

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 29th March, 2016

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

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

PRAYERS

MESSAGE FROM THE NATIONAL ASSEMBLY

APPROVAL OF THE MEDIATION COMMITTEE REPORT ON THE MINING BILL (NATIONAL ASSEMBLY BILL NO.9 OF 2014)

The Speaker (Hon. Ethuro): Hon. Senators, I wish to report to the Senate that pursuant to Standing Order Nos.40 (3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the approval of the Report of the Mediation Committee on the Mining Bill (National Assembly Bill No.9 of 2014).

I quote:-

“Pursuant to the provisions of Standing Order Nos.41 (1) and 142 of the National Assembly Standing Orders, I hereby convey the Message from the National Assembly:-

WHEREAS the Mining Bill (National Assembly Bill No.9 of 2014) was referred to a Mediation Committee on Wednesday, 27th October, 2015 and,

WHEREAS the National Assembly by way of resolution passed on Tuesday, 15th March, 2016, approved the mediated version of the said Bill in the form developed by the Mediation Committee.

NOW THEREFORE in accordance with the provisions of Standing Order No.150 (4)(b) of the National Assembly Standing Orders, Article 113 of the Constitution, I hereby convey the said decision of the National Assembly.”

I thank you.

STATEMENTS

UNREMITTED REVENUE BY THE MARA CONSERVANCY

Sen. Ntutu: Mr. Speaker, Sir, I rise to request for a statement from the Chairperson of the Standing Committee on County Public Accounts and Investments on the position of the unremitted revenue by Mara Conservancy, the collecting agent on the Mara Triangle.

When the Mara Conservancy chief executive officer, Mr. Brian appeared before the Senate Committee, he confirmed to this Committee that three months' revenue was never remitted to the County Government Revenue Account. For avoidance of doubt, revenues for the months of February, March and April, 2014 were never remitted.

My questions are as follows:-

(1) How much was the unremitted revenue?

(2) Why were these public funds not remitted as required by the law?

The Speaker (Hon. Ethuro): Is the Chairperson of the Committee here?

Yes, Sen. (Prof.) Lonyangapuo.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I would like to request Sen. Ntutu, who is also a Member of the Committee to give us two weeks.

The Speaker (Hon. Ethuro): It is so ordered. Let us have the response in two weeks time.

Let us proceed to the statements as per the Order Paper. Let us begin with the first one.

EXPENDITURE OF KSHS15 BILLION SET ASIDE FOR *EL NINO*

Is the Chairperson of the Committee on Finance, Commerce and Budget here? What about the Vice Chairperson? Do we have any Member of the Committee to respond to the statement?

We will revisit the matter later.

REGISTRATION OF PERSONS WITH DISABILITIES

This Statement is to be responded to by the Standing Committee on Labour and Social Welfare. There is no Member from the Committee.

Let us move on.

STATUS OF CASH TRANSFER PROGRAMME

Is the Senate Majority Leader here?

Sen. Musila: On a point of order, Mr. Speaker, Sir. On Thursday 24th March, 2016, you ordered the Senate Majority Leader to issue this Statement. It is apparent that the Senate Majority Leader has defied the Chair's instructions, which were very clear.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

Could we have your guidance on this matter because it has taken over a year for this to be addressed and you appropriately gave it to the Senate Majority Leader who has defied your instructions? Kenyans are suffering. The elderly need this cash. Some of it is being distributed unfairly. I believe this is why that side of the House is unable to come clean on this matter. On behalf of all the Senators, because they are concerned, may I seek your guidance?

Sen. Muthama: On a point of order, Mr. Speaker, Sir. I sought a statement on 25th March, 2016---

Hon. Senators: We are on Sen. Musila's statement!

Sen. Muthama: I stand guided, Mr. Speaker, Sir.

Sen. Hargura: On a point of order, Mr. Speaker, Sir. I am also asking for a response to some of my statements which are due but are not listed on the Order Paper.

The Speaker (Hon. Ethuro): I will not respond to Sen. Musila's point of order now. Let us just go through the statements again. Once we get there, I hope that the political leadership will be in the House.

Let us start with the Statement listed as 2(a), to be responded to by the Chairperson of the Committee on Finance, Commerce and Budget.

EXPENDITURE OF KSHS15 BILLION SET ASIDE FOR *EL NINO*

Is Sen. Billow here? Where is the Vice Chairperson or any Member of the Committee? Sen. Khaniri, what do you have to say?

Sen. Khaniri: Mr. Speaker, Sir, I am not a Member of the Committee; I am the one who sought the Statement. This Statement has been appearing on the Order Paper continuously for the last six weeks since we started this session.

On several occasions, the Speaker has given firm instructions that the Statement should be answered the following week. I even requested that the Speaker should give some sanctions because I thought the Chairman of this particular Committee is not taking this matter seriously.

Last Thursday, the Speaker ruled that the Statement must be given this Tuesday, failure to which sanctions shall be issued against the Chairperson of the Committee on Finance, Commerce and Budget. Just like Sen. Musila, I seek your guidance.

Sen. Kilonzo Jnr.: Mr. Speaker, Sir, allow me to defend my chairman. Last week while you were representing the country in the Inter-Parliamentary Union (IPU) Assembly, the Cabinet Secretary (CS) for Treasury was summoned. He came to the Standing Committee on Finance, Commerce and Budget. Kindly allow me to check so that we can present the Statement. This Statement was requested of him. It is not deliberate on the part of the committee. However, I will find out soon enough so that we can respond as a committee.

Sen. Khaniri: Mr. Speaker, Sir, I have a strong feeling that the chairman is not taking this matter seriously. On three occasions, he was in the House. When we got to Statement Time, he walked out. I even brought it to the attention of the then Chair, the Deputy Speaker, Sen. Kembi-Gitura.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

I have the Statement. I have been having it for the last weeks; it is here. It is just for him to come and issue it. Therefore, the excuse Sen. Mutula Kilonzo is giving does not hold water. The issue of CS, Treasury, not having been there does not arise.

