

**PARLIAMENT OF KENYA****THE SENATE****THE HANSARD****Wednesday, 6<sup>th</sup> August, 2014**

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

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

**COMMUNICATION FROM THE CHAIR***KAMUKUNJI FOR HON. SENATORS*

**The Speaker** (Hon. Ethuro): Hon. Senators, I have two communications to make. First, I wish to announce that we will have a *Kamukunji* tomorrow morning at 11.00 a.m. in this Chamber.

OPERATIONS OF THE SELECT COMMITTEE ON THE PROPOSED  
REMOVAL BY IMPEACHMENT OF THE DEPUTY  
GOVERNOR OF MACHAKOS COUNTY

Secondly, I wish to announce that the Select Committee on the impeachment of the Deputy Governor of Machakos County met this morning and carried out their elections. Sen. Kagwe was elected as Chairperson and Sen. (Dr.) Zani as the Vice Chairperson. The Committee will be reporting to the House its findings on Monday, 11<sup>th</sup> August, 2014 at 2.30 p.m.

*(There was a technical hitch)*

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. The microphones are not working.

**The Speaker** (Hon. Ethuro): Order, Senators, our technicians are working on the system. Is it on?

**Hon. Senators:** It is on now!

**The Speaker** (Hon. Ethuro): Good. Let us proceed.

**PAPERS LAID**

**The Speaker** (Hon. Ethuro): Sen. Sijeny, you may proceed.

REPORT ON THE GENERAL STATUS OF THE ROADS WHICH ARE UNDER  
CONSTRUCTION OR REFURBISHMENT IN KENYA

**Sijeny:** Mr. Speaker, I beg to lay the following Paper on the table of the House today, Wednesday, 6<sup>th</sup> August, 2014:-

A report from the Ministry of Transport and Infrastructure on the general status of the roads which are under construction or refurbishment in Kenya.

I am doing this in my capacity as the Vice Chairperson of the Committee.  
I beg to lay the report on the Table.

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

REPORT ON THE CASH DISBURSEMENT SCHEDULE  
FOR COUNTY GOVERNMENTS FOR THE  
FISCAL YEAR 2014/2015

**Sen. Billow:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the House, today, Wednesday, 6<sup>th</sup> August, 2014:-

The Report of the Senate Standing Committee on Finance, Commerce and Budget on the Cash Disbursement Schedule for County Governments for the Fiscal Year 2014/2015.

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

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

**NOTICE OF MOTION**

ADOPTION OF REPORT ON THE CASH DISBURSEMENT  
SCHEDULE FOR COUNTY GOVERNMENTS FOR THE  
FISCAL YEAR 2014/2015

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

THAT, the Senate adopts the Report of the Standing Committee on Finance, Commerce and Budget on the Cash Disbursement Schedule for county governments for the Fiscal Year 2014/2015.

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

## STATEMENTS

STATUS OF STAFFING IN LOKIRIAN  
PRIMARY SCHOOL, TURKANA COUNTY

**Sen. Nabwala:** Mr. Speaker, Sir, I rise to request a statement from the Chairperson of the Committee on Education on the status of staffing in schools specifically in Lokirian Primary School in Turkana County.

In the statement, the chairperson should:-

(1) Explain why Lokirian Primary School in Turkana County has a severe shortage of teachers to the extent that police officers who are deployed to enhance security have volunteered to take on the role of teaching.

(2) State the specific steps that the national and county governments have taken to remedy the situation since the problem of under-staffing in public schools in marginalized areas has always been there.

(3) Explain if it is fair for such disadvantaged students to take the same national examinations with privileged students in well equipped schools.

(4) State if the Teachers Service Commission (TSC) and the Ministry of Education are aware of this problems and the measures taken to improve teachers staffing in such institutions.

Thank you, Mr. Speaker sir.

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

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

**Sen. (Dr.) Khalwale:** Mr. Speaker, the matter raised by the nominated Senator is so important that it goes beyond Turkana County. You are aware that the TSC has recently released the number of places that they want to offer each school and every county to try and achieve some form of balance in the discrepancy of teachers in the country. Maybe this is an opportunity for the Chairperson to also tell us the criteria that was used to allocate the given number of positions to various counties and why certain schools were allowed to recruit and others are not going to enjoy the same privilege

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Khalwale, I am sure you have been a very faithful Member of this House and you recall the words of the Senator from Meru County, that you do not load his statement. I, therefore, recommend that Sen. Nabwala's statement is taken as she read it and that yours will also be a second statement to the same committee.

*(Applause)*

This is so that you can deal, especially with your own use of the word "grave". I think the situation of Lokirian Primary School is grave. We do not want to complicate it with yours.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, we seem to have shifted. Normally, when there is a request, we are allowed to make further requests, but let me also make a request that may not be of---

**The Speaker** (Hon. Ethuro): By the way, just on that one, Sen. Wetangula, that is a practice we should actually discourage. A statement should be specific. We have allowed that practice, but it is not the proper one.

**The Senate Minority Leader** (Sen. Wetangula): But because of the critical national importance of this matter, I do not know if you watched TV yesterday and saw police, administrative police constables with Kalashnikovs on their back, purporting to be teaching standard one children. How can a child of seven years concentrate on learning from a person who is not a trained teacher at all and wearing a Kalashnikov on the shoulder and purporting to be teaching?

The question I want to ask the chairperson of the committee, that that situation is very dire---

**Sen. Munyes:** Yes, it is.

**The Senate Minority Leader** (Sen. Wetangula): My distinguished friend and colleague and party chairman from Turkana is here appreciating and nodding that the lady has done a good job.

I have been speaking to KNUT and they tell me that the natural attrition in teaching, teachers who die and those who retire, are much more than what the Government recruits per annum. This means that teaching in schools, particularly primary schools is going down and down to the level that what you find in all urban areas---

**The Speaker** (Hon. Ethuro): Order! Senator Wetangula.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, I am asking a question.

**The Speaker** (Hon. Ethuro): Order, Sen. Wetangula! This is Statement Time.

**The Senate Minority Leader** (Sen. Wetangula): Okay let me just conclude. What is this Government doing to redress the imbalance in staffing of teachers in schools, particularly rural schools and the marginalized counties like Turkana, Marsabit, Mandera, Wajir, Bungoma and others?

**The Speaker** (Hon. Ethuro): I will leave it to the discretion of the Chairperson to satisfy himself on whether all those counties qualify to be marginalized.

**Sen. Wangari:** Mr. Speaker, Sir, I was hoping to get a chance to raise a point of order earlier when Sen. (Dr.) Khalwale was speaking. I know that I have asked this question over and over again, and you have ruled on how we address Senators in this House. Sen. (Dr.) Khalwale addressed Sen. Catherine as Nominated Senator and Sen. Wetangula called her "that lady." The Standing Orders are very clear on how a Senator should be referred to. Regardless of whatever they call us out there, I think that in this House, it should be out of order for them to refer to other Senators whatever they feel like.

**The Speaker** (Hon. Ethuro): I am sorry, Sen. Wangari, the system cannot tell exactly whether you want your request to come after or during. But I note the issue that you have raised. Sen. Boni Khalwale, indeed, the Standing Orders are very clear. Each Member here is Senator so-and-so. Sen. Wangari, in the circumstance of Sen. Wetangula, there are Senators that he referred to as his kid brothers. You can qualify after

you have made the appropriate description. So, I think that, that is the practice, so far. But saying “that lady” is unacceptable.

Let us leave it there. Everybody has heard and you know how we are supposed to refer to each other. That is absolutely important.

**Sen. Omondi:** Mr. Speaker, Sir, I want it to go on record that Sen. Wetangula said that the police officers were “purporting”. Were they purporting or they were teaching? If they were teaching who gave them permission to teach? If they were rescuing the situation, were they purporting or they were actually teaching? I think that “purporting” and “teaching” are two different words. Could Sen. Wetangula tell us what he really meant?

**The Speaker** (Hon. Ethuro): Order! Order! There is really no debate there. The way you use words is basically to express your own appreciation of the situation. As far as Sen. Wetangula is concerned, maybe he wanted to convince the House that it is not possible to teach and, at the same time, hold an AK47. He even gave a reason that they are not qualified to teach. The only thing that Sen. Wetangula does not appreciate is that maybe under the circumstances of a place like Lokiriana, the pupils can learn more under a teacher with an AK47, because they will be more assured that they are protected.

*(Laughter)*

**Sen. Elachi:** On a point of order, Mr. Speaker, Sir. While I know that in this country, even chiefs and other people do volunteer, I wanted to ask earlier if, indeed, my Senator, who is also my leader from Western, was in order to say that the police had AK47 rifles. I never saw on television AK47 rifles in the class. I think that it would be wrong for us to discourage people who have volunteered to help, where we know that situations are very dire. In fact, what is happening is a result of our mistakes as leaders.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. I do not know which channel she watched. There are many Senators here who can testify, probably even across, that those Administration Police (AP) constables had Kalashnikovs. I am not complaining. Turkana is a security operation area and for anybody to carry a Kalashnikov is not offensive. But to go before a Standard One child to teach with a Kalashnikov is, definitely, a state of fright for the children.

**The Speaker** (Hon. Ethuro): Order, Senators! By the way, Sen. Elachi, you are not the Chairperson of the Committee on Education. The last time I checked, it was Sen. Daniel Karaba. Again, this Statement has not been responded to yet. So, let the Vice Chairperson tell us when they will bring the Statement and then we will interrogate the Statement. The Committee will confirm whether or not, there was an AK47 or if there was any teaching that took place. All these issues have been canvassed and will be responded to.

**Sen. Mohamud:** Mr. Speaker, Sir, due to the other requests by the Senators, on behalf of the Committee, we will report back to this House the first Thursday after the recess.

**The Speaker** (Hon. Ethuro): Order, Vice Chairperson! How many Statements do you have? You have two Statements. There was a specific one by Sen. Nabwala and then

you now have another Statement, which I said should be separated from the one by Sen. (Dr.) Khalwale, which was supported by Sen. Wetangula.

**Sen. Mohamud:** Mr. Speaker, Sir, on behalf of the Committee we will report back to the House on the two Statements on the first Thursday after the recess.

**The Speaker** (Hon. Ethuro): Of course, for the issue raised by Sen. Wetangula in terms of replacing the teachers due to attrition, that is something that the Committee can really dispense with very quickly. This is because the assumption that the Teachers Service Commission (TSC) uses for recruiting teachers is really on the basis of attrition. So, it would be wrong if less teachers are recruited than those lost through attrition.

**Sen. Billow:** On a point of order, Mr. Speaker, Sir. Watching the Kenya National Union of Teachers (KNUT) Secretary General last night on television speaking in Mombasa, he said that out of the 10,000 new teachers the number that was lost due to attrition last year was 5,500. He said that the balance is only what represents additional teachers. That is what he said yesterday on television.

**The Speaker** (Hon. Ethuro): Order, Senators. Sen. Billow, you are taking us back on an issue I had already ruled on. I thought you are in a nice comfort of the neighbourhood of Sen. Elachi, whom I reconfirm is not the Chairperson of the Education Committee and neither are you. My recommendation was to the Chairperson to establish these facts and come and report to us. That way, we do not have to engage to know which figures are correct.

