which is indicated here. This body is going to draft policies and regulations and transmit them to the 47 counties. They should have units or directorates that are going to implement the same in the various counties.

I am happy that this Bill goes further to say that by law, there is a requirement of members. It states who is required to be here. I see they have mentioned; the Cabinet Secretary for the Ministry responsible for environment and climate change affairs. This is where we also have the National Environment Management Authority which can be able to work together with this Council. In their proposal it states that a representative from the private sector should be able to sit here.

It is also better to qualify what type of a person from the private sector we want, although down there, it is actually indicating the type of training that these people must have undergone. It would be important to have somebody from the industrial sector. This is because of the type of emissions that come from industries. Kenya is in a state of take-off when you look at our Vision 2030. Last year, we were declared a middle income country and this means that we are heading towards value addition and employment of our people will now be found in the agro-based industries. The Bill is also talking about somebody from the academia. It is good to qualify that this must be a person from an active research area on climate change.

There is a rider in paragraph 7 which I need to read. It states:-

“The Council shall, at its first sitting ballot to determine which of the members appointed under sub-section 2 (f), (g) and (i) shall serve for a two year term to ensure pro-rata succession of membership”.

This statement is stating which type of representative will come from the private sector. Somewhere in the Bill, it states that the members must be vetted by the National Assembly. It is not clear from this rider whether there will be need to submit a representative from the private sector so that you vet two and keep another one spare for almost two years before the other one finishes the time. We are also going to have a representative from the civil society, another one representing marginalized communities, the academia and so on.

We also know that the Council of Governors is rotational on a yearly basis and a sitting Chairperson is only eligible for one extra term. The originator of this Bill needs to look at that because must it strictly be the Chairman of the Council of Governors? It could even be a person nominated by the Council of Governors who will sit for the full term of five years. The Member needs to re-look at this. I do not see why we should have two people from the private sector on a rational basis. We should just do it once, and then after the duration and the exit as a Council, a new one comes. I do not see why we should not be able to do that.

Madam Temporary Speaker, what has been indicated here are the powers and duties of the Cabinet Secretary. There is also a proposed Climate Change Directorate. Under the relevant Ministry, there must be a directorate of climate change which is going to be led by a director who is going to be employed by the Public Service Commission and people from all these fields indicated here. They have stated in Clause 9(4) (a) that he should be a Kenyan citizen, (b) with a postgraduate degree, knowledge and experience in any of the following fields: Environmental studies, engineering, meteorology, law, economics and so on.

Now that we are dealing with climate change, it would have been more specific to state that this person should have a second degree in areas related to climate change. This is now being studied in universities. There is no need to include law, economics and engineering. We should have just zoomed in on what we want. The people who are coming to the Council are persons that have experience of over 10 years in areas related to climate change. There are also other parastatals that will work with them.

What I see being proposed here is very interesting and I hope they are not going to go the same direction. We have NEMA and many other parastatals in Government which are asking for money from the public. In Part IV – Duties relating to Climate Change, Clause 15(1) says:-

“The Council may, on recommendation of the Cabinet Secretary and in consultation with the relevant Cabinet Secretaries and county government, impose duties relating to climate change on any public entity at all levels of Government”.

When I read “impose duties”, of late, almost every parastatal that is born comes up with an element of tax collection. This is worrisome because why do they collect money and yet it is the national Government that is giving out the money? On some occasions, we have had some parastatals that have not utilized their funds well and have ended up running around trying to close projects and businesses in the name of wanting to use this money. The NEMA shall also, on behalf of the Council, do the same. This Bill proposes that we have the county government on board so that the performance, functions, integration and mainstreaming of climate change is imposed on the county governments.

It is time we took climate change seriously. The earlier we do it, the better, now that we are just starting devolution. Every county government must show where this is anchored. The CEC in charge of environment issues must be somebody who has studied and has the relevant expertise in the same. We should also have a directorate under the relevant CEC so that we are able to safeguard Kenya and make it a country of choice in controlling climate change and guaranteeing the future and the lives of our people.

I support.

The Temporary Speaker (Sen. Ogoro): Senate Majority Chief Whip, Sen. Elachi.

