

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 9th June, 2016

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

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

PRAYERS

STATEMENTS

MINING OF BALLAST BY COVEC IN VIHIGA COUNTY

Sen. Khaniri: Mr. Speaker, Sir, I rise pursuant to the provisions of Standing Order No.45(2)(b). I beg to seek a Statement from the Chairperson of the Standing Committee on Land and Natural Resources concerning the mining of ballast by China Overseas Engineering Group Company Limited (COVEC) in Vihiga County. In the Statement, the Chairperson should explain if:-

(1) The National Environment Management Authority (NEMA) undertook an Environmental Impact Assessment (EIA) and if so, what were the results.

(2) The steps undertaken by the Government to address the concerns of the residents of South Maragoli in relation to the negative impact of the project to the community and infrastructure. The specific concerns include;

- (a) Rehabilitation of the local road network;
- (b) The ongoing water project; and
- (c) The fate of the resultant dam.

(1) The specific Corporate Social Responsibility (CSR) benefits to the locals of Vihiga County and in particular those of South Maragoli Ward, considering that the project involves the construction of the Kakamega-Webuye Road.

(2) If the agreement is adequate for the project, given its magnitude and the impact, and if the community was involved in drawing the agreement.

Thank you.

The Speaker (Hon. Ethuro): Sen. Mwazo Mwakulegwa, please respond.

Sen. Mwakulegwa: Mr. Speaker, Sir, on behalf of the Committee, we intend to respond in two weeks time.

The Speaker (Hon. Ethuro): It is so ordered.

Let us move to the Statements to be issued. Can the Chairperson of the Standing Committee on Energy respond to Statement (a)?

Please proceed, Sen. Mwazo.

PROVISION OF AFFORDABLE AND RELIABLE POWER
SUPPLY IN KISII COUNTY

Sen. Mwakulegwa: Mr. Speaker, Sir, Sen. Obure had requested for a Statement in which he wanted the Chairperson to explain why despite promises made by the national Government to introduce various interventions to deal with frequent power blackouts in Kisii and its environs, the situation continues to worsen day by day.

Mr. Speaker, Sir, the source of supply in Kisii - the electricity distribution in Kisii County is supplied from Kenya Power's main transmission substation at Kegati which also supports Nyamira, Migori and Homa Bay counties. There is also a transmission substation within Kisii Town. However, in recent weeks, the network experienced voltage dips across the sub-transmission network which was as a result of defective control equipment. This equipment has since been sourced and installed by 16th May 2016.

Two, supply interruptions caused by trees falling on the power line during the past and current rainy seasons. Three, network maintenance activities have been intensified to stem escalation of such instances. We have taken a sample from 1st to 30th April 2016 to show the instances of interruptions as well as the measures undertaken to improve the power supply. There were two main causes; the falling trees during the rainy season as well as the shuttered pin and insulators due to lightning strikes in the region.

Mr. Speaker, Sir, regarding future plans; in an effort to improve the quality and the reliability of power supply in Kisii County, the following are part of ongoing or planned projects intended to improve the quality of supply in the country;

(1) The completion of the ongoing construction of Kegati-Awendo-Homa Bay transmission line and substation. That will greatly improve the ability to serve the customers in Kisii and the adjacent counties of Nyamira, Migori and Homa Bay. That project is scheduled to be commissioned by September 2016.

(2) Establishment of a second transmission substation for Kisii Town near Kisii High School by 31st December 2018.

Mr. Speaker, Sir, all the above projects will guarantee alternative and reliable power sources with inbuilt flexibility for the county. However, additional resources and manpower has been deployed to provide focused customer service to Kisii County and the surrounding counties. Parts of Kisii, Nyamira, Migori and Trans Mara have been hived off from the greater Nyanza to form what has now been named South Nyanza region, headquartered in Kisii County headed by regional managers. County business managers in each of the counties have been posted with full complement of teams who have the ability to address current and future challenges in these regions.

Sen. Obure also wanted the Chairperson to explain the cause of the increase in billings in both domestic and commercial entities in the last three months. The response is that the approved tariffs applicable from 1st July 2015 to date have remained

unchanged as shown in Part (2)(c), page No.8 of the approved schedule attached. Additionally, the pass-through costs, namely; the fuel cost charge, the foreign exchange rate fluctuation adjustment, water resource management levy and inflation adjustments have remained constant since January 2016 to date. The table below has a summary as follows; the fuel cost charges has remained at Kshs200.31. The foreign exchange rate fluctuation adjustment has remained at Kshs100.00. The water resource management levy has remained at Kshs0.50 while the inflation adjustments have remained at Kshs29.00.

The other charges to be added to the taxes and levies which have remained unchanged during the same period; the value added tax at 16 per cent, the rural electrification programme at 5 per cent of revenue from unit sales and energy regulatory commission levy at Kshs0.30 per kilo watt. Any change to the billing amounts is due to the customer's consumption quantities. An analysis of sample domestic and small commercial bills from KPLC systems have been provided for comparison purposes. These have indicated that the bills have fluctuated due to consumption patterns.

Mr. Speaker, Sir, Sen. Obure further wanted the Chairperson to explain the measures that the Government intends to put in place to abolish the numerous charges loaded onto electricity bills such as fuel cost, forex adjustment, inflation adjustments and maximum month deviations, among other charges.

The response is as follows:-

Regarding Approved Schedules; the tariffs were approved in 2013 and adopted. This structure will remain in force for three years. These have two components, basically the base tariff that is the fixed charge, energy charge and the demand charge, then the pass-through costs. I have explained the Fuel Cost Charges (FCC), the Foreign Exchange Rate Fluctuation Adjustments (FERFA), the Water Resource Management Authority Levy (WRMA) charges and the Inflation Adjustments (INFL). These are pass-through costs. The electricity prices are reviewed normally for a three-year term in line with the existing tariff review policy. In the meantime, variable input prices are affected by consumer price indices; internationally and locally.

Regarding the exchange rates, authority charges and fuel price fluctuations, the fluctuations of the above mentioned parameters form the basis of the pass-through costs. While efforts are being made to ensure predictability and reduce variations of the pass-through costs, it is important to ensure that the electricity prices are reflective of the costs and that Kenya Power's financial integrity is maintained.

The next item is part (d) which required me to explain what the Government is doing to ensure institutions that are charged with the mandate of energy generation and distribution are working effectively to provide affordable reliable power supply. Under the Government's plan to add 5000 megawatts to the national grid by 2017, the Government identified and allocated KenGen to deliver 844 megawatts. Of this target, KenGen has already delivered 385 megawatts through geothermal energy. Among the projects commissioned are Olkaria I and IV which have already delivered 280 megawatts. This has an overall impact because what has been delivered by these two projects is at seven US cents. These projects were commissioned in 2014 as per the attached schedule.

Regarding the Energy Mix, in 2014 the energy mix in Kenya was mainly dominated by hydro, which was also the generation base load. However, from 2014 to date, KenGen has commissioned major generation plants, mainly geothermal, and this has shifted the base load as indicated in 30th June, 2014 with the comparison of 30th March, 2016. For example, geothermal energy in 2014 was 366 megawatts but now it contributes 658 megawatts. Hydro energy remains the same at 821 megawatts while thermal was 576 megawatts but is now contributing 829 megawatts. Wind and baggas was 31 megawatts but it is now 53 megawatts. Therefore, Kenya currently produces 2361 megawatts.

The growth strategy is therefore as follows: Going forward to 2025, there is an estimated demand of 8900 megawatts mainly driven by meeting the latent demand, growth in economic and implementation of the Vision 2030 key projects. KenGen intends to contribute towards this demand by adding 2500 megawatts, all green energy, mainly geothermal. It will consist of 2090 megawatts geothermal and 410 megawatts by wind. This contribution will significantly lower energy tariffs in the country and ultimately raise Kenya's competitiveness. Going forward, KenGen is to enforce geothermal footprint in Africa and globally. The company has identified geothermal mode of generation as the key driver to make sure that Kenya is achieving supply of power.

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

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. The Chairman has said that the power station was improved in the month of May this year. Despite that, we have not seen any improvement in the power supply to Migori County, instead it has worsened. Could he therefore confirm or deny that the lack of power supply to Migori County is total sabotage by Kenya Power because of political reasons?

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

Sen. Obure: Mr. Speaker, Sir, I just wanted to thank the Chairman for an elaborate answer and also note that some of my main concerns have been addressed. For example, the defective control equipment which was largely responsible for this frequent power blackouts and the fact that they are now intensifying inspection to ensure that trees which are falling on power lines are removed to avoid any further outages. The only thing I wanted to request the chairman to find out is why the Kenya Power has given the public more than 10 telephone lines for contact in the event of a serious emergency yet you cannot reach them even when you call any of the 10 numbers they have given. I want to ask the Chairman to ensure that the issue is addressed so that we can reduce human suffering and possible potential danger to the public.

Mr. Speaker, Sir, I have other individual concerns which I will raise with the Chairman so that he can contact Kenya Power and other energy institutions. I do not have to raise it here.

The Speaker (Hon. Ethuro): Sen. Billow.

Sen. Billow: Mr. Speaker, Sir, Kenya Power is a company of contradictions. This is because you read about them saying there is so much power that they are thinking of exporting it then in the next minute, half of this country has unreliable power supply and it is very expensive.

Therefore, I have two questions. The first one is; could the Chairman explain why they still have the thermal power plants which are very expensive when we have so much of the geothermal, hydro and green Energy which are cheaper? Is it because those people who own the thermal power plants are politically connected individuals who must maintain those power plants? Is that the reason why Kenyans will continue paying for very expensive power?

Secondly, when is this country going to ensure that there is reliable power supply in areas off the national grid like Mandera where we have serious problems of power throughout the year? We have been here complaining year in, year out. When will the Ministry ensure that there is reliable power supply? We have really suffered. It is like that part of the country is not part of the nation.

The Speaker (Hon. Ethuro): Hon. Senators, try to be brief since the interest is quite high.

Sen. Ndiema.

Sen. Ndiema: Mr. Speaker, Sir, I had ridden on the request and sought to know why some schools in Trans Nzoia County were supplied with solar power instead of the grid power when, in fact, the said schools were not more than three kilometers away from power lines. Grid power tends to benefit the community as compared to solar power which serves only the institution. Did they buy more solar power units than was necessary? I believe that there are certain parts of the country which require solar power more than Trans Nzoia. This particularly happened in Sinyerere Ward.

Sen. Okong'o: Mr. Speaker, Sir, I need a clarification on the issue that the many tariffs that are levied on Kenyans can only be reviewed after three years. We were told that we had surplus electricity at some point in time. Do we not have a way in Kenya of reviewing levies after six months or one year, since that rigidity of three years is costly for the Kenyan people?

Sen. Khaniri: Mr. Speaker, Sir, Kenyans have suffered for a very long time under the Kenya Power Company. I think they are subjecting Kenyans to this because of the monopoly they enjoy. The Senator for Kisii asked a very specific question and I do not think the Chairman has come out clearly to answer it. He asked about the numerous charges that are loaded on our electricity bills. This is one of the countries where electricity is very expensive and, as a result, we are scaring away investors. Some of us receive electricity bills of up to Kshs40,000 a month, just for lighting. Could the Chairman come out clear on the charges on our monthly electricity bills?

Sen. Karaba: Mr. Speaker, Sir, as you are aware, all schools are supposed to be provided with laptops and they require electricity as the source of power. Could the Chairman convince us that by end of the year, the laptops project will have taken off?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, when the Jubilee Government came into power they extravagantly promised that in five years they were going to bring on-stream 5,000 megawatts of power. To date, three-and-a-half years down the line, from the public pronouncements we have been seeing and the launching of projects, they have brought on-stream less than 150 megawatts. Everytime we ask about power dips, outages and blackouts we are told that it is because of the weakness of the grid due to shortage of power.

When are they going to fulfill the pledge of 5,000 megawatts of power, so that we can have continuous and uninterrupted supply of power? Whenever there is an outage or blackout in many households, the entire electrical equipment – fridges, television sets and other equipment - get destroyed, and the Kenya Power does not compensate the users. Could the Chairman assure the House that Kenya Power will be obligated by law – even if it requires legislation – to insure against unforeseen damage that comes to users for no fault of their own?

The Speaker (Hon. Ethuro): Could the Chairman respond?

Sen. Mwakulegwa: Mr. Speaker, Sir, Sen. (Dr.) Machage wanted to know when the Kegati-Awendo Substation will be completed. The project is ongoing. There was a breakdown of the machinery and it was replaced by 16th May, 2016. Therefore, the Kegati-Awendo line is still in progress.

Sen. Obure wanted to know why the Kenya Power telephone lines do not work whenever there are issues and they are called. There are ten telephone lines, but there is an emergency line, 95551. If you call that number it will lead you to a call centre where you will be assisted. I have done that severally and there is no time I have failed to get a response from the emergency call centre.

Sen. Billow wanted to know the reliability of power supply in Mandera and whether thermal power generation still exists. There is a table that I provided to Sen. Obure. From last year to date, geothermal energy has continued to outperform thermal energy. But we still need thermal energy, because our current demand is about 2,500 megawatts. Currently, we are producing 2,361 megawatts. We will continue using thermal energy until the green energy – geothermal – is accelerated and loaded to the national grid. That is why we continue having thermal energy, which is a bit expensive. With regard to Mandera, I do not have an answer right away. I could provide an answer later, specifically on the power supply to his county.

Sen. Ndiema wanted to know why some schools are being connected to solar energy and not the national grid. I do not know the criteria being used to connect schools, but I can provide that information later. What I know is that if a school is within 600 metres from a transformer they will be connected to the national grid.

Sen. Okong'o asked why the policy on tariffs remains unchanged for three years. Whenever a policy is adopted it takes time to be changed. The standing charges have remained constant; what has changed is the consumption rate. That is why the bills fluctuate.

Sen. Khaniri wanted to know why consumers continue being charged highly on a monthly basis. In my response, I have provided an example of so many bills by Kenya Power Company. They show that the baseline and fixed costs do not change. What changes is the consumption. The billing has remained constant and I gave an example of the foreign exchange. We can follow up with the Kenya Power to do something about the billing. As we continue to produce more power, Kenyans expect the electricity charges to go down. However, the bills for heavy commercial and industrial users have drastically reduced because they consume electricity heavily.

Sen. Karaba wanted to know how far the laptops project has been implemented given that it requires power. I gave an answer sometime back indicating that over 20,000

schools had been connected. I can get further information and pass it to the Senator. That information might help him as the Chairman of the Committee on Education.

Sen. Wetangula said that ever since the Jubilee Government came into power they have only increased 150 megawatts. The fact of the matter is that as at 2013 we were at 1,794 megawatts. Currently we have 2,361 megawatts; an increase of over 500 megawatts.

