

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 30th June, 2016

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

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

PRAYERS

MESSAGE FROM THE NATIONAL ASSEMBLY

APPROVAL BY THE NATIONAL ASSEMBLY OF THE COUNTY
ALLOCATION OF REVENUE BILL (SENATE BILL
NO.3 OF 2016)

The Speaker (Hon. Ethuro): Hon. Senators, I have a Message from the National Assembly on the approval of the County Allocation of Revenue Bill (Senate Bill No.3 of 2016).

I wish to report to the Senate that pursuant to Standing Order No.40(3) and (4), I received the following Message from the Speaker of the National Assembly regarding the approval by the Assembly of the County Allocation of Revenue Bill (Senate Bill No.3 of 2016). I quote:-

“Pursuant to the provisions of Standing Orders No.41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly:-

Whereas the County Allocation of Revenue Bill (Senate Bill No.3 of 2016) was published vide Kenya Gazette Supplement No.51 of 18th April, 2016 as a Bill concerning county governments to provide for equitable allocation of revenue raised nationally among the county governments for the 2016/2017 Financial Year and the responsibilities of the national and county governments pursuant to such allocation;

Whereas the said Bill was passed by the Senate on Tuesday, 7th June, 2016 and referred to the National Assembly for consideration and;

Whereas the National Assembly by resolution made on Tuesday, 28th June, 2016 approved the Bill without amendments and in the form passed by the Senate;

Now, therefore, in accordance with the provisions of Article 110 of the Constitution and Standing Order No.41(1) and 142 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate.”

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Hon. Senators, in the circumstances, I will process the Bill and present it to His Excellency the President for assent.

I thank you.

STATEMENTS

The Speaker (Hon. Ethuro): There are statements to be issued. Is the Chairperson of the Committee on Agriculture, Livestock and Fisheries here? Vice Chairperson or any Member of that Committee?

Sen. Karaba: On a point of order, Mr. Speaker, Sir. I have two statements that I am expecting will be issued today. By the look of things, the Chairpersons of the Committees are not here. This is my worry and I seek your intervention.

The Speaker (Hon. Ethuro): How do I help you? I am with you here and they are not here. Is the Chairperson of the Committee on Roads and Transportation present?

Can we proceed with the Statement to be issued by the Senate Majority Leader on the business for the week?

Sen. (Dr.) Machage, I can see you have been appointed the Acting Majority Leader.

BUSINESS OF THE WEEK COMMENCING TUESDAY 5TH JULY, 2016

Sen. (Dr.) Machage: Thank you, Mr. Speaker, Sir, for the compliments. I am reading the Statement on behalf of the Senate Majority Leader on the business of the Senate for the week commencing Tuesday, 5th July, 2016 pursuant to the provisions of Standing Order No.45.

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

On Tuesday, 5th July, 2016, the Rules and Business Committee (RBC) will meet at 12.30 p.m. to schedule business of the Senate for the week. Subject to further directions by the RBC, the Senate will continue with business that will not be concluded in today's Order Paper focusing on Bills at the Committee of the Whole Stage.

On Wednesday, 6th July, 2016, the Senate will continue with the business not concluded during the Tuesday sitting. In addition, the following Bills will be scheduled for the Committee of the Whole:-

(a) The Natural Resources (Classes of Transactions Subject to Ratification) Bill (National Assembly Bill No. 54 of 2015).

(b) The Forest Conservation and Management Bill (National Assembly Bill No.49 of 2015).

(c) The Protection of Traditional Knowledge and Cultural Expressions Bill (National Assembly Bill No.48 of 2015).

(d) The Energy Bill (National Assembly Bill No.50 of 2015).

(e) The Access to Information Bill (National Assembly Bill No. 36 of 2015).

(f) The Seeds and Plant Varieties (Amendment) Bill (National Assembly Bill No.43 of 2015), and;

(g) The Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No.44 of 2015).

The Senate will also consider any other business by the Rules and Business Committee.

On Thursday, 7th July, 2016, the Senate will consider Bills at the Second Reading, deliberate on Motions and any other business scheduled by the Senate Business Committee.

I appeal to you, hon. Senators, to make yourselves available to dispose of pending business before the Senate, especially Bills with constitutional timelines.

I thank you and hereby lay the statement on the Table.

(Sen. (Dr.) Machage laid the document on the Table)

The Speaker (Hon. Ethuro): Hon. Members, I can now respond to the issues raised by Sen. Karaba.

Sen. (Dr.) Machage, since you have been the Acting Majority Leader, you may also wish to tell us what happened to the statements listed as 3 (a) and (b). I want to believe the transfer of temporary powers was complete.

Sen. (Dr.) Machage: Mr. Speaker, Sir, in exercising the temporary transfer of power, I hereby request that you reallocate the time for these statements to be given.

The Speaker (Hon. Ethuro): These statements will appear in the Order Paper on Tuesday in that order.

DELAYED PAYMENT OF FRENCH BEAN FARMERS IN KIRINYAGA
COUNTY BY VALUE PAK LTD

CONSTRUCTION OF KIRINYAGA SEWERAGE PLANT

(Statements deferred)

(Sen. Karaba stood up in his place)

Sen. Karaba, I understand your feelings, bear with us. We will ensure that the statements are responded to on Tuesday.

(Interruption of Statements)

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION OF TEACHERS AND STUDENTS
FROM KAWAIDA PRIMARY SCHOOL, KIAMBU COUNTY

The Speaker (Hon. Ethuro): Hon. Senators, before we proceed to the next Order, I wish to recognise the presence of visiting students and teachers from Kawaida Primary School, Kiambu County. They are seated at the Public Gallery. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

I thank you.

(Applause)

Sen. Karaba: Mr. Speaker, Sir, as the Chairperson of the Committee on Education, I wish to extend my congratulations and welcome to the students from Kiambu County. They have found it necessary to come and see how we perform our duties and activities. I would like them to continue observing what is good. What is not good, they should not carry it with them. This House comprises of what you see and hear.

Sen. Wangari: Mr. Speaker, Sir, I also join you in welcoming these young boys – no - girls from Kiambu County. I hope they will get---

The Speaker (Hon. Ethuro): What is the “no” about Senator?

Sen. Wangari: Mr. Speaker, Sir, I was just confirming whether it is a girls school. I am seeing many girls, but there are also boys. As a mother of such young children that are close to the age of the ones seated at the gallery, it is quite a good site. I hope they will pick things from this Senate and know that they can become anything they want to become.

As the Vice Chairperson of the Kenya Women Senators, I welcome them to the Senate. The young girls should know that they can reach any limit and their dreams are valid. I urge them to pick what is good from this Senate. We hope to see them here in the years to come.

The Speaker (Hon. Ethuro): “Sen. Kananaiza.”

Sen. Kanainza: Mr. Speaker, Sir, I am not “Kananaiza”. I am Kanainza.

Thank you for giving me this opportunity to welcome the pupils from Kawaida Primary School. Being a Member of the Committee on Education, I wish them well as they engage with Parliament. I wish to tell them that their dreams are valid. The Senate also has young people. Looking at their ages, I believe that by the year 2022, they will be participating in elections and the voting exercise. I wish those with the aspirations well to be leaders of this country well.

The Speaker (Hon. Ethuro): Sen. Kanainza, you can conduct tutorial lessons for me.

Proceed, Sen. Omondi.

Sen. Omondi: Mr. Speaker Sir, I join you in welcoming these students. It reminds me of the days when I would hope someone would pay for such a trip. Then I could not afford. This is a great opportunity for these students.

I have not seen learners with special needs coming here. I think it is because of the issue of accessibility. Whoever is listening to the proceedings of this House, maybe teachers from special schools are also encouraged to bring learners with disability to learn the practices. We want them to be in leadership. They cannot be in leadership if they cannot learn the practices.

On the issue of accessibility, I think it is not your making, Mr. Speaker, Sir, but I would like to ask the leadership of Parliament to ensure that the Speaker's and public galleries are accessible to everybody because there is discrimination if they cannot access the Senate or the National Assembly.

The Speaker (Hon. Ethuro): Point noted, Senator.

Sen. (Dr.) Machage: Mhe. Spika, nafurahia sana kuona wanafunzi, hasa vijana chipukizi, wengi wao wakiwa rika ya wajukuu wangu wakifika kwa Bunge hili ili kujionea yanayotendeka hapa. Watasoma mengi kuhusu shughuli za Bunge hii. Ninataka wajitayarisha siku za usoni kufika hapa kwa sababu wengi wetu tutakuwa tume yoyoma na kuondoka. Nakumbuka siku nilizolingia Bunge, wengi wenu hamkuwa mmezaliwa.

Mungu awabariki.

Sen. Gwendu: Mr. Speaker, Sir, I also join my colleagues in welcoming the pupils seated at the gallery. I wish to add that they are very lucky to have come to see what their Members of Parliament are doing. Some of us grew up seeing Members of Parliament at barazas and funerals until the Constitution made it possible for us to be here. For you who are here, this is an opportunity created by God to learn.

In my capacity as the Organising Secretary of the Kenya Young Parliamentary Association (KYPA), I would like to tell you that it is possible to be whoever you would like to be if you put your mind to it.

Welcome to the Senate.

INVITATION TO MEMBERS TO PARTICIPATE DURING THE UNCTAD 14 AND TICAD VI CONFERENCES

The Speaker (Hon. Ethuro): Hon. Members, before we move on to the next order, I want to make a communication. This is to invite Members of the Senate to express interest to participate in the conference sessions during the United Nations Conference on Trade and Development (UNCTAD14) and the Tokyo International Conference on African Development (TICAD VI).

Pursuant to Standing Order No.45(2)(a), I wish to inform to this House that Kenya will be hosting two international conferences in July and August 2016; the 14th UNCTAD and the TICAD VI in Nairobi at the Kenyatta International Convention Centre (KICC) from 17th -22nd July, 2016, and 27th - 28th August, 2016, respectively.

This will be the second time the UNCTAD Conference is being held in Nairobi since 1976 and the first time that the TICAD conference is being held out of Tokyo, Japan, since its inception in 1993.

Hon. Senators, UNCTAD is the principal organ of the United Nations General Assembly dealing with trade, investment and development issues while TICAD aims at drawing international attention and urgency to African development issues while paying attention to Africa's ownership of the process.

On 21st June, 2016, the Ministry of Foreign Affairs and International Trade briefed a joint Committee of the Senate on Foreign Relations and Finance on the state of preparation towards the hosting of the said conferences.

As the country prepares to host the UNCTAD 14 and TICAD VI conferences, it will be important for Parliament and in particular the Senate to actively participate and contribute to the key thematic areas of UNCTAD 14; the World Investment Forum, Global Commodities Forum and the World Youth Forum and TICAD VI; Industrialisation, Health and Social Stability that have a vast array of topics lined up for discussions.

In this regard, that I invite Senators who wish to participate in the UNCTAD 14 and TICAD VI Conferences to express interest and indicate which thematic areas they may wish to be part of. This is important because participants at this conference will need to be fully accredited.

This is, therefore, to request you to submit your names and the thematic areas of interest in both conferences to Mr. Boniface L. Lenairoshi, Principal Clerk, Finance, Budget and Commerce Committee on cellphone No.0722258582 by 5.00 p.m today 30th June, 2016.

I thank you.

Hon.Senators, I will rearrange the Order Paper subject to Standing Order No.39. I will allow the Chairperson of Land and Natural Resources Committee to submit a Paper. After which, we will go straight to Order No.20 on the Order Paper and then go back to Order No.12. We will proceed along those lines.

PAPER LAID

REPORT ON THE FOREST CONSERVATION AND MANAGEMENT BILL 2015 (NATIONAL ASSEMBLY BILL NO.49) OF 2015

Sen. Kivuti: Thank you, Mr. Speaker, Sir. I beg to lay the following Paper on the Table of the Senate today, Thursday, 30th June, 2016:-

Report on the Forest Conservation and Management Bill 2015 (National Assembly Bill No.49) of 2015.

(Sen. Kivuti laid the document on the Table)

The Speaker (Hon. Ethuro): Next order.

MOTION**COMMONWEALTH WOMEN PARLIAMENTARIANS
REGIONAL CAPACITY BUILDING WORKSHOP**

Sen. Gwendo: Thank you, Mr. Speaker, Sir. I beg to move the Motion that the Senate note the report of the Commonwealth Women Parliamentarians Regional Capacity Building Workshop held in Dar es Salaam, Tanzania, on the 20th -23rd of January, 2016. First of all, I would like to thank you for having given me the opportunity to attend this conference which was attended by women parliamentarians from all over Africa. We learnt a lot from this conference. I would like to bring to your attention the many women who attended this conference, the different things that we learnt from each other and the recommendations that we came to---

The Speaker (Hon. Ethuro): Order, Senator. I am told that you need to move the Motion properly.

Sen. Gwendo: Thank you, Mr. Speaker, Sir. I beg to move the following Motion:-

THAT, the Senate notes the report of the Commonwealth Women Parliamentarians Regional Capacity Building Workshop held in Dar es Saalam, Tanzania on the 20th to 23rd of January, 2016 laid on the Table of the House on Thursday, 17th March, 2016.

I beg for your indulgence, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order, Senator! You have not said a thing. I cannot prevent anybody from attacking what does not exist.

(Loud consultations)

Sen. Gwendo: Mr. Speaker, Sir, kindly control the Members who are consulting in very loud voices.

The Speaker (Hon. Ethuro): Proceed, Senator. I will deal with that matter when you are on course.

Sen. Gwendo: Thank you, Mr. Speaker, Sir. I would like to thank you for giving me the opportunity to attend this conference and representing the women in this Senate and the women in the National Assembly. We were only two women who attended the Conference from Kenya together with 200 other women from other parliaments in Africa and all over the world.

Some of the issues that were discussed in this Conference were the issues of political parties and how women should relate with political parties, women and the media, and how we should conduct our political engagements.

There was a lot to learn from the Conference, but I would like to start with the issue of women and how we should conduct ourselves with political parties. We had different speakers in this Conference. One of them was a woman speaker from Ugandan Parliament. This topic was very impressive and she had a lot to teach us on how women should engage with their political parties. We all had different experiences that we

brought to the table. Some of the women who attended the conference had suffered through the nominations from their political parties, seclusion and not being able to voice their concerns or their objectives on why they are in politics. We came to the conclusion that women should be supported by political parties.

Mr. Speaker, Sir, for our South African counterparts, their political parties raise for them funds and they are supported on the ground. They are even given priority during nominations. That does not happen in our country but I hope that one day, Jesus will come back and there will be fair nominations in this country. Women will not only be given positions to be called “flower girls” by their political parties. Some women parliamentarians have brought quality Motions and Bills to the House. I am aware that some of these positions would not have been attained were it not for the political parties. However, where does the engagement end? Are the political parties aware that we brought Bills to Parliament? I do not think so. However, political parties should support us and our engagements and know how far the Bills that we bring to Parliament go in as far as implementation goes.