Sen. Elachi: Madam Temporary Speaker, I thank you for appreciating that women Senators are the ones handling the work of the Senate and ensuring that we go up to 6.30 p.m. when the House adjourns. Having said that, I thank---

Sen. (Prof.) Lonyangapuo: On a point of order, Madam Temporary Speaker. Did you hear my neighbour praising women Senators---

The Temporary Speaker (Sen. Ogoro): Who is your neighbour?

Sen. (Prof.) Lonyangapuo: My neighbour is Sen. Elachi. Did you hear her praising lady Senators and forgetting that we are also here? Is she in order?

The Temporary Speaker (Sen. Ogoro): The Senate Majority Chief Whip is quite in order. Just a few minutes ago, 95 per cent of those who were in attendance in the Senate were female Senators and we took note of that. Now, it is at 90 per cent. Therefore, she is quite in order to make that observation.

Proceed, Senator.

Sen. Elachi: Madam Temporary Speaker, I thank the Mover of this Bill who is a Member of the National Assembly. I also thank the National Assembly for realising that this is a Bill that touches on counties.

Madam Temporary Speaker, you will realise that climate change is a challenge that faces the global world. There have been many protocols, for example, the Kyoto

Protocol of 2005 which obligates governments to ensure that every country mitigates and handles climate change. Climate change has especially affected Third World countries. We have faced different challenges especially disasters of rainfall and snow. For example, Nyandarua County experiences snow and that has completely changed. Therefore, climate change has also affected the agricultural sector. Most of the farmers who believed in and followed the seasons that have now changed are also affected.

Madam Temporary Speaker, the Bill has to be amended to ensure that the words “National Assembly” are changed to “Parliament” to ensure that both the Senate and “Parliament” receive, for example, reports and many other issues that the Mover of the Bill has indicated.

The other issue I want to raise concerns Clause 6 which is about issues relating to climate change. We must ensure that as we create this not just at the national level---

Sen. (Dr.) Zani: On a point of order, Madam Temporary Speaker. Is it in order for Sen. Elachi to talk about the National Assembly and Parliament? She should have said the National Assembly and the Senate so that we do not give a wrong impression because she is talking about a critical point of the Bill being subjected to both Houses. I think she wanted to highlight the Senate and the National Assembly.

The Temporary Speaker (Sen. Ongoro): Sen. (Dr.) Zani, what exactly do you think is out of order in that order of reference?

Sen. (Dr.) Zani: Madam Temporary Speaker, was the Senator in order to allude that the National Assembly and the Senate are inclusive? I think she wanted to allude to the National Assembly and the Senate rather than the National Assembly and Parliament.

The Temporary Speaker (Sen. Ongoro): My understanding of her reference was that she meant that both Houses constitute what is referred to as Parliament. If that is what she meant, then, she is in order because the Senate and the National Assembly constitute Parliament.

Sen. Elachi: Madam Temporary Speaker, I meant that the words “National Assembly” should be deleted and replaced with the word “Parliament” to ensure that both the Senate and the National Assembly receive reports.

Madam Temporary Speaker, the most important thing we need to look at are functions to be performed by counties and those of the national Government. However, we must ensure that those functions are stipulated very clearly in the Bill.

The issue of the Cabinet Secretary (CS) has been emphasised in the Bill, which is okay. However, we must understand climate change cuts across many Ministries. Therefore, we have to be very clear on that, or else, we will continue facing the same challenges we faced when we were looking at the Food Security Bill. We had to delete the words “the Cabinet Secretary” so that whoever will be in at that time takes charge of that department.

Madam Temporary Speaker, we must understand that climate change links development and economics together. Therefore, as we discuss this Bill, we should be aware of the effects that come as a result of climate change which could affect our economy and development. As the Bill moves to the Committee on Land and Natural Resources, we hope that there will be more amendments to ensure that we do not just

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look at the seven parts the way they are but include more content for county governments so that they are included in this Bill.

With those few remarks, I beg to support.

The Temporary Speaker (Sen. Ongoro): Thank you, Senator.

Senate Minority Deputy Whip, Sen. Ong'era.

Sen. Ong'era: Thank you, Madam Temporary Speaker for giving me this opportunity to contribute to the Climate Change Bill (National Assembly Bill No.1 of 2014). From the outset, I thank you for recognising the very important work that women Senators in this House do and how they stay here up to the late hours to make our Senate better and grow so that we finish the business of the day.