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

Sen. Murungi: Mr. Speaker, Sir, I plead with you not to condemn the chairman who is not in this House. Sen. Billow is one of the most active chairpersons of the committees that we have in this House. Reading from the media, I think this new responsibility he has got of forming the Pastoralists' Party must be what has taken most of his time. It is only fair that he is given a bit of time to explain to us why he has not been available to give the statement.

The Speaker (Hon. Ethuro): Order, Sen. Kiraitu! It is also in the public domain that you also have an equally onerous responsibility. That has not prevented you from coming to the House.

Sen. Murungi: Mr. Speaker, Sir, I know how difficult it is to manage those other responsibilities. That is why I am pleading for Sen. Billow to be given more time. Setting up a new party is not an easy task. This being a political House, I plead with you that he be given a little more time.

The Speaker (Hon. Ethuro): Order, Senators! Sen. Khaniri made a very clear case; that on three occasions, the chairman walked out when the matter was supposed to be appearing. These walk-outs have translated to total absence. Therefore, Sen. Murungi, the situation is definitely deteriorating.

Secondly, there is already a ready answer. Therefore, if he is too busy, he could delegate to the Vice Chairperson or any other Member of the committee. Therefore, I agree with Sen. Khaniri. I give sanctions to that particular chairperson and his committee. They will not transact any business in this house until they respond to this Statement. This includes suspending any sittings of the committee. The sooner they do it the better for themselves and this House.

(Applause)

Sen. Kilonzo Jnr., you can do better than defending your chairperson. Assume the responsibility.

Sen. Kilonzo Jnr.: Mr. Speaker, Sir, I will collect the Statement and read it. If it is available, I can respond accordingly.

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

Sen. Haji: On a point of order, Mr. Speaker, Sir. Notwithstanding the problem that we are discussing this afternoon, is Sen. Murungi in order to allege that Sen. Billow is very busy forming a new party while we know he himself has been very busy forming another party? Could he explain his absence occasionally; that he is busy with party affairs?

The Speaker (Hon. Ethuro): Order, Sen. Haji! The issue before us is not the business of Sen. Murungi. Therefore, whatever Sen. Murungi is doing, apparently has not affected his chairmanship. Even this other, I will treat it like conjecture. That matter has been disposed off.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

We will move to Statement 2(b), Standing Committee on Labour and Social Welfare.

REGISTRATION OF PERSONS WITH DISABILITY

Is the Chairman, Vice Chairperson or any Member present?
Next! Statement 2(c).

STATUS OF CASH TRANSFER PROGRAMME

Sen. Obure: Mr. Speaker, Sir, on Statement (c), the Senate Majority Leader was requested to step in because the chairman of the relevant standing committee had failed persistently to respond to this Statement. I do not know what we will do now that the Senate Majority Leader is also absent to deal with this Statement.

There are serious concerns around the country about the administration of the cash transfer system. There are serious doubts about the manner in which the beneficiaries have been identified. There are also serious fears that even those benefiting may not be genuine and deserving beneficiaries. Therefore, we need some response to this very important question as quickly as possible.

The Speaker (Hon. Ethuro): Yes; Sen. Murungi?

Sen. Murungi: Mr. Speaker, Sir, I have not requested the Floor.

The Speaker (Hon. Ethuro): I know, Sen. Murungi. On the basis of two considerations; first, apart from the Deputy Speaker, whom I have spared for other reasons, you are the senior most from the majority side.

Secondly, you had already demonstrated your interest to have legal duty of care when it comes to chairpersons, by defending Sen. Billow. Therefore, you have the Floor.

Sen. Murungi: Mr. Speaker, Sir, in terms of seniority, Sen. Haji is more senior given his age and vast experience.

(Laughter)

However, because you have appointed me, I will not let you down. I undertake to look for the Senate Majority Leader and request him to make this Statement in this House within seven days.

The Speaker (Hon. Ethuro): Order, Sen. Murungi! Seven days is too long a period. I am willing to give you one more day. Therefore, let the Majority Leader or the relevant Chairperson respond to it, latest tomorrow. Failure to do so, there are sanctions. We are implementing sanctions. He should learn from the Standing Committee on Finance, Commerce and Budget.

Sen. Murungi: Mr. Speaker, Sir, I have heard you. I will inform them of the seriousness and gravity of this matter. I will request them to make this Statement tomorrow in the afternoon.

The Speaker (Hon. Ethuro): Let me also refresh your memory, Sen. Murungi. Why I considered you senior most is because Sen. Haji and I came to Parliament one

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

term after you. So, we are referring to the longevity in Parliament. I am sure you agree with that observation.

Sen. Murungi: Mr. Speaker, Sir, I had forgotten that bit.

(Laughter)

The Speaker (Hon. Ethuro): Order, Members! We are not doing very well

Sen. Muthama: Mr. Speaker, Sir, I sought a statement from the Chairperson of the Standing Committee on Security. It has been ready for the last ten days. I have been given the answers. It was not on the Order Paper. Kindly, allow him to respond.

The Speaker (Hon. Ethuro): Sen. Haji, Chairperson Committee on Security; are you ready with the response?

Sen. Haji: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Proceed.

HARASSMENT OF RESIDENTS OF MACHAKOS COUNTY BY POLICE OFFICERS

Sen. Haji: Mr. Speaker, Sir, on 25th February, 2016, Sen. Muthama requested for a Statement regarding the alleged harassment of residents of Machakos County by police officers. The Hon. Senator particularly sought to be informed on:-

(a) Whether the Government is aware that almost all attempts by the residents of Machakos County to present petitions to the Office of the Governor have been violently disrupted by police, leading to arrest and prosecution of the residents.