With regard to funding of the political parties, we realized that most of the women Members of Parliament who attended this conference had no financial support from their political parties yet political parties and their constitutions stipulate that women should be supported not because they are a lesser gender but because we need to stand and defend our political parties. We need to be funded for that. I know that does not happen in this country but as I said, I hope that it will happen one day.

Mr. Speaker, Sir, we also discussed the issue of women and the media. Most of the people who attended the conference gave their experiences on how media exposes their inadequacies. For instance, if Sen. Kanainza lost her purse, the media will make it a big story. A small thatched house can be made to look like a mansionette when it comes to discussing women issues. In other words, stories about women are exaggerated and tend to move towards the negative. However, no one defends us. We remain to defend ourselves from such stories. We are left alone to defend ourselves against the public and everyone else.

We learnt that the women the Members of Parliament need to prepare their families for such things. Most of us have had very bad experiences with bad press and attacks. Our families did not know how to react in such instances. The first people that you need prepare for such instances are your family and friends because they are the only people who are left to stand with you. A media personality was there to train us on how to handle bad and good press. We were also taught how to create relationships with media personalities so that whenever there is bad news about a woman on a Thursday, good news can be highlighted on a Friday. As women parliamentarians, we need to work towards capitalizing on the good news that has been highlighted about you. We are aware that darkness cannot drive away darkness. However, light can drive away darkness. Bad press can only be taken away by good press. Therefore, as women parliamentarians, we need to create a good relationship with the media personalities so that the pill is not too bitter to taste.

Mr. Speaker, Sir, we need to create a good relationship with the male Members of Parliament if they allow us. We need their support. I remember during the debate on the

Gender Bill in the National Assembly, we did not consult well with the men even though we need their support. When a woman Member of Parliament leaves her house, she leaves a husband who has allowed her and is supporting her to be in Parliament. Therefore, we need support from the male Members of Parliament and to consult them to be better Legislators. Some male Members of Parliament have been in Parliament longer than us and have gone through experiences that we can learn from. We agreed that if they allow us, we need to have a better relationship with them so as to make our legislation a better journey.

We discussed the issue of funding for women and agreed that as Commonwealth Women Parliamentarians, we need to look for funding outside our comfort zones. Mostly, women parliamentarians go to look for funding from the local Non Governmental Organisations (NGOs). For instance, here in Kenya, we do it under the Kenya Women Parliamentarians Association (KEWOPA). However, we leave out the big companies that operate in this country. We were advised that there are companies that operate in this country which we have allowed as legislators to do business. A good example of such companies is the Unilever and the Coca Cola Companies. Women need to come up with proposals or ideas that could help us to be supported by such companies. We also need to find a way of encouraging and empowering the women back at home because I am so sure that someone like my grandmother in the village does not know what a Gender Bill is or how I represent her in Parliament. She will only get to know how I represent her here if I let her know.

Mr. Speaker, Sir, we need to find methods of creating, disseminating and packaging information in a way that my grandmother in the village can understand. That is where companies such as the Unilever and the Coca Cola will come in. Women will be able to go to them with proposal and inform them that we want to create awareness on how we can change the voting patterns among women say a county like Homa Bay County or how we can empower women to make their own money. Companies such as the Unilever and the Coca Cola Companies will only support ideas that are good enough.

What came out of that workshop is that women need to work together. We have been told time and again that women are their own worst enemies. However, I beg to differ because if I fell down right now, it is the women who would come over to help me. The men will be left laughing and waiting for my legs to go up for them to see something. However, the women would come to my rescue.

(Laughter)

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

Sen. Billow: On a point of order, Mr. Speaker, Sir. Did you hear the hon. Member say a statement that is not befitting of this House? She said that if she fell down right now, the honorable male Senators in this House would only be interested in seeing her legs go up and that it is only the ladies who would be concerned with lifting her up? Is the hon. Senator in order to use such a derogatory attitude towards the male colleagues whom I am sure would be more than happy to lift her in the event that she fell down. It is unfair for her to suggest that we would be more concerned with what is between her legs.

(Loud consultations)

The Speaker (Hon. Ethuro): Order Members! The Hon. Member can tell us what she meant. However, what I understood is that the male Members may be more careful to confirm that she has actually fallen down because when one falls, it means that the legs are up and not down.

Sen. Gwendo: Mr. Speaker, Sir, I believe that I have very beautiful legs. Therefore, if I fell down right here, the ladies will be concerned about my health while the men would be concerned about other things. I did not mean it in a derogatory manner.

My point is that women deal with things emotionally. Another woman would understand my concerns and problems more. I know that the men are there to support us and we are grateful for the support that we receive from them in our houses, Parliament and society. However, we need to get away from the belief that women are their own worst enemies. It is the women who vote in the male Members of Parliament. Back at home they go to the women groups, the same ones we go to, and they bring the belief that we are our own enemies. Men who are in this Parliament even today are here because of women. So, why can a woman not be brought to the decision-making table with the same gusto and energy that she makes a house be a home? Why are we trying to make the world believe that a woman's place--- She makes the society and the family complete but she cannot be a leader? We aired our concerns on that day and realised that the only way we can bring out the leadership qualities of women is if all women came together and agreed that they are not their own enemies. We are friends although we support men, we should find a way of softening them to support us.

Mr. Speaker, Sir, another point that was brought out in the conference is that women's problems can only be understood by fellow women. Therefore, we need to enlighten the men on the problems we have and the kinds of issues we experience in our leadership. Through that, they will be in a position to support us differently. Also through such mechanism, we will have more Members of Parliament who are women and in the society we shall have leaders other than teachers and nurses. Most of our parents are teachers and nurses. My mum is a teacher and I am proud of her. This goes way back in believing that the only jobs that women can do is teaching and nursing. Women can make good leaders and be on the decision-making table but that cannot be so if we cannot accept the fact that women make the society a better and happier place. This will not be understood if we do not come out and speak this to the people. We should also endeavour to enlighten our women back at home.

This conference took place at the time that elections were going on in Uganda. The Speaker of Uganda was giving us an experience about the way women who were campaigning to be Members of Parliament were stripped naked just because they came out and expressed their need to vie for elective position. She asked us how she could advice such women to go back to politics. Then again who said that there is something easy in life? If we go for the easy, I am not sure where we will end up.

It is more tough for women, both in Parliament and outside as leaders. For women who have had bad experiences--- I have had bad experiences myself but I do not believe

that a bad experience would make me a bad person. It makes me a better person who is able to share my experience, the same way I shared in Tanzania. I have now brought that experience in this House.

Mr. Speaker, Sir, I would like to thank the Chair because that was a learning experience for me to hear that not only Kenyan women go through difficulties in leadership. People out there go through more difficult experiences. If we bring our heads together with a common objective that we want to make our country a better place and our women better leaders, then we can do it.

With those few remarks, I beg to move and ask Sen. Wangari to second.

Sen. Wangari: Mr. Speaker, Sir, allow me to congratulate Sen. Gwendu for laying this Report to the Table of this House. I also thank the office of the Speaker for always facilitating women in this House to attend these meetings. I have not attended a Commonwealth Women Parliamentarians meeting but we have hosted them at Safaripark Hotel. The experience shared in such a meeting is not anything you can exchange for anything else. I want to thank you and your office for facilitating this.

The issue of women in leadership is a wide and contentious issue. When President Obama said that if we do not have women in leadership, it is like having half of your team in football and not having them play the game in the field. Despite being over 50 per cent of the population, we are still marginalized. In fact, as a country we are still struggling to reach the 30 per cent that we have put as a minimum threshold in the Constitution in terms of political leadership.

It is not just limited to Parliament and political leadership; if you look at this report, you will actually see that the main thing was actually increasing women participation in decision-making structures. Sometimes, we over rate political leadership. In fact, we need to incorporate every other decision-making organ, be it in the church or in academic institutions. We must have women playing their rightful role in various institutions including county assemblies. This conference happened after Tanzania had held their elections and it was very significant to have it in Tanzania. It is the first time in history that we have a deputy president who is a woman in Tanzania. It was a timely conference to confirm that it is possible.

We are also hoping at one point, we will get to the presidency as the women of this country whether as the president or the deputy president. We are headed there and we will get there. The Chairperson of the Commonwealth Women Parliamentarians is the Rt. Hon. Rebecca Kedaga, the Speaker of Ugandan Parliament. I have heard the opportunity to listen to her when she recently came to join us in the national prayers at Safaripark hotel a while ago, she is full of wealth and inspiration to young women. So, we actually have a mentor and a role model in her. These conferences are not just limited to Members but they actually come with parliamentary staff. In terms of gaining experience, we are actually favoured to have the staff to contribute and be a part of that set up.

In the tenth Parliament, the Kenya Women Parliamentarians did a study that was focusing on how possible it is for a woman to be elected in this country. It was quite interesting that every time a woman vies, she has a 50 per cent chance of being elected but the problem is how many are able to vie. That is when it becomes difficult; how do we get women out there.

In 2013, we have very strong women who vied for gubernatorial and senatorial positions, but we did not get even one governor elected as a woman neither did we get a Senator. We only got three county assembly speakers who are women.

That tells us how far we are and need to go. In the Tenth Parliament we actually had 18 single-Member constituencies out of 210. We now have 16 out of 290 constituencies. What does that tell us? We are celebrating that we have a higher percentage of women, but how many are actually able to go out there, get a fair nomination, run for office and be elected? We are dipping and not growing, if you look at it that way. Most of us are serving on affirmative seats. How many are able to campaign and actually undergo a fair nomination to be elected to Parliament? We are going down in terms of percentage and that is something we need to worry about.

Yesterday, the Kenya Women Parliamentarians hosted some congress for lunch, comprising of five men and three women from the United States (US). They were actually awed that we are so many and thought that we are doing very well. Even in the US – and they are a democracy that is over 200 years old – they are only at 17 per cent, but they also do not have the quotas that we have. They look at us and think that we are doing very well. We told them of the struggles that we have even to try to get laws passed in Parliament. They look at our Constitution as a very progressive one, and yes it is. It clearly states that not more than two-thirds will be of the same gender, but how will we implement that? We tried to get the numbers in the National Assembly to pass that law and it was impossible, yet when we try to pass some laws, like the security laws, it is very easy to marshal the numbers. We were deliberating on what exactly we do wrong. Why are women judged so harshly when it comes to political representation? There is a narrative that women are not contributing or adding value, yet it could be just ten out of the 86 that we have that are not doing well. Again, maybe 30 of the balance of a 418-Member Parliament are men and nothing is said about them. That portrays the picture of what we have to deal with everyday.

We are headed for elections and I can assure you that it is not easy to run for office. If some of us who are running for offices next year are having it tough, how can an ordinary woman out there with no platform or resources run for office and be assured of a fair and level-playing ground? How can an ordinary woman run for office and win? I have a very good track record of women where I come from. In my home constituency, Gilgil, out of five elected Members of the County Assemblies (MCAs) three are women. I do not think there is any other in this country that can beat that record. We have proved that they can perform even better. Exactly where do we go wrong? That is what this conference was trying to find out.

When you look at political parties even today, you can never find many women in the normal vertical structures. They are very few, thanks to the one-third threshold. You will find them mostly in the women league. You could be in the youth league of ODM, like Sen. Kanainza; you are never in the mainstream. How many women actually append their signatures in the nomination certificates, as secretary-generals of political parties in this country? Maybe there is only Sen. Elachi, who is the Secretary General of the Alliance Party of Kenya (APK). I do not know of any other. That is where we start to be disadvantaged. You work very hard in your constituency, but just as Roosevelt said: “As

a woman, you have to work twice as hard to be recognized half as much.” That is how terrible it is.

What we ask for, as women of this country, is not to be favoured or given something soft. We want to fight, but give us a level-playing ground. When you attack me, as my opponent, you should not look at the length of skirt or who is the father of my children. You look at what is between my ears and we can compete properly. There is the issue of neck-down politics and other appointive positions. I want to quote the Waiguru saga. The attacks on her children that we saw in the media demonstrated what women are subjected to in this country. I cannot say that she was clean, but neither were her colleagues. We never heard anything about their children. Nobody can tell you about the children of a male Cabinet Secretary who was dismissed from service; it is very difficult. But for women, their whole life is brought out. It is quite difficult and emotionally heavy to deal with.

As we go for elections next year, I know that women will struggle. Some political parties are making an effort to actually give affirmative action to women. We will not leave the young people and people living with disabilities, because they are also part of it. In fact, Sen. Kanainza here is a young woman representing youth. If you at the records, less than ten percent of land is owned by women. Very few of us have title deeds and that is the reality. We hope to entrench ourselves in the political parties. I urge the women who have served on affirmative seats, to identify a constituency to run for. We will be doing this for our girls who look up to us. In fact, I think that affirmative seats and even the women representative positions should be held for one term. One should serve for one term and then look for votes in a constituency. That is the only way we can increase the number of women in Parliament. I do not want to be nominated for three consecutive terms; I will be doing an injustice to the women and girls who look up to us to actually show them that it can be done. We must encourage women to get out and vie for positions. The men who are here should encourage the women in their lives to get out there. When we need your support in terms of money, we will fundraise and hope to get favorable responses. Political parties must give us a good rate even in terms of nomination fees. Let the women pay 50 per cent of the nomination fees, so that many of them can be encourage to seek political seats and make policies.

I want to recommend a book for all the leaders here, including the women. There is a book written by Sandberg, the Chief Operations Officer of *Facebook*, called *Lean in*. Everytime you go to a meeting, do not sit at the periphery. It is our time to get close to the table; otherwise you will be on the menu. I want to encourage all of us to get out there and for the men to support us, because we mean well for the country and our future.

Mr. Speaker, Sir, I beg to second the Motion.

The Speaker (Hon. Ethuro): Hon. Senator, you do lead by approaching the table? Even the menu is on the table.

(Question proposed)

Sen. (Prof.) Anyang’-Nyong’o: Thank you very much, Mr. Speaker, Sir. I would like to support this Motion and congratulate my voter, Sen. Joy Gwendo, for moving this

very important Motion. I would also like to congratulate the dynamic young Senator from Murang'a and Nakuru, Sen. Martha Wangari, for seconding this Motion very ably.

Before I proceed, I would like women to celebrate their victories. To say that women have not occupied top echelons in party politics in this country is to ignore history. Some of the very brave women like Phoebe Asiyo went high up. Grace Onyango was the first woman to be elected directly from Kisumu Town. She was elected on merit as a politician who had been the first woman mayor in this country. Margaret Kenyatta was a mayor in the city of Nairobi, notwithstanding the fact that she might have enjoyed the advantage of being the sister of a President. Nonetheless, she performed on her own right as a woman.

Mr. Speaker, Sir, I remember in 1996, as we sat down at the Social Democratic Party (SDP) and debated how best to promote the participation of women in politics and to challenge male domination in politics in a progressive manner, we deliberately nominated Ms. Charity Ngilu as a presidential candidate.

Sen. Murungi: *Bure Kabisa!*

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, that was at a time when people like my dear friend, "King" from Meru County, regarded the initiative as *bure kabisa*.