(Sen. Wetangula spoke off-record)

They promised 5,000 megawatts by 2017. If need be, I could provide the projected production up to 2017, towards the 5,000 megawatts.

(Sen. Wetangula spoke off-record)

I am not cheating. What I am providing are facts, and figures do not lie. Currently, we have 2,361 megawatts.

The Speaker (Hon. Ethuro): What is it Sen. Okong'o?

Sen. Okong'o: On a point of order, Mr. Speaker, Sir. I wonder why the Vice Chairperson would respond to non-issues. Everybody else knows that this is cheating and he has answered loudly on the Floor. Was he in order to talk about issues which are outside the inquiries made by Members?

Sen. Mwakulegwa: Mr. Speaker, Sir, I did not respond to non-issues. While I was responding, Sen. Wetangula said that; "do not cheat on their behalf". That is why I responded by saying I am not cheating. I have given figures and I said figures do not cheat. All I said is that from 1,794 megawatts to 2,361 megawatts, there has been some growth in that sector. It is not adequate and that is why I have said we need to accelerate that growth so that by 2017, the 5,000 megawatts they promised is delivered to the Kenyan consumer.

The Speaker (Hon. Ethuro): Vice Chairman, for my own understanding, it has moved from what to what production?

Sen. Mwakulegwa: I said it has moved from 1,794 in 2014 to 2,361 megawatts today. There has been increment of 500 megawatts but there is a total shortfall of 2,600 megawatts.

Sen. Billow: On a point of order, Mr. Speaker, Sir. I think the Vice Chairman did not clarify some of the questions I sought. Regarding the increase by 500 megawatts, you will notice that nearly 300 megawatts is from thermal power plants. Those are political projects. Could the Vice Chairman clarify how many megawatts actually came from geothermal which is the main source that we were targeting in this five-year period?

The Speaker (Hon. Ethuro): Order, Sen. Billow. Let me allow the Vice Chairman to respond.

Sen. Mwakulegwa: Mr. Speaker, Sir, I had already given an answer earlier. I stated – and I want to repeat - that geothermal was producing 366 megawatts. Currently, geothermal is at 658 megawatts. Secondly, the other increase has been thermal which was at 576 megawatts and is now at 829 megawatts. The other increment has come from wind

which was 31 megawatts and is now at 53 megawatts. What has remained constant – I said this earlier – is the hydro which has remained at 821 megawatts. Thank you.

The Speaker (Hon. Ethuro): Order, Members. Vice Chairman, I made an observation that you started recounting one year later. My understanding, which is also yours, is that the Jubilee Government, including you in the Senate, came into being in 2013 but not 2014. So, I am surprised that Sen. Wetangula is actually unhappy. He should be happier because maybe if we added one more year, it could be more.

Sen. Billow: On a point of order, Mr. Speaker, Sir. I seek your indulgence to table some petition reports for four counties that came in a bit late.

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Speaker, Sir. There is no project that can be started in one year and you get power in the same year. The Jubilee Government is reaping from the Grand Coalition Government. So, we need to know what has been started by the Government that I am part of rather than counting oranges, tomatoes, potatoes and everything.

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo, we had actually dispensed with that matter. However, you are even making your own case worse. When you say “my own Government where I sit”, then you should tell us. Why are you telling others to tell you?

(Laughter)

Order, Members, let us go back to the Order Paper. We will go back to Order No.5 on Papers.

Sen. Okong’o: On a point of order, Mr. Speaker, Sir. I thought we were on statements and we have only dealt with one.

The Speaker (Hon. Ethuro): Yes. In the Standing Orders, there is a provision that states that the Speaker, for the convenience of the House, can reorder---

(Sen. Okong’o spoke off record)

It is very easy because statements are many. These are small issues which we can deal with before we forget and resume statements.

Sen. Billow.

PAPERS LAID

REPORTS OF THE FINANCE COMMITTEE ON VARIOUS PETITIONS

Sen. Billow: Mr. Speaker, Sir, I beg to table, today, 9th June, 2016, The Report of the Senate Standing Committee on Finance, Commerce and Budget on the Petition---

The Speaker (Hon. Ethuro): Order, Sen. Billow, you owe the House an apology, especially when the House has been very generous to you.

Sen. Billow: Mr. Speaker, Sir, thank you very much. I apologise for tabling these reports late. I seek the indulgence of the House to lay on the Table of the House, the following Reports:-

Report of the Senate Standing Committee on Finance, Commerce and Budget on the Petition by Hon. Daniel Chitswah, the Speaker of Vihiga County Assembly, concerning taxation of allowances and other benefits paid to Members of County Assembly (MCAs) and the staff of the County Assembly.

Report of the Senate Standing Committee on Finance, Commerce and Budget on the Petition by residents of Machakos County concerning breach of the Constitution and other laws by the County Executive and the County Assembly of Machakos.

Report of the Senate Standing Committee on Finance, Commerce and Budget on the Petition by Hon. Festus Ndeti, MCA representing Kola Ward in Machakos County concerning marginalisation of Kola Ward in the implementation of development projects by the County Government.

Lastly, Report of the Standing Committee on Finance, Commerce and Budget on the Petition to the Senate by Julius Masiva Obuga concerning employment of workers at the Vihiga County Assembly and the wastage of public funds by the County Assembly.

Thank you.

(Sen. Billow laid the documents on the Table)

PETITION

BREACH OF THE PFM LAWS AND REGULATIONS BY BUNGOMA COUNTY GOVERNMENT

The Speaker (Hon. Ethuro): Order, Members, I also have a petition to the Senate by five residents of Bungoma County concerning corruption and other grievances.

Hon. Senators, pursuant to Standing Order Nos. 220(1)(a) and 225(2)(b), I hereby report to the Senate that the Petition has been submitted through the Clerk by five residents of Bungoma County concerning corruption, breach of Public Finance Management (PFM) laws and regulations and other grievances against the County Government of Bungoma. In summary, the petitioners state as follows:-

(a) That the County Government of Bungoma has since 2013 failed to prudently use the resources allocated to the county as well as revenues generated within the county, thus, accruing debts of close to Kshs3 billion as at the end of 2014/2015 Financial Year.

(b) That Bungoma County Government presides over rampant misappropriation, misuse and misallocation of funds, corrupt practices, spending beyond budgetary allocation, impunity and breach of the Public Finance Management and Procurement Laws and Regulations in the County.

The particulars of these averments are detailed in the Petition. The petitioners, therefore, pray that the Senate investigates these matter and makes appropriate recommendations, thereon, to address the petitioners' grievances.

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

Sen. Billow: Mr. Speaker, Sir, it is interesting that we are getting a petition from Bungoma County, which had become notorious because a wheelbarrow in that county was reported to be costing similar prices to some of the vehicles that are manufactured in countries like India. It is important that Kenyans are bringing these petitions to the Senate. It is a clear indication that they have confidence that this House will investigate these matters and recommend appropriate action.

One of the challenges that petitioners face is that although we make commendations to the office of the Director of Public Prosecutions (DPP) for action, they do not move with speed to investigate and prosecute those particular cases. Going forward, our Committee, in particular, the Senate Committee on Finance, Commerce and Budget is in the process of inviting the Office of the DPP so that we can go into a mutual agreement to ensure that an officer from that office will sit in the Committee during our deliberations so that they get the facts relating to all the cases. This is to facilitate their work so that in case there is any recommendation regarding prosecution, they can deal with it.

It is important that we deal with all these incidences that have been raised in petitions such as the one from Bungoma County so that the level of corruption, pilferage and theft of funds in the counties is brought to a halt.

Sen. Boy Juma Boy: Bw. Spika, asante kwa kunipa nafasi ya kuunga mkono malalamishi haya.

Bw. Spika, kuna kulalamika na kunung'unika. Kunungu'nika ni ile hali ya kupigo domo tu bila kuchukua hatua yoyote. Wakenya wengi tunapenda kunung'unika. Tunayotaka sisi ni kulalamika na kuhakikisha maneno yamewekwa katika maandishi kusudi jambo lile liweze kufuatiliwa. Haya malalamishi ndiyo tunataka kuliko kunung'unika.

Bw. Spika, naunga mkono watu wa Bungoma kwa jambo walilotenda na ninahimiza jambo hili lifanyiwe kazi kwa haraka.

Sen. Kivuti: Mr. Speaker, Sir, looking at this petition, I am concerned that we may be receiving very many petitions from many counties. My concern is that our Standing Orders require that when a petition comes, the recommendations of the committee concerned cannot be debated but rather have to be implemented.

I am wondering what will happen if the recommendation of a committee is such that the governor should go. Will he go? We need your direction on this matter considering that we have been through some issues related to this kind of approach and we may be opening a different chapter.

Sen. Kagwe: Mr. Speaker, Sir, my comment on this is that we are at least happy that this Petition has not been brought by a Senator who is running against the governor of the said county because the Senator of that county is running for the Presidency and not governorship. Consequently, I believe that it is not out of vindictiveness but concern. The missing link between the complaints in the petitions is prosecution. This is because we have had so many petitions to the Senate Committee on Finance, Commerce and

Budget, but if you look at the level of prosecution of all the accusation in the 47 counties, I cannot recall any of them, that we can say has been successfully prosecuted. No one has been prosecuted as a result of corruption due to the petitions brought to the Committee or from the deliberations of the Auditor-General.

Mr. Speaker, Sir, what this House must address and squarely face, is the fact that there is a link between theft and prosecution but it is currently missing. This is because we can talk until the cows come home, but if there is no prosecution of any individual, we shall still be doing what Sen. Boy Juma Boy said about “*kunung’unika*”. We need to address that issue.

As the Senate Committee on Finance, Commerce and Budget, and my Chairman is here, what are we going to do towards prosecution of those who have been named in corruption? We are aware that this House prosecuted an individual to the point where he was removed from the governorship of Embu County but he has continued to serve for five years. In fact, he is boasting that this House cannot do anything. If we cannot deal with the governors who are stealing, how can we deal with clerks who are under the same governors who are stealing?

Mr. Speaker, Sir, we have heard that a wheelbarrow has been bought for US\$1000 and yet we have not heard of the prosecution or jailing of such an individual. How then can we stand as a House and start complaining about the national level of corruption?

The Speaker (Hon. Ethuro): Conclude, Sen. Kagwe.

Sen. Kagwe: Mr. Speaker, Sir, I support the Petitioner but seek that my colleagues address the bigger matter of what to do when we conclude those petitions.

Sen. Hargura: Mr. Speaker, Sir, I thank the Petitioners from Bungoma County for bringing up an issue which is rampant in this country. As my colleagues have said, it seems like the governors are having a field day because the other systems are not working. For example, the Ethics and Anti-Corruption Commission (EACC) has many cases and Kenyans have reported the vices but nothing is being done. Also the Office of the Director of Public Prosecution is also not doing anything to that effect. We need to go beyond addressing petitions and come up with practical ways of curbing this run away malpractice at the counties.

Sen. Cheruiyot: Mr. Speaker, Sir, I also want to register my comments based on the arguments made by my colleague in the Senate Committee on Finance, Commerce and Budget, Sen. Kagwe. These petitions, in my opinion, will either break or make the Senate in the eyes of the public. In many occasions, when the petitioners present their petitions, they look at the Senate as the House of last resort or as a place where they can find refuge from the plunder that is being carried out in the country by most governors. It will be a great adversity to the promise of devolution if we let these governors to go scot free.

Mr. Speaker, Sir, I sit in this Committee and I have had an opportunity to look at petitions, not only by residents of Bungoma County, but also from Bomet county, which has been concluded. You can clearly see that money has been lost. We have however been reduced to a House of “spouters” who make a lot of noise without giving directions to the country. I do not think we shall be forgiven by Kenyans.

In my opinion, such a petition should be dealt with extensively while at same time pronouncing ourselves seriously on the matter of plunder of public resources by governors. This can be possible even if it means presenting a petition to the Judicial Service Commission (JSC) or have a special court to deal with issues of plunder of money meant for devolution. This is because devolution is a great promise for this country but we are not seeing the fruits. It is really frustrating to sit in the Senate undertaking county revenue allocation, only for these allocations to end up paying salaries and in the pockets of a few individuals. We are being frustrated by the Office of the DPP and the EACC. It is about time that we also consider not only making recommendations but also taking more actions. This is because we have done that before.

What is it that we, as Senators, can do to deter people from plundering public resources such that when the matter is brought to the Senate, it will successfully be prosecuted in our courts and end up with jailing of those found guilty? This will lead to people respecting public property.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I join my colleagues in lauding members of those respective counties for being vigilant and concerned enough to raise issues regarding wastage of funds in their counties. We should encourage members of the public who have the interest of their counties at heart to take initiatives to raise such petitions.

If you listen to the Member of County Assembly (MCA) from Machakos County who has realised that there is a deliberate attempt to refuse to fund projects in his Ward just because he is not singing the same song as the governor, that is the type of leaders that we want. From the counties that we come from, particularly my county, there are some peculiar wards that have been shut out because they do not sing the governor's name in the morning, mid-day and evening. This is a terrible way of slavery that has arrived in our counties.

As we look at these petitions, we should also come up with a procedure to compel relevant Government arms like the Ethics and Anti-Corruption Commission (EACC) and the Office of the Director of Public Prosecutions (DPP) to quickly institute a lifestyle audit on some of these fellows who were nobody yesterday morning and became instant millionaires overnight. I am told that there are some who have even decided to build helipads on top of their houses and these are people who were just ordinary in the village.

I support this and I encourage it. I am waiting for some from West Pokot, Turkana and Trans Nzoia counties who are my neighbours, now that Bungoma County has started.

The Speaker (Hon. Ethuro): Order! Sen. (Prof.) Lonyangapuo, speak on the one of Bungoma County for now.

Sen. Ndiema: Mr. Speaker, Sir, by the time a member of the public decides to write to the Senate, a lot of work has been done and a lot of frustration has occurred. At the county level, there are all arms of Government which can handle these situations but the last resort is the Senate. It looks like the multiplicity of institutions dealing with theft or corruption has not helped this country. It looks like it was even better when there was only one institution called the police to deal with such situations.

Today, even outright theft is categorized as corruption and, therefore, subject to investigation. In my village, if a *mwanaanchi* steals chicken, he is apprehended maybe by

the “*Mukasa*”, taken to the police and the next day he is arraigned in court. When public funds are plundered in our counties, no action is taken. It is time that this Senate stands up to be counted in eliminating such vices in our counties. The police should not consider theft to be matters of corruption. If it is outright theft they should take steps immediately and not wait for other institutions to act.

The Speaker (Hon. Ethuro): Strictly the last three: Sen. (Dr.) Zani, Sen. Khaniri and then Sen. Wetangula, in that order.