Madam Temporary Speaker, this Bill that has been brought to this House is very important. Climate change has been universally recognised as one of the greatest global challenges that the world is facing today. This is because it affects and creates serious threats to sustainable development in this world. Therefore, I am very happy that hon. (Dr.) Otichilo considered it proper to bring a Bill that would address policy issues, regulate climate change and create adaptation and mitigation of the effects of the climate change.

Madam Temporary Speaker, as you are aware, Kenya has ratified several international conventions including the UN Framework Convention on Climate Change that was adopted in 1994 and the Kyoto Protocol in 2005. Incidentally, the United States of America that trumpets to be a democratic nation has refused to ratify these conventions---

(Loud consultations)

After President Obama, who happens to be a son of Kenya was here, we keep on getting mixed up.

(Laughter)

I was saying that incidentally, the USA which happens to be one of the greatest democracies has not seen it fit to ratify the Kyoto Protocol. However, I am happy to note that Kenya is the first African country to come up with a Bill that will regulate the effects of climate change in this country.

The Bill, as many speakers have said before me, sets out policy framework that will adapt and mitigate the effects of climate change. There is a provision for a council to be set up. However, I have issues with this clause. I hope that the Mover of the Bill will look at Clause 7 which sets out the members of the council. I do not see why we have to make the President the Chairman of the council. If we do that, we will be bogging him down with technical issues. It would suffice if a CS or any other qualified Kenyan was appointed to be in charge.

Madam Temporary Speaker, we will also be pleased to have criteria on how these appointments will be made, particularly, for those from the private sector, civil society

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and the marginalised communities so that there is no misuse of power in terms of how people are appointed. There should be a clear criterion so that when we see a person from a marginalised community appointed, we are sure that he or she is from a marginalised community and that no one is using it to reward their political cronies.

Madam Temporary Speaker, I am happy to note that within that membership, gender issues have been considered. In the appointments, there should be, at least, one-third of either gender represented. Women have done a lot concerning climate change, particularly, in risk reduction. We have, in this Parliament, our very own hon. Rachel Shebesh who was elected the UN Champion for Disaster Risk Reduction yet she has not been given enough opportunity to advance this. In fact, outside Kenya, such kind of people are highly celebrated. Hon. Shebesh is forever in the air going around speaking on issue of disaster risk reduction.

Madam Temporary Speaker, we know the effects of climate change. I am happy that this Bill provides for research particularly in the field of agriculture and industrial technology. As you are aware, there are very many diseases arising as a result of climate change. We need to have thorough research or research centres set up to address these issues coming up as a result of climate change.

I am very happy to see that there are provisions that will deal with the effects of what many farmers are undergoing. As a result of climate change, maize, which is a major crop in this country, is now not being grown in the manner we would have wanted. The Food and Agriculture Organisation (FAO) has warned us that five years from now, maize production will become almost extinct. That has encouraged farmers to start considering planting bananas.

I hope that with the establishment of the council, enough research will be done so that we know the varieties of bananas we should plant and crops we should not plant so that our farmers are left with no cash crops to grow. In fact, if I may quote, our own Ministry of Agriculture, Livestock and Fisheries said that; "At least, 300 maize farmers are currently affected by crop failure in this country." Therefore, adaptive capacities need to be addressed in this Bill.

Finally, Madam Temporary Speaker, Clause 25 is with regard to the use of the Fund. A lot of money will be poured into this Fund, especially, from the donor communities. It is my hope that the money will be used effectively to do work that has been set out in Clause 25(8) which states that the Fund shall be applied for use of industrial research, technological policy formulations, scientific and academic research.

Madam Temporary Speaker, I once more, congratulate the Mover of this Bill. I hope that once it is passed, we will see the effects of proper regulations on climate change.

I beg to support.

The Temporary Speaker (Sen. Ongoro): It is now time for the Mover.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I beg to move.

Madam Temporary Speaker, given that we do not have the requisite numbers, I request that you defer the putting of the Question, under Standing Order 54 (3).

The Temporary Speaker (Sen. Ongoro): Very well. The request is in order. We shall put the Question tomorrow afternoon.

(Putting of the Question on the Bill deferred)

Next Order!