(b) Why the following events by residents of Machakos County were disrupted or cancelled by the police:

(i) On 16th December, 2014, a caravan of residents being given civic education was violently stopped and participants arrested and arraigned in court.

(ii) In mid-2014, some residents of Masinga Sub-county were stopped by police officers in conjunction with the county inspectorate while on their way to present a petition on environmental degradation caused by the uncontrolled sand harvesting activities.

(iii) On 18th December, 2015, some residents of Katani and Mlolongo were violently dispersed and arrested by police officers while on their way to present a petition on the deplorable state of roads in their area.

(iv) On 26th February, 2016, the business community from Machakos County led by the local officials of Kenya National Chamber of Commerce and Industry were violently dispersed by police officers while demonstrating against the illegal hiking of business levies by the County Government of Machakos.

(v) On 27th January 2016, some members of the Tala Township Business Community were violently dispersed by police officers while demonstrating against illegal hiking of business levies by the county Government.

(vi) On 29th January, 2016 which was a market day in Tala Township, more than 400 anti-riot police officers were deployed in the township, which greatly inconvenienced and caused anxiety among the residents.

(c) Action being taken against the officers of the Kenya Police Service and other persons who have and are still violating the provisions of Article 37 of the Constitution, by repeatedly denying the public their right to assemble, demonstrate, picket and present petitions to public authorities in a peaceful way.

Mr. Speaker, Sir, I wish to state that the Government is unaware that police officers have been harassing residents of Machakos County. All public processions whose organizers notified the police in accordance with the law and participants adhered to the law were allowed to proceed. However, the Government is aware that police officers had to intervene in their endeavour to maintain law and order during various incidents in the county.

These incidents include:-

(1) On 16th December, 2014, a caravan comprising of some residents of Machakos County purportedly conducting civic education was intercepted and participants arrested and arraigned before court for taking part in an unlawful procession. The organisers had not notified police of their intention to organise the public procession. Neither had they obtained a permit from the National Environmental Management Authority (NEMA) for the use of loudspeakers. Nobody was injured.

(2) In mid 2014, the residents of Masinga Sub-county held an unlawful assembly and started marching towards the county government offices to present a petition on alleged environmental degradation caused by sand harvesting. Police intercepted and dispersed the group. Nobody was injured.

(3) Similarly, on 18th December, 2015, some residents of Katani and Mlolongo held a procession to the Governor's Office without notifying the police. They blocked the Machakos-Kyumbi Road junction thus inconveniencing motorists. Police dispersed the rioters but nobody was injured or arrested.

(4) On 11th January, 2016, sand transporters from Matungulu held unlawful demonstrations and blocked the Nairobi-Kangundo Road at Joska using 300 lorries. Operations were thus paralysed along the road for about three hours. Matungulu Sub-county security team managed to convince the demonstrators to present their grievances to the County Government.

(5) On 22nd January, 2016, members of the Kenya National Chamber of Commerce and Industry, Machakos County, through their Chairman, Mr. Simon Kitheka, notified police of their intention to hold a meeting on 25th January, 2016 at Mulu Mutisya Gardens. He was issued with the notification in accordance with the Public Order Act Cap 56(3), which indicated that the event would be a public meeting and not a procession and that it was scheduled to end at 5 pm.

After the meeting, a few people attempted to march to the Governor's Office but they were repulsed after they blocked the road thus inconveniencing motorists. Nobody was injured.

(6) On 27th February, 2016 at Tala Market at around 11 a.m. *boda boda* operators staged an unlawful demonstration and blocked the Nairobi-Kangundo Road using

motorcycles and electric poles. The Officer Commanding Police Division (OCPD) approached them and advised them to present their grievances to the Sub-County Administrator, who would then forward the same to the County Governor.

The demonstrators became unruly and started harassing innocent people prompting police to disperse them. Two suspects were arrested and the road was cleared. Ten motorcycles which had been used to block the road were impounded and retained at KBC Police Station. The owners will be charged once they are traced. The two suspects were charged with the offence of participating in an unlawful assembly.

(7) On 29th February, 2016, police received information that there would be an unlawful demonstration at Tala Market, against hiking of revenue fees by the Machakos County Government. This prompted the police to employ pre-emptive measures.

Lastly, the Government does not intend to take any action against the police officers as they acted within the law in the execution of their duties. I wish to emphasize that the residents of Machakos County should adhere to the Constitution just like any other Kenyan. Any violation of the same will be dealt with in accordance with the law.

Sen. Muthama: Mr. Speaker, Sir, I most sincerely wish to thank the Chairman for the response. However, I am not satisfied with the answers. First of all, for the Chairperson to say that the Government is not aware that these things have been happening and police have been harassing people is not true. This is because already, there is a response confirming, in fact, that arrests have taken place.

Secondly, on 16th December, the people who were arrested were arrested at the police station where they had gone to present a notification of the civic education to the police. They were not arrested on the roadside or assembling but at the police station. So, the Chairperson should try to clarify that.

The Chairperson has told the House that the people of Masinga had started marching towards the Governor's office in Machakos County to present their petition. The distance between Masinga and Machakos Town where the County Government offices are situated is close to 85 kilometres. There is no way that people could start marching towards Machakos Town, given that distance.

On the third issue, if those people were arrested in Katani and Mlolongo, they were arrested in the interior and from Katani to Machakos is another distance of 45 minutes. Those people were just going to Machakos County to present a petition to the County Governor that they elected. They went there to explain their grievances and they were arrested even before they could get to Machakos.