Sen. (Dr.) Zani: Mr. Speaker, Sir, the promise of devolution and especially the way it is being implemented has become a big disappointment for many people, especially the misappropriation of funds. In the Committee on Finance, Commerce and Budget, more and more petitions are coming about the same. I think it raises a fundamental question where even when we begin the debate about the Constitution and the sort of dialogue and changes that we want to engage in, to begin to think about the nature of how governors should get into office. I know of countries like Sweden who have resorted to appointing of governors rather than electing them; such appointees are regarded as Chief Executive Officers (CEO) and directly answerable.

I think the problem that we have had with governors is that at the end of the day, they are elected and they feel that they owe their allegiance to the electorate. So, to remove them – this is the argument that they present – it would take the people who elected them, depending on whether they were voted in or not. In most counties, you would expect finally that the buck stops with the governor. He should be the one who should be answerable. I think it has already been expressed that we have been unable to make the governors accountable. I know especially in this society, as long as something is not punitive, people will try to get away with it as much as possible.

However, I think it also gives us a chance, because this is the first time that we are implementing devolution, as we go into the elections, the citizens are watching, becoming more alert about the sort of people they want to elect and are even looking at their qualifications. Even as they continue to engage in the voting, they do so for people who are patriotic and who are really interested in entrenching and making devolution work.

Sen. Khaniri: Mr. Speaker, Sir, listening to this Petition, I now understand the bitterness that is driving many Senators to go and run for these positions of governor. I take this opportunity to hail the five patriotic residents of Bungoma County for their bravery in bringing this Petition and for the confidence that they have in this Senate to address issues affecting them.

The story of corruption, misappropriation and spending beyond budgeted figures reads the same in all counties. It is the duty of this Senate to ensure that this comes to an end. Devolution is not benefitting Kenyans as envisaged in the Constitution. Governors have deliberately decided to preside over very corrupt regimes to enrich themselves and their cronies. Kenyans are crying loudly to the Senate. I support the sentiments made by my colleagues who spoke earlier, that unless we take action on some of these governors and bring them to book and send some of them to jail, we will not be able to stop the corruption, theft and plunder that is going on in the counties.

I urge the relevant Committee to work on this Petition decisively, firmly and expeditiously, so that we can get to the bottom of these complaints. Bungoma is the same county where we had wheelbarrows being bought for Kshs1 million and the Governor's seat was bought for Kshs3 million; *kiti ya kukaa tu*. I urge the Committee to be very firm. This time around, we must ensure that action is taken against these particular implicated officers.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, before I make any comment, I thank each Senator who has shown interest in this Petition from Bungoma County. I salute the five courageous residents of Bungoma County who have filed this Petition. For ordinary citizens to come to this House and file a petition to highlight issues of corruption, it means that they have lost hope along the way, to the effect that the Directorate of Criminal Investigations (DCI), the EACC and all institutions of Government are not working.

Mr. Speaker, Sir, Bungoma is the county with notoriety, where in the first year, the governor presented a budget where he had allocated Kshs53 million to fight pornography that does not exist in Bungoma. He had provided Kshs54 million for personal entertainment. This means that he was to spend an average of Kshs1 million plus on personal entertainment every week. It is the county with the notoriety of the governor spending public funds to invite a man from Congo called Kanda Bongo Man to the county to dance the whole night, where the governor himself was dancing.

It is the county where a wheelbarrow was bought for Kshs109,000 which translates to 2725 per cent above the normal purchase price of a wheelbarrow. This is the county where a meat hook which hangs a leg of a cow in a butchery was bought for Kshs34,000 when it costs Kshs400. It is the county where a parcel of land that would have cost Kshs47 million was bought by the governor at Kshs163 million. It is the county where recently, the governor purchased a chair worth Kshs2.7 million to be carried around for him to sit on whenever he goes for a funeral.

Mr. Speaker, Sir, these obscenities are the frustration that drive residents to run to this House. The only good thing that appeared in Bungoma County recently is when a courageous young man hang onto a helicopter and looked like James Bond. Otherwise, everything from my county is stinking. It may be recalled that the Ethics and Anti-Corruption Commission (EACC) went to Bungoma on an investigation mission and found an official of the county with Kshs6 million under his mattress. Up to today, he has not been prosecuted or been taken to account.

It is the county where the governor and his government can award two contracts on one road, from A to B and B to A and pay for both simultaneously. This is how money is being stolen. This story sounds like every other story in every other county but Bungoma is the most notorious. It is the only county that is leading in pending bills. When the Controller of Budget released the list of pending bills, Bungoma County had Kshs2.7 billion pending bills against the provisions of the Public Finance Management Act (PFMA).

I want to urge my brother, the Senate Majority Leader, that we need to sit together and re-look at the Standing Orders. We need to know what to do with the end product of petitions that come to this House. Bringing witnesses to give testimonies and then

keeping the petition results is not helpful. This is also the county where the governor projected that he will collect kshs1.47 billion in local revenues. Records show that he collected Kshs2 billion and then reflected that he had collected Kshs183 million. The rest disappeared. This has killed the incentive of all the Senators to start advocating for more money to go to the counties. Money is going to the counties to line the pockets of individuals.

Mr. Speaker, Sir, as I finish, the other day, a good Samaritan came to tell me that my governor and a member of his family purported to purchase fertilizer worth Kshs150 million this planting season. What was bought was fertilizer of less than Kshs20 million. The rest of the money is gone. I agree with Sen. Ndiema that we should not turn theft into corruption. Theft is an outright criminal offence for which the Directorate of Criminal Investigations (DCI) should move in, investigate, arrest, incarcerate and prosecute. We need to have things move right now or never.

I want to urge the Committee on Finance, Commerce and Budget, Chaired by Sen. Billow, being a man with a finance background, to meticulously look at the Bungoma Petition. If there is any governor who needs to be in Kamiti Maximum Prison as a guest of the State, it is the governor of Bungoma. I want to see justice being done for the people of Bungoma County. The billions that we have given Bungoma County as the third largest county cannot be counted for anything.

The Speaker (Hon. Ethuro): Order Members, we may now proceed with Statements.

Sen. Sijeny, you had a Statement to seek.

STATEMENTS

IMPLEMENTATION OF GOVERNMENT POLICY ON FREE MATERNITY SERVICES

Sen. Sijeny: Mr. Speaker, Sir, I rise to seek a Statement from the Chairperson of the Standing Committee on Health. In the Statement, the Chairperson should address the following:-

(1) state whether the Jubilee Government policy on free maternity is being implemented and how effective it is;

(2) state how much money each county received towards free maternity in the Financial Year 2015/2016;

(3) explain why up to five mothers and babies admitted at Kisumu County Hospital are sharing a bed, and;

(4) explain the measures that the Government intends to put in place to alleviate the suffering of mothers and new born babies admitted in hospitals.

The Speaker (Hon. Ethuro): Chairperson or Vice Chairperson of the Committee on Health.

Sen. Kittony.

Sen. Kittony: Mr. Speaker, Sir, we will respond in a week's time.

The Speaker (Hon. Ethuro): It is so directed, in a week's time.

Statement (b). Sen. Kittony.

INCREASED CASES OF PNEUMONIA IN CHILDREN
AND ELDERLY PERSONS

Sen. Kittony: Mr. Speaker, Sir, I do not have the answer with me. It came by email and it has not been officially signed. I will give an answer next week.

The Speaker (Hon. Ethuro): It is so ordered.

Statement (c); Vice Chairperson Standing Committee on Energy.

FREQUENT POWER OUTAGES AND SURGES IN
KINNA SUB-COUNTY

Sen. Mwakulegwa: Mr. Speaker, Sir, I would like to respond to the Statement sought by Sen. Adan. In the Statement, she wanted us to explain why there is loss of power for long periods and frequent surge of electrical power in Kinna Sub-County in Isiolo County.

The response is as follows:-

(1) The source of power for Kinna Sub-County; Kinna Township in Isiolo is approximately 160 kilometers from Isiolo Town and 40 kilometers to Maua Town in Meru County. The supply line delivery power to Kinna Sub-County is from Kenya Power Meru Sub-station through Maua Town. It also supplies Garbatulla in Isiolo County and ends in Banane which is situated in Garissa County. The state of the network configuration has been as a result of Kenya Power distribution network expansion over the years.

Loss of power for long periods is caused whenever the supply line from Meru suffers an interruption. Kenya Power has faced challenges in responding to customers' complaints from Kinna Sub-County and beyond when a line has a problem due to insecurity which limits staff mobility. Unfortunately, this has led to lengthy delays as Kenya Power seeks the assistance of security personnel to aid staff access the area and carry out patrols and repairs. The road network sometimes also becomes impassable, especially during rainy seasons.

Concerning question two, on what measures the Government is taking to prevent the frequent surge and loss of electrical power in Kinna Sub-County, the response is as follows:-

In order to stabilize the supply line and prevent interruptions, the following course of action will be undertaken:-

(a) Intensify inspection and maintenance of the distribution network with the assistance of the security agencies, including the *Nyumba Kumi* Coordinators and local leadership to enhance accessibility to the affected areas.

(b) Initiate establishment of a Kenya Power operations office at Garbatulla with the intention of bringing services closer to the customers. This will be done by 30th June, 2017.

(c) The construction of an alternative line from newly commissioned Isiolo Transmission Station to act as a second source and enhance flexibility. This shall be implemented by 30th June, 2017.

Regarding question three, on how the Government will compensate the residents of Kinna Sub-County for the loss of property such as electronics, shops, houses and animals due to frequent power surges, the response is:-

Kenya Power processes each claim of damaged equipment, property or animals based on specific claims by individuals who claim to have lost the same due to an electrical fault or cause. The claim is individually investigated by both Kenya Power, to give the technical finding and later by insurance loss adjusters to authenticate the claim after which the claim is settled expeditiously or dismissed altogether if found that the cause of loss is not attributed to any electrical fault.

Kenya Power has not received any individual claims from Kinna Sub-County to start the process of compensating anybody.

Sen. Adan: Mr. Speaker, Sir, first, I thank the Chairperson for this elaborate statement highlighting the plan the Ministry has for the people of Kinna in Isiolo County.

However, it is disappointing when the Chairperson says that they are unable to maintain the power lines due to insecurity. Really, is that position satisfying? Do animals live in that area? That is not an excuse. It is important for the Ministry to have a better excuse, not security. We are not animals. Human beings live there.

The Speaker (Hon. Ethuro): Order, Sen. Adan. It is statement time. Do not use this as excuse to debate.

Sen. Adan: Mr. Speaker, Sir, finally, the other concern is the issue of compensation. Most of our people do not know how compensation is done. I wish the Ministry could build the capacity of the locals to ensure that when there are such dangers, they can follow up compensation stages.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I would like to make a further inquiry. Isiolo County is one of the counties which I thought enjoy what the President said; the last mile connectivity. If what has been raised is true, then could the Chairperson inform us how many institutions have not been connected to the electricity grid in that county and neighbouring counties?

Sen. Mwakulegwa: Mr. Speaker, Sir, regarding Sen. Adan's concern about accessing the areas, I said that rainy season and insecurity are the main challenges. I have also explained the measures being undertaken to make the areas accessible.

Regarding compensation, Kenya Power has appointed County Business Managers in all the counties. They have full complements that are able to access and reach the customers. If the people do not know how to pursue their claims, I urge my colleagues to sensitize the public during public *barazas*. If they have any damage arising from electrical fault, they can approach the County Kenya Power offices. They will be guided on how to fill the forms. They will be assisted to get compensation.

Sen. (Prof.) Lonyangapuo has requested for information on institutions that have not been supplied with electricity. This is a new request. I will send it to him personally. I am not in a position to give him details now because this was not part of the statement requested.

The Speaker (Hon. Ethuro): Well done, Chairperson.
Next statement. That is Statement (d). Proceed, Sen. Kagwe.

PLANS BY THE GOVERNMENT TO BAN *MITUMBA* TRADE

Sen. Kagwe: Mr. Speaker, Sir, the response to the Statement was delegated to me by the Chairperson. We have it but it is not signed. Also, there is nothing showing ownership. Therefore, as a Committee we have decided to summon the Cabinet Secretary concerned to respond to those issues, not only to the Committee but to the whole House. With your indulgence, we would like to be given at least two weeks so that we can summon the Cabinet Secretary to come to the House and explain.

Sen. Khaniri: Mr. Speaker, Sir, I agree with my good friend, the Senator for Nyeri. This is a very important matter. If that is the decision of the Committee, I have no problem. I would wish to be informed when the Cabinet Secretary is coming so that I can attend that session as a friend of the Committee.

The Speaker (Hon. Ethuro): It is so ordered. Next statement!

Where is the Chairperson of the Standing Committee on Land and Natural Resources?

Sen. Kivuti: Mr. Speaker, Sir, following the request for a statement on weather forecasts made by the meteorological department---

The Speaker (Hon. Ethuro): Order, Sen. Kivuti, Chairperson of the Committee on Land and Natural Resources. I do not see any weather forecasting in statement 2(e).

Sen. Kivuti: Mr. Speaker, Sir, I rise to respond to the request for a ministerial statement on validity of weather forecasts by the Kenya Meteorological Department as requested by Sen. Okong'o.

The Speaker (Hon. Ethuro): Sen. Khaniri, do you wish to assist your Chairperson?

Sen. Kivuti: Mr. Speaker, Sir, I have two of them. I was responding to 2(f) instead of 2(e).

The Speaker (Hon. Ethuro): Order, Senator! I repeated and made reference to statement 2(e) twice. You ignored twice and attempted to respond to statement 2(g) twice. You can conclude the rest.

COMPENSATION OF LAND OWNERS ALONG THE
STANDARD GAUGE RAILWAY (SGR) ROUTE

Sen. Khaniri: Mr. Speaker, Sir, I understand why my Chairman is rushing to the other one. We do not have the answer to this one. I have a letter that we wrote to the Ministry.

The Speaker (Hon. Ethuro): Order, Senator! Since the one who requested the Statement is not here, those are unnecessary details. Let us go to Statement 2(g); beloved of the Chairperson. Sorry, it is statement 2(f).

Sen. Kivuti: Mr. Speaker, Sir, you also made an error this time.

The Speaker Sen. (Ethuro): Maybe we need some doctors to determine whether your errors are infectious.

(Laughter)

CREDIBILITY OF WEATHER FORECASTS ISSUED
BY KENYA METEOROLOGICAL DEPARTMENT

Sen. Kivuti: Mr. Speaker, Sir, following the request for a statement on the weather forecast by Sen. Okong'o, the Committee has received a response to the request from the Ministry of Environment and Natural Resources and going straight to the statements sought, the answer to question one which was: the methodologies used by the Kenya Meteorological Department (KMD) to get weather forecast, the department issues seamless weather forecasts using various methodologies depending on the sector.

The temporal and spatial scales: these include, the following time scales:

- (a) Now casting forecasts which are for two to six hours.
- (b) Daily forecasts which are forecast 24 hours.
- (c) Weekly forecasts which are for 7 days.
- (d) Monthly forecasts which are for 30 days.
- (e) Seasonal forecasts which are for 90 days and
- (f) Climatic change scenarios up to 50 years.