THE COMMUNITY LAND BILL
(SENATE BILL NO.38 OF 2014)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I beg to move that the Community Land Bill (Senate Bill No.38 of 2014) be now read a Second Time.

Madam Temporary Speaker, I will be very brief because it is my wish that this Bill can be seconded before 6.30 p.m. This Bill is about a very important factor of production which is land. But even more importantly, it is about a category of land that has been the subject of a lot of tension in our country, that is, community land. The Constitution that we are applying now categorizes land, in Article 61 into three categories, namely public land, private land and community land. It goes on to talk about the need for Parliament to make legislation to regulate various aspects of land. It was intended, under the Sixth Schedule of the Constitution, that four pieces of legislation touching on various aspects of land could be enacted. The other three pieces of legislation have already been enacted long time ago, namely the Land Act of 2012, the Land Registration Act of 2012 and the National Land Commission Act of 2012.

The Community Land Act which was anticipated under the Constitution to be passed has not been passed. It has a deadline of 27th August and somehow we have to contend with that. But briefly put, community land is sensitive and that is why the drafters of the Constitution provided in Article 63 (4) of the Constitution that all land which was previously called Trust Land--- Community land now is what used to be called trust lands and they used to be governed by the operation of two legislations; the Trust Land Act, Cap.288 and the Local Government Act, Cap.265. So, all the land that was under the control of county councils, on behalf of communities, would now be governed by a new law. This is the law that we are discussing here today.

What does it say? It talks about the National Land Commission going out to adjudicate the entire country in terms of community land – the former trust land. For avoidance of doubt, Article 63 (4) of the Constitution froze any transaction or dispossession on the former trust lands until this law is in place. Therefore, people will not alienate, dispose or transfer land which was under the trust of the county councils because they no longer exist.

This Bill now transfers the mandate of trust from county councils to a shared trust between the National Land Commission and county governments in respect to the county where that land is found. So, this Bill creates a number of institutions, including community land boards. The key thing to note here is that community land will now be

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held in trust by the National Land Commission on behalf of county governments. However, county governments have a say in how community land will be administered on behalf of the people.

This Bill is brief. I think that Senators have had an opportunity to look at it. It empowers the NLC to adjudicate throughout Kenya all former trust lands which is now community land, pursuant to its provisions in Article 67(2) of the Constitution. I hope that the problems that have been there between the NLC and the Ministry of Lands, Housing and Urban Development will cease. One area which would have been very controversial is community land in terms of the relationship between those two institutions.

The Bill creates customary rights, including rights of occupancy, grazing and user, unlike other Bills such as the current Land Act under which you can only have ownership right; community land can be owned differently. It can be owned by just having access to graze and using it.

The Bill also talks about how land will be registered in the name of communities and how it will be used. It provides for the setting aside of common areas for grazing. It also provides that people may even fence part of community land for purposes of fencing their homesteads or areas that belong to a particular family within the community. In a nutshell, that is what this Bill does.

Lastly, the Bill creates a new register called the register of community lands in the Lands Registry. There will be a registrar of community lands. We have had trust lands before but there was no register of community land. So, this registry will help in making sure that national wealth which is in trust land, now called community land, is protected for the sake of communities. You cannot have individual ownership. It is owned by communities. However, as I have said, you could have user rights which are individual, including rights to fence certain parts for purposes of grazing, watering animals or securing homesteads.

Madam Temporary Speaker, without much ado, I beg to move. I request Sen. (Prof.) Lonyangapuo to second.

Sen. (Prof.) Lonyangapuo: Madam Temporary Speaker, I rise to second the Community Land Bill (Senate Bill No 38 of 2014), which, as rightfully put, is supposed to effect Article 63(5) of the constitution, which says:-

“Parliament shall enact legislation to give effect to this article.”

This article talks about community land. This Bill is timely. Those who come from areas which were popularly referred to as marginalised areas, know that a small chunk of land is private or public. Most of it was trust land. Sometimes, parcels of land were categorised as group ranches. Some clever people have abused this process by buying off some community land. When this Bill is enacted, they also become rightful owners of this land.