Ms. Charity Ngilu did her best. We wanted it to be a sign of encouraging women to enter the political scene. I must say at that election, the number of women who were elected as councilors across the nation increased tremendously. I think it formed the first step that a lesson went to the public that, to assume that women could not climb to the higher echelons of politics was done a big blow.

Mr. Speaker, Sir, subsequently when we formed the Orange Democratic Movement (ODM) as a party in 2005/2006, the first Executive Director of that party was Madam Janet Ong'era who is currently a Senator here. So, we have milestones of women's achievements in the politics and public affairs of this country which should be celebrated. I am not saying that that is the end of the journey. It is the beginning of an important journey which, nonetheless, shows that there are some people who have blazed the trail as women in our nation.

Going back to history, some of the very progressive African leaders have demonstrated their progressive politics in taking a very firm stand on women and the women liberation movement. When Mwalimu Julius Nyerere was a student at Makerere University, the first book that he wrote was on women liberation. People do not know this but I launched this book at Makerere University some years ago and actually wrote a preface to this book. It had been sitting in the archives of publishers for long but finally Makerere University published it as a book to initiate a scholarship programme for women at Makerere University. Part of this programme was contributed to by the Joshua Mugenyi Foundation, which I also launched in Makerere University at that point in time. I think it was in 2008. Dr. Joshua Mugenyi was my Vice President in Makerere University when I was the President of the Makerere Students' Guild. I am not in a hurry to be a president again because I have occupied that position before.

Mwalimu Julius Nyerere wrote that book as a senior student at Makerere University. If you look at his writings, the emphasis of the freedom of and participation of women in politics ---

Sen. Okong'o: On a point of order, Mr. Speaker, Sir. Is Sen. (Prof.) Anyang'-Nyong'o in order to tell us that he has been President before and he is not interested to be a president again? Could he tell us exactly which type of President he has been? Has he been a President of a republic before and might not be interested to the President of a republic again?

The Speaker (Hon. Ethuro): Order, Sen. Okong'o! That is an argument. He did not specify which one. He just said that he has been a president before and he has no desire to be one again. It could be again of the same.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I think Sen. Okong'o was not listening to me. I said I was the president at the Makerere University Students' Guild, one of the oldest students' organisations in Eastern Africa. It has been headed by many prominent people. Being the president of the guild in those days was like being a head of State. So, when I said that I am not interested in being President again, it is because I have occupied that seat before. So, that will come in my biography subsequently.

Nonetheless, if you look at ---

The Speaker (Hon. Ethuro): Order, Senator! Now, you are getting yourself into murkier waters at the invitation of Sen. Okong'o. When you said it before it was okay. You are now equating a student president to a head of State. Surely, they cannot be the same.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, no. I said: "it was like being". I did not say: "it was as being". It was just like because of the dignity that was accorded that office. These are semantics.

When the Mozambique Liberation Front (FRELIMO) was struggling for freedom in Mozambique, the Head of State, Samora Machel's wife, Josina Machel, was on the forefront. She was only 24 years but was on the forefront for fighting for the liberation of Mozambique. Within the liberation zones, Josina Machel was killed in the forefront of the battle field. To celebrate her contribution in the liberation struggle of Mozambique, the late Samora Machel started a nursery school in the bushes and named it Infantario Josina Machel. It means, the nursery school for Josina Machel. That became a landmark in the Mozambican history of the importance of women to take part at the highest levels of political struggle with men. The place of women in FRELIMO and in the new Government of Mozambique remained progressive.

If we go to the 17th and 18th Century, some of the most important pro-feminists of that century, a century that was full of conservatism, could be found in France. Many of the French authors, Denis Diderot and *Charles-Louis de Montesquieu* wrote fantastic things on the liberation of women. They did so at a time when few in Europe thought that liberation of women was an important matter. John Stuart Mill, in 1866, wrote a very important book called *The Subjection Women*. It was extremely important in Victorian England. Mind you, Queen Victoria was the longest serving Queen in England. Yes, as a queen, she herself never promoted the liberation of women. However, Stuart Mill, in the midst of Victorian conservatism, wrote that book. He said, among other things, that marriage for Victorian women was predicated upon a sacrifice of liberty rights and property.

Mr. Speaker, Sir, you have seen the Victorian dress, it was even imported into Uganda at Busitu; that long dress that the Baganda women wear. That was imported from England as the conservatism of the Victorian England, where women were expected to dress completely up to the bottom so that their beautiful legs are not seen by men.

However, it was Stuart Mill who championed the liberation of women.

I am making this point because the liberation of women is not just a women's affair. Men have been at the forefront of the women liberation struggle. In this country, some of us in the previous Parliaments – I remember in the 1990s and 2000s – were called honorary women because of the stand that we took in the liberation struggle for women in this country.

I join hands with my two Senator friends that this is not something to be left for women. The women struggle is not a women's affair. It is part and parcel of the democratic struggle in this nation.

Democratization will not be complete without the full liberation of women and children, because the trouble with male chauvinism is that it is an ideology that stunts development both for men and women. As His Excellency the late Nyerere once said, you cannot be a complete man if you do not have a complete woman next to you. Calling women the best part of men, my best partner or my other half is not truly complete. For a man who is liberated, the woman is either your equal half, not just the other half.

Mr. Speaker Sir, let me use another image that hon. Raila Amolo Odinga has always used: when you go to a race, and you decide to put your wife on your back to win that race, and another man decides to run with his wife on his side, the likelihood is that the man who goes to the race with his wife on his side will win, than the other man who bears his wife on his back because he must insist that, "this is my other half."

The image of the liberation of women is that of human beings who in this Century must play an equally important role in the development and advancement of our nations.

Finally, Mr. Speaker Sir, you can see that in the United States of America, they are finally going to have a woman president, Madam Hilary Clinton. It is not by chance. There seems to be a historical logic in what is happening in the US. First, they elect an African American, which then frees their psychology of male patriarchy, which is part of racism in the US, that people of African American descent can become president. Once that was done, the psychology of oppression that is present in male chauvinism and inherent in racism was hit a blow, and finally Americans can think freer to elect a woman as president.

It is extremely important that we unleash the energies of our women to participate, not only in politics, but in all public affairs. Let us not forget that those who have studied the political economy of rural life will give you evidence and facts that, productivity in rural life especially in agriculture, is largely borne by women. This is because women play two roles: one, they are productive in agriculture and other economic activities, but they are also the same people who ensure that the family is reproduced, not just physically, that women give birth to children, but in the sense that the family economy without the woman cannot be a live economy. She is the one who makes sure that there is food and security in the household, by taking care of both the men and children.

We have only ourselves to blame if in this day and age we do not implement the important content of our Constitution, which is base on the liberation of every citizen. The problem is that the Constitution only provides a framework of principles and institutions that need to be built and must be filled in passing necessary laws that gives our Constitution content. That is why most issues like this are very important because they can give us a reason to frame laws which when passed and implemented, by the Government will make our Constitution live.

It is not going to serve us, Mr. Speaker Sir, if we continue beating our chests, to be proud of our Constitution without giving it content by---

The Speaker (Sen. Ethuro): Order! Sen. Professor.

Sen (Prof.) Anyang'-Nyong'o: I beg to support, Mr. Speaker, Sir.

(Applause)

The Speaker (Sen. Ethuro): If I had extra powers, I would have allowed you to continue, but we have limited powers which I must enforce. So your time is over.

Sen. (Dr.) Machage: Mr. Speaker Sir, as I support this Motion, I give words of encouragement to the women of Kenya---

The Speaker (Sen. Ethuro): Order, Sen. (Dr.) Machage. Just allow me briefly to welcome and recognize the presence of visiting pupils and teachers from Mbagathi Road Primary School, Nairobi County, who are seated at the public gallery. In our usual tradition of receiving and welcoming visitors to Parliament, I send a warm welcome to them and on behalf of the Senate and on my own behalf, we wish them a fruitful visit. I thank you.

Proceed, Sen. (Dr.) Machage. Sorry for that interruption, it is because their time is limited.

Sen. (Dr.) Machage: Mr. Speaker Sir, I would like to encourage the women of Kenya that not all is lost. If you look at the world history and leadership of countries and you look at today, we have 22 women who are heads of state in 22 countries. To mention a few, we have the President of Liberia, Chancellor of Germany, the President of Lithuania and many others. You just have to google and see. I do not have to read the whole list.

Previously, we had world renown leaders such as Golda Meir of Israel, who was quite a known head of state, Indira Gandhi of India, and Margaret Thatcher from Britain. What is the cry all about? It is true, whether you want to accept it or not that the statement that we are always reminded of is that, it is only women who are enemies of women. Men have never been enemies of women. Men like and love women and would want to nurture them onto very soft landing spots. No man would want to see a woman ridiculed in whatever forum, not even refusing to pick a falling woman in a respected House like this, as has been alluded to. That is not manly.

The important thing, as the Motion says, should have been that we were supposed to discuss capacity-building in Dar- es-Salaam. When I go through the report, whereas I really support the women, I see so little on that workshop on capacity-building, and I

expected that to be tabled or discussed on the floor of this House. What is there that can be harnessed to support women in leadership?

In Kenya as has been alluded, a woman has a 50 per cent chance of winning whenever she vies. It is true because the population so dictates. Women are over 50 per cent of the population in Kenya. What is the problem? Why do women shy off from electing fellow women? That is what should be studied and analyzed. What is the reason?

We know that by nature, and it is a gift to be a woman, and be given that capacity to bring forth the human life. You need to take time to nurture the human life to be complete, and that cannot be ignored at all. There is no time that women may think they are ignored, because men cannot be able to do that, since nature has not facilitated them. So, that time must be spent in doing so, otherwise we will have a problem of negative population growth in Kenya like we are now having in Europe and other countries. Do you want to go into that?

The important thing is that, when you look at the Senate of Kenya, out of 20 nominated Members of the Senate, 18 are women. Only two are men. So, what is the cry all about? The important thing is to encourage women in this country, Africa and elsewhere in the world to be bold enough to stand and be counted. It is not a matter of having excessive resources. You will be surprised at how many men go into elections with minimal resources. All they are elected for is their ideas and ability to communicate. I believe women are better communicators than men.

If you were to take statistics of how many words a human being speaks, you will be surprised. A woman speaks over 200 words in a minute while a man speaks only a 100 words. That is the difference. Women are good communicators. Use that ability to find your footing in the political leadership. My question is: Is leadership only in politics? No. I believe important issues on women and leadership were properly disseminated during the three-day workshop that was held in Dar es Salaam. Stop baby crying, come out and be counted.

Sen. Mwakulegwa: Bw. Spika, ninaunga mkono Hoja hii. Heko kwa akina mama kwa sababu Katiba yetu imewapa nafasi katika shughuli zetu za ujenzi wa taifa. Kwa mfano, Seneti hii ina Maseneta 18 wa kike walioteuliwa kwa sababu ya Katiba yetu. .

Tunajua ya kwamba kuna akina mama waliogombea kiti cha urais katika nchini. Hawa ni Mhe Ngilu, Mhe. Karua na Mhe. Nazlin. Hii ni kwa sababu hakuna unyanyasaji wa kisiasa na Katiba yetu inampa kila mtu haki ya kugombea kiti chochote nchini. Ninawasihi akina mama kujitoa mhanga na kugombea viti vyote vya kisiasa bila kungojea kutengewa viti fulani. Tuna mifano mingi ambako akina mama baada ya kuteuliwa kwa muda wa miaka mitano, wao hujipigia debe hadi kuchaguliwa. Ni lazima akina mama viongozi hapa nchini wapange kongamano na akina mama wa mashambani ili wawaeleze umuhimu wa kugombea viti vyote vya kisiasa. Viwanda vingi ambavyo vinasimamiwa na akina mama vimeimarika sana. Mama Tabitha Karanja wa Keroche Breweries ni mfano mzuri wa akina mama waofanya vizuri. Amekiongoza kiwanda hicho hadi kufikia ngazi za kimataifa.

Ni lazima akina mama wa mashinani waelemishwa kuhusu nafasi ambazo Katiba yetu imewatengea ili wawe na ukakamavu wa kugombea viti vyote vya kisiasa. Hapa

kwetu inawezekana mwanamke kugombea kiti cha urais kama kule Marekani. Akina mama wajitokeze kwa wingi na kuunga mkono mmoja wao.

Wakati wa harakati za kupigania Uhuru wa nchi yetu kulikuwa na mama mashuhughuli kutoka Pwani kwa jina la Mekatilili wa Menza. Aliwaongoza watu wa Pwani kupigana na Waingereza waliotaka kunyakua mashamba yao kwa nguvu. Alikuwa na kipawa cha kuwaleta watu pamoja ili wapigania haki zao. Kwa hivyo, naomba akina mama wajitolee mhanga waweze kupigania haki yao katika taifa hili. Wasingojee kupewa viti bure kwani hatuna viti vingi. Ni lazima wagombe viti vya ubunge, useneta na vingine vyote.

Ninaomba akina mama kujitolewa kwa wingi katika uchaguzi ujao ili wawezekupigania viti vingi. Inafaa viti vyote viwe wazi, na akina mama wajisatiti ili wakienda katika kura wawe na mikakati mizuri.

Bw. Spika, ninaunga Hoja hii mkono.

(Interruption of Debate on Motion)

The Speaker (Hon. Ethuro): Hon. Senators, I have to interrupt this particular debate because we have other commitments. After my communication, we will resume the debate.

COMMUNICATION FROM THE CHAIR

APPEARANCE BY GOVERNORS BEFORE THE SENATE AND ITS COMMITTEES

Hon. Senators, I have a Communication on the appearance by Governors before the Senate and its committees.

I wish to inform you that I am in receipt of a letter dated 17th June, 2016 from the Chairman of the Council of Governors, the hon. Peter Munya, in which he raises concerns about the alleged harassment of Governors appearing before the Senate and its committees. The Chairman states that Governors appearing before the County Public Accounts and Investments Committee of the Senate have complained about the manner in which they have been treated, which he states has been in total disregard of the Senate Standing Orders and the Constitution.

The Chairman cites the alleged mistreatment of Gov. (Dr.) Evans Kidero in his appearance before the Committee on 15th March, 2016. In this regard, the Chairman attaches a letter dated 17th June, 2016 from Gov. (Dr.) Kidero addressed to the Speaker of the Senate titled “Complaint against Undignified Treatment during the Senate Public Accounts and Investment Committee Presentation by Nairobi City County.”

The Chairman goes ahead to state that based on the alleged experience of Gov. (Dr.) Kidero in his appearance before the Committee and the experience of other governors, it was apparent that the safety and security of governors appearing before the Senate Committee was not guaranteed. He also goes further to state that there is a clear conflict of interest and I quote:-

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“Senators sit over their own cause since they have declared openly that they will be vying for the position of governors at the next general elections.”

It is the view of the Chairman that the Standing Orders and rules of natural justice require that any interested party should declare their interest and should not preside in a matter in which there are indications that there will be a conflict of interest.

I will stop to allow Members at the Bar to enter.

(Several Senators entered the Chamber)

Order, Sen. Murungi. When you have been favoured, you do not walk in that manner.