There are other forecasts like terminal area forecast, route forecast, significant meteorological information, air craft takeoff and landing forecasts, and all for aviation industry. There are also marine forecasts, agro-meteorological forecasts for agriculture and food security, hydro-meteorological forecasts for flood forecast, forecasting the water resources and energy sectors, health malaria forecast, severe weather events, including forecast for military operations.

On question two, the Senator sought to know whether the methodology used conforms to the established global standards. Kenya ratified the World Meteorological Organisation (WMO) convention on 2nd June, 1964. As such, the forecasting methodologies used by KMD are as per the recommended best practices by WMO.

On question three, whether the Meteorological Department is well equipped, with adequate infrastructure and manpower to give reliable forecasts, the department would like to thank the government for equipping it with modern equipment and plants, forecast observing, transmitting, processing, archiving and disseminating weather and climatic information including well-trained manpower.

The KMD infrastructure consists of the following:

- (a) Observational systems and networks, which are inclusive of surface observation systems, consisting of 39 manned stations, comprising 24 hour synoptic weather and 14 agro-meteorological stations, 72 automatic weather stations, 17 hydro-meteorological automatic weather stations, three airport weather observation systems, two automatic weather fix buoys, over 1000 voluntary observing rainfall stations, four tidal gauge stations, one ozone profile measuring system, one global atmospheric watch

station, two urban pollution stations, one mobile air pollution monitoring laboratory and four seismic stations.

They also have air observation system which consists of one upper air radiozod station, and ozonezod station. They also have a space-based observation system, consisting of geo-stationary meteor-sat second generation and polar-orbiting meteor-top satellite receiving stations.

(b) The telecommunication systems and networks consisting of the National Telecommunication Networks for Global System Forecast Mobile Communications (GSM) and General Packet Radio Service (GPRS) and internet technology.

KMD has and continues to fulfill its regional responsibility and holds the WMO regional communications hub for receiving and disseminating data and products from the neighbouring countries.

(c) KMD has high performance computing systems for processing, analyzing and forecasting systems, including integrated meteorological information system forecast running regional models such as forecasting system, cluster computer system and running climate change scenarios, projection and flood diagnostic and forecast system In the Nzoia River Basin.

(d) They have a database management system and archiving.

(e) They have a product and information dissemination system and;

(f) They have a very well-trained human capital.

Mr. Speaker, Sir, as per question four, the credibility of the forecast issued by the Meteorological Department including the *El Nino* rains forecast; a variety of stakeholders analyze KMD forecasts for their socio-economic benefits to minimize the negative impacts of extreme weather. For instance, the aviation industry depends heavily on aviation weather forecasts and information forecasts for their operations, planning and safety of their navigation, without which Notice to Airmen (NOTAM) will be issued to air operators.

The meteorological forecasts are used by various Multi-Departmental Agencies (MDAs) for decision-making and planning. For example, in 2001, the government imported electric power generators to supplement hydro-electricity, The National Disaster Operations Center and in 2015, the October to December seasonal forecasts issued on 1st November indicated that most parts of the country would receive enhanced rainfall which has come to be.

The KMD also has a national disaster operations center and, as a result of forecasts issued in September 2015, the *El Nino* Disaster Operations Center (ENDOC) was able to prepare informed plans for co-ordination of activities, fore tested their existing plans, developed and shared *El Nino* preparedness, mobilized funds for *El Nino*.

Without going into very many explanations, there are very many positive impacts for the Meteorological Department output. I welcome any comments from this answer.

(Interruption of Statements)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM KENYATTA UNIVERSITY

The Speaker (Hon. Ethuro): Let me acknowledge the presence of a delegation from Kenyatta University in the Speaker's Gallery. I request each member of the delegation to stand when called out so that they may be acknowledged as per the Senate tradition.

Prof. Paul K. Wainaina, Acting Vice-Chancellor,
Mr. Stephen M. Mboroki and Mr. Charles Musyimi.

On behalf of the Senate and on my own behalf, I welcome you to the Senate and wish you well.

(Applause)

Sen. Okong'o.

(Resumption of Statements)

Sen. Okong'o: Mr. Speaker, Sir, let me thank the Chair for belatedly bringing this answer which I sought in February this year. At that time, there were a lot of inconsistencies in weather patterns. I have heard the Chairman say that the weather forecast department has been accurate which is not true because we still have inconsistencies. What I need to be clarified on is about the modern equipment procured by the department for the last ten years.

The Speaker (Hon. Ethuro): The Chairman, could you respond to this?

Sen. Kivuti: Mr. Speaker, Sir, I actually took that question very seriously and that is why I did not jump any part of the answer to question three which sought to know what equipment the meteorological department has. I will not read all of them again because I have gone through more than two pages. They are inclusive of observational systems and networks which I just read a few minutes ago. Service observation systems, upper layer observation systems, space based observation systems, telecommunication systems and networks, data processing analysis and forecasting systems, data base management systems, conduct and information dissemination systems and human capital. I do not think I need to repeat that.

The Speaker (Hon. Ethuro): You do not need to repeat.

Next statement by the Senate Majority Leader.

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

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

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 14TH JUNE, 2016

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, mine is to give the Statement on the business for next week.

On Tuesday next week, there will be a Rules and Business Committee meeting at 12.00 p.m.

On Tuesday 14th June, 2016, we have a visiting dignitary addressing the house at 2.30 p.m. As you are aware hon. Senators, Standing order No. 25 allows the Speaker of the Senate in consultation with the Senate Majority Leader and the Senate Minority Leader to allow a visiting dignitary to address the Senate from time to time. Under that Standing Order, the house leadership has invited the retiring Chief Justice of the Republic of Kenya, Dr. Willy Mutunga, Senior Counsel and President of the Supreme Court, to come and address us as he retires from that very important office in our country. You are requested to come on time.

The procedure used under Standing Order 25 is the same procedure that is used under Standing Order 23 with regard to the address by the President. In other words, Standing Order 23 applies *Mutatis Mutandis*, that is to say that the Chief Justice will be heard in silence without comment or question. Therefore our colleagues who are known for---

The Temporary Speaker (Sen Mositet): Does it mean that the Speaker will not make any comment?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, he will be involved in the listening part, only the hearing part. We should listen to the Chief Justice in silence without question or comment. Those who belong to the “*firimbi*” movement, are hereby warned not to repeat the fiasco we saw on the other side during the address by the President in April.

Mr. Speaker, Sir, allow me to welcome all senators for that important address. We have discussed in the Rules and Business Committee and we think we should use Standing Order 25 a little more. Suggestions have been put across for example--- Though it has to be discussed and approved by the House leadership, I see no reason as to why the retired presidents of this country like former President Daniel Toroitich arap Moi, who sat in this chamber in 1957 as a Member of the Legislative Council (LEGCO), should not come, if he has the time to just give us his views, whatever those views are, so that we can chronicle the journey of our country including the good and the bad. The former President Hon. Mwai Kibaki, who himself was the third president of Kenya - I see no reason why he should not be invited to come and share with us what he considers as his achievements and challenges now that he is out of office. I think this is a very good thing. We should have more of these dignitaries coming to address this House.

On the same Tuesday, we shall continue with the business after the address by the Chief Justice because I do not think he will take the whole afternoon.

Allow me to note that the same will continue on Wednesday 15th and Thursday 16th June, 2016. We have very many urgent Bills which have constitutional deadlines. I want to thank Senators because we have done commendably well in the last two weeks.

We have managed to push a number of Bills through Second Reading and pushed one Bill which was very urgent, the Anti-Doping Bill, to finality. With regard to the constitutional Bills or those with constitutional deadlines, we have about nine of them. We need to work faster and smarter. I therefore want to encourage full attendance next week.

It should also be noted that in accordance with our calendar, we have a short break of about one week from Thursday for about ten days. That will eat into our time. I am not saying recess is not important. I am just trying to make a case of why we must work very hard on the Bills that have constitutional deadlines before another crisis comes. As Senators maybe are aware, the last extension that was given on these Bills is final. We even have a longer recess, the usual longer recess at the end of July. This means that we shall be away the entire of August and half of September. So to avoid inconveniencing Senators who had scheduled private or county activities during our recesses, let us work maximally when we are on session. I hope we will do a few more Bills next week. I do not want to talk more than I have done. I now lay the Statement on the business of next week on the Table of the Senate.

(Sen. (Prof.) Kindiki laid the document on the Table)

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

BILLS

Second Readings

THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS
SUBJECT TO RATIFICATION) BILL (NATIONAL ASSEMBLY
BILL NO. 54 OF 2015)

(Sen. (Prof.) Kindiki on 2.6.2016)

(Resumption of Debate interrupted on 8.6.2016)

THE ORDER OF PRECEDENCE AND TITLES BILL
(NATIONAL ASSEMBLY BILL NO. 11 OF 2014)

(Sen. (Prof.) Kindiki on 8.6.2016)

(Resumption of Debate interrupted on 8.6.2016)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, for Order No. 8 and Order No.9, we do not have the numbers and I request that you defer the putting of the question to the next sitting day under Standing Order No.54(3).

The Temporary Speaker (Sen Mositet): So we defer Order 8 and Order 9.

(Bills deferred)

Next Order!

Second Reading

THE ENERGY BILL (NATIONAL ASSEMBLY
BILL NO. 50 OF 2015)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to move that the Energy Bill (National Assembly Bill No. 50 of 2015) be read a Second Time. The Energy Bill is one of the Bills that have a deadline under our Constitution; that it must be enacted by 27th August, this year. As I have said when I was giving the weekly statement, the extension that was given to these Bills last year is final and non-extendable.

Mr. Temporary Speaker, Sir, what this Bill does is to; first, consolidate all the laws relating to energy into one piece of legislation. Secondly, it will align the issues around energy to the Constitution of Kenya of 2010, noting in particular, the sharing of responsibilities between the national Government and---

*(Sen. Orengo entered the Chamber
and consulted with Sen. Hassan)*

Mr. Temporary Speaker, Sir, my senior, Sen. Orengo is---

The Temporary Speaker (Sen. Mositet): Order! Sen. Orengo. The House was very silent until you came in.

The Senate Majority Leader (Sen. (Prof.) Kindiki): I know that for the past two weeks, he has been engaged in activities outside this House. So, he needs to align himself to the activities of the Senate.

Mr. Temporary Speaker, Sir, this Bill consolidates the law on energy. Secondly, it aligns the responsibilities of national and county governments with regard to energy with the new Constitution of Kenya of 2010. I do not know whether it is still new but it used to be new. I think it is getting older but it remains the Constitution of Kenya, 2010.

Mr. Temporary Speaker, Sir, allow me, by way of this Second Reading debate, move this Bill by highlighting some of the key provisions of this Bill. In Clause 3, the Bill describes itself as the framework law on energy. In other words, this is the Bill that will apply. In the event of any conflict between this Bill and any other law on matters of energy, the Energy Bill will prevail. It is a framework law, just the same way, in matters of environment, The Environmental Management and Coordination Act supersedes any other sectoral statutes that touch on aspects of the environment.

I also want to highlight Part Two which comprises of Clauses 4 to 8. I want to mention that the CS is under obligation to develop a national integrated energy policy which must be reviewed every five years. The same Part requires the CS to publish a report on implementation of the national integrated energy plan every year.

In Clause 7, the Bill proposes an obligation on the part of the Government of Kenya to ensure the provision of energy in all areas of the Republic of Kenya. That is a very important provision, so that we do not have skewed provision of services that we have seen in the past in this country that has denied many areas in this country certain economic drivers like energy.

Mr. Temporary Speaker, Sir, Part Three is quite extensive. Clauses 9 all the way to 71 establish a number of energy sector institutions. The first one is in Clause 9. It establishes the Energy Regulatory Commission (ERC) which is the regulator in this industry where there is licensing to be done. It is the ERC which is supposed to do that. It is composed of the leadership and governance structure of the ERC, *et cetera*.

Allow me also to highlight Clause 24 that provides for administrative justice. If the ERC makes a decision, whoever is unhappy with the decision may appeal to the Energy and Petroleum Tribunal (EPT) which is established under Clause 26. So, you have the tribunal and the commission.

There is also the Electrification and Renewable Energy Corporation (REREC) established under Clause 42 and it has two functions. The first one is to promote electrification of rural areas which is now currently being undertaken by the Rural Electrification Authority (REA). More than that, the mandate has been enlarged so that that corporation will also deal with renewable energy. For laymen like Hassan Omar, renewable energy refers to non-fossil energy. That is energy that is not from fossil or hydrocarbons, if you like. This is energy generated from natural non-depleting resources such as solar, wind, biomass---

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

The Temporary Speaker (Sen. Mositet): Order, Senate Majority Leader. What is your point of order, Sen. Hassan?

Sen. Hassan: Mr. Temporary Speaker, Sir, did you notice the almost derogatory way the Senate Majority Leader singled me out casually by saying Hassan Omar, without due reference to what was given to me by the people of Mombasa as “en. Hassan Omar”? He went ahead to explain to me what renewable energy is. I am a proponent of renewable energy. After all, there is Sen. Kanainza, the Senator for Uasin Gishu, the Senator for Makueni and Sen. (Dr.) Zani. Why would he think that I am the one who needed some specific elaboration on renewable energy?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, first and foremost, I apologise unreservedly to the Senator for Mombasa County, Sen. Hassan Omar Hassan, for not referring to him as such. It was inadvertent but not intentional. Secondly and finally, I noted that Sen. Hassan Omar Sarai has not denied that he is a layman. My fear was that he was contesting that he is a lay person. What he has asked is why I singled him out because I know he is a layman. The other colleagues I see here are quite fluent on matters energy. The last time I checked, Sen. Hassan is more at home with other topics which I do not want to list here. The last time I checked, energy is not one of them and I am not aware that Sen. Hassan has gone back to school since we joined the Senate in 2013.

Mr. Temporary Speaker, Sir, allow me to say that that the REREC will make sure that rural areas access electricity and also ensure that renewable energy is promoted. I

have described this as non-fossil energy generated from natural non-depleting resources such as solar, wind, biomass, geothermal and hydro energy, including oceanic and tidal energy *et cetera*.

Under the same Part Three, we have nuclear power energy and petroleum agencies established in this country. We know that we have been aspiring to generate nuclear energy. So, that agency is established to be the implementing agency of nuclear energy programmes in the country.

Part Four deals with Clauses 72 to 92. It talks about renewable sources of energy in details. Because of time I just want to say that renewable energy resources under or in any land – like the ones I have explained – are vested with the national Government, except certain rights that may be conferred on other persons by written law.