Madam Temporary Speaker, this Bill states clearly what is supposed to be done. It addresses recognition, protection, registration of community land and their rights. It lists all of them. It also talks about Community Land Management Committees that will be in place in every county, sub-counties and below. It reminds me that in my county, there is a

sub-county which is a size of a constituency, but has no title deed. One fellow was mischievous; he went and looked for rights to prospect rubies. Somehow, he came with a title deed from Nairobi. That “hanging” title deed will now be revoked courtesy of this law. How did he acquire a title deed? Some people who want to benefit at the expense of others end up doing this.

In addition, it talks about Community Land Boards. It clearly states their roles and duties. I am impressed with this Bill because it also talks about how we can convert community land to public land, from community land to private land and *vice versa*. This will assist with two things that are happening today. We are losing a lot of farmland because we are going to have small parcels of land which are private. We must amalgamate a law so that we can have land for farming and *vice versa*.

Madam Temporary Speaker, we have national parks in some few counties but not all counties. This Bill will assist because community land can easily be used for other purposes other than what is stated here.

Madam Temporary Speaker, I hope that Senators will look at this Bill and pass it so that it is enacted into a law.

I beg to second.

(Question Proposed)

Sen. (Dr.) Zani: Madam Temporary Speaker, let me congratulate Sen. ((Prof.) Kindiki for bringing this Bill. For a long time, issues of land have been very sensitive in this country and especially the issue of community land. It has been quite difficult to define what community land is and various definitions have been given. Lots of complications come because they do not know the basis of community land; is it for people sharing common ancestry, a common language, the geographical space or the interests of that community? It becomes very critical to provide basis for recognition, protection, management and administration of community land.

As the Mover of this Motion said while moving the Motion, previously, adjudication had not specified community land. It was across all land. It is important to have the key components put into place.

The Temporary Speaker (Sen. Ongoro): Order, Sen. (Dr.) Zani. I will interrupt you a little bit. I want to invoke the provisions of Standing Order No.30 to allow you extra time to conclude your contribution when this matter is next on the Order Paper. We will move to the next contributor before close of business.

Sen. (Dr.) Zani: Madam Temporary Speaker, I was saying that it is important that this adjudication be done for all the land. It is going to be an extensive exercise. The National Land Commission (NLC) will have to look into the different pieces of land and come up with the clear categories of the same land. The county councils that held the land in trust can give the responsibility to the national Government and the county governments.

Looking through the whole issue of unregistered community land gives us a sense of the problems that have come about. For example, in the former Coast Province, there

have been a lot of problems when purchases of land have been made. Community land does not have a title. You find that one of the brothers can sell the land without other members knowing. It is important to have this sort of a process so that this can be streamlined. Looking through the definitions, I see the issue of community has been tackled. I want to say that the definition of natural resources is very narrow. When we come to the Committee Stage, we will propose amendments which will include a broad definition of natural resources as per Article 260. A lot has been left out in that definition.

Madam Temporary Speaker, Clause 7 states that community land shall be owned by the communities. This is a basis of the whole Bill so that at the end of the day, various land tenure systems can be put into place, either customary, freehold, leasehold or any other tenures system. The NLC would have to give a sense of the various tenures and go through a lot of work to ensure that these tenures are adhered to. It should be clear that at the end of the day, the various categories are well stipulated and streamlined. This will include a lot of work which the Commission will do.

The procedure for adjudication will need to include documenting and this is stipulated in Clause 12. The Commission will need to document, map and develop an inventory of community land so that it is done in a transparent, equitable, cost effective and participatory way. This is going to be very key. I also see in the Bill the level of interaction and public participation that has been created, so that members can come on board and clearly indicate the various parcels of land and have a way of proper inventory to be put in place.

Madam Temporary Speaker, various measures are going to be put in place by the Commission to ensure that this is done. One measure is public notice. I think that the stipulation of 30 days is very short to declare the area of land to be classified as community land, especially given the complexities of what community land entails and being able to adjudicate and categorise the various pieces of land.

If we look at the documentation at the Ministry of Lands, Housing and Urban Development, and going by the history that we have issues and problems in the Ministry in terms of doing proper allocation--- A common Kenyan may not even know the category of the land that he occupies. Therefore, even if a public notice is given, where can it be done? It may be done at the governor's office without a common Kenyan knowing.

It is unfortunate that we might not have a lot of time because this is one of the Bills with a constitutional deadline of the 27th August, but it is important that we give provisions of ensuring that we give enough time for people to come forth, talk about and give stipulations of their land. They should be given the sort of involvement and engagement that Clause 12(2)(b) envisages; that they have a proper inventory of their land and resource rights.