**Sen. Munyes:** Mr. Speaker, Sir, you said the committee should deal with this matter. Given that we will be away on recess and by the time we come the TSC will have posted the teachers, it would be a matter of urgency to discuss this matter at the committee level. We should also sort out the issue whether it is appropriate for police officers to purport to be teachers in some of these areas. I know there is need, but is that the right way to dispense of matters of education?

**The Speaker** (Hon. Ethuro): But the matter has come when we should have been on recess. Remember that this week was an extension.

Secondly, it is the plenary that will be on recess. The committees will still be at work. I am sure the Members of the Committee, ably represented by the Vice Chairperson have heard the sentiments by the Senators, including yours. They will interrogate the TSC accordingly.

**Sen. Mohamud:** Mr. Speaker, Sir, indeed, we, as a Committee, have a meeting tomorrow. We will discuss that issue as one of our agenda.

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

## BILLS

### *First Readings*

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (No.2)  
BILL 2013 (NATIONAL ASSEMBLY BILL NO.33 OF 2013)

THE COUNTY RETIREMENT SCHEME BILL,

(SENATE BILL NO.25 OF 2014)

THE NATIONAL YOUTH SERVICE (AMENDMENT)  
BILL, (SENATE BILL NO.26 OF 2014)

THE COUNTY ASSEMBLIES SERVICES BILL  
(SENATE BILL NO.27 OF 2014)

*(Orders for First Readings read –  
Read the First Time and ordered to  
be referred to the relevant Senate Committees)*

### COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

### IN THE COMMITTEE

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

THE COUNTY GOVERNMENTS (AMENDMENT) BILL,  
(SENATE BILL NO.1 OF 2014)

**The Temporary Chairperson** (Sen. (Dr.) Machage): Order, Senators. We are now in the Committee of the Whole on the County Governments (Amendment) Bill, (Senate Bill No.1 of 2014), otherwise referred to as the Khalwale Amendment.

We will go straight to Clause 3. There are two amendments; one sought by Sen. Khaniri and another by Sen. G.G. Kariuki. I will advise and direct that we listen to the amendment by Sen. G.G. Kariuki first.

**Sen. Khaniri:** On a point of order, Mr. Temporary Chairperson, Sir. I do not wish to challenge your decision. However, if we go by the Order Paper, I think my amendment comes first. If you notice, the amendment by Sen. G.G. Kariuki is actually my amendment and an addition. Therefore, I would propose that I move my amendment first because the amendment by Sen. G.G. Kariuki is actually exactly my amendment plus an addition.

**The Temporary Chairperson** (Sen. (Dr.) Machage): If you look at the two amendments, Sen. G.G. Kariuki's amendment is broader. If we discuss and approve it, it would have carried your amendment. I think it would be prudent and a save of time to go that way.

*Clause 3*

**Sen. G.G. Kariuki:** Mr. Temporary Chairperson, Sir, I beg to move:-

THAT clause 3 of the Bill be amended by –

- a) renumbering the proposed new section 6A as section 6A (1);
- b) Inserting the following new subsections immediately after the new subsection (1) –
  - 2) A County Assembly may, by a resolution supported by at least two thirds of the Members of the County Assembly and with the approval of the Senate, transfer the county government from the physical location specified in the Third Schedule to such other physical location as it may consider appropriate.
  - (3) A County Assembly shall, before passing a resolution under subsection (2), obtain the views of the members of the public within the County.

Mr. Temporary Chairperson, Sir, on the Third Schedule----

**The Temporary Chairperson** (Sen. (Dr.) Machage): Order! Please, only move Clause 3.

*(Sen. Wetangula consulted loudly)*

Order, Sen. Wetangula! What do you want to say?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Chairperson, Sir---

**Sen. G.G. Kariuki:** Mr. Temporary Chairperson, Sir, I hope he is not---

*(Sen. G.G. Kariuki and Sen. Wetangula remained on their feet)*

**The Temporary Chairperson** (Sen. (Dr.) Machage): Order, Senators! The two of you cannot be on your feet at the same time. It is Sen. Wetangula on his feet now.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Chairperson, Sir, I am sorry I did not seek your permission. I was just telling the distinguished Senator that he will move the amendment on the Schedule when we reach it.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Thank you although that was not your work.

**Sen. G.G. Kariuki:** Thank you for reminding me.

**The Temporary Chairperson** (Sen. (Dr.) Machage): I have to propose first.

**Mr. G.G. Kariuki:** Mr. Temporary Chairman, Sir---

**The Temporary Chairperson** (Sen. (Dr.) Machage): You can now sit so that we can hear from the others.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Chairperson, Sir. I think the procedure would have been that after he read out his amendment, he be given an opportunity to carry the House with him by justifying the amendment. Before he could do so, he was asked to sit down. Maybe it is nice if he could carry all of us with his amendment.



**The Temporary Chairperson** (Sen. (Dr.) Machage): Very well, I think the confusion came with Sen. Wetangula. I accept Sen. (Dr.) Khalwale's intervention. Therefore, I will reverse my decision and give Sen. G.G. Kariuki the opportunity to move the House with him.

**Sen. G.G. Kariuki:** Mr. Temporary Chairperson, Sir, there should never be any confusion because I was very sure that I will be given an opportunity to explain the reason for this proposal.

I think this being a respected House by the people of Kenya, we should also go by their feelings that they recognize this House as a major and very important House in the institution of politics in Kenya. We should also allow members of the public to participate fully according to the Constitution. The original amendment was quite in order as far as I am concerned. I supported the amendment by my colleague over there and I thought we needed to give the public the opportunity because the county government can just sit down and decide that we are going to move this county headquarters to another location without giving the public an opportunity.

I am saying this because I have an experience in Laikipia County. Before I thought about the amendment, the County Government of Laikipia had sat down and passed a resolution which was sent to the Clerk of the Senate with a copy to the Speaker informing them that they would want the physical location of the headquarters of the County of Laikipia to be transferred from Nanyuki to Rumuruti.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! You can only concentrate on Clause 3 and leave Clause 4 because we shall come to it.

**Sen. G.G. Kariuki:** Thank you, Mr. Temporary Speaker, Sir. Then I have not much to add because this is very clear and straight forward amendment.

I beg to move.

*(Question of the amendment proposed)*

**Sen. Khaniri:** Mr. Temporary Chairperson, Sir, I rise to support the amendment moved by Sen. G.G. Kariuki. But before doing so, I would like to say that when this Bill was moved, I was away. However, I had drafted a similar amendment.

Let me take this first opportunity to thank Sen. (Dr.) Khalwale of Kakamega County for bringing this Bill. It is a very good Bill. Before we pass the Bill, it is at the whims of the governor and the executive to decide to move the county government headquarters to any place. We have seen it happen in some counties, but we do not want to name them here.

If the Bill passes as it is, it will leave some lacuna. This is because there has to be a provision for the residents when they want to change their county headquarters from one place to another. Therefore, we must put that provision in the law where there is a procedure to be followed when you want to shift your county headquarters from one place to another. That was the import of my amendment.

I want to support Sen. G.G. Kariuki's amendment because he has incorporated a further amendment whereby the general public should participate in this process. A good idea will always give way to a better idea. My idea was a good one, but I concede that

Sen. G.G. Kariuki's idea is better. For that reason in advance, I withdraw my amendment and fully support what Sen. G.G. Kariuki has put forward.

*(Proposed amendment by Sen. Khaniri withdrawn)*

**The Temporary Speaker** (Sen. (Dr.) Machage: In a normal situation, the Clerk's office should have called both of you. However, we only do so if the amendments are more than ten. Since they were less than ten, that is why they were left as they are. Thank you for your patriotism.

We will defer putting the Question for obvious reasons, unless there is somebody else who has an intervention.

**Sen. (Dr.) Khalwale:** Mr. Temporary Chairperson, Sir, as the originator of the Bill, I fully support this amendment. I am glad to be informed and reminded that things do change. In fact, because this Bill is attempting to mirror what you find in Urban Areas and Cities Act which provides for Nairobi as the Capital City of Kenya, I am reminded of the case of Nigeria and Tanzania. After sometime, Tanzanians discovered that it is better for them to move from Dar es Salaam to Dodoma. Nigeria moved from Lagos to Abuja. Brazil is another example. I have been reminded that by the former Minister for Foreign Affairs and Senate Minority Leader. Things might change in future as we strengthen the counties. Therefore, this opening must be there. We do not want to find ourselves where Tanzanians found themselves in the sense that the Tanzanians were not involved in any way. A decision was just made by the political leadership. They had to resort to the singing of Mbaraka Mwinshehe to carry the country with that decision.

I support.

**Sen. Sang:** Mr. Temporary Chairperson, Sir, I rise to support the amendment by Sen. G.G. Kariuki. We, as the Committee on Legal Affairs and Human Rights, sat. We deliberated on this Bill and solicited the views of all the stakeholders under the leadership of the Attorney-General *Emeritus*. We solicited views from all the stakeholders and drafted an amendment. However, when you look at the amendment by Sen. G.G. Kariuki, just like the one by Sen. Khaniri had, you will see that we, as a Committee, agreed to drop our amendment. We agreed to support Sen. G.G. Kariuki's amendment because it captured the entire issues that we thought needed to be addressed.

I want to be on record, therefore, that as a Member of the Committee on Legal Affairs and Human Rights, under the Chairmanship of Sen. Amos Wako, we agreed to fully support this amendment.

I support.

**The Temporary Chairperson** (Sen. (Dr.) Machage: I see no other interventions. You can proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Chairperson, Sir, this is yet another Member of the Committee on Legal Affairs and Human Rights. I want to confirm that the public is in tandem with the proposed amendment save that we need to reconsider sub clause 3 in terms of when views of members of the public should be obtained.

This one suggests that it should be before passing of a resolution. Let me say that as a Member of the Legal Affairs and Human Rights Committee, I want to confirm that

this amendment complies with Article 14 of the Constitution where we have given sovereign power to the people to be exercised both at the Senate and at the county assembly. Under sub article (1) we have also given the people of Kenya an opportunity to consider this amendment.

As Sen. (Dr.) Khalwale has said and in his wisdom as he was proposing this Bill, the Makueni County may decide that once Konza comes up, we will relocate it to Konza. So, that opportunity should be given to the county and to the members of the public. We do not want to have hiccups of anchoring things in the law that cannot be changed.

More importantly, Mr. Temporary Chairperson, law is dynamic. Therefore, we must also, as a legislative organ, recognize that it being dynamic, there is an opportunity for change where the physical location becomes something that can be altered for purposes of enhancing service delivery or for any other purpose that the public may be interested.

**Sen. Kajwang:** On a point of order, Mr. Temporary Chairperson, Sir. I have a small matter which makes a big difference to me since I have now seen how we conduct public hearings in counties.

Regarding sub clause (3), a county assembly shall, before passing a resolution---

**The Temporary Chairperson** (Sen. (Dr.) Machage): Order, Sen. Kajwang. If you want to contribute, then you better let Sen. Mutula Kilonzo Jnr. to complete his contribution. You should also press the right button because as long as you press the intervention button, that means you are on a point of order.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Temporary Chairperson, Sir, for coming to my rescue. That is what I was talking about. It is possible that we may have to consider the collection of public views under sub clause 3 so that we make this an independent public participation. Before the county assembly passes a resolution, they shall conduct a public hearing under the necessary provisions of the County Governments Act.