I think that is a universal Clause that you will find in many jurisdictions around the world, so that people do not lay claim to the ownership of the wind, solar among others that are found in certain areas. However people might be licensed to operate, for instance, wind power stations and similar installations. Under Clause 75, the Renewable Energy Advisory Committee is established.

Part (v) is generally about mid-stream and downstream petroleum activities and basically about licensing of all petroleum activities, also known as mid-stream and downstream activities. For simplicity purposes, this includes how to license and regulate people who want to deal in oil refinery undertakings, imports and exports, among others. These are industry regulation aspects which are taken care of in that section.

The Energy Bill is a consolidation of the applicable law on energy. It also aligns our energy law to the Constitution of Kenya particularly by considering certain aspects related to energy within the county government. I think it is energy reticulation which is in county governments.

As the Committee looks at this Bill, they should tell the Senate which protects the interest of counties and county governments, by the time the Bill goes to the Committee of the whole, whether there are certain aspects that need to be amended to ensure we respect the functions of two levels of governments in matters that relate to energy.

With those many remarks, I beg to move and request my younger brother, the Senator for Makueni, Sen. Mutula Kilonzo Jnr. to second this Motion of a Bill. It is a Motion to move a Bill.

I beg to move.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, I don't know whether I am supposed to refer to the Senate Majority Leader, as my older brother now that he has referred to me as his younger brother.

I rise to support The Energy Bill (National Assembly Bill No.50 of 2015) which is quite large and contains several matters. Just as the Senate Majority Leader said, it is important that the Committee scrutinizes this Bill particularly on functions of counties. I am very impressed and I must say that we are making progress as Parliament in terms of drafting laws that concern county governments. This is because the drafters of this Bill did not hesitate to mention not only in text, but also involving the Council of Governors in the new proposed Energy Regulation Commission set up under clause nine of the Bill.

Mr. Temporary Speaker, Sir, to that extent alone, I feel that we have made progress. One of the things that must be said here is that the issue of energy is very important to this nation because it is the highest factor in terms of costs in industry and agriculture. If there is one sector that must be managed properly both at national and county government level, it is the energy sector. If the intention---, and I hope the Committee will scrutinize that energy in whatever sense, whether renewable, wind energy, hydro-electric power energy, nuclear energy or any other form of energy - is not to make energy cost cheaper, then we are not helping the common *mwananchi*.

Mr. Temporary Speaker, Sir, in clause 171, you will find Rural Electrification and there is a fund. This morning we were discussing the Equalization Fund with the Cabinet Secretary for National Treasury and one of the things that have led to marginalization in this country is electricity. That is why Article 204 of the Constitution identifies electricity as one of those things that the Equalization Fund attempts to equalize. The efforts that I see with the Jubilee Government in attempting to have all schools connected to electricity, we should be saying that every homestead should have a switch. Every homestead should have an electricity switch; just like the one I saw His Excellency the President switching on in a place I cannot remember, which to me appeared like an informal structure. That is what every Kenyan should have.

The minimum standard is that every school must have electricity. However, since it is a challenge and a big problem, it has been revised that every school must have a connection or solar energy. I know that although solar energy is a substitute for electricity, the correct position is that what rural electrification programme is doing in our schools is that they are going to abandon those solar projects because it is very expensive to maintain them.

It is very expensive for primary schools in the rural areas to maintain the solar power set up, for example in your county of Kajiado. This is because even the middle class would find it very difficult to maintain the panels, the batteries and so on. The intention of having rural electrification fund should be that every market or every health centre in this Republic to have electricity connection.

Mr. Temporary Speaker, Sir, there is also what they are calling the tribunal. The tribunal is called Energy and Petroleum Tribunal which excites my mind for good reasons. If this tribunal was in existence in the previous laws or in the law that we are going to repeal, the people of Thange and Kibwezi where there was a petroleum spill, would have had a good avenue to file a suit in this tribunal for compensation for over 300,000 litres of petroleum oil that leaked into Thange in Kibwezi East Constituency.

Mr. Temporary Speaker, Sir, we are all aware of the problems that are arising out of accidents arising out of problems with the energy sector, transformers and so on. These are captured here in full including the jurisdiction and innovation which I support it in its entirety

Let me go Baringo County, Naivasha and other parts of Nakuru County. These places are famous for water geysers which are a tourist attraction site but we have not fully exploited it. It is a tourist attraction. Why we have not exploited these geysers for purposes of reticulation of energy or source of energy, is something that this country should not be proud of.

Mr. Temporary Speaker, Sir, I am aware that at some point we were importing power from our neighbours. I am not sure up to what extent Kenya is self-sufficient in terms of energy. This is also a source of income for our neighbours. We take pride in the dams that we create like the Masinga Dam and others. We must assess whether or not this is one of those avenues that this country and the Government must put a lot of emphasis in terms of ensuring that we can get cheap energy.

I insist that we had the Agrarian Revolution and now we have the revolution of energy. Energy can be available to do the simplest of things. If this country must achieve Vision 2030 in terms of industry – that is where we lack – we are soon rather than later, because of the cost of energy, going to import everything. We will import toothpastes, tooth brushes, clothes, the water we drink, beds and bedsheets that we sleep on and everything. This is because the cost of doing business in this country is too high and we must say so. A Bill like this that does not provide cushioning for industries in terms of energy so that they are able to generate income and, therefore, have tax holidays, will not be in the best interest of this Republic.

Mr. Temporary Speaker, Sir, Kitui County takes pride in the coal deposits. Those deposits have not been exploited for various reasons. Partly is because of corruption, disagreements and misunderstandings between various players in the sector. However, the bottom line is that Kitui County is one of those counties that are recognised under the policy of marginalization by the Commission on Revenue Allocation as one that should benefit from the Equalization Fund because it is marginalized. Yet, one of those items that Kitui County must get as a marginalized county or area as defined in Article 204 is energy, and yet it has possibly the largest deposits of coal.

Strictly speaking, Kitui County ought to generate income, but first, generate power for themselves and then export to neighbouring counties like Makueni, where half of it shuts down when the sun goes down. It is now 50 years after Independence, there are people who still think that switching on electricity is a miracle in the Bible.

If we exploit the proposals in this Bill and activate the fund that is particularly put here for rural electrification and help counties in terms of electricity generation ---If there was one particular section of the functions of county governments where we should allow counties to enter into public-private partnerships, it is the function of distributing or providing energy to our people.

Mr. Temporary Speaker, Sir, the Fifth Schedule has a very interesting Clause – distribution of functions between national and county governments, as an extension of Section 250. I must say that for the first time – that is why I am saying that we have come a long way as Parliament – we have legislated that both national and county governments must have an energy policy plan. Therefore, county governments should be advised that when they do the next County Integrated Development Plans (CIDPs), this law requires that they will have a plan on how they can generate electricity.

In the Fifth Schedule, Section 250 of this Bill, we have provided a nice way of how counties and the national Government must work together. This is because if there is one of those things that the national Government ought to cede ground in terms of providing capacity, formula and resource, it is the function of energy. Therefore, I am happy to support this Bill. I think that the Committee should expedite the Bill so that it

becomes the hallmark of this Senate and something that we can talk about and say that we not only participate in legislation but we are now talking about the bottom of the pyramid, that place where the people who elected us should be taken care of both at the national and county government level.

Let us say that gone are the days that people will see electricity in newspapers or other forums. Every home in this Republic should have a television set like they do in Bombay where in every slum, the bare minimum is a television set; even that is a luxury in Kenya, while in other places where they have an equivalent of slums – although this term appears derogatory – but even then, they have those basic facilities.

I support.

(Question proposed)

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, let me start by observing that this is a very important Bill. In a very innovative and systematic way, it brings across the various sectors and tries to create order by mainly creating various regulatory bodies. For example, starting with a commission that has quite a bit of power to ensure that there is order in the sector. It looks at issues like licences and, indeed, also co-opts the role of county governments to ensure that it is done in a proper way. This Energy Bill is critical because I think it will bring order. Therefore, I stand to support it.

Let me highlight some of the critical issues which might be important as we think and debate this Bill. The first is that the Cabinet Secretary will develop and publish a National Energy Policy, which is critical. I think many times we move on very quickly to make legislative proposals without looking at the general policy framework. I was really happy when I looked at this Bill and saw that there has to be a published energy policy.

Better still, this policy in terms of the implementation and its upkeep, will be through a report that will be shared annually to Parliament, three months before the end of the year. So, this annual published report will also give direction as to how far the implementation of a policy has gone. I think that is a good idea as well because it helps us to link theory and the actual thing. So, policy being theory and the actual implementation to see how far it will go.

The Cabinet Secretary will also develop, publish and review an energy plan in respect to the midstream and downstream petroleum, coal, renewable energy and electricity to ensure reliable energy services. Apart from having a general national plan that will be critical, as Sen. Mutula Kilonzo Jnr. Said, this plan will be cascaded. Again, if you look at the areas which it touches on like the key energy resources like coal and electricity, we have a lot of reserve for renewable energy that can be utilized. With the right policy and drive from the Cabinet Secretary, we should be able to get that.

Mr. Temporary Speaker, Sir, it is also expected that County Energy Plans should be made and subjected to the Cabinet Secretary. I think these plans need to be cascaded. To avoid disorder in this sector, it will be important that maybe we start with the bigger policy which is the national plan and then move to the county plans but also give guidelines so that those county plans are directly cascaded from the main national plan.

That way, people will move and read from the same page and there will be no contradictions.

It makes it easy and possible for cascading, implementation and for those plans to take place. Indeed, we should look at the County Integrated Development Plans (CIDs). It is also important that we empower the county assemblies especially the Committees that deal with natural resources so that they are able to do proper mapping of the resources that they have within their counties. After they have done the mapping, they should try to find a status quo report of how far they have gone in terms of exploitation of those resources. It will be unfortunate if we leave out the MCAs and members of the communities in this process. They should be part and parcel of those specific plans.

Under various Government obligations, one obligation that is critical is that, at the end of the day, we should provide affordable energy services. Long gone are the days when people were in darkness in some of the regions while others were enjoying the light. We have the bright light theory where people come to town to enjoy the light. Later on, in the Bill, there is emphasis on rural electrification and processes to ensure that it becomes real.

There has been progress of up to 20 per cent of work in the rural areas but we still have other rural areas that have a problem in installing electricity. It does not take rocket scientist to decipher the co-relation between certain energy sources being affordable and available and development. We will have problems if we are not able to quickly use the energy, the light, factories and manufacturing to catapult ourselves into development. This will mean ensuring that the manufacturing sector is taken care of. It will also ensure that we go into a more mechanized agricultural system in the areas.

Once we are able to put these all together, we will see the changes that have taken place just like in the introduction of technology in agriculture which has an implication on food security. It has an implication for general development and the way forward. Having affordable energy services spread as evenly and as equally as possible is something encouraging so that we do not have certain areas and regions moving faster than others.

This Bill also establishes a regulatory commission which will regulate the generation, importation and the distribution of various resources including crude oil and other energy resources. That particular commission will protect the interests of consumers, investors and other stakeholders. They have to be taken care of so that the interests of the people who are investing or consuming are known and are well articulated.

It also aims to develop guidelines and applicable treaties, conventions and protocols affecting the energy sector in consultation with statutory authorities, except those relating to nuclear energy. The part of ensuring that all these provisions and guidelines are given within a framework of the treaties and conventions that exists is critical. There is the issue of ensuring that a level of coordination exists so that as we implement national energy, there is a sense of efficiency, conservation and the action plan. I have also talked about bringing in the various stake holders for the various considerations and deliberations.

Lastly, but important, is ensuring, in collaboration with the Kenya Bureau of Standards (KEBS), that only energy and cost effective appliances and equipment are imported into the country. This will protect the citizens so that they are not exploited. The person who will take charge of this sector should not bring in equipment that is expensive which Kenyans will use and end up spending more money at the end of the day, than they ought to. A lot of work needs to be done at the KEBS to ensure that it happens in such a way that can guide us to a position where we can utilize the energies well.

There is also the creation of an Energy and Petroleum Tribunal. From its composition, it will look at matters arising and put in place a dispute resolution mechanism. The other issue of rural electrification and renewable energy will need to be looked at to oversee and ensure that implementation of rural electrification is done in a progressive way. They should look for additional funds that are needed to ensure that all the renewable energy costs are catered for. This will develop and promote the use of renewable energy and its technology specifically bio gas, bio diesel, bio ethanol, charcoal, fuel, wind, and many others. The Bill covers a broad span of energy sources.

Part 4 deals with renewable energy and targets all exploited and unexploited renewable energy. Apart from the resources that we have, we should look at others that have not been exploited appropriately. That is where we have a weak link. We have the ones that are exploited and we also have many more that have not been exploited appropriately. This needs to happen. We should be able to prepare a renewable energy resource area so that we know from a specific area that the resource will be available.

We should also formulate a national strategy for coordinating research in renewable energy. This is critical because we cannot have an output without the necessary research which equals to funds and expertise. We can team up with the county governments to ensure that the young people in certain areas where there are specific energy resources are equipped right from the beginning. They should take an interest to pursue and go for the right levels of education and be able to conduct that research and feel part and parcel of the community and participate effectively. This Bill also speaks to the aspect of coordinating research in renewable energy which needs to be emphasised on.

Mr. Temporary Speaker, Sir, lastly is the issue of creating a framework for efficient and sustainable production of solar, wind, geothermal and charcoal. There should be a sustainable production of whatever someone is using that can be utilized over and over again because this is a source of livelihood for many people.

As I alluded to earlier, the Bill, at various sections, deals with issuance of licences and compliance for the specific licences. One of the critical issues that I have picked from the Bill is that in areas of issuance of licences, reference is always made to other Acts that are already in existence to ensure that there is no contradiction or criss-crossing of various Acts. Licences are to comply across various Acts. For example, it should not contradict the Health and Safety Act.

The issue of payment of fees for the various licences has been picked, explained and expounded on. Clear policy guidelines have also been put in place in terms of how to go about getting the licences. Also, putting into consideration and remembering the county government's laws that are already in place to ensure that they are not

contradicting. The Bill is extensive and has addressed most of the issues which are relevant in the various sectors.

Mr. Temporary Speaker, Sir, I want to end by emphasizing what Sen. Mutula Kilonzo Jnr. emphasized as he was seconding this Bill. The involvement of county governments will be critical. Therefore, it is important to think about the strategy for engagement of those counties. If it is a strategy across capacity building, let it begin in advance. This is what the Ministry should think about. If it is capacity in terms of coming up with the right legislation and laws, it becomes critical. In the long run, it will support the success of the Energy Bill.

Mr. Temporary Speaker, Sir, I support.

The Temporary Speaker (Sen. Mositet): Hon. Senators, I now call upon the Mover to reply.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I do not wish to say any more than what I have said. However, given that we do not have enough Senators to proceed with a Division, I request you direct that the putting of the question be deferred to next week under Standing Order No.54(3).