Madam Temporary Speaker, upon adjudication, the title deed will therefore be given and then that becomes community land. It is important to note that it will have to be registered and various provisions are given for registration. It can be under family,

community association or a traditional leader. Communication must begin early and some sort of discourse has to happen at that particular level.

This is because matters lands are so sensitive that if the title deed is given to somebody who will abuse that title--- Maybe, we should even have very strict provisions about how that land can be sold, so that we do not have somebody who has been given the responsibility and authority to hold that land, being the one who is going to give it away. That sort of clear demarcation of who is in charge and the responsibilities that go with it are very important

Madam Temporary Speaker, more importantly, in Clause 14, the land is going to be registered and clear provisions have been given for that, including the estimation of the size of the community at the time of the registration and the particulars of the members for that particular community that has been put into place. Part II, on the administration and management of community land also delves into detail.

One of the most important components of this Bill is the setting up of a properly registered committee that will need to have representation at all levels and hold regular and democratic elections; that we would have to keep proper books of accounts so that for this particular group and committee, they can run the show.

Madam Temporary Speaker, the distribution is also gender inclusive and cuts out anybody who is 35 years and younger. We are therefore thinking that the level of maturity is key here. If there is a correlation between age and maturity, then this might be important. It is not always that obvious. Two members; a man and a woman, representing the youth is very critical. All these have been provided. I do not want to go into details because of time, but I would just like to note that there is at least gender representation. This committee will actually manage and administer community land on behalf of the communities, facilitate recording and perform any other functions as stipulated by the Act.

Clause 22 is critical because it talks about removal of Committee members, for example, where there has been a variation or gross misconduct. Where a person ceases to be a member of that Committee, he has to do so in writing. So, there is a level of formality.

Madam Temporary Speaker, we must remember that we are dealing with communities which are usually more informal. Again, it is really important and I cannot overstress that discourse, education and people understanding what is going on will be very critical. We do not want a situation where those who are more educated in matters of land run away and put people in a very difficult position.

There is also a community land board which will be overall in charge of, for example, very specific issues of overseeing the management, administration of the functions, monitoring and evaluation and compliance of the committee as a board so that they do what the committees have actually stipulated.

Clause 32 is critical in that it creates community lands appeal boards. This gives a chance for those who feel that classification has not been done appropriately and can make a point of reference in terms of being considered.

Let me stress on Clause 36 which talks about overriding interests that have to be taken into consideration especially during the registration. Some of the key things that he brings in are cultural and social issues like spousal rights over matrimonial property as they need to be considered and have a say. Certain trusts like customary ones that are put on land need to be put into consideration as well. For example, it should be known whether the land is for grazing or burying people. All those considerations have been put into place and they are quite extensive.

There is also provision given to changing of land from community to public land. This is usually by compulsory acquisition, transfer or surrender. A mechanism for transferring community into private land is provided. According to the Constitution, all land belongs to the national Government. Therefore, conversion is important especially where the Government or country has interests, may be, to construct a road on a certain piece of land, they can acquire the land.

Lastly, Madam Temporary Speaker, the settlement of disputes relating to community land is also clearly stipulated. There will be processes which will include having a mediator, convening meetings where the mediator can understand the specific issues and how people can move forward where these disputes have been.

As I finish, strategic approach and education will be needed in implementing this Bill. That way, community land will be safeguarded. I would like to believe that this Bill actually safeguards community land. We also have to pay a lot of caution that nobody will be put in a position where when this land has been converted into community land, they end up suffering and become disgruntled as a result.

This Bill is meant to create order but we have to make sure that we put clear legal operation systems into place to ensure that beneficiaries of the classification of community land are the communities themselves. This is because without this land, many communities will not sustain themselves since they depend on it for water, and other natural resources, grazing needs and other customary rituals. These lands have buried forefathers who have to be respected.

I support.

ADJOURNMENT

The Temporary Speaker (Sen. Ongoro): Hon. Senators, it is now time to interrupt the business of the Senate. The Senate stands adjourned until tomorrow, Wednesday, 30th July, 2015 at 2.30 p.m.

The Senate rose at 6.40 p.m.