The other point is that again, ---

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

Sen. Muthama: Mr. Speaker, Sir, let me conclude. If you look at these answers here, the issue is just the distance that the people had to walk from their areas to Machakos, to present their petitions and complaints to the Governor. That is why they are being arrested. Why can they not be allowed to see the Governor that they elected? Stopping them is curtailing their democratic rights and they deserve it like any other Kenyan.

Sen. Musila: Mr. Speaker, Sir, I listened very carefully to the response that was given by my friend, brother, former and present colleague. I really sympathise with him

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

because he kept repeating “unlawful assembly”. Let me remind Sen. Haji that Article 37 of the new Constitution - it is apparent that they are using the old one - states as follows:-

“Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.”

Here is a case of people of Machakos County who are doing exactly what this Constitution says. The police took the law into their hands to prevent people who were enjoying what the Constitution of Kenya provides.

Mr. Speaker, Sir, what my friend read is what he and I used to do many years ago and those days are gone. On the 21st March, 2016, I and other Members of Parliament were clobbered by the police in Kibwezi for doing what the Constitution provides.

So, would I be in order to ask the Chairman to go to the person who gave him that statement and draw to his attention to this Constitution and come back with a different response?

Thank you.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, since this appears to be a trend and as Sen. Musila said, Article 37 is clear and neither is there a provision under Article 37 that requires either three days or seven days notice where a person requires to present a petition. Under what provision of law do the police qualify Article 37 in terms of seeking notice while Article 37 does not have an enabling provision, legislation or any other qualification in terms of time?

Mr. Speaker, Sir, could the Chairman assist this House and Members of this House particularly who want to picket and present petitions, to clarify under what provisions of law the police in Kenya, in Masinga - and the ones in Kitui where Sen. Musila was tear-gassed – under what law have they qualified Article 37?

Sen. Haji: Thank you, Mr. Speaker, Sir. From my understanding, when I was reading this Statement, I think it was very clear that the county government’s incidents that were tabulated did happen. What the Government is denying is to say if the Government is aware that members of Machakos County are being harassed.

Mr. Speaker, Sir, in view of this, there are instances where people were given license to demonstrate or to go and give the petition to the governor but when people became unruly to the extent of blocking roads, I think the police had no option but to try either through persuasion or use of other means to unblock the road. I think that is my understanding of the statement here.

Thank you.

Sen. Muthama: Mr. Speaker, Sir, you can see even from the Chairman himself that he is not persuaded from the answers he is giving. Can the Chair go back and bring a substantive report based on the issues which were raised in this statement? This is because we are not convinced.

Secondly, can he also tell the House when he is bringing the report if not now, in the next response that he is bringing when these motorcycles are going to be released to the owners? This is because they had taken them to the police station and they are not being charged and the police are just asking for money. They tell them to bring money so that they can get their motorbikes. Can the Chair clarify when the motorcycles will be released to the owners?

Sen. Haji: Mr. Speaker, Sir, in the Statement that I have given, it is questionable for my brother to accept it the way it is. As for the two motorbikes which are being held, I think the owners have the right to go and claim them from the police station. If they have not committed any offense, I believe they will be released. If they have not committed any offense, I am sure the law will take its course.

Mr. Speaker, Sir, if it is the question of bribe, I think they should go to the Criminal Investigation Department (CID), treat that money and go and give to the police so that they can be arrested.

The Speaker (Hon. Ethuro): What is it Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I am not certain whether the Chairman heard my question correctly. The regulations or whatever memorandum that qualifies Article 37 needs to be made public. Article 37 does not say that you require time to picket or present a petition. It does not require notice or notification. Under what basis did the police demand for those things? They need to be made public. That is what I requested.

Thank you.

Sen. Haji: Thank you Mr. Speaker, Sir. I think the Constitution is very clear on this issue. If anybody feels that the police are doing anything against the Constitution or the law, they should take them to court. That is the best solution to do. *Washtaki wao kortini!*

The Speaker (Hon. Ethuro): Order Members! What is it Sen. Muthama?

Sen. Muthama: Mr. Speaker, Sir, the motorcycles which are kept at the police station are not two; they are nine. From 27th February, 2016, the motorcycles are lying at the police station. The police have never charged anyone. What other clear evidence does the Chair need to be given to demonstrate that the police are asking for bribes? Why have they not taken the owners of the motorcycles to court?

Sen. Haji: Mr. Speaker, Sir, the Statement which I read here says that these people have not appeared anywhere. So, if their motorcycles are being held at the police station, they should go and claim. If the police will ask for bribe, as I said, they should go with treated money, give it to them so that they can be arrested.

(Laughter)

The Speaker (Hon. Ethuro): Sen. Hargura!

Sen. Hargura: Thank you Mr. Speaker, Sir. I had asked for two statements from the Chairman of the Finance, Budget and Commerce Committee. One was due last week and was on the Order Paper but it was withdrawn and I have not gotten a reply. So, I am enquiring about the position of my statements.

The Speaker (Hon. Ethuro): Both of them are to the Finance, Budget and Commerce Committee?

Sen. Hargura: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. (Prof) Lonyangapuo.

Sen. (Prof) Lonyangapuo: Thank you Mr. Speaker, Sir. We will request the Senator to allow us up to tomorrow so that we can check its status, and if it is ready, we can respond tomorrow in the afternoon or the day after.

Sen. Hargura: Mr. Speaker, Sir, up to tomorrow is okay.

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

STATUS OF CASH TRANSFER PROGRAMME

Sen. Musila: On a point of order, Mr. Speaker, Sir. I know that you had passed Statement (c), but the Senate Majority Leader is here and you had sent Sen. Murungi to him. Would you be kind enough to give him the message directly because he is here?

The Speaker (Hon. Ethuro): Sen. (Prof.) Kindiki.