The Temporary Speaker (Sen. Mositet): I order the putting of the question to be deferred to next week when we will have the numbers.

(Putting of the question on the Bill deferred)

Next order!

Second Reading

THE ACCESS TO INFORMATION BILL (NATIONAL ASSEMBLY BILL NO. 36 OF 2015)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move that The Access to Information Bill (National Assembly Bill No. 36 of 2015) be read a Second Time.

Just like the Energy Bill, this Bill must be enacted by both Houses of Parliament latest, 27th August, 2016. This Bill gives effect to Article 35 of the Constitution of Kenya on access to information. Other than that, it confers on the Commission on Administrative Justice the oversight and enforcement responsibilities with regard to access to information by the people of Kenya.

Mr. Temporary Speaker, Sir, allow me to highlight the ingredients of Article 35 so that we understand what this Bill seeks to do. Article 35 gives the right to access of information to any person. Let me correct myself. It gives this right to every citizen. The choice of the word “citizen” is very deliberate. I was a professor of international law, especially human rights law. Sometimes in the Constitution or the bill of rights reference is made to “every person.” In other places, the same Bill of rights makes reference to “every citizen.” It is because there are certain rights that can be enjoyed by any person; natural or juridical person. Juridical person is like a corporation or company which is a person in law.

When you see the Constitution or Bill of rights use the word, “citizen”, it means those rights specifically can only be enjoyed by the citizens of the Republic of Kenya. For example, the right to run for office is in the Constitution but it is not for every person, it is for every citizen of Kenya. I just wanted to highlight that this is one of the rights that is reserved to citizens of Kenya. Article 35 states:-

(1) Every citizen has the right of access to—

(a) information held by the State; and

(b) information held by another person and required for the exercise or protection of any right or fundamental freedom.

(2) Every person has the right to the correction or deletion of untrue or misleading information that affects the person.

(3) The State shall publish and publicise any important information affecting the nation.

In Article 35, there are two categories; the same right but in terms of beneficiaries, there is a difference. The right to access information is the right of citizens of Kenya but the right to correct erroneous information that exist is the right of any person. It does not have to be a citizen. If for example, there is a person who is not even a citizen and there is information held by a public agency for example, the Criminal Investigations Department (CID), the court, judicial or justice system has a record showing that person has ever been convicted of an offence and it is not true, that person has a right for that information to be deleted and corrected whether or not they are Kenyans.

Therefore, there is a difference between the right of asking for information which is for Kenyans and the right of correcting information which is not true which is the right of any person. Having said that, this Bill states that, that right will be enjoyed by the person irrespective of the reason that person gives for seeking the information. In other words, a person cannot be denied access to information held by the State simply because the reason they have given to access that information is this or that way. The reason notwithstanding, they have a right to get that information.

Secondly, Clause 4 states that it is immaterial what the views of the public agency that is holding that information has about why the person is asking for information. In other words, it is immaterial whether in the eyes of the public agency holding the information, the information should be given or not or whether the reason for which the information is sought is right or wrong. It does not matter.

Mr. Temporary Speaker, Sir, I would also like to highlight Clause 6 on the limitation of this right. It refers to certain limitations. It is quite an extensive provision but allow me to say the following. Rights are not absolute. They can be limited. There is a general provision in Article 24 of our Constitution in the Bill of Rights that says rights may be limited. So is the right to information. It is not absolute. It may be limited. However, the limitation of rights is also not arbitrary. You cannot say this right will be limited anyhow or as long the State think they should limit the right.

Under Article 24 of the Constitution, human rights can only be limited by law. There must be a law. Secondly, rights can only be limited to an extent which is reasonable and justifiable in an open and democratic society. You cannot limit rights in

an arbitrary, capricious, malevolent or undemocratic manner. There must be some democratic justification why you are limiting that right.

Thirdly, under Article 24 of the Constitution, rights can only be limited, taking into consideration a number of factors such as the nature of that right, purpose of the limitation and the rights of other people. Let me give two examples to simplify what I mean. You can limit human rights. My friends from the party where Sen. Mutula Kilonzo Jnr. and Sen. (Dr.) Zani come from tell us that Kenyans have a right to demonstrate, assemble and get information but they do not tell us those rights are limited under Article 24. The law limiting the rights is not undemocratic, it is reasonable in a democratic society. Thirdly, so long as that limitation is for the protection of the rights of other people.

When I used to teach international law in the topic of human rights, we used to say, “Your rights end where my nose starts.” Even if we assume you have rights to do whatever you want, you cannot go exercising that right once you reach where my nose starts. That is where your rights end. You cannot trample on the rights of others as we have seen the destruction of property in this country by people ostensibly purporting to demonstrate over certain political rights. There are limitations.

In the context of access to information, the limitation of this right is based on areas of national security. It says, and I think these are very noble and justifiable limitations that, “Issues to do with national security, impeding due process of law, endangering safety, health or life of any person may limit the access to information.” For example, you cannot demand information about my private health from Kenyatta National Hospital which is a public agency. You cannot demand my medical record, because that is against the right to privacy that I enjoy, which is also protected in another part of the Constitution.

Mr. Temporary Speaker, Sir, the other thing that might limit rights are commercial interests or intellectual property rights of a third party, for example, if giving that information is going to jeopardize intellectual property rights of a third party, like a patent, copyright and other intellectual property, there will be a limitation there, and also in professional confidentiality which mainly applies in the practice of medicine and law. For example, you cannot demand information about my client from me as a lawyer. That is confidential information. There is a law that creates that confidentiality, the Advocates Act. The same applies to a medical doctor. The professional oath that they take and even the statutes that regulate the practice of medicine gives them that immunity to protect certain information even if that information is held by a public agency. Those are the limitations.

With regard to military and security concerns, Mr. Temporary Speaker, Sir, information that relates to national security that may not be available in exercise of this right includes: military strategy, covert operations of the military, military capability and capacity or military deployment. The other day, again, I heard our good friends trying to politicize a very savage attack that had taken place outside the borders of Kenya against the soldiers of this country. They were trying to apply political pressure on the Commander-In-Chief of the Kenya Defence Forces, to tell Kenyans how many soldiers had died, how they had died and possibly to give them the video proof of how our

soldiers were killed by the enemy. I asked myself: “In which country do we live?” Did we not see that when a country is under attack from the enemy, you cannot use access to information because it is there in the Constitution, for example, to reveal to the enemy the military capabilities of your country, because that is not in the national interest.

Mr. Temporary Speaker, Sir, when terrorist attacks took place in 2001 in America, up to now, not a single picture of what happened has been released by the US authorities. People just see pictures of smoke and some aircraft striking a building, and that is it. However, we are told horrible things happened. Some people were jumping from 120th Floor of a building to their death. Those are not things you want to access and give the public in the national interest; so are issues to do with military and security operations, intelligence activities or intelligence sources. You cannot expect the national security intelligence service (NSIS) to publicise intelligence activities or the sources of their intelligence. The same applies to foreign government information which has implications on national security.

So I hope as my Seconder seconds this motion, he will speak to the ilk that form the opposition and tell them that there comes a time when certain information cannot be released for good reasons, as required by law, justifiable in an open and democratic society, and also subject to the rights of other people.

Mr. Temporary Speaker, Sir, the chief executive officer (CEO) of any public agency, a parastatal, a Government department, a county government department, is designated in Clause 7 as “the information access officer for the purposes of this Act.” The same Clause says, the CEO may delegate, but the responsibility to ensure that the public access information under this Act is on the CEO of the public agency concerned. They might delegate this responsibility under Clause 7(2) to a particular officer who is under them.

Under Clause 8, an application to access information is supposed to be made in writing and in English or Kiswahili. I am thinking even if it is made in vernacular and translated, I see no reason why that should not be considered, because, for example, some of our citizens are not fluent in English and Kiswahili and they may want certain information, especially now with county governments, a lot of activities and information is held at that level. Therefore, that is something we might want to look at as we go forward.

Mr. Temporary Speaker, Sir, the process of considering or processing the application is time bound under Clause 9. Twenty one days are provided for processing that request. If it is an urgent matter, concerning the life or liberty of a person, for example, somebody is held in a place you do not know, there are suspicions that maybe he is held in a police station without communication, as lawyers say, and that information is required, you cannot wait for twenty one days because that kind of strange or arbitrary arrest could endanger the person’s life, health or liberty. In such cases, under Clause 9, such requests must be processed within 48 hours, but if the situation is complex or requires huge volume of information, within not more than 15 days.

I also want to highlight Clause 12, ‘That no fees should be charged or levied’ in relation to applying to access information, to make sure that as many citizens as possible, are able to access information. Under the same Clause, there is the right of any person

now whether a citizen or not, to correct information that is out there in the public domain or held by a public institution through an application, which is provided for.

Finally, in Clause 14, the decisions that a public institution makes on that application, for example, if they deny the applicant the information or the information given is unsatisfactory, or they refuse to give any decision at all, the citizen or the applicant may ask for a review of that decision by the Commission on Administrative Justice, which has the enforcement mandate to make sure that this Act is respected and adhered to by different state organs at the national and county levels.

Mr. Temporary Speaker, Sir, under Clause 20, the Commission on Administrative Justice is given oversight and enforcement sections of this Act. I do not want to say more, this is a second reading debate.

I beg to move and request the Senator for Makueni, Sen. Mutula Kilonzo Jnr to second this Bill.

The Temporary Speaker (Sen Mositet): Sen. Mutula Kilonzo Jnr., the Majority Leader did not refer to you as his younger brother this time round.

Sen. Mutula Kilonzo Jnr: Mr. Speaker, Sir, we are actually age mates though I look younger than him.

From the beginning, I wish to state that this Bill in its entirety, all folds, all sections, was developed by the Information Communication and Technology Committee of the Senate, though for some reasons it found its way to the National Assembly. I was telling my Chairman that his Bill is now on the floor. Some of these things at times disappoint me, but I am learning through the Senate that I should practice my Christianity a little more.

I want to correct an impression created by the Senate Majority Leader. Chapter Four which is the Bill of Rights which this Bill comes under is one of those very fundamental chapters. If there is victory of this Constitution other than Chapter Four and Chapter Eleven which is on Devolution, there is no other. This is what they taught us about the Bill of Rights, though I do not know what would have happened if the Senate Majority Leader was my teacher.

The Bill of Rights, like fundamental freedoms, is inalienable. You are born and you have it, it is not given. It is not granted, it is inalienable. It is like your hair.

The Temporary Speaker (Sen Mositet): What is your point of order, the Senate Majority Leader?

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Speaker, Sir. I appreciate the brilliance of Sen. Mutula Kilonzo Jnr. but I also accept that he has submitted that he was not fortunate to have been taught by myself. Is it in order for Sen. Mutula Kilonzo Jnr. to mislead this House and Kenyans that rights are absolute? The inalienability of rights, which he is alluding to, the inherency of rights, is subject to the nature of the right. It is in this connection that some rights are derogable such as the right to access information. Some other rights like the right to freedom from torture are non-derogable. You cannot say there is a justification to torture someone. However, access to information, assembly, association are derogable rights, I know what I am talking about.

The Temporary Speaker (Sen Mositet): Sen. Mutula Kilonzo Jnr. your teacher has answered you.

Sen. Mutula Kilonzo Jnr: Mr. Temporary Speaker, Sir, the problem is that with teaching, every time you go to class you carry a marking scheme before you set an exam. I was talking about the principle of fundamental rights, even before I get to the exceptions. This is because the principle of a fundamental right is that it is inherent. It is like a right to life, to speak or to walk. That right is granted to you, it is unalienable.

Regarding the rights of information, unknown to Sen. (Prof.) Kindiki, when the national Government refused to disclose about the attack of our soldiers in Somali, a video was circulated in the internet giving graphic details of how our soldiers were butchered. When the Senate Majority Leader says that the opposition was demanding the information, I am simply saying that in this arena of information, even when the national Government denies that information to Kenyans, somebody somewhere will disclose it. That video is in circulation and it paints a very bad picture about the national Government and why it did not want to disclose what truly happened to our sons who we sent to Somalia.

The Senate Majority Leader was referring to the right to picket and demonstrate under Article 37 in reference to my Coalition and that of Sen. (Dr.) Zani, the CORD. He said that the right to demonstrate and picket can only be limited under Article 25 by a law. If you are going to limit the right of information here under Article 35, you then draft a law. I was then going to tell him, in his good teachings, that there is no law to stop the right to picket and demonstrate in this Republic. *Mheshimiwa* Nkaissery is not a law. There is no law. So you cannot claim: "I have banned it and there is a law." They have charged Sen. (Dr.) Khalwale with violation of a non-existent law.

There is this word that is coined about *Serikali* but it is *Sirikali*. That *Sirikali* is about information. We have made tremendous strides in the right to information. This is one of those Bills that will put Government agencies and institutions to absolute check and this is the reason - you look worried, Mr. Temporary Speaker, Sir - the Bill of rights applies to all law and binds all state organs and all persons. That is Article 20 which is the application. What about implementation? When I talk about Article 21, I need to read it again to the people who are managing our security so that they understand. It states:-

"It is the fundamental duty of the state, national government and every state organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights. "

That obligation is on the state. So the obligation of the right to demonstrate and picket must be promoted by the state, not hindered by the state. They should find a method. I would have preferred if the national Government would have found out through our good Attorney-General, the Professor, a method or a legal framework which would define how one pickets and demonstrates like they do in Europe and China. These fundamental rights are absolutely guarded. This chapter is important and I want to go to Article 23, so that when the CORD goes to court, about their right to picket and demonstrate, similarly, the person who will infringe this right of information under Article 35 will have to deal with the High Court. This is a very fundamental Clause. It states:-

“The High Court has jurisdiction in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or a threat to”.

You actually do not need to violate it. If I suspect that you are about to threaten my right of information, I have a right to go to the High Court. If you threaten my right to picket and demonstrate, not stop but threaten it, I have a right to go to the High Court and seek an order to enforce that right. Kenyans must clap for themselves for passing a very progressive Constitution.

I am happy to be seconding this Bill because gone are the days when somebody would be fired from the Civil Service and they send you home with a one liner stating: “You are hereby dismissed.” They do not tell you why or give you the verdict and they do not care. Similarly, when they deny you your pay, again they write a one-line statement stating that your appeal is hereby denied and you are free to leave.

This Act will not allow that. Gone are the days that people were not entitled to information. A person will be entitled to the reason why they are denied information. They may want to know under what basis you made that decision and the procedure is clearly stipulated here. It enforces a law that we passed here which did not find any objections at the National Assembly. It is called The Fair Administrative Action Act which is in line with Article 47 of the Constitution. If a person requests for information, he or she should be given unless that information is prohibited under Clause 6.