**Sen. Kajwang:** Mr. Temporary Chairperson, Sir, just where Sen. Mutula Kilonzo Jnr. left, you cannot really know how to obtain views from members of the public. Is it that if the assembly were to move from Homa Bay where they currently sit to Mbita Market and invite the public so as to seek views with regard to the transfer of the headquarters, would that be sufficient to be considered as consultation of the public? Do we put it that this will follow an Act of Parliament?

*(Sen. Murkomen consulted with Sen. (Dr.) Khalwale)*

**The Temporary Chairperson** (Sen. (Dr.) Machage): Order, Sen. Murkomen! You are a Member of the Speaker's Panel.

**Sen. Kajwang:** Mr. Temporary Chairperson, Sir, we should have coached it in the manner in which Mutula Kilonzo Jnr. put it so that it follows the law that has been passed by the County Assembly in terms of the way public hearings will be conducted. That will satisfy me.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Sen. G.G. Kariuki, I can see your intervention. However, you are the Mover of the Motion and you have already spoken. Do you want to say something?

**Sen. G.G. Kariuki:** Mr. Temporary Chairperson, Sir, we are not supposed to do any kinds of replies in such amendments.

**The Temporary Chairperson** (Sen. (Dr.) Machage): The computer was showing that you had two requests to speak and one intervention.

**Sen. G.G. Kariuki:** Mr. Temporary Chairperson, I am sorry about that.

**Sen. Okong'o:** Mr. Temporary Chairperson, I want to concur with the sentiments of Sen. Mutula Kilonzo Jnr. and Sen. Otieno Kajwang. This clause, as it is, in terms of collection of public views is ambiguous. Unless and until we get a remedy to this through legislation, this does not augur well. If you look at the systems which have been used by assemblies with regard to public participation, we must have a procedure where we have a mode of collecting views.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Sen. Wako, do you want to contribute or do you have an intervention?

**Sen. Wako:** I want both.

**The Temporary Chairperson** (Sen. (Dr.) Machage): No, you cannot want both.

**Sen. Kagwe:** Mr. Temporary Chairperson, whereas I appreciate the intervention regarding how public views should be collected, here in Parliament, we normally have public hearings and we get people to listen to what we are saying. It is my considered opinion that this amendment qualifies to do exactly that. We do not want to overregulate. Once we have given a mandate to county assemblies to collect views, honestly, they will do it. It is also up to them, at some point, to make their own regulations regarding how they will do it. We should not start regulating the operations of county assemblies.

**Sen. Wako:** Mr. Temporary Chairperson, Sir, on this particular issue, I think it is good for us to be consistent in drafting. Consistency in drafting means that we use the same words that are in the Constitution and in the County Governments Act. The words used in both are "public participation."

Therefore, we need to amend subsection 3 to say that a county assembly shall; before passing a resolution under sub section 2, facilitate public participation and involvement in the decision. If we have that, the Committee contemplates that since a legislation is contemplated for under the County Governments Act on what public participation is all about, we will be bringing----

**The Temporary Chairperson** (Sen. (Dr.) Machage): Sen. Wako, you have not shown any intention to move an amendment. Therefore, you cannot discuss as if you have already moved an amendment. You have to amend the amendment. Is that what you want to do? You have to be procedural. Could you, please, put it in writing and submit it although it has been overtaken by events?

**Sen. Wako:** Mr. Temporary Chairperson, Sir, I will do so.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Do we have any other contribution as Mr. Wako fights with his pen?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Chairman Sir, as the distinguished Senator from Busia grapples with the amendment, I would like to thank the

distinguished Senator from Laikipia for bringing this very good amendment. One, to involve the representatives of the people in deciding where the capital of the county shall be located and two, to make sure that people are also consulted.

Thirdly and more important, you have seen some of our governors who are drunk with power waking up and deciding on their own, without consulting anybody that they have moved the headquarters of the county to a different place.

You have seen the case of Kiambu where a Governor woke up one day and decided that the headquarters would not be in Kiambu, but in Thika where he comes from. We must legislate to avoid this irrational excessive behaviour by any individual. We are aware of situations where many governors, upon election, may unilaterally decide to move the headquarters to their villages. We have seen this megalomaniac behaviour from the former President of Cote d' Ivore who moved the headquarters of his country from Abidjan to a little village where he was born called Yamasucro. We also had Mobutu Seseseko who moved the headquarters from Kinshasa to a forest called Gabolite where nobody knows and nobody goes there. The examples are endless. So, the only way we can curb excesses from megalomaniacs is by legislation and having a proper law that is definitive and that can help the members of the public, in whichever county, to participate in shaping the destiny of their county.

Finally, Mr. Temporary Chairperson, Sir, when this law is passed, I think it will really help. I want to thank the distinguished Senator for Kakamega and the Committee on Legal Affairs and Human Rights for their input in continuing to make devolution a reality, a pro-people movement and beneficial to the people and not to individuals. Devolution is not for Senators, it is not for governors, but it is for the people of this country and that is what we must constantly stand for.

Thank you, Mr. Temporary Chairperson, Sir.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Yes, Sen. Wako.

**Sen. Wako:** Thank you very much, Mr. Temporary Chairperson, Sir. I am now ready with the amendment and it reads as follows.

THAT, Clause 3 be further amended in paragraph (b)(3) by deleting the words "obtain the views of the members of the public within the county" and inserting the words "facilitate public participation."

With the amendment, the clause will now read:

"A county assembly shall, before passing a resolution under sub section 2, facilitate public participation."

Do I need to speak on it now?

Mr. Temporary Chairperson, Sir, I think this amendment is now consistent with the wordings contained in the Constitution. As you are aware, the spirit of the Constitution is public participation in everything. That spirit of public participation has also been captured in the County Governments Act. Actually, in the County Governments Act, we are supposed to come up with legislation on how that public participation should take place; the criteria, what should be done and so on.

I can assure this august House that the Committee on Legal Affairs and Human Rights is already crafting that legislation. In fact, I will soon be bringing a Motion in this

House to permit us to come up with that legislation. We have already come up with a legislation on how the elected officials – Senators, Members of County Assembly (MCAs)---

**The Temporary Chairperson** (Sen. (Dr.) Machage): Can you restrict yourself to this amendment?

**Sen. Wako:** Mr. Temporary Chairperson, we have come up with how they can participate in accordance with that particular Act. We shall now be coming up with another piece of legislation on how the public itself will be able to participate in that decision. This is the spirit of this amendment. Before a county decides to move the headquarters, the public must be involved in the decision making process.

*(Question of the further amendment proposed)*

**Sen. G.G. Kariuki:** Mr. Temporary Chairperson, Sir, since I do not see a major difference from what I proposed; it was obtaining participation where you obtain from the public and the public participates. So, I do not see ambiguity there myself because it is just a matter of saying that it is in line with the Constitution and what not. So, that language, if I understand English language properly, is almost the same. I do not see the difference between participation and collecting public views. That is my understanding. So, I do not think we should really spend a lot of time arguing about one word which means the same.

So, if my colleague over there, the Mover of the new amendment will agree, it would go the way it is because you have to ask the public to give their views. How do they give their views? They have either to be called in a hall or anywhere; it is mandatory even here to obtain the views of the public and public participation.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Order! You know, as the Mover, if you remove the amendment, it has a different legal situation in the House. I mean, are you refusing the amendment of Sen. Wako?

**Sen. G.G. Kariuki:** Mr. Temporary Chairperson, Sir, I have the Constitution here. He did not specify which section of the Constitution he is talking about. We should go by the Constitution. I am not here to say something which is outside the Constitution. The only thing that Sen. Wako should do is to let us know which section of the Constitution he is reading so that we can also compromise.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Sen. G.G. Kariuki, you have said that Sen. Wako's amendment does not shift from your view of the whole clause.

**Sen. G.G. Kariuki:** It does not.

**The Temporary Chairperson** (Sen. (Dr.) Machage): So, it is all right?

**Sen. G.G. Kariuki:** It is all right the way it is. There is nothing new.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Very well; that decision will be made by the Chair. Since you have accepted that it does not shift the meaning of your amendment to the clause, then we accept it and I will call on Sen. Kajwang.

**Sen. Kajwang:** Mr. Temporary Chairperson, Sir, thank you very much. I think I agree with Sen. Wako because that is what bothered me earlier. When you say "obtain

views,” then it is like you are going to do some referendum or you are going to do some research to know who said “no” and who said “yes.” But when you say “public participation,” then it leaves it there until there is legislation to say exactly how that public participation will be done. I hope this law on public participation comes quickly because as it is now, the county governments are required to facilitate public participation. However, what they do now because I have watched them, it is not really public participation. They go to the market place, they say they are from the county. They have not published anything before like the budgets. They say “we want to do a road, a dam, this or that here, can you give us your views?” People do not know even how much money they have, what is the priority and why they have chosen the dam. Therefore, people actually end up saying that you should not have come here; you have already made a decision.

Mr. Temporary Chairperson, that law which has been proposed by the Committee on Legal Affairs and Human Rights should come quickly so that we can put the county governments to account. We will ask them “did you actually carry out public participation as is required by the law?” We could then have the four corners of the law fixing them and saying “you did not, then do the right thing and this budget of yours should be disqualified. Things like that.

Mr. Temporary Chairman, Sir, I beg to support the amendment.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Just to shorten further discussions on this, you should look at Articles 118(d) and 196(3) of the Constitution and you have the answers. You do not have to prolong the discussion; it is all in the Constitution.

Yes, Sen. Wetangula, unless you have something else---

*(Sen. Wetangula spoke off record)*

**The Senate Minority Leader** (Sen. Wetangula): I do not need to belabour the point.

Thank you, Mr. Temporary Chairperson, Sir.

**The Temporary Chairperson** (Sen. (Dr.) Machage): I see no further interventions.

Sen. Mutula Kilonzo Jnr. do you still want to contribute?

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Chairperson, Sir, I just want to echo the sentiments of my Chairperson and Sen. Wetangula that, in fact, what we have done is to follow Article 196(2)(b) word for word. I also want to add that the words “public participation” appearing in the County Governments Act, we are preparing legislation on that so that, then, we have the law and phraseology in tandem with one another so that we satisfy Sen. G.G. Kariuki.

Thank you, Mr. Temporary Chairperson, Sir.

**Sen. (Prof.) Anyang’-Nyong’o:** Mr. Temporary Chairperson, Sir, I was just going to say exactly what my colleague, Sen. Mutula Kilonzo Jnr. said and tell my colleague, Sen. G.G. Kariuki that his intentions are correct and noble. However, I think exactitude is the essence of law and I think what my other colleagues said is in line with

what the Constitution and the County Governments Act says. It is important to be exact in the language that is used so that nobody doubts whatsoever what they are going to do, or when this particular amendment takes effect.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Very well! I will put the question because we have to dispose of this.