The Chairman concludes by stating that, and I quote:-

“Due to the manner in which the governors have been mishandled as they appeared before the Senate Committee purporting to provide oversight, the Council of Governors (CoG) has henceforth considered and advised its members to desist from appearing before the Senate until the issues raised are satisfactorily addressed.”

The Chairman further states that:-

“If the harassment continues, even the Executive Committee Members will also be advised not to appear before the Senate Committee.”

The CoG reiterates that the governors are no longer willing to respond to any summonses that are made by the Senate and any of its committees until the Senate puts in place mechanisms to address the serious constitutional and statutory issues raised.

Hon. Senators, the Chairman of the CoGs, the Hon. Peter Munya, in his letter refers to the complaint by Gov. (Dr.) Evans Kidero, Nairobi County Governor, relating to his appearance before the County Public Accounts and Investment Committee (CPAIC) on 15th June, 2016. It is important that I state from the outset that pursuant to Section 10 of the National Assembly (Powers and Privileges) Act, Cap.6, Section 7 of the Sixth Schedule to the Constitution and Standing Order 176(5)(b), (c) and (g) of the Senate Standing Orders, I referred the complaint by Governor (Dr.) Kidero to the Senate’s Rules and Business Committee for its consideration and appropriate action. In the circumstances, and on the account of the fact that the matter is pending before the Senate’s Rules and Business Committee, I shall say no more on this matter at this particular stage.

I will only make the observation that Gov. (Dr.) Kidero has appeared before the Committee of the Senate yesterday after the incident.

On the position taken by the CoGs to the effect that they shall not honour any summonses by the Senate and its Committees until the issues that they have raised in the letter dated 17th June, 2016 are addressed, as this purported action would affect all committees of the Senate, it is important that I state that the power of the Senate and, indeed, of the entire Parliament, to require the attendance of any person is a constitutional obligation. It is a power provided for under Article 125(1) of the Constitution. This Article provides as follows:-

“Either House of Parliament, and any of its committees, has power to summon any person to appear before it for the purpose of giving evidence or providing information.

(2) For the purposes of Clause (1), a House of Parliament and any of its committees has the same power as a High Court-

(a) To enforce the attendance of witnesses and examine them on oath, affirmation or otherwise;

(b) to compel the production of documents; and

(c) to issue a commission or request to examine witnesses abroad.”

In addition, Section 14 of the National Assembly (Powers and Privileges) Act further provides as follows:-

“(1) The Assembly or any standing committee thereof may, subject to the provisions of Sections 18 and 20, order any person to attend before it and to give evidence or to produce any paper, book, record or document in the possession or under the control of that person.

(2) The powers conferred by subsection (1) on a standing committee may be exercised by any other committee which is specially authorised by resolution of the Assembly to exercise those powers in respect of any matter or question specified in the resolution.”

Appearance before the Senate and its Committees, is, therefore, not optional and cannot be pegged to the fulfillment of any pre-conditions set by the CoGs as it seems to be suggested by the Chair of the Council of Governors. Appearance before the Senate and its Committees is a constitutional and a non-negotiable obligation.

In reference to Article 179(4), Governors get invited by virtue of position.

Article 179(1) states;-

“The executive authority at the county is vested in, and exercised by, a county executive committee.

(2) The County executive committee consists of

(a) the county governor and the deputy county governor.

So, the letter itself has a contradiction that you may wish to allow the executive and not the Governor and the provisions of that constitution are expressively clear.

Article 179(4) is even more compelling to me. It states:-

“The county governor and the deputy county governor are the chief executive and the deputy chief executive of the county, respectively”.

Therefore, they cannot decide to be the chief executive of the county when it is convenient to them.

Hon. Senators, as I have previously stated in this House, the Courts have settled the question of the appearance by governors before the Senate and its Committees, in the matter of the International Legal Consultancy Group versus the Senate and the Clerk of the Senate, High Court of Kenya at Kerugoya, Constitutional Petition No.8 of 2014 in which I mastered the Senate was not even represented. The petitioner filed a petition challenging the decision of the Senate to summon nine Governors and County Executive Committee Members responsible for finance to appear before the Senate and produce

various documents and to respond to various issues with regard to county finance and fiscal management within their counties.

The Court held that the Senate can summon Governors, County Executive Members for Finance and County accounting officers to appear before it and answer to questions on County Government finances in so far as the National revenue allocated to the respective county is concerned. This is a duty that the Constitution has assigned to the Senate under Article 96(3).

Hon. Senators, in the circumstances, on account of the provisions of Article 125 of the Constitution, Section 14 of the National Assembly (Powers and Privileges) Act and the decision of the High Court in Constitutional Petition No.8 of 2014 and Article 179 of the Constitution, the position taken by the CoGs not to respond to summonses of the Senate and its Committees is not tenable. It contravenes and would violate the Constitution and the National Assembly (Powers and Privileges) Act and would be contrary to the judgement of the High Court of Kenya on this matter.

Hon. Senators, in the light of the above, I have responded to the letter from the Chairman of the CoG setting out this position as I have given to you. I have also encouraged him that he has a constitutional duty just like me, to ensure that there exist cordial relations between our two institutions. Let me, therefore, emphasise that despite this, the business of all Senate Committees should proceed in the usual manner in accordance with the Constitution and our Standing Orders.

I thank you.

Hon. Hon. Members, those who are for the Motion, you can now retire. We want intervention on the Communication first.

All the requests should be for the Communication.

Sen. Wako: Thank you, Mr. Speaker, Sir. I have listened to your ruling. It is an excellent ruling. It makes this House proud that we have a Speaker who can make such rulings. The issue which gave rise to those comments as you may recall was the way the proceedings of the County Public Accounts and Investments Committee proceeded when the Governor of Nairobi County appeared before it.

I am glad that in spite of what the Chairman of the CoGs said arising out of that incident, the Governor for Nairobi City County only yesterday appeared before our Committee. He was well prepared with all documentations. I, therefore, appeal to other governors to follow his example. There is a misconception when the governors compare themselves to the President of this Republic. The governors think that they are mini presidents of county governments. The President of this country has a dual role of being the Head of State and the Head of Government. The governors have no other role other than being Chief Executive Officers (CEOs) of county governments. They do not have the role of being heads of counties. Therefore, they should not confuse themselves because I have heard them try to compare themselves in the manner of entourage and podiums. I hear that some of the podiums are carried hundreds of kilometres to different venues just so the governor can use the podium to speak at the right time.

Let the governors humble themselves by being hands on CEOs of the various county governments. I, therefore, laud your ruling and appeal to other governors. I know that both the former and current Chairpersons of the County Public Accounts and

Investments Committee(CPAIC) are here and they know how much work we still have pending on the audit of the 2013/2014 Financial Year as well as the audit of the 2014/2015 Financial Year. Therefore, we do not want any more stumbling blocks. The governors who have appeared before the CPAIC can testify that we treat them professionally when they appear before us. Therefore, if the governors are clean on the allegations, they should not be worried at all. They come, explain themselves and we clear them. That runs them in good state in their counties.

I beg to support.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, thank you very much for the solid Communication from the Chair. I would like to underscore that the incident that took place in our Committee involving our colleague was an isolated incident. The actions that you and the Committee took demonstrate clearly that isolated incident should not lead to a generalized form of behavior that the governors fear. Therefore, that matter can be put to rest.

The other issue that I would like to be put to rest is that of saying that since certain Senators have expressed interest in running for the governors' positions, they are not in a position to fulfill their roles as Senators, including in Committees like ours which involves accountability by the governors. So far, we have known that in public life, one has to be prepared to play many roles and that is part of civility. Therefore, unless somebody feels that civility is not there in public life, I think that is a wrong assumption.

Mr. Speaker, Sir, secondly, even if some Senators have expressed interest, it is not a fact that they will vie for that position. One has to wait until the bell rings for declaration and commitment to running for any position. In any case, even in the United States of America (USA), we have witnessed situations where Senators run for presidency, but they are recalled back to the Senate to play their roles as Senators. Therefore, it is a wrong assumption that is so. I would like to give an example, if your daughter declares that she is going to get married and she is betrothed to a young man, you tell your daughter, now that she is interested in playing a similar role to her mother, she is not entitled to make any comments about the relationship between me and her mother because she is now an interested party to that entitlement.

Therefore, it is completely wrong for the governors to think that once Senators declare their intention, they are immediately assumed to be in conflict with the governor's interest. What is important is to look at the facts. Except for the incident by Sen. Sonko, whether there has been any kind of ocular proof that Senators have abused their positions in these Committees. As far as I am concerned, we have behaved very civilly and fulfilled our roles in line with the law. Therefore, excuses should not be adduced by the governors who know – and most of them who are vocal on this – that they are in trouble with the Auditor-General because they have already seen the audited accounts of their counties that implicate them in serious issues of accountability and transparency.

Mr. Speaker, Sir, I beg to support your Communication.

Sen. Murkomen: Mr. Speaker, Sir, I join my colleagues; Senior Counsel, Sen. Amos Wako and Sen. (Prof.) Anyang'- Nyong'o whom I must admit that while on my way here, I listened to his contribution on a Motion earlier, spoke very well as the

professor he is. I join them in congratulating you on a well researched communication pointing out the right provisions of the law and the Constitution. I like the reminder that you put there that a governor is a CEO of a county while the deputy governor is the deputy CEO. That is a reminder that in so far as accountability is concerned, the governor is like a Managing Director (MD) of a parastatal or any other institution of Government that one presides over. Therefore, they cannot run away from responsibility merely on an account of an excuse that one governor and one Senator disagreed in a Committee meeting. If anything, just as Sen. Wako has pointed out, the aggrieved governor for Nairobi County even without the prompting of your communication, already appeared before the said Committee and answered the questions that were required.

Mr. Speaker, Sir, the message that we must pass out there as you pointed out from the judgment of the court, that while over sighting county governments, the Senate has a responsibility, that if they summon any governor, he must be willing to come because there is no constitutional mechanism of shielding a governor from arrest or contempt of summons from this House. However, as Sen. (Prof.) Anyang'- Nyong'o has said, there has been erroneous debate out there that Senators must not aspire to be governors. That debate is stretched because we do not only oversight counties, but the President and the Deputy President as well. This House has a responsibility if a President or the Deputy President is brought before us on a matter of impeachment, we are the ones to decide whether that President will go home or not. Therefore, to imagine that a Senator cannot run for the governor's seat is similar to saying that a Senator cannot run for presidency. It is also similar to saying that Members of the National Assembly must not imagine of being Presidents because they oversight institutions of national Government. It is also similar to saying that a Member of the County Assembly (MCA) should not run for governor's seat because they oversight county governments.

The responsibility of determining who runs for what office is provided for already by the people of Kenya in the Constitution which states that a person who runs for presidency must meet certain qualifications and provides exclusions that one cannot run for office, including if you are an Independent Electoral and Boundaries Commission (IEBC) officer. There is no exclusion for the Senators from running for one office or the other. Therefore, I encourage those that are going to be governors to continue with their ambitions, but assure them that should the governors be brought here in future and should I come back here by the will of the people of Elgeyo-Marakwet County, we will robustly oversight and summon them in the same manner that they are doing to other governors whether it is Sen. (Prof.) Anyang'- Nyong'o or Sen. (Dr.) Khalwale.

I would be glad if I come back here as a Member of the County Public Accounts and Investments Committee and summoned the king of Meru if need be. However, the experience they have received here, I believe that most of them are going to do a fantastic job, and there will be no need for them to come here to answer queries.

I support your communication.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, allow me to thank you for that ruling. I want to laud that you have not, in your ruling, belittled the complaint by Governor Munya. You have clearly told him that the matter has been referred to the Senate Rules

and Business Committee and will be pursued to its logical conclusion in respect of Governor Kidero.

However, I want to report to this House that there is a common thread that runs through the counties where you get governors being very resistant to come to the Senate; right from Bomet, Meru, Murang'a and Kakamega. The common thread is that upon looking at the reports of the Auditor-General, they realise that there are damaging audit queries which cannot afford to be interrogated.

Mr. Speaker, Sir, you must be congratulated for insisting that these governors should come forthwith and respond to audit queries. When I watched Governor Munya speak, I was very disappointed because he is not just a governor, but an officer of court. He is a lawyer and a teacher of law. He taught my son at Moi School of Law. So, for him to pretend that he does not understand the Constitution simply because he wants to be allowed to run away with the thieving, stealing and pilferage of public funds in Meru, cannot hold water.

I also want to appeal to Senators that on this particular issue, we might indirectly be contributing. I remember when we went through the elections of the Chairman of CPAIC, some of the Senators who sit in that Committee were saying that Sen. (Prof.) Anyang'-Nyong'o and Sen. (Dr.) Khalwale, would not be ideal to be chairs because they have announced their ambitions to run for governor. You are playing into the hands of those governors. It is Sen. Murkomen who has put it so eloquently that no one should ever be denied an opportunity to exercise their ambitions under the Constitution. We want people to run for MCA, governor and president. If it happens that the person is running against a person in office who you love, please, hold your horse, you are free not to run against your man. For us, we shall continue running against them to ensure that the democratic space in this country is opened up completely, if for nothing else, just to remember the lives lost by Kenyans who wanted that the democratic space of the country be expanded.

Thank you, Mr. Temporary Speaker, Sir.

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

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

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, allow me to congratulate the Speaker for a very well-reasoned and justified communication. I want to say over and above what the Speaker has clearly stated, Section 30(3) of the County Governments Act talks about things to do with accountability for all resources in the county; human resources and financial resources. That responsibility is on the governor of the county and not any other officer.

Mr. Temporary Speaker, Sir, for that reason, the governor of a county cannot abdicate his or her responsibility and pretend to send junior officers when serious issues of accountability have been raised.

Lastly, what we are seeing now is just a symptom of what is about to come. I am convinced beyond doubt that 2013 was a trial face for theft and robbery in the counties.

The 2014 activities will shock this country. I will not be surprised if 70 per cent of governors go to jail in the long-term. I will tell you why. Just this week, I discovered two very strange projects that have been introduced in the last few months. The first one, the county government decided to set up a museum. That museum would include a snake park. He commissioned young men to go and look for live snakes in exchange for money. Therefore, there were categories of snakes, for example, if you catch the puffadder, you get Kshs5,000. If you catch a cobra, you get Kshs10,000. First and foremost, it is criminal because you cannot handle wildlife unless you are part of the Kenya Wildlife Service (KWS). You also must be a trained snake handler and must also be injected with anti-snake drug in the event of an accident. Finally, this is an abuse of our young people. Millions of money has gone into that project, but I do not know how many snakes have been caught. These are some of the things that will shock this country. If Kenya thought the carcinogenic wheelbarrow was hilarious enough, then they have not heard from Tharaka-Nithi. Two weeks ago, the County Government of Tharaka-Nithi spent millions of money to buy fish fingerlings and introduced them into 11 rivers in Tharaka-Nithi. I went there and asked two questions; how can the Auditor-General establish that one million fingerlings have been introduced in 11 rivers in Tharaka-Nithi. It is impossible to account. The other issue is that fish swims and it will not discover the boundary between Tharaka-Nithi and Meru County. In fact, the beneficiary of that fish is likely to be the Senator for that county because fish swims upstream. It is likely that the fingerlings which were put in the rivers of Tharaka-Nithi two weeks ago, are already in Meru County yet they were bought using the resources of Tharaka-Nithi County defeating the whole purpose of allocation of revenue per county.