Mr. Temporary Speaker, Sir, there is a condition here and I want to highlight it. It says that that information shall not be given to you unless it can cause substantial harm to the ability of the Government to manage the economy of Kenya. When this Bill comes for Second Reading and public participation, I will recommend to my committee that this is extremely ambiguous. If Kenyans wanted to know about, for example, the famous or infamous scandal on Eurobond and then somebody tells them that that information cannot be given because it will cause substantial harm to the Government to manage the economy, that cannot be a condition to deny information. Clause 6 of this Bill gives an exception and conditions.

Mr. Temporary Speaker, Sir, this Bill is interesting. That is why it was developed in my committee. Despite anything contained above, the conditions I have said regarding foreign relations and security *et cetera*, a public entity or private body may be required to disclose information where the public interest in disclosure outweighs the harm to protect interest as shall be determined by the court. So, the law has opened a small window. Where the national Government says it will not give a person information or documents on Eurobond, the court, under Article 165, can interrogate and ask the fundamental question whether the public good outweighs what is a limiting condition in this Bill. This is a beautiful legislation. It goes ahead in Clause 6(6)(a) on Page 15 to give those conditions.

Mr. Temporary Speaker, Sir, the law requires that 30 per cent of budgets be given to the groups represented by Sen. Kanainza and others. These are Persons with Disability (PWDs), the youth and women. If you go to our county governments and ask which PWDs, youth or women have been given contracts, chances are that that information is

not available. By dint of this law, those entities will be bound to disclose the details of the persons who compose the youth.

From some of the petitions we are dealing with in the Senate, we know that there are what we call phantoms of companies created. They claim to give the youth affirmative action yet they are just surrogates of Members of County Assemblies (MCAs) and particularly our governors. I want to tell them that on signing of this Bill, the old will be gone, the new will come and they will be exposed. It will be like hanging your clothes out there for everybody to see. Therefore, this Bill will also implement part of Article 201 of the Constitution on accountability. While we demand the right of accountability, that right cannot be granted unless the information is available.

Mr. Temporary Speaker, Sir, this is a point to note. The term of the Commission on Administrative Justice, otherwise known as Office of the Ombudsman, will end sometime next year. Under this Bill, it is contemplated that the Commission on Administrative Justice, under Sections 54 and 55, would transit to the Kenya Human Rights Commission (KHRC). By the time this Bill comes back for Third Reading, we would have provided the Committee on Information and Technology a method of transition, so that we do not have a gap by the time the Ombudsman exits and the KHRC enters.

Ideally, it is important to note that the public and our agencies must understand that the Commission on Administrative Justice is the enforcer where you refuse to disclose information. Otherwise, this law will grant a direct access to information to the citizens upon request.

The Commission will come in to enforce or review decisions of any person who does not do so. It will most likely provide sanctions to public officers who violate this law at the first instance even before a person can go to court. That is the only way we can ensure that the system of going to court or litigation does not in itself create an inhibition to the right to access information because we know that our court system can somehow, for some strange reasons, be a letdown in terms of how we determine these issues.

Mr. Temporary Speaker, Sir, Part Four is about conferment on the commission, oversight, enforcement of functions and various other methods of when you get the information, who will give you the information, penalties, reporting and other laws that will need to be amended such as The Statutory Instruments Act and The Interpretation and General Provisions Act. Whereas Article 2(5) states that international law shall form part of the law of Kenya, the change of rules of international law are specified.

Article 2(6) of the Constitution states that any treaty and conventions ratified by Kenya shall form part of the law of Kenya.

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

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

I have one more example. It is in the public domain that there are members of the defunct Interim Independent Electoral Commission (IIEC) that participated in the “Chickengate” scandal. How can it be that very many days after the persons who bribed

members of that defunct commission – some of them are now in the Independent Electoral and Boundaries Commission (IEBC) – that there is no person in Kenya who can demand for that information? They insist that it must come through the Committee on Legal Affairs and Human Rights led by *Mheshimiwa* Abraham Chepkonga but none of us has that information.

If this Bill is signed, any person, including our good Chania seated here with us, will have a right to go to the Ethics and Anti-Corruption Commission (EACC) and tell them that they want to have the information on “Chickengate”. Therefore, I feel proud as a Kenyan today to say that the old manners of hiding information in cabinets, calling the *Serikali* and pretending that information is somehow against national interest will be no more. It will be the end of that era of doing things behind dark curtains and corridors. It will be the end of hiding and keeping Kenyans in the dark. It will be the end of switching off television and live broadcasts so that Kenyans do not know what is happening. That era will be gone.

Thank you, Mr. Temporary Speaker, Sir. I beg to second.

The Temporary Speaker (Sen. Sang): Hon. Senators, I now wish to propose the question.

(Question proposed)

Sen. (Dr.) Agnes Philomena Zani, you may proceed.

Sen. (Dr.) Zani: Thank you Mr. Temporary Speaker, Sir. I like it when you are chairing since you call out all my names.

The freedoms that this Constitution has given us cannot be taken away even as the Government in office wishes to do so. When people have a right to picket, this is their right. Preliminary to the right to picket, various engagements were made. Our Coalition, the Coalition for Reforms and Democracy (CORD) was very clear about seeking dialogue. This is part of information sharing that we are talking about.

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

[The Temporary Speaker (Sen. Mositot) resumed the Chair]

It is the Coalition that the Senate Leader of Majority represents that refused dialogue for a very long time. When you try to engage in a process---

The Temporary Speaker (Sen. Mositot): What is your point of order Sen. Sang’?

Sen. Sang: On a point of order, Mr. Temporary Speaker, Sir. Did you hear Sen. (Dr.) Zani indicate that the Jubilee Coalition has refused to engage through dialogue? The true position is that the Jubilee Coalition believes in dialogue and that we have all along been willing to dialogue. The only position that we took was that the dialogue needs to be within the legal framework provided by the Constitution. Is Sen. (Dr.) Zani professing that dialogue only means dialogue outside the Constitution and that dialogue within the structures provided in the Constitution is not considered by the other side of the Coalition as dialogue?

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, if the wise Sen. Sang, who has just walked in, took a bit of time to listen to my argument and understand what I was talking about, he would have not raised that point of order. I was actually going through historical trajectory before the demonstrations. If you remember well, our part of the Coalition called for dialogue at that time and even much earlier on. Even before we come to the question you are raising now about the form of dialogue, which is still under contention, we have to seek consensus while trying to get to the point of how that dialogue will happen. The preliminary point was the earlier dialogue that we sought for.

Picketing is allowed in the Constitution whether we like it or not. We have made provisions, as a Coalition that we picket in the most peaceful manner. We, as a Coalition, have made a point, to be sure to communicate what we are picketing about. We are talking about an important institution, the Independent Electoral and Boundaries Commission (IEBC). We do not want to find ourselves in 2017 with an institution that is lacking in capacity.

Having an IEBC that has not been institutionalized in terms of capacity to handle an election will create other problems. This should be something clear and nothing to be protective about--

The Temporary Speaker (Sen. Mositet): What is it Sen. Sang?

Sen. Sang: On a point of order, Mr. Temporary Speaker, Sir. I respect the Professor, Sen. (Dr.) Zani, and agree with her when she says that the issue of IEBC is a straight forward matter. However, every aspect on how to deal with the IEBC issues is clearly provided for in the Constitution. This includes how to constitute, reconstitute, disband and hand issues of IEBC. This is the position we have all stood for on our side of the Coalition.

Is she in order to purport sharing that information with me when it is actually her side of the Coalition that needs that information? It is quite straight forward and is a matter that we can sort out within the existing structures.

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, I like when Sen. Sang is annoyed because he also promotes my credentials by giving me titles such as Professor that I do not have although I am hopeful that he is praying for that, as he acknowledges the potential that I have.

It is interesting when we are talking about the Constitution. Every time we have a debate in this country we need to take it to the next progressive level. We cannot stay at one particular point given the fact, Sen. Sang, that there are other decisions that have been made against the same provisions, starting with the latest on the appointment of two people of the same gender to a public institution which you are aware of. Additionally, the provisions that were in the Ethics and Anti-Corruption Commission (EACC), that were not as per the Constitution. Let us call a spade a spade. Let us not run to the Constitution when it is valid to do so.

What we are saying is that we need dialogue and we need it today and now. We need to get some level of sober-headedness and say that we do not need to have a situation where we are going to have this country go up in flames because we do not want to use the same information we are talking about, the same freedoms that are in the

Constitution for the sake of this country as well as for the sake of building it. It is in that context that I find the contents of this Bill very important.

It will require a very proactive and progressive Government in place to actually implement this. This is because we are calling for a mind change from the way we do things. One of the ways to ensure that we do not do what is expected is to keep as much information as secret as possible.

Sometimes it just happens when, for example, you have control of airwaves by controlling what goes out from them. I remember for example in the 1960s and 1970s it was only Kenya Broadcasting Corporation (KBC) that was operational and if it did not cover a story, that story would remain uncovered. The same can happen now even with various channels by withholding information and playing *Nyimbo za wazalendo* when something else is going on.

This Bill is calling for a transformation and I hope this will not only be on paper, but it will also have to move from paper to reality. This will enable us to give information. I am very passionate about this Bill because we have talked about open governance systems and open data which the Bill addresses. Unfortunately, as was said by Sen. Mutula Kilonzo Jnr. this was a Senate Bill. When will we solve this problem? When will have Senate Bills processed and finalized by this House?

Mr. Temporary Speaker, Sir, the objectives of the Bill are clear for instance the right of access to information. One of the ways that such access will not be given is by delaying. We should not anticipate a bureaucratic process where somebody applies for information and they are told to wait endlessly or they apply and the information is not given in the manner asked for without recourse to going back to say the format someone needed it in.

We also need a very proactive and friendly staff to facilitate and probe that information. Can you imagine a scenario where you have a bully standing and looking at you and telling you: "This is the information, do you need anything more? Obviously, you will need to be strong hearted for you to continue requesting for more.

This Bill is not only asking for an information age, but a whole change of mind-set in terms of our culture. This includes promoting routine and systematic information disclosure. The information can be disclosed willingly, happily and in advance. By the way, if more information is given, there will be less information sought. It will actually give the Commission that is created in this Bill later on less work. This is because that data will be out there.

Additionally, it provides for protection of persons who release the information. This is key so that they do not end up being culpable. It also provides a framework to provide public education on the right for this information. That is part of the genesis to get people interested so that they can ask for information.

Mr. Temporary Speaker, Sir, basically, the Bill gives the right to information whether it is held by the state or a person who has the responsibility.

Clause 4(2), states:-

"Subject to this Act, every citizen's right to access information is not affected by –

(a) any reason the person gives for seeking access; or

(b) the public entity's belief as to what are the person's reason for seeking access"

This implies that there will be no environment for making excuses for not releasing information. There will not be information not given because of a particular reason that can be conjured up. You will not have to be blocked from getting specific access. So, you will not have to say: "I want this information for reason one, two, three or four." Seeking that information is not reason enough to for you not to get information. At least the issue of questions such as: How do you want this information? Is it secretive? How do you want to use it? This is catered for appropriately in Clause 6 which deals with information that cannot be given so that we do not just leave it open for anyone to ask for any information.

Mr. Temporary Speaker, Sir, Clause 6 deals with specific areas where information cannot be given especially if it has to do with sensitive issues like military strategies and foreign Government information. However, we must also be careful that we do not tilt information that does not fit in these categories, to fit in these categories so that we are stopped from giving it.

Clause 6(1)(a), (b) and (c) states:-

"Pursuant to Article 24 of the Constitution, the right of access to information under Article 35 of the Constitution shall be limited in respect of information whose disclosure is likely to-

- (a) Undermine the national security of Kenya;
- (b) Impede the due process of law;
- (c) Endanger the safety, health or life of any person;"

Those are the limitations of that particular Clause in terms of the information that is sought. This is very critical.

At any one time, the information that is needed should be facilitated; whether it is information on particular aspects such as information about organisations, functions and duties and powers and duties of officers and employers. I will not go through all of them. All this is clearly indicated in Clause 5 which is very detailed. It gives the sort of information that can be given. This is followed by Clause 6, moving to the information that might not be given. An expansion of the same has been done with that Clause.

How then does the process of access to information get conducted? In the Commission, which I think is also a wise thing that this Bill has done, one of the Commissioners is delegated as a person who will be specifically in charge of information and giving it. This person is almost like a committee head of sorts who will deal with specific matters on information. However, there is appointment of a Chief Executive Officer (CEO) of a public entity, who will be the point of information. He or she will have a chance and the obligation to give that information. He or she shall be the Information Access Officer.

So, the hierarchy is the CEO, another CEO and an Information Access Officer who can actually give that information. However, the CEO also has responsibility where necessary, to delegate to somebody else. So, it does not have to be one particular person who is the Information Access Officer. Others can also be utilized for this particular access.

Mr. Temporary Speaker, Sir, Clause 8 deals with how the application should be made. The Senate Majority Leader, in moving the Motion, clearly indicated this. This is because the Bill says it should be written in Kiswahili or English but I think some communication can be made so that we do not cut off a group of people who cannot communicate in the way that the Bill specifies. We need to look at that. Probably an amendment is needed during the Committee Stage to ensure that anybody seeking this information can get it.

Clause 10 gives the timelines. For example, how that transfer of information will be sought and the date of receipt of the applicant. If they are, for example, seeking information from another public entity, that information will be sought from that public entity. That process will be engaged in from the point of view of the CEO. This is very critical. There is also a premise that within 15 working days from the time one makes an application, he or she should have the application granted. The Bill also provides the way the information should be contained, details of fees and the method of payment. All these are proposed in Clause 11 and they are straight forward.

Clause 12 has also been alluded to. No fee may be levied in relation to the submission of an application. Again, sometimes there may be a silent fee in delay where you keep going and coming but formally, no fee is expected. Let me talk a little about the quality of information and the data. Since there is no fee, it is not that there is a favour that is being done and that someone should just be happy and go with the information that they have been given. It is important that that information is up to standard.

In Clause 13, the Bill gives the possibility for correcting information. Information is never static. Just in case there are changes and situations have shifted, then that information can be corrected and updated. More information can be annotated to the initial information that was given to ensure that the information is up to date. This is a Bill with a lot of optimism if we can use the technology, mechanisms and the good will of the Bill to give information.

Part 4 is all about review of decisions by the Commission. This suggest that where somebody is unhappy with the information that they have got or they want additional information or review, then this will go to the Commission. The Commission will then review and see how to give that information in another way. The Commission also has the overall oversight role of enforcement of functions and powers. The name I was looking for earlier is this Access to Information Commissioner. He or she will be the link from the Commission point of view but then the particular person who is directly in charge of giving information at a lower level. He or she has the responsibility to ensure that information is passed on.

Mr. Temporary Speaker, Sir, we also have provisions for delegated powers at the end of the Bill that give the regulations. Some key regulations which will be important are the manner in which applications under this search have been made, so that there is a routine, measures to be taken by public entities to ensure adequate records are created and maintained over time and the procedures requiring a public entity to ensure that personal information is also accurate. There is nothing as bad as inaccurate information. It is better to have no information than to have inaccurate information

I support, Mr. Temporary Speaker, Sir.