What is it, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Temporary Chairperson, Sir, looking at the plenary, I can see around 15 delegations. For this reason---

**An hon. Senator:** There are others in the lobby here.

**Sen. (Dr.) Khalwale:** Well, I am saying the ones who are here because the question is now about to be put.

So, Mr. Temporary Chairperson, Sir, I rise on Standing Order No.99 in view of that so as to avoid the disaster of this particular question being put and then---

**The Temporary Chairperson** (Sen. (Dr.) Machage): Yes, I had already noted that; thank you for your reminder---

**Sen. (Dr.) Khalwale:** If you could wait a little bit longer---

**The Temporary Chairperson** (Sen. (Dr.) Machage): Yes, we will wait.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Chairperson, Sir.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Yes, Sen. Wetangula?

*(Sen. Wetangula spoke off record)*

**The Senate Minority Leader** (Sen. Wetangula): We have enough delegations. We have counted and found out that we have about 27 delegations present that are actually in the lobby. I do not know where the whips are to go and whip people back.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Where is your Whip, as the Senate Minority Leader?

**The Senate Minority Leader** (Sen. Wetangula): Where is the Whip of the Majority?

*(Laughter)*

**The Temporary Chairperson** (Sen. (Dr.) Machage): The issue is that I will put questions on all the deliberations. So, let us, as you look for your Whip to whip or you can also decide to be the whip. Let us proceed.

Yes, Sen. Wangari?

**Sen. Wangari:** Thank you, Mr. Temporary Chairperson, Sir. Noting that we also have the County Governments Amendment Act coming immediately after Sen. (Dr.) Khalwale's Bill, will I be in order to request that we also go for the Committee Stage on the same as we also marshal the delegations for voting on the amendments?

**The Temporary Chairperson** (Sen. (Dr.) Machage): Let us dispose of this and then I will make that decision later.

Proceed to the next clause.



**The Temporary Chairperson** (Sen. (Dr.) Machage): I propose that Clause 4 be part of the Bill. Clause 4 on your paper is written as Third Schedule.

Yes, Sen. G.G. Kariuki? Can you put your microphone on? The importance of switching on your microphone is because that is what we use to give you the microphone.

*Clause 4*

**Sen. G.G. Kariuki:** Mr. Temporary Chairperson, Sir, I also want to move:-

That, the Third Schedule be amended in row 31 by deleting the words “Nanyuki Urban Area” appearing in the third column and substituting therefor the words “Rumuruti Urban Area”.

Mr. Temporary Chairperson, Sir, I am speaking on behalf of the Laikipia County Government who sat down and decided to pass a resolution to this effect and also addressed the resolution to the Clerk of the Senate and a copy of the same resolution was sent to the Speaker. This means that all of them sat down and agreed to do this amendment. I am saying this because I am the Senator there, but I did not have any particular interest. I requested the county government to handle this matter because they know the reason they want to be in Rumuruti instead of Nanyuki. That is why when I was thinking about bringing this resolution to this House, but I also decided to do the amendment which you have already done away with.

I beg to move the amendment.

*(Question of the amendment proposed)*

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Chairperson, Sir, I was waiting to hear from the distinguished Senator that he has consulted because these are decisions that must be consultative. Since he has told us that he has consulted the people of Laikipia, anybody who knows the Geography of Laikipia will not slight him for proposing Rumuruti as against Nanyuki which is stuck way on the corner of Nyeri and Meru counties and almost close to Isiolo as well. So, the people of Laikipia will be better served if their headquarters was in Rumuruti. I support the amendment brought by the distinguished Senator.

**Sen. (Dr.) Khalwale:** Mr. Temporary Chairperson, Sir, I want to support that amendment and also would like to confirm that a copy of the letter communicating the decision of the County Assembly of Laikipia to the Senate was availed to me and, therefore, I attest to the factuality of the same. For two weeks or so, I was out of the country. I do not know whether that letter, when it came, was treated in accordance with the provisions of these Standing Orders. The Standing Orders provide that that was a message and, therefore, being a message, it should have been formally tabled and announced by the Speaker to this House. If it was not done, it was an oversight because it is making it difficult for the Senator for Laikipia to convince the House.

I would like to state what I got in my capacity and what he has communicated. But if that oversight was there, then I want to urge the office of the Clerk that they should have followed the rules as provided for in the Standing Orders, that that was a Message

from the County Assembly; having reached the office of the Speaker, it should have been communicated to this House during plenary.

I support.

**Sen. Ndiema:** Thank you, Mr. Temporary Chairperson, Sir. The message having come to the Committee, we should really be convinced since the Committee has confirmed that it received it and there is a resolution by the County Assembly of Laikipia to have the headquarters in Rumuruti, we should not really doubt and complicate issues with them.

I support.

**Sen. Lesuada:** Mr. Temporary Chairperson, Sir, I just want to add my voice to what my colleagues have said. Knowing that it has been a consultative decision as the Senator has said, I think it is only wise for us to support this amendment. Samburu being a neighbour to Laikipia County, I am aware that these discussions even took place before we went into the general elections and there was that pull and push about Rumuruti and Nanyuki. I know that the people of Laikipia would really feel safer in Rumuruti in terms of accessing services since that is more central to the people of Laikipia County.

I support.

**Sen. Sang:** Mr. Temporary Chairperson, Sir, I stand to support this further amendment. What is more important is the fact that the Senator for Laikipia has confirmed that to this House and he actually has the evidence that he has been instructed on this particular matter by the County Assembly of Laikipia. I would only add that we know we have three counties in this country that we have passed a Motion in the Senate that the national Government should be able to support the establishment of their headquarters and that is Tana River, Tharaka Nithi and Nyandarua. I think with this decision, we should also consider Laikipia as part of those counties that the national Government should be able to support to put the necessary infrastructure in Rumuruti so that they are able to provide the facilities for the county government to be based in Rumuruti.

I, therefore, support this amendment.

**Sen. Kajwang:** Mr. Temporary Chairperson, Sir, as I support, I just want to say that at Clause 3, we have put very high standards before you can persuade this Senate to move your headquarters. First, there is the two thirds majority vote and the seek views from the members of the public or facilitate public participation and then you get the Senate to approve by a majority. Although we are creating this for the first time, we can avoid that procedure. If this resolution was made, did it come to this House as a Petition? As a Petition, we would have seen whether it was supported by the two thirds majority. It would have been formally tabled and we would have debated it if necessary and we would be having something to compare with at a later stage. Carrying a resolution of a House with very few people or no quorum could be a bit mischievous, but because the most senior Senator has said so, and we are not moving the headquarters anyway because the first law to make the headquarters is this one, I will accept that we proceed this way for the people of Laikipia.

I support.

**Sen. Okong'o:** Mr. Temporary Chairperson, Sir, I also support this amendment and it is important to understand that we have grounds on why the headquarters should be moved. I am happy that the Senator for Laikipia consulted with his people. In the county of Nyamira where I come from, I have read in the newspapers that the Governor wants to move the county headquarters without following the due process. It must be made very clear that to move a county headquarters, there are rules and procedures which must be followed.

I support.

*New Clause*

**The Temporary Chairperson** (Sen. (Dr.) Machage): Next Clause. Where is Sen. (Prof.) Lonyangapuo? Since he is the Mover and he is not around, the amendment is dropped.

*(Proposed amendment by Sen.(Prof.)  
Lonyangapuo dropped)*

**The Temporary Chairperson** (Sen. (Dr.) Machage) Sen. Wetangula you promised that you have soldiers. We now want them because we want to vote.

I have to guide you on how we are going to vote. We will vote on Clause 3 and also on the further amendment. Then we will also vote on Clause 4, Clause 2, the Title and Clause 1. Those are three votes.

Could the Division Bell be rung for eight minutes?

Please, log in. I, therefore, put the Question. I will tell you when to start voting. Start voting now. I will announce the results later.

Start voting now.

Order! Please re-log your cards so that I can register the attendance. The attendance is not registering up there.

We are going to the next Question and I hope everybody is logged in.

*Clause 3*

## DIVISION

### ELECTRONIC VOTING

*(Question, that Clause 3 be amended as proposed by Sen. G.G. Kariuki,  
and be further amended as proposed by Sen. Wako,  
put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen.

Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

**The Temporary Chairperson** (Sen. (Dr.) Machage): The results for Clause 3 are as follows:- Those who voted electronically are 26, plus one who voted manually.

**AYES:** 27

**NOES:** Nil

**ABSTENTIONS:** Nil

The ayes have it.

*(Question carried by 27 Votes to 0)*

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

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

*(Clause 3 as amended agreed to)*

## **DIVISION**

### **ELECTRONIC VOTING**

*(Question, that Clause 4 be amended as proposed by Sen. G.G. Kariuki  
Put, and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

**The Temporary Chairperson** (Sen. (Dr.) Machage): The results for Clause 4 are as follows: Those who voted electronically are 26, plus Sen. Chelule who voted manually.

**AYES:** 27

**NOES:** Nil

**ABSTENTIONS:** Nil

The "Ayes" have it.

*(Question carried by 27 Votes to 0)*

*(Question, that the words to be left out be left out,  
Put and agreed to)*

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

*(Clause 4 as amended agreed to)*

*Clause 2, Title, Clause 1*

## **DIVISION**

### **ELECTRONIC VOTING**

*(Question, that Clause 2, Title and Clause 1 be part of the Bill put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

**The Temporary Chairperson** (Sen. (Dr.) Machage): The results for Clause 2 are as follows:-

**AYES:** 26

**NOES:** Nil

**ABSTENTIONS:** Nil

The ayes have it.

*(Question carried by 26 votes to 0)*

*(Clause 2 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Temporary Chairperson** (Sen. (Dr.) Machage): Open the bars.

THE COUNTY GOVERNMENTS (AMENDMENT)  
(NO.2) BILL, (SENATE BILL NO.2 OF 2014)

**Sen. Kagwe:** On a point of order, Mr. Temporary Chairperson, Sir.

*(Off record)*

**The Temporary Chairperson** (Sen. (Dr.) Machage): Hon. Members, we have more votes to do. Let us continue. Where are the Whips, please, do your work.

*Clause 3*

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

*(Loud consultations)*

**The Temporary Chairperson** (Sen. (Dr.) Machage): Order, Senator. What is your interest?

**Sen. Wangari:** Thank you for protecting me.

I beg to move:-

THAT clause 3 of the Bill be amended in the proposed new section 7A by inserting the following new sub-section immediately after sub-section (2) -

(3) Despite sub-section (1), a county assembly shall be deemed to be fully and duly constituted for the first sitting notwithstanding the death, on or before the date of the first sitting of the county assembly, of a member nominated under paragraphs (b) and (c) of Article 177(1) of the Constitution.

Mr. Temporary Chairman, Sir, this emanated from the debate that was on the Floor during the Bill's Second Reading from the Senator of Homa Bay, Sen. Kajwang. The Senator noted and I took it up that we may also not be looking forward to death, but if one of the county assembly members dies before the sitting is constituted under Article 177 of the Constitution, then the county will grind to a halt. This was just to correct that.

We should not hold county assemblies at ransom if someone dies. If death occurs, the county assembly goes on.

Maybe to refresh Members on what this Bill was about; it is on the constitution of the county assemblies under Article 177. The issue was that the swearing in of members elected through party lists was delayed last year for up to five months after elections. In the next election, this can be corrected and the Independent Electoral and Boundaries Commission (IEBC) generate the list and disputes sorted out early enough, so that they are sworn in together with the elected members. That way, they can participate in the activities of the county assembly right from the beginning as it should be the case. That then raised the concern by Sen. Kajwang; what if somebody dies? Does it then mean we do not constitute the county assembly? This amendment will take care of that problem. If death occurs, the county assembly will still go on and be convened for a first sitting.