The Senate Majority Leader (Sen. (Prof) Kindiki): Mr. Speaker, Sir, thank you for giving me this chance. I seek your guidance and further direction regarding a matter that you have just dispensed, which is Statement 2 (c). I can see Sen. Musila nodding.

The matter of the Statement regarding the Government cash transfers to the elderly has been before the Committee on Labour and Social Welfare for some time. I was informed late last week that the Chair directed that the Senate Majority Leader should deal with that Statement. First, I want to seek the indulgence of the Chair because I am not ready with this Statement, although I am seized of the matter.

Secondly, I want to give an apology to the Chair and the House because when the issue was raised, I was not present in the Chamber. Therefore, my prayer is to humbly request you and Sen. Musila to give me a few more days to work on an answer to this Statement. Since we will be going on recess after tomorrow, I kindly request that I issue this Statement on the first day after the short recess.

Sen. Musila: Mr. Speaker, Sir, I have tremendous respect for the Senate Majority Leader. He has pleaded his case and I agree that we give him the time that he has requested. Let him know that this matter has taken over a year. Members of this House are hopeful that this time round, they will get a satisfactory answer.

Thank you, Mr. Speaker, Sir.

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

(Statement deferred)

HARASSMENT OF RESIDENTS OF MACHAKOS COUNTY BY THE POLICE

Sen. Muthama: On a point of order, Mr. Speaker, Sir. I am not satisfied with the answers that were brought by the Chair. I request the Speaker to order the Chair to bring a satisfactory Statement. He never responded to any of the points that were raised. He says in his Statement that notification had been issued to the police, but still the citizens of Machakos County were arrested. I also raised the issue of the motorbikes that are still lying at the police station and nobody has been charged. This issue cannot be left hanging; we have to get the right answers.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

The Speaker (Hon. Ethuro): Chairperson, I think there is a genuine concern from Members, especially when it comes to police actions as state agents. I direct that you interrogate this matter further and come back to the House in two weeks time.

(Statement deferred)

MANAGEMENT OF COMMUNITY AND PUBLIC
LAND IN MACHAKOS COUNTY

Sen. Muthama: On 1st March 2016, I sought a Statement from the Chairperson of the Committee on Land and Natural Resources and he undertook to deliver it in two weeks time. After three weeks, I raised the issue again and a promise was given that it would be responded to in a week's time. This is the fourth week and I do not have a written response or answer from the Chairperson of the Committee. I wish to know the status of that Statement.

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

Sen. Kivuti: Mr. Speaker, Sir, I stand to move the Report of the Mining Bill Mediation Committee.

(Laughter)

Is that where we are?

An hon. Senator: We are on Statements.

Sen. Kivuti: Mr. Speaker, Sir, I have Sen. Muthama's Statement. I am aware that Sen. Muthama had requested for a Statement and I had a discussion with him last week on Thursday. We wrote to the Cabinet Secretary regarding this matter which requires an in-depth research from the National Land Commission (NLC). The Cabinet Secretary has written back requesting that they be given two weeks so that the in-depth information, which needs to be looked for by the NLC is made available. I have communicated this to the Senator.

Sen. Muthama: Mr. Speaker, Sir, the communication came much later after the Chair had given a ruling that the Statement should be delivered. The consultation was on why the Statement has delayed. This is a serious issue because the Chairman of the NLC has advertised to give free land which belongs to Machakos people, to whoever wants it. This was advertised in the newspapers and it is in the public domain. This matter is urgent and if it is not dealt with, at the end of the day, we could be chasing the wind. Any delay in dealing with this matter will harm the people of Machakos County.

Sen. Kivuti: Mr. Speaker, Sir, in light of what the Senator has brought up now, my Committee will also summon the Chairman of NLC. If, indeed, he has advertised to give away that land, free of charge to anybody, we will summon him so that we can forestall that kind of action.

Sen. Muthama: Mr. Speaker, Sir, I want to inform the Chairman that the advert was done on 16th December, 2015. It is now four months down the line and we need quick action.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

The Speaker (Hon. Ethuro): Order, Sen. Muthama. I thought that the Chairman of the Committee has already promised quick action.

COMMUNICATION FROM THE CHAIR

ANNUAL STATE OF THE NATION ADDRESS BY HIS EXCELLENCY THE PRESIDENT

The Speaker (Hon. Ethuro): Hon. Senators, before we proceed to the next Order, I have a Communication to make on the Special Sitting of Parliament and State of the Nation Address by His Excellency the President of the Republic of Kenya.

Hon. Senators, as you may be aware Article 132 (1) (b) of the Constitution and Standing Order No. 22 (1) of the Senate Standing Orders require the President to address a Special Sitting of Parliament once every year and at any other time. By letter referenced OP/CAB.1/40 of 7th March, 2016, addressed to the Clerks of Parliament, the Office of the President requested Parliament to set a date for the Presidential Address to Parliament. Upon receiving the Communication, it was resolved that His Excellency the President addresses Parliament on Thursday, 31st March, 2016. I subsequently issued a Gazette Notice No.2039 of 21st March 2016 convening the Special Sitting.

Hon. Senators, this is, therefore, to inform you that the Special Sitting of Parliament will be held on Thursday, 31st March, 2016 at 2.30 p.m. in the National Assembly Chamber. His Excellency the President will also use the occasion, pursuant to Article 132(1)(c)(i) of the Constitution to report on all the measures taken and the progress achieved in the realization of the national values set out in Article 10 of the Constitution. Further, pursuant to Article 240(7) of the Constitution, His Excellency the President will also report on the state of security in the country.

Hon. Senators, this is an important occasion in the calendar of Parliament that provides the opportunity for His Excellency the President to deliver the State of the Nation Address and to address the Legislature and the people of Kenya on critical matters concerning the country. I, therefore, urge all of you to attend the Special Sitting.