Sen. Kanainza: Mr. Temporary Speaker, Sir, looking at this Bill, access to information is a right as stipulated in Article 35 of the Constitution which states:-

“Every citizen has the right of access to –

(a) information held by the State.”

Therefore, the State is supposed to give information to every citizen.

Article 35(b) further states:-

“(b) Information held by another person and required for the exercise or protection of any right or fundamental freedom.”

This information must also be made available. Therefore, access to information becomes a guiding principle that will enable us achieve this part of the Constitution.

Clause 3(b) of the Bill requires public entities and private bodies to proactively disclose information that they hold and to provide information on request in line with the constitutional principles. It is, therefore, important that the public is given civic education so that people know that there is a channel that they can follow to enable them get particular information. This also applies to the format or the mode in which they can apply to get this information. I believe this is stipulated in this Bill that will soon become an Act of Parliament.

Mr. Temporary Speaker, Sir, Clause 3(d) says:-

“Promote routine and systematic information disclosure by public service and private service on constitutional principles relating to accountability, transparency and public participation and access to information.”

This is why we sometimes see Kenyans becoming jittery because they get small bits and not full information. For instance, we just read in the newspapers about what is happening to the money that got lost at the National Youth Service (NYS), the Youth Fund and the Euro Bond. It is the responsibility of the State to come out clearly and tell us what is really happening. That way, they will have complied with what is stipulated in this Bill on accountability and transparency.

The Bill also fosters public participation in all levels of governance. For us to conclusively discuss and pass this Bill, we must have public participation. We should invite the citizens and other stakeholders to give us their input on how it has been done. Bills are drafted in English and the information is not accessible to all people, especially those who are illiterate. We must put it in a language that is best understood by the people. This Bill provides that the officers who will be employed should be able to help these people in writing properly what their request is and give them feedback at the right time.

The Article on correction of information is good because on many occasions a person can be misquoted or “mis-written” in something that was not properly done. It is important for this Bill to provide that personal information that has been written or given out wrongly be amended accordingly.

Lastly, we are forming many commissions through Bills that are coming to this House. The Office of the Senate Majority Leader needs to look into where the boards, authorities and commissions will be housed. We should not have many bodies doing the same jobs that are being done at the Ministries.

Mr. Temporary Speaker, Sir, with those few remarks, I support the Bill, noting that the Senate Committee on Information and Technology had gone through this Bill for the last three years. I do not know how it came to be a Bill from the National Assembly. The Senate leadership should help us so that we do not spend a lot of our time and brains working on documents which are later on changed to belong to the National Assembly yet the wording is the same.

The Temporary Speaker (Sen. Mositet): Sen. Melly, do you want to contribute?

Sen. Melly: No, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Mositet): I call upon the Mover to reply.

The Senate Majority Leader (Sen. (Prof) Kindiki): Mr. Temporary Speaker, Sir, in replying, I want to thank colleagues for their contributions. I hope the Committee will give us good feedback when we go to the Committee of the Whole.

I agree with the last point by Sen. Kanainza. We have had cases of plagiarism. From my background in academia, the biggest sin in intellectual life is plagiarism; theft of ideas where somebody purports that the ideas of another person belong to them. I hope that we will address this as requested.

Mr. Temporary Speaker, Sir, with those remarks I beg to move.

Similarly, under Standing Order No. 54 (3) and given the numbers, I request that you direct that the putting of the question be deferred to next week.

The Temporary Speaker (Sen. Mositet): I defer putting of the question.

(Putting of the question on the Bill deferred)

It was clear from the Senate Majority Leader that the Bill had initially been drafted by this House. I do not know whether we are trying to accuse the National Assembly Majority Leader.

Next Order!

Second Reading

THE SEEDS AND PLANT VARIETIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 43 OF 2015)

The Temporary Speaker (Sen. Mositet): The Senate Majority Leader, let us see whether we can move this Bill then leave out the debate, if possible.

The Senate Majority Leader (Sen. (Prof) Kindiki): Mr. Temporary Speaker, Sir, with your guidance, this is a one section Bill. It is an amendment; it is not a complete Bill. If you allow me, let us dispense with it. It will not take more than 10 minutes to do everything unless my seconder, Sen. Mutula Kilonzo Jnr. wants to speak forever.

Mr. Temporary Speaker, Sir, I beg to move that the Seeds and Plant Varieties (Amendment) Bill (National Assembly Bill No. 43 of 2015) be read a Second Time.

Allow me to read Article 69(1) (c) of the Constitution of Kenya, 2010 which states that:-

“The state shall protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities”

Article 69(1) (e) states also that:-

“The State shall protect genetic resources and biological diversity.”

There is already an existing law called the Seeds and Plant Varieties Act which is Cap. 326 of the laws of Kenya.

The principal Act talks about protection of seeds and plant varieties as intellectual property. The Article that I have read in the Constitution requires that we align the already existing law with the new Constitution by ensuring that the State takes measures to protect genetic material, biological diversity and the intellectual property rights associated with seeds and plant varieties.

Mr. Temporary Speaker, Sir, allow me to state three points to show why we need this Bill. There is intellectual property much of which is held in traditional knowledge regarding seeds and plant materials. I gave examples here the other day. Farmers all over the world, especially in traditional communities including in our country, have always known the right seeds to plant depending on the rainy season. Some of this information is held by communities but is not protected in law.

Sometimes, a farmer in Busia or Kathonzweni will tell you the way a particular season appears; for example, if the rains will be shorter than the normal rains and if a particular type of seed is the right one to plant. When it comes to plant varieties, traditional medicinal people in many of our communities have a lot of knowledge which is not protected by law; it is stolen. We know that there is a lot of wealth associated with plant and plant material, what in other words the Constitution is calling biological diversity. I already spoke about plant material when I was moving another Bill earlier this week. Plant material is the basis upon which the pharmaceutical industry is built. The empire called the pharmaceutical is actually plant material.

In our country, especially among the traditional communities, the knowledge they have about the pharmaceutical or herbal values of plants is not protected by law. We need to protect it even if we do not have the capacity. There must be some appreciation that companies that extract these materials and use it for commercial purposes compensate our country and the communities where this knowledge is held.

What does this Bill do? It amends the Principle Act, first and foremost to bring a few more definitions but more importantly, it creates what is referred to as a Plant Genetic Resources Centre for Food and Agriculture. Secondly, other than the centre, it establishes a Committee to be known as the Plant Genetic Resources Committee for Food and Agriculture. Thirdly, it establishes a centre to be known as the centre.

I am sorry those are the two. It is the Centre and the Committee. Then it goes to say that the governance of the centre will be through a director who will be appointed through the Plant Genetic Resource Advisory Committee. So, there are three institutions which are being established here to give effect to the seeds and plants varieties act.

The first institution is the Centre which is the Plant Genetic Resources Centre for Food and Agriculture. The second institution is the Committee which is the Plant Genetic Resources Committee for Food and Agriculture. The third institution is the Plant Genetic Resources Advisory Committee which will govern the operations of the Centre.

We have lead institutions because it is one thing for the Constitution to demand that the State shall take measures to ensure that biological diversity, intellectual property relating to seeds, plant and animal material are protected. It is one thing for the Constitution to say that traditional knowledge and intellectual property around biological diversity is protected but it is another for the operationalization of that protection. In that connection, we need a centre where this material can be analyzed, registered and protected. Secondly, you need a Committee to manage the running of that centre. Finally, you need an advisory body to advise the secretariat of that Committee.

Therefore, it is a very straightforward Bill. I do not want to say more than I have done. It is a one pager just to create those three institutions but on a very important area; very scientific and sophisticated are.

This is where the future of the country is going. We have relied on agriculture and traditional things like tourism for a long time. Time has come for us to rely on intellectual property. In fact, if I were asked to summarize the difference between the developed world and the developing country; on one hand, the developing countries are based on sectors that only deal with raw materials; on the other hand, the developed world is based on knowledge, intellectual property, technology and science.

Mr. Temporary Speaker, Sir, this is the future of our country. It is a small Bill. It amends the Act which I have talked about to align it with the Constitution. I see no reason why we should not pass it when the time comes. Nevertheless, when the Committee looks at it, if they want to improve on this amendment, those comments will be welcome.

Mr. Temporary Speaker, Sir, with those remarks, I beg to move. I request my Seconder for the day, the Senator for Makueni, Sen. Mutula Kilonzo Jnr. to second.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, I rise to support this Bill. At first instance, I have been trying to go through the main Act. Unless the Senate Majority Leader can confirm, I am not sure that this is a legislation arising out of the Bills that were done before the new Constitution.

In fact, when I look at the definitions, it appears as if the Committee on Agriculture, Livestock and Fisheries which this Bill will be referred to, should look at the definitions that appear on Clause 2. When I read the Long Title of the seeds and plant varieties, unless there is another Act that is not with us; those definitions do not seem to be appearing there.

However, I have only looked at this. From my reading of the Constitution, I said that this Bill does not appear to be a Bill that was passed under the new Constitution. In fact, at the heading, it says that it commenced on 1st January, 1975. This Bill has only been amended three times; No.1 of 1972, No.2 of 2002 and No.53 of 2012. Under Schedule 4, the function of agriculture which includes crop and animal husbandry in Part 2 is a function of county government.

Therefore, it is my plea to the Committee on Agriculture, Livestock and Fisheries, led by Senator, the King of Meru to interrogate this Bill in its entirety so that if there are portions where in these sections - committees that are begin set up - because my understanding is that this appears to be very cosmetic changes or few changes but if there is a place where we can find a home for the county governments and their institutions,

this would be one of those opportunities. I say so because the Schedule has amazing information on plant names, seeds, varieties *et cetera*. This information would benefit our counties in immense terms.

Therefore, we should find a method of putting in a “county” where there is “national” so that as we amend this law in terms of the proposal to have a genetic resource or where we have included the definition that plant genetic resources for food and agriculture means a genetic material or plant origin of actual or potential value for food and agriculture including indigenous seasoned plant varieties, we must say that this definition alone affects counties. Therefore, as I said before, we must find a home for the county governments in this Act. I have not found any method whatsoever.

Everything I have read here reads “national” Government, Cabinet Secretary *et cetera*. Similarly, this is the case with the Centre of Plant Genetic Resources Centre for Food and Agriculture. I mentioned that animal and crop husbandry finds itself home with county governments. I believe they should be involved.

The newly established Plant Genetic Resource Centre for Food and Agriculture which shall be responsible for the conservation and sustainable utilization of plant genetic resources for food and agriculture including indigenous seeds and plant varieties in Kenya, tells you that we need some substantive – although I do not know whether this will be the opportunity but I think the Committee on Agriculture, Livestock and Fisheries led by the Senator for Meru should find a method how some of these things that are proposed here which are very unique, noble, new in our agriculture and have not been there in the past can be integrated into our county.

In the previous Bill, we stated that county governments must integrate energy planning in their plans and policies. In terms of the mandate of this Senate, we should insist that the proposals in this amendment Bill resonate into the planning in county governments because they are proposing new things that were not there prior to this or done at the county level.

The resource center has been deleted and substituted with a Plant Genetic Resource Committee. I am happy because there is another Bill that is coming from the National Assembly that sort of touches on what they call Genetically Modified Organisms (GMOs) and other substances.

I will make submissions that there is a portion where the persons who are doing research in Kenya, in terms of transfer of research between a scientist and another in Kenya has been impeded by virtue of a Schedule that appears in a Bill that is before us, that suggests that, before you can, for example, transfer material such as a mushroom that you have collected in Kajiado to Mutiso who is at a laboratory in Machakos, you will require the approval of Parliament. While we do so, I hope that we will not pass this Bill in a hurry and forget that our mandate is to consider county governments.

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

The Temporary Speaker (Sen. Mositot): I will now propose the question.

(Question proposed)

Sen. Melly: Mr. Temporary Speaker, Sir, looking at Article 69 of the Constitution, which the Senate Majority Leader read, I wish to make reference to part (c) and (e) which state as follows:-

69. (1) The State shall—

“ (c) protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities;

(e) protect genetic resources and biological diversity;”

We all agree that agriculture is the backbone of our economy. The more we leave it to decline the more we kill our economy. That is why this Bill is here today, to ensure that we take serious steps to protect it and this includes passing this amendment Bill to ensure as stated that:-

“There is established a Plant Genetic Resources Centre for Food and Agriculture, which shall be responsible for the conservation and sustainable utilization of plant genetic resources for food and agriculture, including indigenous seeds and plant varieties in Kenya.”

The Mover has said in proposed (3) of this amendment Bill that:-

“There shall be a Plant Genetic Resources Committee for food and Agriculture, which shall provide oversight on matters relating to the Centre.”

Clause 3A further states that-

“The management of the Centre shall comprise of the Director of the Centre and the Plant Genetic Resources Advisory Committee.”

This kind of leadership was not there before. This is the only way we can protect indigenous plants that all of us are aware were use not only for food, but also for medicinal purposes. This is vanishing because there is no clear law and guideline to protect the same property that was kept for a very long time by our parents.

The coming into effect of this amendment Bill means that we will now have a structured leadership which will ensure that the management of these resources, as enshrined in Article 69 of our Constitution, will ensure that there is a body that is responsible for conservation, utilization of genetic resources for food and agriculture, including the seeds and plants varieties in Kenya.

Lastly, is on the formation of the Advisory Committee and the Director of the Center. This means that from now going forward, the issues that could not be dealt with for a long time because there were no clear guidelines, no laid down procedures and no good structures to ensure that we protect some genetic resources will now be put in place.

Mr. Temporary Speaker Sir, in the interest of time, I support.

The Temporary Speaker (Sen. Mositet): I now call upon the mover to reply.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker Sir, I again thank the contributors. We should not be seen as hurrying this Bill because we are pressed for Senate plenary time, especially given that we have so many Bills. If you visit my office, I have piles of Bills and many of them are time-bound. In any case, I believe that much of the expertise work should be done at the Committee level. So, I expect more participation, debate and amendments at that stage of the Committee of the Whole.

With those few remarks, and given the numbers, I request that you direct that the putting of the question be deferred to next week. I make that request under Standing Order No. 54(3) of the Senate Standing Orders.

Mr. Temporary Speaker Sir, I beg to move.

The Temporary Speaker (Sen. Mositet): Hon. Senators, I want to use Standing Order No. 30, that if you look at the remaining time and the business we have, I direct that we defer the putting of this question.

(Putting of the question on the Bill deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Mositet): Hon. Senators, it is now time to interrupt the business of the Senate. The Senate stands adjourned until Tuesday, 14th June, 2016 at 2.30p.m.

The Senate rose at 6.30p.m.