*(Question of the amendment proposed)*

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Temporary Chairperson, Sir, I want to support this amendment and appeal to Members that in the Third Reading, there should really be no debate. You should just support or correct spelling, but substantial debate should be discouraged from the tradition of Parliament. We are wasting too much time extending debates during the Third Reading and that is why Members are walking out, therefore, threatening quorum in the House.

**The Temporary Chairperson** (Sen. (Dr.) Machage): That is in order, Sen. Anyang'-Nyong'o.

**Sen. Kajwang:** Mr. Temporary Chairman, this deals with the issue of if somebody dies before the constitution of the assembly. However, it does not deal with the real reason why last time they delayed for almost five months. This is a matter that should come in another amendment in another Act of Parliament or Bill. After the list went to the Independent Electoral and Boundaries Commission (IEBC) and a national election took place, those people were assumed to have been elected, as a matter of fact.

I do not know why the IEBC went through review after review and to court after court denying these people the right to participate. We should amend the law so that after the list has been put in place before the election, if there is any dispute, then it is brought forward as a petition so that these people are elected to constitute the assembly. If we let what happened the last time happen again, then these assemblies will never sit. Probably another amendment will be done in the Elections Act to deal with the issue.

I support.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Very well, I see no other person interested in contributing to this. We will, therefore, have the Division Bell rung.

We will move to voting and order that the Division Bell be rung for five minutes.

However, let us first confirm the numbers that we have. I think we have the requisite numbers and we can now move to vote on Clause 3 as proposed by Sen. Martha Wangari.

**DIVISION**

## ELECTRONIC VOTING

*(Question, that Clause 3 be amended as proposed by Sen. Wangari, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County, Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Hon. Senators, I want to announce the results of the first division, that Clause 3 be amended as proposed by Sen. Wangari.

**AYES:** 27

**NOES:** Nil

**ABSTENTION:** Nil

The "Ayes" have it.

*(Amendment carried by 27 votes no 0)*

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

*(Clause 3 as amended agreed to)*

*Clause 2, Title, Clause 1*

**DIVISION**

## ELECTRONIC VOTING

*(Question, that Clause 2, Title, Clause 1 be part of the Bill, put and the Senate proceeded to vote by County Delegations)*



**AYES:** Sen. Abdirahman, Wajir County; Sen. Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, ? County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

**The Temporary Chairperson** (Sen. (Dr.) Machage): On the second question of division, that Clause 2, the Title and Clause 1 be part of the Bill, the results are as follows.

**AYES:** 26

**NOES:** Nil

**ABSTENTION:** Nil

The "Ayes" have it.

*(Amendment carried by 26 votes no 0)*

*(Clause 2 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

*(Applause)*

**The Temporary Chairperson** (Sen. (Dr.) Machage) In both divisions, the number of Senators was 27.

May I now call the Mover, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Temporary Chairman, Sir---

**The Temporary Chairperson** (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale! Draw the bars and open the doors.

*(The bars were withdrawn and doors opened)*

Okay, proceed, Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Mr. Temporary Chairman, Sir, I beg to move that the Committee do report to the Senate its consideration of the County Governments (Amendment) (No.1) Bill (Senate Bill No.1 of 2014) and its approval thereof with amendments.

Mr. Temporary Chairman, Sir, I also beg to move that the Committee do report to the Senate its consideration of the County Governments (Amendment) Bill (No. 2) Bill (Senate Bill No.2 of 2014) and its approval thereof without amendments.

**An hon. Senator:** With amendments

**Sen. (Dr.) Khalwale:** Was Sen. Wangari's Bill amended?

**An hon. Senator:** Yes.

**Sen. (Dr.) Khalwale:** Mr. Temporary Chairman, Sir, I also beg to move that the Committee do report to the Senate its consideration of the County Governments (Amendment) (No.2) Bill (Senate Bill No.2 of 2014) and its approval thereof with amendments.

**The Temporary Chairperson** (Sen. (Dr.) Machage): I therefore put the question that the Committee do report to the House its consideration of the County Governments (Amendment) (No.1) Bill (Senate Bill No.1 of 2014) and the County Governments (Amendment) (No. 2) Bill (Senate Bill No.2 of 2014) as read out by Sen. (Dr.) Khalwale.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*(The Temporary Speaker (Sen. Ongoro) in the Chair)*

### **REPORTS, CONSIDERATION OF REPORTS AND THIRD READINGS**

THE COUNTY GOVERNMENTS (AMENDMENT) (NO. 1) BILL,  
(SENATE BILL NO. 1 OF 2014)

THE COUNTY GOVERNMENTS (AMENDMENT) (NO. 2) BILL,  
(SENATE BILL NO. 2 OF 2014)

**Sen. (Dr.) Machage:** Madam Temporary Speaker, I beg to report that a Committee of the Whole has considered the County Governments (Amendment) (No. 1) Bill (Senate Bill No. 1 of 2014 and the County Governments (Amendment) (No.2) Bill (Senate Bill No. 2 of 2014) and the approved the same with amendments.

**The Temporary Speaker** (Sen. Ongoro): I now call upon the Mover, Sen. (Dr.) Khalwale, to respond.

**Sen. (Dr.) Khalwale:** Thank you, Madam Temporary Speaker. I now beg to move that the House doth agree with the Committee in the said Reports.

*(Applause)*

*(Sen. Wetangula spoke off record)*

**The Temporary Speaker** (Sen. Ongoro): He did not mention your name. Is he the one seconding?

**Sen. (Dr.) Khalwale:** Thank you, Madam Temporary Speaker. I request the Senator for Bungoma, Sen. Wetangula, to second.

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

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Speaker** (Sen. Ongoro): Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I beg to move that the County Governments (Amendment) (No. 1) Bill (Senate Bill No.1 of 2014) be now read a Third Time.

On a point of order, Madam Temporary Speaker. Do I also move the second Bill, because I am doing both?

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

**Sen. (Dr.) Khalwale:** Thank you, Madam Temporary Speaker.

I also beg to move that the County Governments (Amendment) (No.2) Bill (Senate Bill No.2 of 2014) be now read a Third Time.

**The Temporary Speaker** (Sen. Ongoro): Who is your seconder?

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, my seconder for these Bills is Sen. Wetangula, the distinguished Senator of the County of Bungoma.

**The Senate Minority Leader** (Sen. Wetangula): I second.

*(The Temporary Speaker consulted the Clerk-at-the Table)*

**The Temporary Speaker** (Sen. Ongoro): I propose that we do the two Bills together so that we go into one division.

I will now propose the question, which is that the County Governments (Amendment) (No.1) Bill (Senate Bill No. 1 of 2014) and the County Governments (Amendment (No.2) Bill (Senate Bill No.2 of 2014) be now read a Third Time.

*(Question proposed)*

**The Temporary Speaker** (Sen. Ongoro): Before we proceed, I can see two requests. Let me give you the Floor, Sen. Wetangula.

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, I will be very brief. One is to congratulate the sponsors of these Bills and, two, to thank the Senate for debating, passing and voting this afternoon in division. This is another milestone in the protection of counties and like we have said before, counties are about

the people of this country. The interests of the people of this country in counties are articulated and defended in this Senate. That we have passed a Bill and it is going to be law to determine the headquarters of each county goes a long way in forestalling any future arguments, quarrels and even conflicts on where the headquarters of the county is likely to be.

This will help in stabilizing counties and we do hope that as we go to a referendum, we are going to give more money to counties so that counties like Laikipia and Nyandarua that do not have headquarters can have enough money – including Lamu, I am told – to---

**Sen. Billow:** On a point of order, Mr. Temporary Chairman, Sir.

**The Temporary Speaker** (Sen. Ongoro): Yes, what is out of order? You did not even log in!

**Sen. Billow:** On a point of order, Madam Temporary Speaker. You hear the Senator for Bungoma say that we are heading for a referendum and as we head for a referendum, we should be increasing. Is he in order to mislead the country that we are heading for a referendum?

**The Temporary Speaker** (Sen. Ongoro): Senate Minority Leader, are you misleading the country?

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, you can see that is a carefully and mischievous opinion masquerading as a point of order. It was my opinion that we are going to a referendum. If it is your opinion that we are not, you keep it. What is out of order about that?

**Sen. Billow:** Madam Temporary Speaker, you heard the hon. Senator use the word “mischievous”. I rose on a point of order and simply pointed out that there is no referendum that has been approved or endorsed by IEBC. Is it in order for him to accuse me of being mischievous? That word must be withdrawn and he must apologize.

**The Temporary Speaker** (Sen. Ongoro): Senate Minority Leader, I honestly do not find anything mischievous in his observation.

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, I withdraw the word “mischievous” and replace it with an even better word “a miscalculation”. The whole country knows that we are asking for a referendum. We have put a committee of experts in place. The committee of experts has met the IEBC and they have discussed and plans are in place. Those who do not see, I remind you of the great words of Jesus in the Bible: “They have eyes but they do not see, they have ears but they do not hear, they have mouths but they do not speak”. This is the problem we have in this country. That is not the issue. The issue is that this Bill is going to help stabilize counties and that each one of us has a duty, including yourself, to support the allocation of more funds to the counties so that we can be able to stabilize and strengthen devolution.

**Sen. (Prof.) Anyang’-Nyong’o:** On a point of order, Madam Temporary Speaker. When somebody says that “we are heading”, it does not mean that it is official. “Heading” means that we are going a certain direction. So, just English for my dear friend, Senator from somewhere---

*(Laughter)*

**The Temporary Speaker** (Sen. Ongoro): Order! Sen. (Prof.) Anyang'-Nyong'o, you are absolutely out of order. You must withdraw and apologize. You cannot make that kind of derogatory statement concerning another Senator. Withdraw unconditionally and apologize.

**Sen. (Prof.) Anyang'-Nyong'o:** Madam Temporary Speaker, we are all from somewhere, but just to be precise, it is the Senator for Mandera.

**The Temporary Speaker** (Sen. Ongoro): Senator, you did not give your apology. We want to record your apology. I think this is a very serious issue.

**Sen. (Prof.) Anyang'-Nyong'o:** Madam Temporary Speaker, I do apologize and withdraw and instead of the word "somewhere", substitute it with the word "Mandera".

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, now that we have insulated the seat of Government in those respective physical addresses, I hope that the Jubilee Government is going to remember what President Kibaki and Raila Odinga had started with these county headquarters. I am aware that plans had been drawn and architectural designs had been made where each county headquarters would have a model county assembly, a model county headquarters and a model Governor's residence. I hope that the Jubilee Government in these remaining three years will fulfill this.

The second point is that, I want to say that---

**Sen. Elachi:** On a point of order, Madam Temporary Speaker. Is the Senator in order to blame the Jubilee Government while he knows very well that the Governors have already been given the money to build their residences and so on? I think it would be in order for this House to be guided that it is up to the county governments and especially the Governors to make sure that where the allocations were, they are done correctly but not the national Government.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, Sir, I am glad to be informed that the Jubilee Government has now taken money to Governors, but I was not speaking towards resources in terms of money. I meant the architectural designs so that the county assemblies and the Governors' residence are standardized. If you go to South Africa and Ontario, the headquarters are standardized. This is something that must be planned out because we have some Governors like the Governor of Kilifi who has gone and bought a residence worth Kshs145 million. This is a matter that is a subject of an audit query. This is because they are not guided.