Hon. Senators, due to limited sitting space, Senators and Members of the National Assembly will be at liberty to invite one guest each to the occasion. In this regard, you are hereby requested to provide the names of such guests at the Senate reception to facilitate the preparation of formal invitation cards. The names should be submitted by midday tomorrow, Wednesday, 30th March 2016.

The Special Sitting has also necessitated the rearrangement of parking. Consequently, the current Senator's parking area at the Main Parliament Building will not be available for parking by Senators on Thursday, 31st March 2016. Alternative arrangements have been made for parking at the COMESA Grounds at the Kenyatta International Convention Centre (KICC).

Please do also note that access to Parliament through the parking area formally known as the Minister's gate, will remain restricted from tomorrow, 30th March, 2016 to facilitate the pitching of tents for refreshments for that particular date.

Thank you.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

Hon. Senators, I wish to rearrange the Order Paper. Instead of moving on to Order No.8, let us move on to Order No.14; the one that the Chairperson of the Mediation Committee was more than ready to move.

BILL

Second Reading

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

(Bill deferred)

MOTION

ADOPTION OF MEDIATION COMMITTEE REPORT ON THE MINING BILL
(NATIONAL ASSEMBLY BILL NO.9 OF 2014)

Sen. Kivuti: Mr. Speaker, Sir, I stand to move the report of the Mediation Committee on the Mining Bill (National Assembly Bill No.9 of 2014).

The Speaker (Hon. Ethuro): Order Senator! You are doing a very important job, therefore, please, do it from the Dispatch Box. Before you do so, let the Clerk-at-the-Table read the Order.

(The Order was read out)

Sen. Kivuti: Mr. Speaker, Sir, I stand to lay on the Table the report of the Mediation Committee on the Mining Bill (National Assembly Bill No.9 of 2014).

The Speaker (Hon. Ethuro): Order, Senator! The report was laid on the Table of the House on Tuesday, 15th March. Please, move the Motion.

Sen. Kivuti: Mr. Speaker, Sir, I am moving the report of the Mediation Committee on the Mining Bill (National Assembly Bill No.9 of 2014). The Mediation Committee was constituted by this House---

The Speaker (Hon. Ethuro): Order, Senator! You have not moved the Motion. Just read it as it is on the Order Paper.

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

THAT, the Senate adopts the Report of the Mediation Committee on the Mining Bill (National Assembly Bill No.9 of 2014) laid on the Table of the House on Tuesday, 15th March, 2016.

Mr. Speaker, Sir, the Mediation Committee on the Mining Bill (National Assembly Bill No.9 of 2014) was constituted by the two Houses of Parliament on 28th October, 2015 and 4th November, 2015, respectively.

The following Members were appointed to the Committee:-

1. Sen. Lenny Kivuti, Chairperson;

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

2. Sen. Billow Kerrow;
3. Sen. Isaac Melly;
4. Sen. (Dr.) Agnes Zani;
5. Sen. Henry Tiolo Ndiema.
6. Hon. Amina Abdalla,
7. Hon. Ejidus Njogu Barua,
8. Hon. Chachu Ganya,
9. Hon. George Peter Opondo Kaluma; and,
10. Hon. Andrew Mwadime.

Mr. Speaker, Sir, the Committee held several meetings and came up with unanimous resolutions which are appended to this report as recommendations. Allow me to go straight to the recommendations that were unanimously adopted and agreed to by the Mediation Committee. The Committee held three sittings; on 27th November 2015, 16th February and 1st March, 2016 and unanimously resolved the contention of Clauses 4(a)(c), 7, 16, 30, 33, 34, 37, 40, 49, 50 and 149 as follows:-

The Committee agreed that in Clause 4(a), the definition of the word “community” be retained as it is defined in the Bill. The word “community” means a people living around an exploratory and mining operations area. A group of people who may be displaced from land intended for exploration and mining operations. The justification was that the definition is broad as it includes people who are displaced due to mining operations.

In Clause 4(c), the Committee agreed to retain the definition of the words “strategic minerals” provided in Clause 16. The justification was that the definition provided in Clause 16 is sufficient.

The Committee further agreed that Clause 7(2) of the Bill be amended by inserting the words “and with the advice of the Mineral Board immediately after the words in the Gazette.” The justification for this amendment was that it takes into account the need for the advice of the Mineral Board as it has the technical expertise to advise the Cabinet on materials of customary usage.

Mr. Speaker, Sir, the Committee agreed that Clause 16(3) of the Bill be amended by deleting the word “shall” and inserting the words “may with the advice of the Minerals Board.”. The justification for this amendment was that it takes into account the need for the advice of the Minerals Board to the Cabinet Secretary on how to deal with strategic minerals.

The Committee further agreed that Clause 30 be amended by deleting 30(2) and substituting therefor the following new Clause-----

We proposed that, Clause 30 of the Bill be amended by deleting sub clause 2 and substituting therefor the following new sub clause 2:-

The Minerals Rights Board shall comprise of:-

- (a) A chairperson with demonstrable knowledge and experience in the minerals and mining sector who shall be appointed by the President.
- (b) The Principal Secretary responsible for matters relating to mining.
- (c) The Principal Secretary responsible for the National Treasury.

(d) One person who has relevant qualifications or experience in mining, geology, geophysics or engineering nominated by the Council of Governors.

(e) The Chairperson of the National Land Commission (NLC).

(f) The director of mines who shall be the secretary to the Mineral Rights Board.

(g) The director of geological service.

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

The justification for this is that Clause 30(d) provides for the nomination of a representative of the Council of Governors into the Board. It also provides that the nominee shall be a professional on matters of mining.

Clause 30(f) provides for the director of mines to be the secretary of the Mineral Rights Board since he or she is the officer charged with the day to day management of mining and, is therefore, the most competent custodian of documents, minutes, grant concessions and notices.