Mr. Temporary Speaker, Sir, without much ado, I would like to say that what we are seeing is a charade. The only institution that would breathe sanity in the counties is the Senate. The governors who are crying now, have not seen anything yet. We will use every method to catch all the thieves of county money whether small or big, powerful or weak and fat or thin thieves. We cannot be intimidated by people who think that by saying that Sen. (Prof.) Anyang'-Nyong'o, Sen. (Dr.) Khalwale and Sen. Murungi, wants to be a governor, then the Senate should keep quiet and watch armed robbers depriving our counties of their livelihoods.

With those few remarks, I support and laud the Speaker for standing firm in defence of this Senate.

Sen. Murungi: Mr. Temporary Speaker, Sir, first, allow me to declare my interest. The letter that was subject to the statement by the Speaker was written by the Chairman of the CoGs, the Governor of Meru County, who happens to be my competitor. The comments that I will make have no reference at all to our political competition, because they are of general interests.

Mr. Temporary Speaker, Sir, this is a very clear case of impunity. The governors have been operating as if they are law unto themselves; they do not want any scrutiny. What happened between Gov. Kidero and Sen. Sonko is something that is already past us because Sen. Wako mediated and Gov. Kidero even appeared before you after that incident. However, the Chairman of CoGs would like to use that as an excuse, because he is the next person to be summoned by that Committee. He is trying all tricks not to appear

before the Committee because he knows the messes that he has caused in the accounts of Meru County. He should not be allowed to get away with it, because this is not the first time that he is doing it. He was summoned by the EACC and refused to go. He went to the media and said that he would appear before them when the Deputy President steps down because of his case in The Hague. Now that the Deputy President does not have a case in The Hague, the EACC can proceed. If that was the barrier, it has been removed.

This is a man who has gone to public to say that he does not recognize any prefect. Indeed, he has been telling people that the Senator is not his prefect. I have emphasized that under Article 96 of the Constitution the Senator for Meru is the prefect of the Governor of Meru County. This is because I am the one with oversight functions. I need to follow up the Auditor-General's reports and the implementation of the projects funded by national resources in Meru County. Nobody can stop me from exercising my constitutional responsibilities. We should not be intimidated by big titles like "Chairman of the Council of Governors." If you are committing a crime it does not matter whether you are wearing police uniform.

I am so happy that our Speaker has seen through the smokescreen and said that the Committees will continue with their work despite that letter. Therefore, our CPAIC should not be intimidated. It should go on with its programme and summon all the governors who are in line to be summoned, including the Chairman of the CoGs. We cannot allow the glaring mismanagement of the resources of Meru County not to be brought to the attention of this Committee, merely because somebody called "Chairman of the CoGs" has written a letter. A letter cannot overwrite constitutional provisions.

Lastly, Article 125 of the Constitution gives this Senate immense powers – powers of the High Court, as the Speaker said - in enforcement of attendance of witnesses and production of documents. Those powers should be exercised in respect of any governor who is bigheaded and does not appear before the Committee.

Thank you, Mr. Temporary Speaker, Sir.

Sen. Wangari: Mr. Temporary Speaker, Sir, I wish to join my colleagues in congratulating the Speaker for that ruling. It is a ruling that we have been eagerly waiting for. In fact, we were hoping that it would come yesterday.

I have sat in the CPAIC since its inception and seen what we have gone through. In fact, we have a backlog because the governors used to go to the courts to actually curtail our work. Being the law-abiding citizens that we are, we respected that. We were not able to invite them for about eight or nine months and that is exactly why this Committee has a lot of work. We meet from 8.00 a.m. and sit throughout the day because there is a lot of work. It is our responsibility to actually generate reports to this Committee.

My personal view, of course, is that the scuffle that happened between the Senator for Nairobi and Governor of Nairobi City County was unfortunate. However, I also want to thank the leadership of this House and the Committee for showing the way forward. In fact, our Chairman gave a personal statement immediately and sought the way forward and direction. I hope that we will maintain that spirit. It was unfortunate to actually see the CoGs jump into this issue immediately. It appears like they had planned for it because

they issued a statement immediately. My worry is that they doing the same thing that they did with the courts to actually circumvent appearances and justice.

A lot of monies go to the counties and it is our responsibility, under Article 96 of the Constitution, to oversight them. We are not requesting the governors to appear before the Committee; it is their responsibility. Article 10 of the Constitution talks about the national values and principles of governance, and transparency and accountability are quite clear. The governors must, therefore, appear before the Committees. Allow me to congratulate the Governor of Nairobi City County because despite the letter written by the CoGs, he actually appeared before the Committee. I do not know why we should have any other governor quote that letter. Today we were meant to meet the Governor of Murang'a and the Governor of Samburu, but they did not show up on frivolous grounds. We have had governors use all manner of excuses against this Committee. In fact, one governor is on record saying that he is not a tourist attraction to be looked at by the Senators. Those are the challenges we are dealing with, but we have upheld the integrity of our Committee and the House. This is because we realize that this country is bigger than all of us.

The monies that go to the counties are not personal change. In fact, it is people's taxes that they pay very painfully. We should, therefore, see actual development. Having scrutinized reports of 47 county governments and 47 county assemblies, I can assure you that there is a lot of mess. In fact, in one county the governor's wife is on a salary of Kshs500,000 to actually make tea and coffee. We deal with such things everyday. The governors will use every avenue to make sure that such issues are not brought to the fore, but we will not allow it.

The Auditor-General has done his work. Already the 2014/2015 reports are out and we are working round the clock, as a Committee, to actually finish our work. Therefore, we hope that they will honour the summons for those who have not appeared. If they do not appear, we will petition the Director of Public Prosecutions (DPP) to actually take action against governors violating the Constitution. The law will take its course. We are behind schedule, but I can assure this House that we are working round the clock. If someone does not clarify an audit query, it goes without saying it will be confirmed. We, as a Committee, must do that and produce a report, because it is our responsibility to actually report to this House. If we do not do so, people will wonder what we have been doing.

I congratulate the Speaker for that ruling and hope that the CoGs is watching. They know that we expect them to honour the invitations; it is not a request.

Thank you, Mr. Temporary Speaker, Sir.

Sen. Okong'o: Mr. Temporary Speaker, Sir, I will be brief. Ten months ago, I told those governors that they might get painkillers from the courts. Those orders that they got were just painkillers. A governor cannot account for Kshs1.2 billion for the taxpayers of Tharaka-Nithi County and another has suffocated the county assembly and squandered up to Kshs700 million. We then get excuses left, right and centre. We are working as per our oath of office and we are ready to perform our duty. I, therefore, laud your ruling and commend that kind of effort.

Sen. Lesuuda: Mr. Temporary Speaker, Sir, I would like to congratulate the Speaker for this communication. It is sad that four years down the line since we started implementing this Constitution, there are governors who have just decided to clearly dismiss the work of the Senate. They do this both outside and even under our mandate as an institution. The role of every elected leader in representing their people is expressly clear. It is clear what the National Assembly, the Senate, governors and the county assemblies do.

On this role of oversight, the Senate continues to be bashed and abused severally. Why would a governor refuse to appear before our constituted Committee which looks at the taxes that Kenyans pay, and this is not anyone's money, but taxes which go to counties? They are supposed to work for the people. The express role of the Senate is to oversight and protect these counties. The Senate also ensures that resources that go to counties actually work for the citizens of this country.

Mr. Temporary Speaker, Sir, it continues to sound out of question why someone would not appear before the Senate. Unless it is a sign of guilt because why can you not come and address a matter that is just a query? Unless you are guilty, that could be the only reason you do not want to come and explain why a certain audit query has been raised. We have not said that you are guilty of misappropriation of funds. It is upon you because when you took the oath of office, you said that you will serve the people of that county. One of the tasks was to spend their money in the right way. If there is a query, then you appear before the Committee of this House which does that job and clear your name and that of your officers.

Whether a Senator sits in that Committee and wants to run for governor, National Assembly seat or any other seat like the presidency in the next elections, it is not this Committee that will vote for you and neither will any Senator. You will go back to the electorate and ask for votes. I do not know what you are afraid of over a Senator who sits in this House and will also have to go and ask for votes out there. So, you cannot say that you cannot appear before that Committee because so and so sits in that Committee and wants to be governor. Both of you will go back to the electorate and they will give you a red card whether you come to this Committee to clear your name or not. It is the electorate who will put everyone on a weighing scale and decide whether you have worked for them or not.

As I conclude, it is unfortunate, but I hope that my Samburu County Governor had valid reasons as to why he did not appear before this Committee today. Those of us who come from counties where for a long time we have cried that we are marginalised, we want to know whether the resources that go to those counties are being used to do the work that they are supposed to do. I hope that he will appear before the Committee, clear the queries that are there and then move forward in serving the people of this country.

Finally, the court has now ruled that they should appear before the Committee. They should stop looking for flimsy reasons about Sen. Mbuvi and Gov. Kidero who already came today. Please, look for another reason as we have dealt with that one. Gov. Kidero came and answered his queries. I urge all governors who are supposed to appear before this Committee to do so and spare us a lot of time to discuss matters which are straightforward.

Sen. Wamatangi: Mr. Temporary Speaker, Sir, I also rise to laud the decision of the Speaker to uphold the law as it is. As a Member of the Committee on the CPAIC, as I was listening to the various contributions and, especially the one by the Senate Majority Leader, I was being reminded of extremely disturbing and interesting incidents that have continued to be displayed in this Committee. For example, one governor appeared before the Committee and there was a query for Kshs256 million. The governor said he had spent it on bush clearing and building roads. Upon challenge that the Committee should go to inspect and see where this Kshs256 million was used, the governor was very prompt to say that the bushes had already grown again and so it would be futile to go and inspect. This is the kind of theft and lies that have occurred in almost all our counties.

It is also important for us to tell the country that we should remember the precedent set by governors. Indeed, it is clear that they intended to use this incident as a scapegoat. Let us remember that immediately the Senate came into being and the role of oversight started to be implemented, governors rushed to court. As we stand now, as a Committee, are 10 months behind schedule. We have barely looked at three quarters of the counties. As we are trying to catch up on time, this is the time that these governors are trying to use a new excuse.

Mr. Temporary Speaker, Sir, let me say two things quickly. One, we need to tell governors that it is not optional for them to choose to obey or disobey the law. It is clear as set out in the role of this Senate in Article 96(3), that it is our work and duty to oversee counties. The Constitution is also clear in Articles 228 and 229(6) as to what should happen to the reports of the Auditor-General. It is also clarified in the Standing Orders of this House. Article 125 goes ahead to lay out the powers of this and all committees of Parliament as to what we should do in case of defiance.

We, as the Senate, must also seek to introduce or enhance this role by doing specific things that will make it unfashionable and a quick choice for governors to choose to disobey. The way the game is played now, it is like governors assume that if they refuse to appear before the Committee, Senators are the ones who will suffer, be ashamed or feel belittled. That is the conception. We must enforce the law to ensure that this does not become what is played out. One way to do that is in enforcing the reports of the Auditor-General, which are about projects and misappropriation of funds at the county level.

We need to pick those specific projects where money has been stolen, and as Senators, including the Senator of the County, should go to the ground, and call the people who are the owners of this money and tell them, "We have come here because your Governor has refused to come to answer questions about this project."

As you heard the Senator for Tharaka-Nithi saying, let us go to those rivers, snake parks and roads and call the people who will come, and tell the stories where they are, at the county level. I assure you that once we do that, no governor is going to be hiding any more at the county level. They would rather come to the Senate, because the way they are playing it now, it looks like we are begging them and we cannot afford to do that.

Secondly, Mr. Speaker, Sir, we should rope in the other constitutional offices that are involved in this. One, the Office of the Controller of Budget, in releasing the various tranches of funds that go to the county. This House needs to find a way that, when we

have a defiant governor who continues to refuse to come and account for money that he got, we have to go the way we tried to go as a Senate earlier although we faced a few road blocks in ensuring that by law, that governor does not receive the next allocation before he has accounted for those funds.

Thirdly, you have seen all the time, the Treasury publishes a whole page of money that has gone to counties, that this money left on this date.

Mr. Temporary Speaker, Sir, I have made a proposal before, which I would want to be looked at, that this House needs to engage the Treasury which has no business in releasing those monies directly. That report should be sent here to the Senate, and when money is being allocated for example, to Kajiado county, it is the Senator for Kajiado who should rise up in this House, read it out and say, "This year, the amount going to Kajiado is so many billions. This amount will go this time." This is because it is the role of the Senator, but when that money is just disbursed and reports published in the papers, even as we try to tell our people that it is our role, it is misunderstood. I think it is very important for us to make that we engage Treasury.

Lastly, Mr. Temporary Speaker Sir, we also need to implore the Legal Department of Senate. As you had my colleague saying, when we get to the point of summoning the Governors, if any one of them decides to disobey, then the next step is to ask for legal option. The few cases that we have had, the Legal Department of Parliament will push a little bit and lose steam somewhere in midstream.

When you want to say that there is penalty and punishment to be suffered, you cannot show it. It is very important that we also implore our legal department that when we get to that stage, be ready to fight and to push until the end, until the day when we have somebody who has been convicted.

The Public Audit Act 2015 section 62 is very clear. It lays out the penalties and says that it is an offence to refuse either to appear, to come and adduce evidence or to produce papers.

The punishment in that act is that somebody is liable to either five or three years imprisonment. The only thing we need to do is to enforce that law. This story that you have heard Governors trying to peddle, that "because Senators want to run for office, that is why we think that it is improper for us to appear before them.

Mr. Temporary Speaker, Sir, can it be clear that other than Senators, even at the county level there are County Executive Committee Members (CEC) who are under Governors and are already competing to be Governors. Half of the Deputy Governors want to be Senators. If there was anything to be feared, it is the guys who are already sitting with the governors in their offices. This lame excuse that Senators are unsuitable to supervise because of their intent and ambition to run for offices, is not only a hoax but also misleading and a gimmick that is being used to defraud this country of public funds.

We must say with one voice as a Senate that public service must also attract responsibility. Those that are not willing to be asked these questions or have answers to them would better walk and leave the office honourably. When the office is vacant, it will find another occupant who will be willing to come and account for what they do. I support.

The Temporary Speaker (Sen. Mositet): Hon. Senators, there is a communication after the intervention led by the Speaker. Earlier, we were debating on the Motion on the Report of The Commonwealth Women Parliamentary Regional Capacity-Building Workshop Held in Dar es-Salaam, Tanzania. I want to interrupt that debate so that we can allow Sen. Murungi to go on with the Fisheries Bill. So, we go to the Committee of the whole and then after that, because he is a Member of the House Business Committee, we will go back to the Motion by Sen. Gwendo.