Secondly, I would like the House to note with thanks that the two Senators who have led this House in this Bill are both from the United Democratic Forum (UDF) Party, and for this reason, I want to take this opportunity to thank two people namely; Musalia Mudavadi the party leader and Martha Wangari. Musalia Mudavadi because of his steady steering of the ship, we have been able to come this far and Martha Wangari for the reason that in spite of her defecting from the opposition where the party found itself after elections, she still worked with me as a rebel, but we are willing to accommodate her when she changes her mind and realizes that her party did not win the elections. The party lost and this is why it is on the opposition side.

Finally, like Sen. Wetangula who spoke before me, the issue of the referendum did not start with Okoa Kenya movement. The issue of the referendum started as soon as

President Kibaki promulgated the new Constitution because he did so knowing that 20 per cent of that document required to be re-looked at. This is all that we are doing in keeping with the very proud attitude that we carried on the day of---

**Sen. Kagwe:** On a point of order, Madam Temporary Speaker. It is already 5.15 p.m. Instead of dwelling on issues that are, right now in this House, fairly irrelevant, would I be in order to propose that we deal with the matter at hand and leave issues of the referendum for the right time at the right place?

**The Temporary Speaker** (Sen. Ongoro): Sen. (Dr.) Khalwale, I think that intervention makes sense. Could you conclude your remarks so that we move to division?

**Sen. (Dr.) Khalwale:** Madam Temporary Deputy Speaker, I would like to appreciate the intervention by my colleague; that he is feeling the referendum. It is good! Even your Governors have joined us.

I support.

**Sen. Wako:** Madam Temporary Speaker, first, I would like to congratulate all those people who have brought these amendments. We allowed these amendments because we were just beginning. As you realized, the whole of last year, we were mostly on Motions as we prepared to bring Bills and because we were not quite ready, Members were exercising their right to bring Bills to the House. Both of these Bills were really a one or two clauses amendments. Now, one or two clauses amendments to an existing Bill should actually be part of the Statute Law Miscellaneous (Amendment) Bill which is brought to this House by the Committee on Legal Affairs and Human Rights. Therefore, my plea now is that in future if you have one or two amendments to an existing Bill, bring that amendment to the Committee on Legal Affairs and Human Rights and we shall bring a composite statute law composed of all the amendments. We shall have one sitting and we shall complete it.

Secondly, is with regard to the headquarters. I personally would be very hesitant to say that all the counties of Kenya should have one plan for how the State House should look like, the administrative block, *et cetera*, in uniform. That reminds me of colonialism. It is in colonialism that you will find that most of the high courts of former British colonies are all looking the same. Let there be a ceiling or a limit on the amount of money to be spent on this and let each county have its own architectural drawings which fit in with the environment which is there in that county.

I support.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, for the sake of time, I will order that the Division Bell be rung for five minutes, but I will put the questions distinctively for the two different Bills and the votes will also be separate. Could the Division Bell be rung for five minutes?

*(The Division Bell was rung)*

**The Temporary Speaker** (Sen. Ongoro): Order, hon. Senators! You can now log in. Sen. Orengo, please, go back to your seat and log in, so that we have the numbers. If you do not have your card, please, register so that we do not miss your vote.

Hon. Senators, I will now put the question on the first Bill by Sen. (Dr.) Boni Khalwale, which is, that the County Governments (Amendment) (No. 1) Bill, (Senate Bill No.1 of 2014) be now read a Third Time.

Hon. Senators, we have to start afresh because we want to establish the numbers. Please, just remove your card and log in afresh.

*(The Senators re-logged in)*

Have you all logged in? You can now vote. Sen. Orengo, kindly approach the Clerks-at-the-Table, so that your vote can be counted.

*(The Senators proceeded to vote)*

## DIVISION

### ELECTRONIC VOTING

*(Question, that the County Governments (Amendment)  
(No. 1) Bill, (Senate Bill No.1 of 2014) be now read a Third  
Time, put and the Senate proceeded  
to vote by County Delegations)*

**AYES:** Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, the results are as follows:-

**AYES:** 26

**NOES:** Nil.

**ABSTENTIONS:** Nil.

The "Ayes" have it.

*(Question carried by 26 votes to nil)*

*(The Bill was accordingly read  
the Third Time and passed)*

**The Temporary Speaker** (Sen. Ongoro): Order, Senators! Sen. Wangari is not in the House.

I will now put the Question on the second Bill by Sen. Wangari, which is, that the County Governments (Amendment) (No.2) Bill, (Senate Bill No.2 of 2014) be now read a Third Time.

Hon. Senators, we agreed that we would ring the Division Bell once, but vote twice distinctively on these two different Bills. So, log in.

*(The Senators logged in)*

If you have all logged in, you can proceed to vote.

*(The Senators proceeded to vote)*

You have 22 seconds remaining. If you have a problem or think that your card is stuck, please, approach the Clerks-at-the-Table before the expiry of the time.

*(Senators proceeded to vote)*

**The Temporary Chairperson** (Sen. Ongoro): Everybody has voted and those who wanted to be assisted have been assisted. The clerks will proceed to print the results.

## DIVISION

### ELECTRONIC VOTING

*(Question, that the County Governments (Amendment) (No. 2) Bill (Senate Bill No. 2 of 2014) be now read a Third Time, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

The results are as follows:-

**AYES:** 25

**NOES:** Nil



**ABSTENTIONS:** Nil

The "Ayes" have it.

*(Question carried by 25 votes to 0)*

*(The Bill was accordingly read the  
Third Time and passed)*

**The Temporary Speaker** (Sen. Ongoro): Remove the bars and open the door.

Next Order!

**MOTION****ADOPTION OF AD HOC COMMITTEE REPORT ON ROYALTIES ACCRUING FROM  
EXPLOITATION OF NATURAL RESOURCES IN COUNTIES**

THAT, this House adopts the Report of the Ad hoc Committee on legislation on royalties accruing from exploitation of natural resources in the counties laid on the Table of the Senate on Wednesday, 16th April, 2014.

*(Sen. (Dr.) Zani on 3.7.2014)*

*(Resumption of Debate interrupted on 3.7.2014)*

**The Temporary Speaker** (Sen. Ongoro): I am not seeing any requests but when we last had this Motion on the Floor, the Senate Minority Leader was on the Floor and he had 43 minutes remaining.

Proceed.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Madam Temporary Speaker, for giving me a chance to contribute to this very critical Report. I had started by lauding the Committee for doing such great work and even coming up with the Draft Bill. I also pointed out to the Chair of the Committee that there is or has been an identical Bill in the Lower House and that probably they should look at the content and see if it is radically different from our Draft Bill.

Madam Temporary Speaker, minerals play a very critical role in many economies. In Africa, countries with vast mineral resources where they have been well managed have made major strides in their economic development. Before Zimbabwe veered off the road, it had one of the strongest sub-saharan economies because of mineral extraction. The engine of the South African economy, which has of late been overtaken by Nigeria as the largest Gross Domestic Product (GDP) is also mineral-based. Angola has become immensely rich with a very huge GDP and *per capita* because of extraction of hydrocarbons, commonly called oil. Congo has probably the richest reserves of minerals that

have never benefitted the people of the country. Eritrea has vast deposits of gold and other minerals but it is on the wrong path; the money has not benefitted its people.

That is why when we talk of mineral wealth, you either get it right from the start or you get it wrong and you will find it very difficult to come back to the beaten path. Starting with very simple issues, if you look at Nairobi and all the big towns growing around Nairobi, the construction going on is enormous. Sand is a mineral from Machakos and Makueni and has been a major stimulus for construction in this city. The counties of Machakos and Makueni have little to show for it. The stone extraction from the County of Kajiado, County of Kiambu and the County of Machakos that have been the foundation of the brick and mortar that has built Nairobi and its environs, again, you go to those counties and there is little to show for it.

That is why this Motion is so important especially when you look at its findings and recommendations. The proposal to create a sovereign fund cannot be understated. Countries that have taken that route have done very well. You hear of the Kuwait Fund, the United Arab Emirates has probably one of the largest and Norway also. Countries which have taken a wrong path have not done well. We can talk of examples like our sister country, Nigeria, where at one point out of every ten barrels of oil extracted, nine went astray and only one benefitted the country. These are statistics from respected researchers. We hope that now that the country is in the hands of fixers and wheel-dealers, we will be extremely careful. As the fixers shout from rooftops regarding what they have not done, their history will still remain known. If we are not careful, we will find that oil wells in Turkana belong to some of them. If we are not careful, we will find that the minerals we are talking about are being appropriated by individuals.

At the end of the day, it is the country that suffers. It does not help any country to have two or three people appearing in Forbes Magazine as the richest Africans when other people are eating rats, dogs and dying of hunger. Our oil, natural gas, huge water aquifer in Turkana, coal in Kitui, iron ore in Taita Taveta, Niobium, rare earth in Kwale, titanium in Kwale and Kilifi, gold in Kakamega and all other minerals that continue to be prospected must, as a matter of urgency and right for the people of Kenya, not be extracted until we have a proper legal framework.

This is a proper legal framework that will define what goes to the Sovereign Fund. I can see that there is a proposal regarding that aspect. The framework should define what goes to the national Government, the county government where the resources are found and what benefits the actual people who have been the custodians of these resources. We will shudder the day we find ourselves with the challenges that you find in Nigeria in Ogoniland where the people who have protected the resources since time immemorial have to take up arms and wage an armed struggle just to be recognized, appreciated and to be given a benefit from what they have protected.

Equally, the proposed law must take into account the interest of the country *vis-à-vis* the interest of the foreign investor. We cannot and should not have foreign investors coming in, extracting and benefiting from our minerals *ad infinitum*. There must be a graduated benefit to the foreign investor. Since they are putting in all their money, you will probably let them take 70 per cent in first year and drop that to 60 per cent in the

second year. Eventually, we should transfer the entire benefit, save the cost of their investment and running of the process to the country where the minerals are domiciled.

Madam Temporary Speaker, Sir, as concerns the county governments, it is fair and just that the county in whose territory a particular mineral is found is given recognition, share and must benefit from the mineral. The report recommends 30 per cent. This is a recommendation that we can refine, recast and fine tune when we get to legislation in dealing with the Bill that is in draft form.

In the last Government, we had a Bill that went up to the Cabinet level. I look back and see that we could have done better on the proposal that gave 5 per cent to the community that has been the custodian of the mineral; 14 per cent to the county where the mineral is found and the rest goes to the national Government. I think we did this without reflecting on the national Government's capability - as we can see now, of misapplying and misusing these funds to the extent that the county governments may not benefit. I would want to see a situation where the report recommends that the county where the resource is found is upped, at least, by 20 per cent. The people who have been the custodians of the resources can still remain at 5 per cent and that will up to 25 per cent in the same county. The remaining 75 per cent will be part of the sharable revenue that will go to the national Government. The county where the mineral is based will still get a share of the 75 per cent. If our referendum goes through, the 75 per cent will be shared at 40 per cent to 60 per cent between the counties and the national Government.