The Committee noted that the Principal Secretary responsible for matters relating to mining may not necessarily have the technical expertise in mining.

The Committee proposed that Clause 33 of the Bill be amended by deleting sub clauses 7 and 8.

Sub clause 7; where the Cabinet Secretary has rejected an application, the affected applicant may apply to the Cabinet Secretary for the review of the decision.

Sub clause 8; the Cabinet Secretary shall within 30 days communicate with the applicant on the decision in relation to the review.

The justification for this is that once an application has been rejected, an applicant should have a different appeal mechanism.

We also proposed that Clause 34 of the Bill be amended at sub clause 4 by deleting the words “and reconnaissance license” appearing in paragraph (a).

The justification for this is that, this provides for doing away with the need for consent of a person or community for granting reconnaissance license.

In addition, we proposed that the word “a prospecting” appearing before the words “mining rights” be retained and insert the word “registered” after the words “consent of the”

That means the sub clause now would read, “A prospecting and mining rights shall not be granted under this Act with respect to private land without the express consent of the registered owner and such consent shall not be unreasonably withheld.

The justification for this is that there is need for a grant of prospecting rights of a private land to be subject to consent of the owner and the land, hence the need to retain the words “a prospecting.”

Further, there is need for the consent of the owners to be registered. That means not just any owner but the registered owner.

Concerning Clause 40, we proposed that sub clause 1 be retained. It reads as follows:-

The Cabinet Secretary may take steps under the law relating to the compulsory acquisition of land, rights or interests in land to face the land or areas in question or rights

or interest in such land or area in the Government or on behalf of the Government where the consent required Section 36, 37 or 38 is, then it continues to the end of the clause.

The justification for this is that referring to a specific section of a particular law poses a challenge when other laws are enacted relating to compulsory acquisition.

Regarding Clause 49, we proposed that Clause 49 of the Bill be amended in sub clause 2 by deleting the word “for” appearing immediately after the words, “exchange within” and substitution therefor the word “three.”

The justification for this is that, three years after commencement of the production is sufficient time for the holder of a mining license to trade at least 20 per cent of its equity on a local stock exchange market.

This is because we would like the people investing in mining to involve Kenyans by going to the stock market three years after they start production.

Also we proposed that Clause 51 of the Bill be amended: -

(a) by deleting sub clause 2 and substituting therefor with the following New Sub Clause:-

Sub clause 2

The Cabinet Secretary shall not unreasonably withhold consent to assign, transfer mortgage or trade a mineral right and shall inform the applicant of the decision within 30 days of receipt of an application to assign, transfer, mortgage or trade a mineral right.

The justification for this is that, 40 days is sufficient time for the Cabinet Secretary to make a decision on an application to assign, mortgage or trade a mineral right.

(b) The Committee rejected the Senate proposal to insert a New Sub-Clause 8 (a) which was; the Cabinet Secretary shall in consultation with the Mineral Rights Board, prescribe a criteria for the conditions required to be met by an applicant or an assignment, mortgage or trade in a mineral right.

The justification for this is that the criteria for eligibility of mineral rights are clearly provided for in Clause 11 of the Bill. The amendment is therefore, not necessary.

Finally, regarding Clause 149, we agreed to retain sub clause 3 of the Bill to read as follows:-

(3) All immovable assets of the holder under the mining license shall vest in the Republic from the effective date of the surrender or termination of a license.

The justification for this is that, the Constitution in Article 2(1)(f) and 3 classifies minerals as public land which vests on the national Government. The national Government decided to create a National Mining Corporation to also participate in mining and mineral activities as it is in other countries such as Namibia, DRC, and South Africa, among others.

It is important that the corporation is equipped properly with the assets to enable it carry out its function.

Mr. Speaker, Sir, I do not need to add any more information on this Report because I have already read out the justifications that were deliberated upon.

I call upon one of the Members, Sen. Murkomen to second. I nominate him.

Sen. Murkomen: Mr. Speaker, Sir, I am glad to second this very important Motion on the Mediation Committee Report. This Bill is long overdue. It is important in dealing with matters of minerals and mining. Under the new Constitution, we are in a new regime.

Mr. Speaker, Sir, finally, when we pass this Bill, the communities residing around mining areas will have a legal framework under which their rights will be protected. They will participate in so far as the matters of minerals are concerned. One of the most ingenious contributions of this Bill is the provision related to the community. I represent a county where there is fluorspar mining and that was one of the reasons I fully supported and worked in a committee that was working on the Benefit Agreement Bill that was sponsored here and moved by Sen. (Dr.) Zani. Therefore, I understand the problems that our people go through.

In counties like Turkana, Baringo, Elgeyo-Marakwet and West Pokot, mineral prospecting, mining and extraction of oil is going on in the absence of a proper legal framework for the protection of the legal community.

I am happy because the agreed version of the Bill captures the concerns of the Senate and those of the National Assembly. This is the only way we can protect the communities around the mining areas. As I speak, fluorspar mining has been stopped. The reason it was stopped is because there is no legal framework for holding the company to account for every licence they have. They just operate as they wish. The uniqueness of the Bill before us is the fact that it recognises the uniqueness of minerals in so far as they are God-given resources and that whoever is licensed to prospect, should not operate in a manner that holds others to ransom. Such a company cannot blackmail the community.

Mr. Speaker, Sir, as I speak, fluorspar mining is closed. The local community that was benefiting from it in terms of job opportunities and business around Kimalel area is now suffering. The owner of the firm closes or opens as he wishes. Under this law, that will no longer happen. They must answer to the institutions established and, in particular, the Mining Corporation. This is the institution that will uphold the rights of the people of Kenya in any mining areas. They can withdraw a licence from a company that is pretending to be mining, but carrying out mining for the sake of it. Holding licences for hoarding and prospecting without use for the benefit of Kenya will no longer be allowed. Therefore, they will be held liable and possibly their licences cancelled.