(Debate interrupted)

COMMITTEE OF THE WHOLE

(Order for Committee read)

[The Temporary Speaker (Sen. Mositet) left the Chair]

IN THE COMMITTEE

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

THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL (NATIONAL ASSEMBLY BILL NO. 18 OF 2014)

The Temporary Chairperson (Sen. Mositet): Hon. Senators, we are at Order No.11, The Fisheries Management and Development Bill (National Assembly Bill No. 18 of 2014).

Clauses 3 - 9

*(Question that, Clauses 3,4,5,6,7,8 and 9
be part of the Bill, proposed)*

The Temporary Chairperson (Sen. Mositet): We are on Order No.11 for the Senators who have just come in.

Clause 10

Sen. Murungi: Mr. Temporary Chairperson, I beg to move:-
THAT, Clause 10 of the Bill be amended in sub Clause (1) by deleting the words “and the Director of the Service” appearing immediately after the words “the Director-General” in paragraph (g).

(Question of the amendment proposed)

Clauses 11 - 19

(Question that Clauses, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 be part of the Bill, proposed)

Clauses 20 - 32

(Question, that Clauses 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Mositet): The Division will come at the end.

Clause 33

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

THAT, Clause 33 of the Bill be amended in subclause (2) by inserting the words “collaborate with the Director-General in the management of fisheries and shall, for this purpose” immediately after the words “each county shall”.

The Temporary Chairperson (Sen. Mositet): Could you briefly justify the purpose of the amendment?

Sen. Murungi: Mr. Temporary Chairman, Sir, the purpose of this amendment is to clarify the roles of the county governments *vis-a-vis* the role of the Director General. The amendment is to provide collaboration between the Director General and the county government in the management of fisheries in the respective counties as the original Bill did not provide for a role of the county Government. This being a devolved function, we thought it would be necessary for them to be involved in collaboration and consultation.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clause 34

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

Division to come later.

Clause 35

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

THAT, Clause 35 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph –

(b) take into account any recommendations that may be made by the Director General with respect to the plan.

Mr. Temporary Chairman, Sir, as the Bill is currently drafted, the fishery management plans cannot take into any effect unless approved by the Director General. However, we know that fisheries is a devolved function. Our proposal is that the Director General should not override the plans by a county government in its management plans. Instead, the county government should take into account any recommendation by the Director General, but the Director General should not automatically overrule and frustrate any plans that are made by the county governments.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will come later.

Clause 36

Sen. Murungi: Mr. Temporary Chairman, Sir, I beg to move: -
THAT, Clause 36 of the Bill be amended by –

- (a) deleting subclause (3);
- (b) deleting subclause (4).

The purpose of this amendment is to remove the powers being conferred on the Cabinet Secretary to take over the management of fisheries from the county governments in cases where they think there is mismanagement. This taking over functions by the national government is unconstitutional given the fact that fisheries is also a devolved function. We are, therefore, removing those powers from the Cabinet Secretary to take over the management of fisheries at county level.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division to come later.

Clause 37

Sen. Murungi: Mr. Temporary Chairman, Sir, I beg to move:-
THAT, Clause 37 of the Bill be amended –

- (a) in subclause (1) by deleting the words “governing the administration of beach management units” appearing immediately after the words “make regulations” and substituting therefor the words “setting out standards for the management of beach management units established by the county governments”.
- (b) in subclause (2) by –
 - (i) deleting paragraph (b) and substituting therefor the following new paragraph –
(b) minimum standards in the general administration of the beach management units;
 - (ii) deleting paragraph (c);
 - (iii) deleting paragraph (d) and substituting therefor the following new paragraph –
(d) standards to be adhered to by beach management units in imposing levies and charges and the management and utilization of such funds;

- (iv) deleting paragraph (e) and substituting therefor the following new paragraph –
- (e) such other standards which the Cabinet Secretary may consider necessary for the effective administration and management of the beach management unit;

The purpose of this amendment is to ensure that the role of national government is restricted to setting of standards and not to management of beach units. The current amendment seeks to provide for management of beach management units by the national government. We are saying that should be the role of the county government. The national government should merely set standards.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division to come later.

Clause 38

(Question that Clause 38 be part of the Bill, proposed)

Division will be at the end.

Clause 39

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

THAT, Clause 39 of the Bill be amended –

- (a) in the introductory clause of subclause (1) by inserting the words “in consultation with the Council of Governors and” immediately after the words “the Board may”; and
- (b) in the introductory clause of subclause (2) by inserting the words “in consultation with the relevant county governments” immediately after the words “Director-General shall”.

Mr. Temporary Chairman, Sir, the purpose of this amendment is to create some consultative process between the Director General and the Council of Governors in the designation of fisheries. We feel that this consultative process is important because fisheries is found within the counties. Therefore, it will be very difficult for the Director General to come and implement programmes in the counties without consultation with the Council of Governors.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clauses 40 - 60

(Question, that Clauses 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59 and 60 be part of the Bill, proposed)

Division to come later.

Clauses 61-70

(Question, that Clauses 61,62, 63, 64, 65, 66, 67, 68, 69 and 70 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clauses 71- 83

(Question, that Clauses 71,72,73,74,75,76,77,78,79,80,81,82 and 83be part of the Bill, proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clause 84

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

THAT, Clause 84 of the Bill be amended –

- (a) in subclause (1) by –
 - (i) deleting paragraph (d);
 - (ii) deleting paragraph (e).
- (b) by inserting the following new subclause immediately after subclause (1) –
 - (1A) The respective county governments shall be responsible for issuing licences with respect to –
 - (a) using any vessel for recreational fishing in the Kenya fishery waters; and
 - (b) operating a fish processing establishment within the respective county.
 - (1B) The Cabinet Secretary shall prescribe the standards for the registration of vessels and grant, renewal and revocation of licences by a county government under subclause (1A).
 - (1C) Each County Government may enact county specific legislation setting out the –
 - (a) criteria for the registration of a vessel and issuance of a licence to an applicant for a licence under subsection (1A);
 - (b) information required to be submitted by an applicant for registration or issuance of a licence;
 - (c) process of determination of an application;
 - (d) conditions for the issuance or renewal of a licence under this Act;
 - (e) grounds for the rejection of an application or cancellation of a licence issued under this Act;
 - (f) process of application for the renewal of licences, de-registration of a vessel and revocation of a licence issued to an applicant by the county government; and

(g) appointment of inspectors or such other authorised officers to carry out such inspections as the county executive committee member responsible for fisheries may consider necessary for the implementation of this Act.

Mr. Temporary Chairman, Sir, the purpose of this amendment is to give the county governments the power to issue licenses for those who like to do recreational fishing.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clause 85

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

THAT, Clause 85 of the Bill be amended in subclause (1) by inserting the words “to the respective county government” immediately after the words “shall require to apply”.

Mr. Temporary Chairman, Sir, the purpose of this amendment is to register the people who would be interested in fishing for only subsistence purposes; those who are not fishing for commercial purposes.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clause 86

(Question, that Clause 86 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clause 87

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

THAT, Clause 87 of the Bill be amended in subclause (4) by inserting the words “county executive committee member responsible for fisheries in the respective county in consultation with” immediately after the words “effect unless the”.

The purpose for that amendment is to ensure that the Director General issues standards to be complied with by the county governments who have now been involved in the licensing processes for recreation and subsistence fisheries.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clauses 88 - 103

*(Question, that Clauses 88,89,90,91,92,93,94,95,96,97,98,99
100,101,102 and 103 be part of the Bill, proposed)*

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clause 104

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

THAT, Clause 104 of the Bill be amended in subclause (2) by deleting the words “Cabinet Secretary” appearing immediately after the word “The” and substituting therefor the words “county executive committee member”.

The purpose of this amendment is to confer the powers to except fishing vessels for non commercial purposes from the Cabinet Secretary to the county government. The exception should not be made by the Ministry but by the county government.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clauses 105 - 111

*(Question, that Clauses 105,106,107,108,109,110 and 111
be part of the Bill, proposed)*

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clause 112

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

THAT, Clause 112 of the Bill be amended –

- (a) in subclause (1) by –
- (i) inserting the words “respective county executive committee member responsible for fisheries may, in consultation with” immediately after the words “quantity as the” in paragraph (a);
- (ii) deleting the words “Director-General” appearing immediately after the words “notified to the” in paragraph (c) and substituting therefor the words “respective county executive committee member responsible for fisheries”\

- (b) in subclause (2) by deleting the word “authorized officer or inspector” appearing immediately after the words “request of an” and substituting therefor the words “officer or inspector authorized to carry out an inspection by the county executive committee member responsible for fisheries”.

The purpose for this amendment is to confer the powers of licensing fish processing plants in the counties on the counties rather than on the national government.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clause 113

(Question, that Clause 113 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clause 114

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

THAT, Clause 114 of the Bill be amended in –

(a) subclause (1) by inserting the words “or the county executive committee member responsible for fisheries, as the case may be” immediately after the words “the Director-General”;

(b) subclause (4) by inserting the words “or the county executive committee member responsible for fisheries, as the case may be” immediately after the words “the Director-General”

The purpose for this amendment is to enable the county and national Government to appoint inspectors to carry out inspection and ensure conformity with the standards in existing legislations in respect to the functions that we have given to the county governments regarding recreational and subsistence fisheries.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clauses 115 - 120

(Question, that Clauses 115, 116, 117, 118, 119 and 120 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clauses 121 - 130

(Question, that Clauses 121, 122, 123, 124, 125, 126, 127, 128, 129 and 130 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Mositot): Division will be at the end.

Clauses 131 - 140

(Question, that Clauses 131, 132, 133, 134, 135, 136, 137, 138, 139 and 140 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Mositot): Division will be at the end.

Clauses 141 - 150

(Question, that Clauses 141, 142, 143, 144, 145, 146, 147, 148, 149 and 150 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Mositot): Division will be at the end.
(Clauses 141, 142, 143, 144, 145, 146, 147, 148, 149 and 150 proposed)

The Temporary Chairperson (Sen. Mositot): Division to come at the end.

Clauses 151 - 160

(Clauses 151, 152, 153, 154, 155, 156, 157, 158, 159 and 160 proposed)

Division on this will come at the end.

Clauses 161 - 170

(Clauses 161, 162, 163, 164, 165, 166, 167, 168, 169 and 170 proposed)

Division will come at the end.

Clauses 171 - 180

(Clauses 171, 172, 173, 174, 175, 176, 177, 178, 179 and 180 proposed)

Division will come at the end.

Clauses 181 - 190

*(Clauses 181, 182, 183, 184, 185, 186,
187, 188, 189 and 190 proposed)*

Division will come at the end.

Clauses 191 - 199

*(Clauses 191, 192, 193, 194, 195, 196, 197,
198 and Clause 199 proposed)*

Division will come at the end.

Clause 200

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

THAT, Clause 200 of the Bill be amended by deleting paragraph (f).

The purpose of this amendment is with respect to the Fish Marketing Authority. This authority is a national government function and paragraph (f) confers on it the powers to develop fisheries which are functions conferred to the county governments under Part IV of the Constitution. Therefore, we are proposing that this Clause be amended to delete paragraph (f) as this function falls within the ambit of county governments and should not be performed by this authority. So, production of fish should not be a function of this authority, instead, it should concentrate on marketing.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositot): Division will come at the end.

Clause 201

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

THAT, Clause 201 of the Bill be amended –

(a) by inserting the following new paragraph immediately after paragraph (e)

–

(ea) one person, who has knowledge and experience in matters relating to fisheries, nominated by the Council of Governors;

(b) in paragraph (h) by –

- (i) deleting the word “five” appearing at the beginning of the introductory clause and substituting therefor the word “four”;
- (ii) deleting the word “three” appearing at the beginning of subparagraph (ii) and substituting therefor the word “two”.

Mr. Temporary Speaker, Sir, this relates to the composition of the board of directors of the Fish Marketing Authority. There is no nominee representing county interests in this board. Our proposal, through this amendment, is that one nominee of the board be a nominee appointed by the Council of Governors for the purposes of representing the interests of county governments in the authority.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will come at the end.

Clauses 202 - 211

*(Clauses 202, 203, 204, 205, 206, 207,
208, 209, 210 and 211 proposed)*

Division will be at the end.

*(The First Schedule, Second Schedule, Third Schedule
and the Fourth Schedule proposed)*

Division will come at the end.

Clause 2, Title and Clause 1

(Clause 2, Title and Clause 1 proposed)

Division will come at the end. We are done with the amendments so I call the Mover.

Sen. Murungi: Mr. Temporary Chairman, Sir, I beg to move that pursuant to Standing Order No.139, the Committee of the Whole report progress on its consideration of the Fisheries Management and Development Bill (National Assembly Bill No.18 of 2014) and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

PROGRESS REPORTED**THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL
(NATIONAL ASSEMBLY BILL NO.18 OF 2014)**

Sen. Wamatangi: Mr. Temporary Speaker, Sir, I beg to that the Committee of the Whole has considered the Fisheries Management and Development Bill (National Assembly Bill No.18 of 2014) and seeks leave to sit again tomorrow.

Sen. Murungi: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said Report.

The Senate Majority Leader (Sen. (Prof.) Kindiki) seconded.

(Question proposed)

(Question put and agreed to)

The Senate Majority Leader (Sen. (Prof.) Kindiki: Mr. Temporary Speaker, Sir, I rise on a point of order to seek the guidance of the Chair on whether the Chair could recognize, I see we have very many pupils and students in the Gallery. In accordance with our tradition in this House, it would be proper for them to be acknowledged.

The Temporary Speaker (Sen. Mositet): Serjeant-at-Arms, you need to notify the Chair because I cannot see the public gallery while I am seated here.

What is your point of order, Senate Minority Leader?

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I echo the sentiments of my distinguished brother across the Floor, but want to bring to your attention the fact that when schools come to Parliament, I believe they come to learn and see the House in action. Therefore, it is extremely unfair to any visiting school to be brought to the gallery at 5.00 p.m., yet we sit from 2.30 p.m. If we want these children to learn what their senior citizens do in this House, they should be allowed to come in at the start of the House, if possible see the Speaker's procession, how the Order Paper is handled, statements are sought, petitions are presented and debate is conducted.

It is not even good for the image of this House to bring children here when there are only five of us in the House, when we are supposed to be 67. Members have left to various Committees and other businesses. Worse still, the Chair does not even know that he has visitors. I want to encourage the office of the Clerk and Serjeant-at-Arms, because they are the ones who manage visits to the House, to do better so that our children leave the Senate with an impression that this is a place to come and learn. I am sure some of them aspire to become Senators when some of you will have retired and some of us will have become Presidents and moving elsewhere.

The Temporary Speaker (Sen. Mositet): Hon. Senators, regarding that matter, the Clerk-at-the-Table has just notified me that the same students were here earlier. They were acknowledged by the Speaker and there were interventions by some Senators. They could have found the House very exciting and decided to come back.

What is it, Senate Majority Leader?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I seek your guidance under Standing Order No.39 to give notice of a very important Motion, which has just been recommended and approved by the Senate Rules and Business Committee.