The sovereign wealth – I have not quite gone through the draft Bill but I want to encourage Dr. Zani and her team to go the Norwegian way – once locked in, it does not mature for expropriation until after 50 years so that we can build the Fund. That is why Norway today is awash with money. For instance, if they are selling oil, they cap their prices at maybe US\$60 a barrel. If the price is US\$100, US\$40 automatically goes to the sovereign fund and remains locked there. That is why you find countries like Botswana lending huge sums of money to the World Bank, African Development Bank (ADB) from their Sovereign Wealth Fund.

This is because they can expropriate it internally. They can only lend it out to make more money so that when it matures, it comes back. For the record, Botswana is the highest lender to the World Bank in the African continent, much bigger than countries with enormous resources like Congo. Congo, Angola, Equatorial Guinea and Nigeria are recipients. You can see what happened to my favourite West African country, Ghana. They found huge deposits of oil and in five years, they are supposed to hit 2.5 million barrel per day mark. However, the country is now headed to a direction that I shudder to imagine with riots and all manner of things. That is why in this country, if people can steal land in semi arid areas, you can only imagine what else they can do with our gold, iron ore and everything else that we are trying to find.

We have people whose backgrounds and conduct are proven to be those of near fraudsters. When you hear them talking and shouting and looking holier than others, you regret knowing them.

The next level of regulation that should come in the Bill – and some countries have done this, including Australia – if you lock in a percentage of the resource and say about 15 per cent of the resources, as you split it out, shall go to improvement of

infrastructure for the next 15 or 20 years so that we cannot have people coming from Siaya to see the Thika Superhighway running from Nairobi to nowhere. We want superhighways all over the country. We want to see the artery of our economy – the highway from Mombasa to Uganda through Kisumu, Malaba, Busia and beyond – being constructed from this new wealth. This is to the extent that if you have a dual carriageway from Mombasa to Kampala, I have no doubt that it will spur a near 20 per cent Gross Domestic Product (GDP) growth in a year.

Fix our railways, Madam Temporary Speaker, but not in the manner we are going about it and getting excited; that for everything, we must run to borrow from China. Kenyans must know that the railway alone, with the fraud that has come with it; a project that was meant to cost Kshs200 billion is now costing Kshs427 billion and, shockingly, a Committee of Parliament says that is right. That alone – I have talked to top economists – Kenyans, born and unborn, will pay for that debt for 44 years to come. So, even my friend, the distinguished Senator for Mombasa, who just celebrated his first born recently; even your daughter will have a child that will pay for the fraud being committed on the standard gauge railway. It is a terrible shame for the country! This new wealth we are talking about should be segregated so that we can have a superhighway running to Ethiopia, another one to Southern Sudan; a superhighway running from Vanga to Kipini to open up the Coast for more tourism; a superhighway running from Nairobi to Isebania; a superhighway in every direction to open up the country with attendant maintenance and proper use. This will spur growth of the economy in a manner that we shall all be happy about.

Madam Temporary Speaker, this morning, I was embarrassed to read in the newspapers that the Treasury Secretary is now going to float another sovereign bond in Asia and the Arab world. What the Jubilee regime is doing is mortgaging the country. These so-called sovereign bonds are not gifts; we are pre-selling our opportunities and if you float a sovereign bond of billions, which you get and as soon as it lands here, half of it is corruptly appropriated by individuals in high places. The other half does things that we do not even see, like the oldest new road in Machakos; where you have a road that is built in three months and before any car uses it, it is worn out.

Madam Temporary Speaker, sometimes you cannot help admiring China. In China, the people who commit economic crimes are punished severely for it. If you are a shopkeeper and you are a hoarder, they come and try you at your shop, convict you and hang you. The rope that hangs you is paid for by your family. If you are executed by a bullet, that bullet is paid for by your family.

*(Laughter)*

Madam Temporary Speaker, sometimes that might bring sanity to this country. There was a brutal leader in Nigeria called Gen. Buhari, who came to power with a slogan called *Wai* – War Against Indiscipline. So, we can try, like he tried – although in Nigeria he did not succeed – and bring Kenyans to sanity. Sometimes you feel so sad when you meet Kenyans – young, middle aged, old – nobody ever talks about earning money; Kenyans only talk about making money. Everybody is busy looking to make

money; cutting deals. If you ask somebody “What do you do?” He will answer “I am making money.” Nobody talks about earning money. It is only what we earn that we respect. What people do is sit in backroom meetings and craft deals to make money, which is easy come, easy go. I want to encourage that we change our moral psyche.

Madam Temporary Speaker, the Committee is suggesting that there should be a government administered natural resource benefits fund. I do not think this is the way to go. I want to ask the Committee to reconsider this because this proliferation of funds is what has caused many frauds in this country. You set up a fund, give it a bureaucracy; and that bureaucracy will then be mired in the usual Kenyan cycle of corruption. At the end of the day, you will have nothing to show for it. Because if you are talking of a situation where Kenya will probably be able to produce two million barrels of oil a day, even if you say this fund is 1 per cent, which is a huge sum of money; this is a sum of money that is unnecessary because if we had proper structures, we can administer the resources in a manner that is different from what we have seen elsewhere.

One thing, Madam Temporary Speaker, that I would have loved this Committee to do, even as they have given us the report, is to remain seized with the matter because they will bring the Bill to the House. I encourage you to do comparative analysis with countries that have immensely succeeded in managing their natural wealth, like Australia. If you go to Perth, Australia, it is called the Mineral Capital of the World. They even have a university which is specialized in offering degrees up to Ph.D level on how to prospect, extract, add value and how to protect natural resources. You can also look at countries that I have already mentioned like Norway and the United Arab Emirates (UAE). The UAE is one such country where the oil production for a country of just about eight or so million people, they have a production of 2.4 million barrels a day. They are the second largest producers of natural gas and they have managed it immensely well. That is why when you go to Dubai, a city that was not there 20 years ago, now looks like New York and other major cities of the world. Those are good examples to pick. So, instead of creating the fund, we should create structures of managing the wealth in a structured manner that boosts the sovereign fund and where the money goes, it must be put to good use.

This, Madam Temporary Speaker, brings me to laud the Senate for the Bill that is now law; that creates the County Development Boards (CDBs). The new Constitution emphasizes participation of everybody. In fact, I do not understand why our brothers, Governors, are grumbling. Counties were never meant to be possessions of any individual. Nobody owns a county government; it belongs to the people of this country. If everybody, as the Constitution mandates, must participate, then it is vitally important that we should stop behaving like hens guarding eggs against other hens and be open minded, be properly structured and allow others to give us ideas. As it was quoted here today, a good idea will always give way to a better idea; and a better idea can give way to the best idea; and nobody has a monopoly of ideas.

So, when people come to work with you, you should look at the positive side of the value they are adding to what you are doing than jealously thinking that they are coming to diminish your space. If you have no vested interest in what you are doing at a personal level, one wonders why you should resist the support from others.

Madam Temporary Speaker, the criteria for sharing wealth is critical and it must be put in place. In the new Bill, we must avoid creating too many committees because if you go to the county where there are mineral resources and create a committee for coal, they are also eating, you create a committee for gold, they are also eating, you create a committee for gas, they are also eating. We know we have developed such bad habits in this country. We will end up squandering those resources.

As we move towards these exciting times, it will only be good Kenyans who are morally upright, right thinking, like the distinguished Senator who brought this matter that will help this country. I have been watching with a lot of interest what is going on in Kwale. There is a mineral in Kwale called niobium whose value far exceeds any oil you can talk about. When you hold your mobile handset, the stabilizer in there is rare earth which is the niobium. So, you can imagine that this is a mineral that *Nokia*, *Samsung* and every mobile phone manufacturer is using. I just hope that the County Government of Kwale is properly seized of this matter and this wealth is not fleeing because the names associated with the company that is extracting or about to extract that mineral are not names that you can take to a bank for an overdraft. These are the same people who are likely to frisk every cent from this wealth of the people of Kwale and disappear with it. Equally important are the lands on which these minerals are being found.

Madam Temporary Speaker, you can see the *brouhaha* that is coming out from high priests of Jubilee who think that because they fiddle, everybody else fiddles. We must look at the history of this country critically. Where did the rain start beating us? How did whole families own land equal to provinces and districts? They are now the ones taking the moral high ground and ordering for titles to be cancelled without starting with themselves. In my article yesterday, I said that in the Bible, Jesus said: "Before you see the speck in your brother's eye, remove the log in your own". People with logs in each eye who cannot even see are now pretending that they are the high priests of good behaviour.

**Hon. Senators:** Shame! *Bure kabisa!*

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, the land on which these minerals are was illegally and unlawfully appropriated at Independence. These people are walking away smiling by selling and getting illegal compensations; something they never owned in the first place. We have the TJRC Report and the Ndung'u Report and if the Jubilee Coalition Government wants Kenyans to believe that they are interested in dealing with the issue of land, we do not need these populist stunts that are taking us nowhere. If you want to solve the problems of Lamu, start with Mpeketoni. Who were the original owners? In Taita Taveta, how can two families own 70 per cent of a county? If you go to Kwale, Kilifi and Mombasa counties, they stole everything. The same applies to Nakuru County and everywhere else.

If we want to right the wrongs of this country - then and only then - we must be honest with ourselves. We must be honest with the country. It is not enough to shout the name of James Orengo or Naomi Sidi while forgetting that the bigger thieves are in the closet. We shall open those closets and expose them because the facts are there. You can suppress or postpone but you can never kill facts; facts remain facts and nobody is going to whitewash themselves and start telling us things that are not tenable. Why on earth

would the Cabinet Secretary responsible for the Ministry of Lands, Housing and Urban Development roam around in areas where everybody knows land was stolen to close registries purporting to be organizing them and then emerge from those registries and announce that so-and-so does not own any land.

**Hon. Senators:** *Wizi!*

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, if this is not a cover up and, in fact, a bigger fraud, I do not know what it is. We are watching! I have asked; when the Cabinet Secretary for Lands, Housing and Urban Development closed the registry in Nairobi, why would the President of a country visit a closed registry twice? What was he looking for? Then thereafter, the Cabinet Secretary says that the President does not own any land in a most unsolicited manner. Nobody had asked her whether the President owns any land or not.

**Sen. Hassan:** They are undermining the work of the National Lands Commission!

**The Temporary Speaker** (Sen. Ongoro): Order, Senator! If you want to speak, you will log in.

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, then all of a sudden, you hear an order contrary to the Constitution to cancel all the title deeds. The new Constitution has brought new responsibility to leaders. Article 135 says that every decision by the President must be in writing, signed and sealed. Where is this order in relation to Article 135 to cancel title deeds? We are not protecting anybody who has illegally acquired land, but we must deal with everybody who has illegally acquired land. What is the role of the National Land Commission? The constitutional mandate lies with the National Land Commission. You recently read in the newspapers that oil was found in Lamu. I am sure what they are trying to do is to cause confusion, grab this land and then starting chopping blocs and selling them to new oil prospectors.

That is why it is so relevant that as we deal with the new found wealth of this country, at the heart and centre of this is the question of land. Whether it is land in Turkana, Isiolo or Mombasa, Kenyans being ingenious, you might find them with title deeds on the high seas so that when oil is found in our maritime territory, people will turn up with title deeds and say that this is what I own and I need to be compensated. We need to be eternally vigilant to make sure that the property and the wealth of the people of this country is protected.

Madam Temporary Speaker, when an economy that is doing badly as we are, people go and borrow money using title deeds; banks can only give you money on the basis of a title deed. When a Head of State talks like Kimunya who once said that a title deed was just a piece of paper - It brought such chaos in the banking sector that for 12 months, banks were not sure whether they would lend money on the basis of a piece of paper. The National Land Commission (NLC) Act is very clear. If a title is wrongly acquired, like we know people have acquired titles wrongly, there is due process, so that you can maintain sanity and stability in the economy. We are in a country where tourism is dead, corruption is hitting the ceiling, ethnicity is now the order of the day and everytime we talk about security. It is like a circus in an Egyptian zoo.

When there was an attack in Lamu, the first thing that a man called ole Lenku said was that CORD was responsible. They arrested a Governor and took him to Mombasa on

a pick-up. Eventually, they turned round and said that it is local political networks and that they are going to investigate and get everybody prosecuted. Two months later, they come up with a list of landgrabbers, as the outcome of the investigations. Who killed people in Mpeketoni? If it is the land grabbers of Lamu, arrest and prosecute them. We do not want people to play cheap psychology on the minds of Kenyans. I have seen people literally hawking allocation letters from Lamu and those people are not even being mentioned.

Madam Temporary Speaker, let me give an opportunity to others to speak. I want to encourage the Committee that when we pass this Motion, it should even be more robust with the Bill. Please, talk to Australians, Norwegians and look at South Africa. Ghana has a very good legislation on petroleum extraction and value addition. It may be good to look at that, so that at the end of the day it is the people of this country that matter and must benefit from these resources.

Madam Temporary Speaker, I beg to support.

**Sen. Hargura:** Thank you, Madam Temporary Speaker. Despite the problem I have with my voice, I had to make sure that I contribute to this Report. I support it and would like to congratulate the Member who came up with the Motion which led to the formation of the *Ad hoc* Committee.

Also, I would like to congratulate the Committee for having taken its time and come up with a very elaborate Report, which will lead to a legislation which will clearly set out how the natural resources of these counties will be exploited and how the benefit will actually be shared. This is because we are coming from a point where land, which basically is the holder of all these resources, has been dished out from a central point without taking into account the host communities. These resources have been exploited without anything accruing to the local communities and counties.

Madam Temporary Speaker, I would like to note that in the definition of the natural resources to which the Bill is to apply, considering the current situation, a resource like wind should be added. This is because it is a source of renewable energy. We are moving out of the petroleum based power generation to clean energy like solar and wind. I would like this area to be captured at the beginning when the Bill is brought to the House. It has to be captured clearly so that it is not one of the resources which will be added later. That is the area I would like captured from the beginning when the Bill is being brought to the House.

I come from an area where the whole county is trust land other than a small adjudicated area. Trust lands have been under county councils before the new Constitution came into effect. Currently, we are having a situation where there was a lot of information in the media about the Lake Turkana Wind Power Project which is in my county. We are having problems with the project because of this kind of consideration not being given to the community. We have a case where five foreigners came and acquired 150 acres of community land without the knowledge of the community. Trust land is very clear and it states that the community has to be informed. There is no free prior informed consent from the community. The land was allocated to the so-called investors who are now masquerading as the land owners and from the set up of things, it is like they are the host community. The host community is nowhere and when you ask,



you are told that they have a title deed. That is why from the Floor of this august House, I would like to urge the National Land Commission (NLC) to be serious with its work. The community wrote to the NLC in June and they received the letter where the community asked for revocation of the title deed but they have kept quiet. I do not know why. Is it because it is a weak community and does not know its way round and that is why NLC is quiet?

Today, the NLC have actually put in the press a notice on the acquisition of the way leave of a powerline to get power from that wind project but when the community complained about how the land was acquired instead of regularizing it, they have gone ahead and it seems like they are part of the whole thing. So, let Kenyans know that the NLC has to be fair to everybody in this country. It should not be seen to be fighting high and mighty somewhere else then they ignore the weak somewhere else. Any commission worth its salt should be defending the weak. That is where their justice would be seen. How do you defend somebody who is weak who comes to you because you are the commission in charge of land in this country?

Madam Temporary Speaker, we also have the issue of the wind itself which is now a new resource in terms of power generation. The community is not appearing anywhere. We are being told that this is Vision 2030 and the Government is going to get 300 megawatts of power out of it but the host community is losing out. In this age and time where we have a new Constitution that emphasizes the right of each and every individual in this country, we cannot have a system where the national Government just trumpets up the Vision 2030 card at the expense of some citizens of this country.

I am very happy that in this Senate, we have this Bill that will ensure that local communities get benefits from their God-given resources which they have been living with. Once the Bill comes to this House, it will be good that we have a clear way of sharing the resources. The investor will claim that he is paying tax just like any other Kenyan pays income tax. However, how do we generate the royalties? For instance, in the petroleum sector, we have some fuel levy money set aside for road maintenance. The petroleum dealer will pay his income tax based on his turnovers. However, for each and every litre, he has to pay Kshs9 to go directly to the Kenya Roads Board (KRB) although it is collected by the Kenya Revenue Authority (KRA). A formula like that should be worked out so that we know what we are sharing. If we are sharing petroleum or oil in Turkana, we should know what is being shared out. Unless that is clear, the local community may not know how much of sharable revenue is being generated. There should be a formula which is known to everybody.

In the case of wind, we should also know about the sharable formula. What we pass should not create more confusion but should clear the air about what we are sharing so that the public has more faith in us because we have already identified this as a major issue. We have heard many natural resources being talked about by the previous speaker which shows that this is a rich country.

Communities which have once been seen to be poor have been sitting on resources which, once exploited, can allow them to develop them. They can develop their infrastructure. More often than not, you will find that these resources are in areas which are marginalised. Turkana has oil and there is wind power in Marsabit County. We have

one of the highest wind speeds in a place called Bubisa. We could benefit out of that resource, develop our infrastructure and catch up with the rest of the country. That can only happen if this kind of a Bill clearly outlines how the resources should be shared.

At the end of the day, we would have a system where whenever a resource is discovered; those who are closest to it are the ones to benefit. If one person in such an area, for instance, allocates himself a piece of land where the resources have been discovered, by the time the other Kenyans get to know about it, the title deed would be in the name of the individual. I consider that to be immoral because the resource has always been available and the people living in that area have been suffering because they are said to be marginalised.

Unfortunately, in Kenya, we have been thinking along agriculture based business. We only think that an area is productive and has potential when it is agriculturally arable. That is why these areas have been left behind. So, if at the end of the day resources are discovered, let those who have been sitting on the resources who have been suffering the effect of marginalization be the first ones to benefit.

I support this report and hope that the Bill will be brought to this House in a refined way. We hope that it will be enacted so that we do our part in making sure that Kenyans get their rightful share of the natural resources which are within their areas.

**Sen. Hassan:** Thank you, Madam Temporary Speaker, for this opportunity to contribute a word or two in this process. First and foremost, I would like to congratulate my Chairperson, Dr. Agnes Zani, for having provided extra-ordinary leadership. This document, by mere perusal, demonstrates that there was a lot of seriousness attached to the work that was done by this Committee to a point where we suggested legislative framework so that we do not have mere talk as it is in most of the Senate Motions but culminate into some action.

We hope that those who care so much for the counties will see this Bill through, particularly in a situation where we will remain balanced with the national Government. So, I do believe the Senate will rise above partisanship and very narrow parochial interests to ensure that we adopt this report; and we will, equally, adopt the very extensive provisions of the Bill which tend to bring in a form of equity.

Madam Temporary Speaker, we have seen countries whose natural resources have been more of a curse than blessings. I think it is important that we provide a framework as Kenya is now going to minerals. We have had discoveries lately in Lamu; we have had a lot of other discoveries of natural gas in Wajir and a lot of counties that were hitherto some of the most marginalized counties; these counties were ranked as some of the poorest counties; but now, they have discovered enormous wealth. It is high time that having past experience of this nation, we must protect these counties from the potentiality of exploitation and grabbing by those in power.

Madam Temporary Speaker, sometimes I try to reflect on the Kenya we had in the 1960s upon the advent of Independence. It was not a Kenya that most of us lived in; but it is a Kenya that we have heard enormous stories about. Today, part of the anxiety and discomfort in the Coast region is basically as a result of the excesses that we witnessed at the advent of Independence; that the founding fathers became the founding fathers of corruption; they became the founding fathers of theft and ethnicity. But, today, these

founding fathers are celebrated in our history books to our little children, yet we know it is a deception. I remember one of my cousins told me that he cannot send his child to a public school and that he will follow the GCSE system because there is no way he can allow his daughter or his son to idolize people who had disenfranchised him. This is because he knows that if they go through Kenyan schools, they will be told that “these are your freedom fighters” and yet these are the people who put them in the kind of situations that they are in today. If my cousin can think that way, I think it is important that as we evaluate these kind of history, we need to rewrite history accurately to really know who the real *Mau Maus* were and who the beneficiaries of the *Mau Mau* struggles were to the exclusion of the real *Mau Mau*.

(Applause)

Madam Temporary Speaker, if we do not protect these resources at this point in time in our history, generations in Kwale, 20 or 50 years on or children in Wajir or in Turkana will be faced with almost similar circumstances that we are facing today; that those who presided over power at that point in time are people who have inherited enormous wealth from self perpetuation and preservation. Therefore, this Bill comes at the right time when we start to discover our minerals, and we must make sure that we particularly protect communities.

Madam Temporary Speaker, we cannot have this language – and I keep saying it here all the time; that peace is a function of justice and equity – we cannot have this sloganeering of how we need to be a peaceful country; of how we need to love thy neighbour when thy neighbour is living on your land; when your neighbour has grabbed from you. That neighbour that you love is only the neighbour who is just to you and, therefore, those neighbours or this national building is about the equity of resources. I keep saying this time and again; that our devolution was never meant to give Governors flags, outriders or whatever other kinds of functional privileges. Our devolution was about resources. Thus, even as we go into this phase of the referendum, it is about money and resources so that we can secure our development at that level and so that we should give as little money as possible to the national level for corruption on grand projects. If we had the right framework of governance and if we had reasonable resources to the counties, I do not think we would have been conceptualizing such mega projects that we know an element of which will feed into the train of corruption.

Therefore, Madam Temporary Speaker, I want to commend this Committee because the person who brought this Motion, Sen. (Dr.) Zani, has been visionary because she, herself, comes from a region that has been disenfranchised and marginalized. I once remember that I was sitting in a meeting when I was a commissioner in the Kenya National Commission on Human Rights (KNCHR) and some people wanted to understand what was happening in the Coast Province or what the problem was. I looked at them and told them; “You are the problem.”

**The Temporary Speaker** (Sen. Ongoro): Order, Senator! Sen. Hassan, you will have a balance of nine minutes.

**ADJOURNMENT**

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, it is now 6.30 p.m. and it is time to adjourn the Senate to tomorrow, Thursday, 7<sup>th</sup> August, 2014, at 2.30 p.m.

The Senate rose at 6.30 p.m.