The Temporary Speaker (Sen. Mositet): Senate Minority Leader, are you seeking an intervention?

The Senate Minority Leader (Sen. Wetangula): No, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Mositet): I will allow the Senate Majority Leader to give notice of Motion.

(Interruption of the Committee of the Whole)

NOTICE OF MOTION

ESTABLISHMENT OF A JOINT SELECT COMMITTEE OF PARLIAMENT TO INQUIRE INTO ALLEGATIONS AGAINST THE IEBC

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I know that the Senate Minority Leader has great interest in this Motion and so are many Kenyans in this country.

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

THAT:

ACKNOWLEDGING that the sovereign power of the People of Kenya may be exercised directly or indirectly through their democratically elected representatives and that the People's sovereign power shall be exercised only in accordance with the Constitution;

RECOGNIZING that through pronouncements, sections of the Kenyan society have raised issues on the credibility, impartiality, integrity and independence of the Independent Electoral and Boundaries Commission, the electoral processes and the electoral law;

APPRECIATING the need to have the August 2017 general elections conducted by a body enjoying the broad confidence of most Kenyans;

NOW THEREFORE in accordance with the provisions of Article 1(1) and (2) of the Constitution of Kenya and Rule 9 of the Houses of Parliament (Joint Sittings) Rules, the Senate RESOLVES that:-

1. The two Houses of Parliament establish a joint select committee consisting of fourteen (14) members, seven (7) each from the two Coalitions in Parliament.
2. The mandate of the said joint select committee shall be to:
 - (a) Inquire into the allegations against the Independent Electoral and Boundaries Commission (IEBC) Commissioners and the Secretariat;

- (b) On the basis of findings of (a) above may recommend legal mechanisms for the vacation from office of the current Commissioners of the Independent Electoral and Boundaries Commission and Secretariat in accordance with the Constitution;
- (c) Recommend legal, policy and institutional reforms to strengthen the Independent Electoral and Boundaries Commission and improve the electoral system and processes so as to ensure the August, 2017 elections are free and fair and are administered in an impartial, efficient, simple, accurate, verifiable, secure, accountable and transparent manner; and,
- (d) On the basis of the findings and recommendations in (a), (b) and (c) prepare a report and a draft Bill or draft Bills.

THE SENATE FURTHER RESOLVES THAT:-

- 3. The joint select committee shall report to Parliament within 30 days;
- 4. The leaders of the two coalitions agree to issue statements separately to support the final report and draft Bill or Bills;
- 5. The Majority and Minority leaders in parliament will signify the approval of the final report and draft Bill or Bills by affixing their signatures thereon prior to presentation to Parliament;
- 6. The joint select committee shall have two Co-chairs each appointed by the respective Coalitions;
- 7. The Coalitions shall provide joint rapporteurs to the Joint Select Committee, but the official record will be the parliamentary HANSARD;
- 8. The joint select committee and each coalition may engage experts, professionals and such other technical resource persons as they may deem necessary;
- 9. The parliamentary Clerk's office shall provide secretarial services in accordance with the Standing Orders;
- 10. The Committee shall receive views from experts, members of the public, the business community, civil society, religious groups, political parties, county governments and any other persons on matters relating to the Independent Electoral and Boundaries Commission and the electoral process;
- 11. Each member of the joint select committee shall have one vote. Decisions in the select committee shall be made by two-thirds majority vote;
- 12. The Committee shall formulate its own rules of procedure; and
- 13. The Joint Select Committee shall comprise the following Members drawn from the two Coalitions in Parliament:
 - 1. Sen. Kiraitu Murungi (Co-chair)
 - 2. Sen. James Orengo (Co-chair)
 - 3. Sen. Kipchumba Murkomen
 - 4. Sen. Beatrice Elachi
 - 5. Sen. Johnson Muthama
 - 6. Sen. Mutula Kilonzo Jnr.

7. Sen. (Dr.) Boni Khalwale
8. Hon. (Dr.) Naomi Shaban
9. Hon. Jimmy Angwenyi
10. Hon. Moses Kuria
11. Hon. (Eng.) Mohamud Mohamed Maalim
12. Hon. Junet Mohammed
13. Hon. Mishi Mboko
14. Hon. David Eseli Simiyu

The Temporary Speaker (Sen. Mositet): Hon. Senators, I want to rearrange the Order Paper again. Earlier, we suspended the Motion by Sen. Gwendo, which is Order No.20: the Senate Notes the Report of the Commonwealth Women Parliamentary Regional Capacity Building Workshop, held in Dar es Salaam, Tanzania from 20th to 23rd January, 2016. It was an ongoing debate before the communication from the Speaker.

Let me rearrange and we go to Order No.10.

(Resumption of the Committee of the Whole)

COMMITTEE OF THE WHOLE

[Order for Committee read]

[The Temporary Speaker (Sen. Mositet) left the Chair]

IN THE COMMITTEE

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

THE REPRODUCTIVE HEALTH CARE BILL (SENATE BILL NO. 17 OF 2014)

Clause 3

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

THAT, Clause 3 be amended-

(a) in paragraph (a) by deleting the words “the women” appearing immediately after the words “rights for” and substituting therefor the words “every person”;

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

(c) create an enabling environment for the reduction in maternal morbidity, child morbidity and child mortality rate;

(d) in paragraph (d) by deleting the words “women and children” appearing immediately after the words “services to” and substituting therefor the words “every person”.

The reason why this provision has been amended is to ensure that the objects and purposes of the Reproductive Health Care Bill are to promote reproductive health care services to every person and not only to women and children.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will come at the end.

Clause 4

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

THAT, Clause 4 be deleted and substituted with the following Clause-

4. The National and County Governments shall ensure accessibility of family planning services including contraceptive methods, counseling, and free information and education

The purpose for amending the words “available” was to replace it with “accessibility” to avoid ambiguity and also as defined under the definitions. Accessibility was defined under definitions as ability of an individual to obtain or receive appropriate safe, accountable, effective, quality health information and services. So, it is for clarity purposes.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will come at the end.

Clause 5

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

THAT, Clause 5 be deleted and substituted with the following Clause-

5. (1) The County Governments shall ensure availability of information and education on natural family planning methods.

(2) Every health care provider prescribing a contraceptive method shall provide relevant information to the person to whom the prescription is being given as to its advantages and disadvantages and ensure informed consent.

(3) A health care provider who provides family planning services shall collate relevant data and forward it to the board under the cover of confidentiality

The purpose is to include natural family planning as a family planning option. It seeks to cater for people whose beliefs or religion and health do not allow the use of contraceptives as a family planning option.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will come at the end.

Clause 6

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

THAT, clause 6 be amended by-

- (a) deleting the heading appearing immediately before Clause 6 and substituting therefor the following new heading –
ASSISTED REPRODUCTION
- (b) deleting the word “stable” appearing immediately after the words “means a”.

The purpose for this amendment is to ensure that the same has an umbrella heading for all other types of assisted reproduction. It is all other methods and not only one as had been indicated before.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will come at the end. There are quite a number of them. So, try to be brief.

Clause 7

Sen. Sijeny: Mr. Temporary Chairperson, Sir, I beg to move:-
Provision of assisted

Reproduction services

THAT, the Bill be amended by deleting Clause 7 and substituting therefor the following clause-

- 7. (1) Every person has a right to assisted reproduction.
- (2) The national and county governments shall provide affordable, accessible, acceptable and quality assisted reproduction services.
- (3) Assisted reproduction services shall be offered by a person qualified and licensed by the respective regulatory bodies.
- (4) For purposes of assisted reproduction services-
 - (a) the health care provider shall before commencement of treatment, give the parties seeking treatment specific information about medical condition, the available medical treatment options, the risks, the success rate, cost of treatment and the facilities where that treatment options are available;
 - (b) the assisted reproduction health care provider shall provide professional counselling to patients about the implications and chances of success of assisted reproduction and shall also inform the patients of the advantages, disadvantages and cost of the procedures;
 - (c) the health care provider and the health facility shall ensure there is preservation and promotion of the health, safety, and dignity of the parties; and
 - (d) the health care provider shall give all concerned parties relevant information to enable them make an informed choice and give informed consent before undertaking any assisted reproduction service.

The purpose is to safeguard the young persons being exploited into being used as surrogate mothers for unintended purposes. It is to protect young mothers.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will come at the end.

Clause 8

Sen. Sijeny: Mr. Temporary Chairperson, Sir, I beg to move:-
THAT, Clause 8 be amended by deleting paragraph (c) and substituting therefor the following paragraph-
(c) in the prescribed form.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will come at the end.

Clause 9

Sen. Sijeny: Mr. Temporary Chairperson, Sir, I beg to move:-
THAT, Clause 9 be deleted.
The purpose is to safeguard the interest of the expectant mother.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will come at the end.

Clause 10

Sen. Sijeny: Mr. Temporary Chairperson, Sir, I beg to move:
THAT Clause 10 be deleted.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Let us move to Clause 11.

Clause 11

- Sen. Sijeny:** Mr. Temporary Chairperson, Sir, I beg to move:
THAT Clause 11 be amended-
- (a) in paragraph (c) by-
 - (i) deleting sub-paragraph (i) and substituting therefor the following new sub-paragraph-
(i) is above twenty - one years of age;
 - (ii) deleting sub-paragraph (iv);

- (b) by deleting paragraph (e) and substituting therefor the following new paragraph-
- (e) the commissioning parents agree to meet expenses for the surrogate mother's prenatal care regimen consisting of sensible diet, prenatal vitamins, regular visits to her obstetrician, and hormonal support as prescribed by the obstetrician or medical providers at the in vitro fertilization clinic.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Let us move to Clause 12.

Clause 12

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

THAT Clause 12 be amended by deleting the words “the provisions of section 10 satisfied” and substituting therefor the words “deposited in the assisted reproduction facility together with all relevant medical documents”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Let us move to Clause 13.

Clause 13

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

THAT, the Bill be amended by deleting Clause 13 and substituting therefor the following clause-

13.(1) A surrogate parenthood agreement may be terminated-

(a) by a termination of pregnancy that may be carried out in terms of the provisions of this Act;

(b) before implant of the fertilized embryo in the surrogate mother's womb; or

(c) in case there arises a dispute between commissioning parents before the fertilized embryo is implanted in the surrogate mother.

(2) If a genetic test proves that the child born out of a surrogacy arrangement does not bear the intended genes, the parties shall go through an arbitration process to determine who takes up the parental rights.

(3) If a surrogacy agreement is terminated in accordance with sub-section (1), the commissioning parents shall have a right of first claim to the child born out of the surrogacy arrangement and should they not desire to exercise their right to first claim, the child shall be placed in the care of a charitable children's institution.

(4) In the event of termination of the surrogacy agreement pursuant to sub-section(1) and the commissioning parents do not wish to exercise the right under sub-

section (2), the commissioning parents shall have no further duties or responsibilities under this agreement.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Let us move on to Clause 14.

Clause 14

Sen. Sijeny: Mr. Temporary Chairperson, Sir, I beg to move:-
THAT, Clause 14 be deleted.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Clause 15 has got an amendment. Yes, Mover.

Clause 15

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

THAT, Clause 15 be deleted.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): There is an amendment to Clause 16.

Clause 16

Sen. Sijeny: Mr. Temporary Chairperson, Sir, I beg to move:-
THAT Clause 16 be amended by deleting paragraph (d) and substituting therefor the following paragraph-
(d) midwives

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Clause 17 has an amendment.

Clause 17

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

THAT, Clause 17 be amended by deleting all the words appearing immediately after the words “government shall” and substituting therefor the words “ensure access to the highest attainable standard and quality of ante-natal, intra-partum, post-partum, neo-natal and post-natal services”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Clause 18 has got no amendment.

Clause 18

(Question, that Clause 18 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Mositet): There is an amendment to Clause 19.

Clause 19

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

THAT, the Bill be amended by deleting Clause 19 and substituting therefor the following Clause-

19. (1) A pregnancy may be terminated by a trained health professional, where in the opinion of the trained health professional-

- (a) there is need for emergency treatment;
 - (b) the pregnancy would endanger the life or health of the mother; or
 - (c) there exists a substantial risk that the fetus would suffer from a severe physical or mental abnormality that is incompatible with life outside the womb.
- (2) Trained health professionals shall offer non-directive counselling, before and after the termination of a pregnancy.
- (3) Termination of pregnancy shall be performed by a trained health professional.

(Question of the amendment proposed)

Clause 20

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

THAT, the Bill be amended by deleting Clause 20 and inserting therefor the following Clause:-

20. Subject to the provisions of this Act, termination of pregnancy may take place-

- (a) with the consent of the pregnant woman;

(b) in the case of a pregnant minor, after consultation with the minor's parents, guardian or such other persons with parental responsibility over the said minor, provided that the best interest of the minor shall prevail; or

(c) in the case of a person living with mental disability-

(i) after consultation with the parents, guardian or such other persons with parental responsibility over the said person; or

(ii) where the person is an institution, the senior most health care provider shall give consent and the best interest of the person living with mental disability person shall prevail.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): There is an amendment to Clause 21.

Clause 21

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

THAT, **Clause 21** be deleted and substituted with the following

clause-
Termination of Pregnancy

21. Termination of pregnancy on demand is not permitted unless as provided for under this Act.

The purpose is to ensure that responsibility to ensure minimum medical standards are met with the health care facilities and not the person offering the service.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division to come later.

Clause 22

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

THAT, Clause 22 be deleted and substituted with the following clause-

22. The health care facilities offering reproductive health care services shall meet the minimum medical standards.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division to come later.

Clause 23

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move: -
THAT, Clause 23 be deleted and substituted with the following clause-
23. There shall be at least one county referral hospital in every County, which shall be well equipped to offer quality reproductive health services.
The purpose is to devolve health care services and to ensure that at least one county referral hospital is in every county.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division to come later.

Clause 24

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move: -
THAT, Clause 24 be deleted and substituted with the following clause-
24. The County Government shall ensure that every county has-
(a) a functional referral system;
(b) at least five ambulances in every county referral hospital;
(c) a well equipped pharmacy in every county referral hospital.
This is to obligate the national government to ensure that every county has a functional referral system and well equipped pharmacy in every county referral hospital.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division to come later.

Clause 25

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move: -
THAT, Clause 25 be deleted.
This is because it has been already been catered for in the amended Clause 24.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division to come at the end.

Clause 26

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move: -
THAT Clause 26 be deleted.
The reason for this is because the previous amendment in Clause 24 has catered for the services which are required.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division to come later.

Clause 27

(Question, that Clause 27 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Mositet): For purposes of clarification, there was no amendment on Clause 27. Division will be at the end.

Clause 28

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

THAT, Clause 28 be deleted and substituted with the following clause-

28. Breach of confidentiality by a health practitioner shall be dealt with by the relevant health professional regulatory body.

The purpose for this amendment is to protect the interest and the rights of the patient.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): The Division will be at the end.

Clause 29

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

THAT, Clause 29 be deleted.

This is because all children matters are catered for in the Children's Act.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): The Division will be at the end.

Clause 30

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

THAT, Clause 30 be deleted.

This is because it has already been catered for in the previous section and the Children's Act.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): The Division will be at the end.

Clause 31

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

THAT, Clause 31 be deleted.

This is because it has already been catered for in the previous section and the Children's Act.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): The Division will be at the end.

Clause 32

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

THAT, Clause 32 be deleted.

This is because it has already been catered for.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): The Division will be at the end.

Clause 33

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

THAT, Clause 33 be deleted.

This is because it has already been catered for in the previous amendments.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): The Division will be at the end.

Clause 34

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

THAT, Clause 34 be deleted and substituted with the following clause-

34. Adolescent friendly reproductive health services shall include age-appropriate

—

- (a) mentorship;
- (b) spiritual and moral guidance;
- (c) counseling on-
 - (i) relationships;
 - (ii) abstinence;

- (iii) consequence of unsafe abortion;
- (iv) sexually transmitted infections and HIV/AIDS;
- (v) substance and drug abuse; and
- (vi) prevention of pregnancy.
- (d) training in livelihood and life skills;
- (e) vocational trainings; and
- (f) such other health services as the Cabinet Secretary shall determine.

The purpose for this amendment is to seek clarity on the types of the adolescent friendly reproductive healthcare services.

(Question of the amendment proposed)

Clause 35

Sen. Sijeny: Mr. Temporary Speaker, Sir, I beg to move:-

THAT, Clause 35 be amended by –

- (a) re-numbering the existing provision as sub-clause (1);
- (b) in the new sub-clause (1) by deleting the words “and adolescents” appearing immediately after the words “female genital mutilation”;
- (c) inserting the following new sub-clause immediately after sub-clause (1)-
(2) All persons who get health complications as a result of forced or voluntary genital mutilation shall access treatment from any health care provider without discrimination.

The purpose of the amendment is to ensure that all persons who get complications after undergoing female genital mutilation (FGM), voluntary or forced shall access treatment from any healthcare provider without discrimination.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will come at the end.

Clause 36

Sen. Sijeny: Mr. Temporary Speaker, Sir, I beg to move:-

THAT, Clause 36 be amended-

- (a) in subsection (2), by deleting paragraphs (b) and (c);
- (b) in subsection (4)-
by deleting the words “and child health care” appearing at the end of paragraph (e) and substituting therefor the words “health care rights”.
- (c) by inserting the following new paragraphs immediately after paragraph (f)-
(fa) collate data and carry out research to monitor and evaluate progress on the implementation of laws, rules, guidelines and policies of reproductive health care rights;

(fb) develop policies to protect all persons from practices that violate their reproductive health rights;

This is because we have removed all children issues from the Bill to be taken care by the Children's Act. The rest have been taken care in the previous clauses.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will come at the end.

Clause 37

Sen. Sijeny: Mr. Temporary Speaker, Sir, I beg to move:-

THAT, Clause 37 be amended-

(a) in subsection (1) by deleting paragraphs (a) to (n) and substituting therefor the following new paragraphs-

(a) a chairperson appointed by the Board from among its members;

(b) the Principal Secretary, responsible for Health or a person designated by the Principal Secretary;

(c) the Principal Secretary responsible for Education or a person designated by the Principal Secretary;

(d) a representative of the County Governments appointed by the Council of County Governors;

(e) the Director of the National Coordinating Agency for Population and Development;

(f) a representative nominated by the Kenya Medical Practitioners and Dentists Board, who shall be either an obstetrician, gynecologist or pediatrician;

(g) a pharmacist nominated by the Pharmacy and Poisons Board;

(h) a representative of the Nursing Council of Kenya;

(i) a representative of faith-based organizations appointed by the Inter-religious Council of Kenya;

(j) two persons representing civil society organizations working in the area of reproductive health care appointed by the Law Society of Kenya; and

(k) two young persons, of either gender, representing the youth with a proven record of knowledge, experience and commitment to advocacy for reproductive health care, one of whom must be a person living with disability, nominated by the Cabinet Secretary.

(b) by deleting subsection (2) and inserting therefor the following new subsection:-

(2) A person shall not be eligible for nomination under sub-section (1), if that person does not fulfill the requirements of Chapter Six of the Constitution.

(c) in subsection (3), by deleting paragraph (e).

This is to ensure that all relevant stakeholders are included in the board.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will come at the end.

Clauses 38 - 40

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

The Temporary Chairperson (Sen. Mositet): Division will come at the end.

Clause 41

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-
THAT, Clause 41 be deleted.

This is because there is already an existing professional body that caters for all the disputes that arise in the medical fraternity. So, this is to avoid duplication of roles.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will come at the end.

Clause 42

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-
THAT, Clause 42 be deleted.

This is because the tribunal shall not be required to deal with only disciplinary issues.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will come at the end.

Clause 43

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-
THAT, Clause 43 be deleted.

This is because the tribunal shall not be required to deal with disciplinary issues.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will come at the end.

Clause 44

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-
THAT, Clause 44 be deleted.

This is because the services of the tribunal shall not be required to hear all the legal issues that shall arise.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will come at the end.

Clause 45

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-
THAT, Clause 45 be deleted.

The reason is because the tribunal shall not be required.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will come at the end.

Clause 46

Sen. Sijeny: Mr. Temporary Chairperson, Sir, I beg to move:-
THAT, Clause 46 be deleted.

The reason for deleting Clause 46 is that the tribunal shall not have the responsibility of listening to disputes.

(Question of the amendment proposed)

Clause 47

Sen. Sijeny: Mr. Temporary Chairperson, Sir, I beg to move:-
THAT, Clause 47 be deleted.

The tribunal shall not be required to listen to disputes.

(Question of the amendment proposed)

Clause 48

Sen. Sijeny: Mr. Temporary Chairperson, Sir, I beg to move:-
THAT, Clause 48 be deleted.

Again, the tribunal shall not be required.

(Question of the amendment proposed)

Clause 49

Sen. Sijeny: Mr. Temporary Chairperson, Sir, I beg to move:-
THAT, Clause 49 be deleted and substituted with the following clause-

49. The Cabinet secretary shall in consultation with the Board and other regulatory health bodies make regulations or any other statutory instrument necessary to promote the objects of this Act.

Mr. Temporary Chairperson, Sir, it is the responsibility of the Cabinet Secretary and other people to ensure that objects are achieved.

(Question of the amendment proposed)

Clause 50

Sen. Sijeny: Mr. Temporary Chairperson, Sir, I beg to move:-
THAT, Clause 50 be deleted.

The tribunal shall not be required to hear the disputes within the Act.

(Question, that Clause 50 be deleted, proposed)

Clause 51

Sen. Sijeny: Mr. Temporary Chairperson, Sir, I beg to move:-
THAT, Clause 51 be deleted.

Since the professional body shall give all the regulations that will be required, there will be no need for the tribunal.

(Question of the amendment proposed)

New Clause 18A

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

THAT the Bill be amended by inserting the following New Clause-

Right to reproductive health rights 18A. The County Executive Member for the time being in charge of health shall-

- (a) provide physical access and resolve transportation and proximity issues to clinics, hospitals and places where public health education is provided, contraceptives are sold or distributed or other places where reproductive health services are provided;
- (b) increase access to information and communication materials on sexual and reproductive health in braille, large print, simple language, sign language and pictures;
- (c) provide continuing education and inclusion of rights of persons with disabilities among health care providers; and,
- (d) undertake activities to raise awareness and address misconceptions among the general public on the stigma and their lack of knowledge on the sexual and reproductive health needs and rights of persons living with disabilities

(Question of the New Clause proposed)

(New Clause 18A was read a First Time)

Sen. Sijeny: Mr. Temporary Chairperson, I beg to move:-
THAT, New Clause 18A be read a Second Time.

This is to make it more elaborate. Also, since health has been devolved, it gives the County Executive Member clear responsibilities.

*(Question that, New Clause 18A be
read a Second Time, proposed)*

The Temporary Chairperson (Sen. Mositet): Division to come at the end.

New Clause 18B

Sen. Sijeny: Mr. Temporary Chairperson, I beg to move:-
Sterilization

THAT, the Bill be amended by inserting the following New Clause-
18B. Sterilization shall not be carried out to persons with mental disability.

(Question of the New Clause proposed)

(New Clause 18B was read a First Time)

Sen. Sijeny: Mr. Temporary Chairperson, I beg to move:-
THAT, New Clause 18B be read a Second Time.

This is also to provide for the reproductive rights of persons living with disability.

(Question that, New Clause 18B be read a Second Time, proposed)

The Temporary Chairperson (Sen. Mositet): Division to come at the end.

New Clause 6C

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

Consent

THAT, the Bill be amended by inserting the following New Clause 6C-

6C. (1) An assisted reproduction health care provider shall not perform any treatment or procedure of assisted reproduction without the consent in writing of all the parties seeking assisted reproduction services.

(2) An assisted reproduction health care provider shall not freeze any human embryos without specific instructions and consent in writing from all the parties seeking assisted reproduction in respect of what should be done with the gametes or embryos in case of death or incapacity of any of the parties.

(3) An assisted reproduction health care provider and facility shall not use any human reproductive material to create any embryo or use an in vitro embryo for any purpose without the specific consent in writing of all the parties to whom the assisted reproduction facility relates.

(4) The consent of any of the parties obtained under in-vitro fertilization may be withdrawn at any time before the implantation of the embryos or the gametes to the woman's uterus.

(Question of the New Clause proposed)

(New Clause 6C was read a First Time)

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

THAT, New Clause 6C be read a Second Time.

This is to give more clarity and protect the health care provider.

(Question that, New Clause 6C be read a Second Time, proposed)

The Temporary Chairperson (Sen. Mositet): Division to come at the end.

New Clause 6D

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

Conditions for

Assisted reproduction

THAT, the Bill be amended by inserting the following New Clause 6D:-

6D. A trained health professional specializing in in-vitro fertilization shall before carrying out any procedure ensure that:-

(a) consent to the collection and use of gametes is obtained from the gametes provider,

(b) in cases where the gamete provider is deceased, the gamete provider had given their consent for the use of the gametes before their demise;

(c) gametes to be used for the procedure have been stored for less than ten years after being obtained from a gamete provider;

(d) the donor has been medically tested for such diseases as may be prescribed and all other communicable diseases which may endanger the health of the parents, surrogate or child;

(e) all parties to the agreement are aware of the rights of a child born through the use of assisted reproduction service; and

(f) information about clients, donors and surrogate mothers is kept confidential unless with the consent of the person to whom the information relates, or in a medical emergency.

(Question of the New Clause proposed)

(New Clause 6D was read a First Time)

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

THAT, New Clause 6D be read a Second Time.

This is so that all the conditions of assisted reproduction are met.

(Question that, New Clause 6D be read a Second Time, proposed)

The Temporary Chairperson (Sen. Mositet): Division to come at the end.

New Clause 6E

Register

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

THAT, the Bill be amended by inserting the following New Clause-

6E (1) (a) A register with information on full names of the donor, physical characteristics of the donor, ethnic origin, family medical history, interests, hobbies and skills of the donor shall be kept at all assisted reproduction facility.

(b) The register shall be strictly confidential.

(2) A donor shall remain anonymous to both the person using the gametes and the child born out of the use of the donated gametes.

(3) A donor shall not acquire any parental responsibility to the child born out of the use of the donated gametes.

(4) Parties using a donated egg or sperm have a right to choose their donor should they wish to do so.

(5) A donor shall not receive any form of compensation for the use of their donated gametes.

(6) An assisted reproduction health specialist shall provide information to the donor to allow the donor make an informed decision.

(Question of the New Clause proposed)

(New Clause 6E was read a First Time)

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

THAT, New Clause 6E be read a Second Time.

This is to ensure that there is confidentiality and all the data is collected.

(Question that New Clause 6E be read a Second Time, proposed)

The Temporary Chairperson (Sen. Mositet): Division will come at the end.

New Clause 6F

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

Limitations

THAT, the Bill be amended by inserting the following New Clause-

6F. The following limitations shall apply to assisted reproduction services:-

(a) gametes shall not be used in research except with the consent of the gamete provider;

(b) an assisted reproduction health specialist shall not use, supply or export a gamete except with the written consent of the donor and in a manner consistent with the donor's consent;

(c) gametes shall not be used in assisted reproduction treatment if the gamete provider is deceased unless the gamete provider had given consent to the use of gametes before death; and

(d) an assisted reproduction health professional shall not use a gamete to create an embryo if the assisted reproduction health specialist has knowledge that the donor is a close family member of the recipient to avoid genetic complications.

(Question of the New Clause proposed)

(New Clause 6F was read a First Time)

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

THAT, New Clause 6F be read a Second Time.

(Question that, New Clause 6F be read a Second Time, proposed)

The Temporary Chairperson (Sen. Mositet): Division will come at the end.

New Clause 12A

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

Legal Fees

THAT, the Bill be amended by inserting the following New Clause after Clause 12-

12A. (1) Each party shall have a different lawyer and the agreement shall be witnessed by different persons to protect each party's interest.

(2) Any legal fees to the surrogate mother shall be paid by the commissioning parents.

(1) Before the signing of the surrogacy agreement, the parties and their respective lawyers shall be present at the signing of the informed the consent in the press of a qualified medical practitioner, who shall explain to the parties the implications of the surrogacy agreement.

(Question of the New Clause proposed)

(New Clause 12A was read a First Time)

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

THAT, New Clause 12A be read a Second Time.

This is to ensure that the fees of the surrogate mother are paid for.

(Question that, New Clause 12A be read a Second Time, proposed)

The Temporary Chairperson (Sen. Mositet): Hon. Senators, Division on this will be done later.

Since we only have five minutes remaining, and we have done substantial work on the Bills, the Committee can report to the House and seek leave to sit again tomorrow.

Mover, I hope you have been guided. Proceed.

Sen. Sijeny: Mr. Temporary Chairperson Sir, pursuant to Standing Order No. 139, I beg to move that the Committee do report progress on its consideration of The Reproductive Health Care Bill (Senate Bill No.17 of 2014) and seeks leave to sit again tomorrow.

(Question proposed)

(Question that put and agreed to)

(The House resumed)

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

PROGRESS REPORTED

THE REPRODUCTIVE HEALTH CARE BILL
(SENATE BILL NO.17 OF 2014)

Sen. Wangari: Mr. Temporary Speaker, Sir, I beg to report progress that the Committee of the Whole has considered the The Reproductive Health Care Bill (Senate Bill No.17 of 2014) and seeks leave to sit again tomorrow.

Sen. Sijeny: Mr. Temporary Speaker, I beg to move that the House do agree with the Committee in the said report.

The Temporary Speaker (Sen. Mositet): Sen. Wangari, are you seconding?

Sen. Wangari seconded.

(Question put and agreed to)

ADJOURNMENT

The Temporary Speaker (Sen. Mositet): Hon. Senators, it is 6:30 p.m., time to interrupt the business of the Senate. The Senate stands adjourned until Tuesday, 5th July, 2016, at 2.30p.m.

The Senate rose at 6.30 p.m.