This is the kind of Bill that we need if we have to progress in the next two ways. It will help us raise revenue for use in running the country's affairs. Secondly, the locals will benefit and there will be transparency in the manner in which mining will be carried out. Licences will no longer be a preserve of a Cabinet Secretary where he can wake up one morning and grant or withdraw them. It cannot be a basis of corruption that has been there but, instead, transparency will be achieved.

Mr. Speaker, Sir, I congratulate the Chair and the Mediation Committee that passed this important mediated version of the Bill. I also congratulate you, you the Speaker and the National Assembly Speaker for giving us a working parliamentary system as anticipated in Article 110 of the Constitution. We had a lot of challenges in the beginning. Like any new institution, there were many people who did not recognise the importance of this House. However, it is through these kind of Bills that give us the joy

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

and gratification that our hardworking, commitment and desire to remain focused has borne fruits. Therefore, we now have a system that is working; one House recognises the importance and the quality check of the other. It is recognising that we are all representatives of the people of Kenya for the best interest of our country.

I was excited when the Bill was brought to this House. When you said that we need to fast track it, I felt like you appreciated because you come from one of the counties that are endowed with abundant underground resources. You understood what our people need. This is the kind of Bill that we need to pass before we break for recess so that they enjoy the fruits early.

I second.

The Speaker (Hon. Ethuro): Sen. Murkomen, while appreciating your gratitude, may I remind you that the Chair remains impartial irrespective of where he comes from. To me, the important consideration was that this matter has been pending. Secondly, there is concurrence through a mediated process; therefore, we should not squander any moment. This is because if it is a matter of debating, it had already been debated. If it is a matter of the House resolving, it had been resolved. Therefore, it is a matter of expediting the process so that it can be forwarded for assent as soon as possible.

I hope the Members who will contribute, will bear that in mind.

(Question proposed)

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I also support the Motion. If the Chair recalls, it is this Bill that opened the Pandora's Box after we raised hue and cry about its passing in the National Assembly without referring it to this House. The National Assembly reluctantly sent it to us. Through the Chair's efforts, we now have the mediated version of the Bill. I read a report suggesting that the Senate was delaying the Bill. I am happy that the Rules and Business Committee (RBC) has found it fit to have it expedited. I wish we could vote before we break for recess. However, we leave all that to the Chair.

I also thank the Committee chaired by Sen. Kivuti for expediting the process and the approvals on the Bill. The importance of this Bill does not need to be reemphasized. The fact of the matter is that under Article 60 through to Article 62, the Constitution has recognised the resources that are available in the counties. It is the wealth that Kenyans have been looking for. Therefore, the role we, as Senators, play other than protecting the counties is to create wealth as a result of the Mining Bill.

Mr. Speaker, Sir, the initial draft had omitted the role of the Cabinet Secretary. However, in this Bill, we find that it is not too heavy to the national Government. The county governments will have a chance to participate in ensuring that resources like coal in Kitui County are mined. Kitui, which has been considered a hardship zone and a place that is recognised under Article 204 as marginalised, can be proud that they have coal that can be mined. This will give the people of Kitui County a sense of belonging.

Mechanisms have also been proposed in this Bill of ensuring that in the exploits of the minerals that are in this Republic, county governments and the national Government will work in tandem to ensure that these resources are not exploited to the

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

prejudice of communities. If this Bill had been in place at the time that it should have been, the people of Taita-Taveta County would be proud of their minerals that are exploited there. Mining continues in many other parts of the Coast, including Kwale, but for some strange coincidence, most counties that are considered by some people as not being part of this country, are the richest in terms of minerals. If this country could exploit what is classified under Schedule 1 as industrial minerals, precious metal, stones and semi-precious stones group, base and rare metals groups, fuel mineral group and gaseous minerals, we would forget about poverty in this Republic.

Mr. Speaker, Sir, I support this mediated version of the Bill. We call upon you to ensure that this Bill finds its place. We request that this time round when the Bill will be assented to, you should stand next to the President with some Senators of this Republic. We will be proud for the efforts you made in ensuring that this Bill is tabled before this House.

Sen. Ong'era: Thank you, Mr. Speaker, Sir, for giving me this opportunity to support this Motion. I join my colleagues in congratulating Sen. Kivuti and the Co-Chairperson, Hon. Amina Abdalla for doing an excellent job in coming up with an agreed document through mediation.

Mr. Speaker, Sir, we thank you for the efforts you have done in ensuring that we finally get this Bill mediated and our suggestions, as Senators, have actually been taken into account. I am glad to note that in this report, the communities where the exploration of minerals will be done will be beneficiaries. There is no point in communities having a lot of minerals and yet, they are not beneficiaries to it. We do not want unscrupulous foreign mining companies to take all our minerals and assets. What happened in Sierra Leone, which has diamonds, is really a disgrace. Likewise, what happened in the Democratic Republic of Congo should never happen to an African country. The communities in these two countries have been reduced to beggars, yet they have the largest wealth of minerals in Africa. I am happy to note that in this Bill our local communities, who are the custodians of these minerals, will also benefit from what will be explored.

Mr. Speaker, Sir, we need to vote in this Bill so that we can finish this issue and do away with it before we go on recess.

I beg to support.

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

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

Sen. Wako: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to speak on this very important Motion. When the history of this Parliament – National Assembly and Senate – is written, many people will come to appreciate that this Bill could, probably, be one of the most important Bills passed by Parliament. At one stage, most of us were very much concerned when the National Assembly and the Senate appeared to be going in different directions. We thought at that time that maybe we could not reach an agreement on this very important piece of legislation.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

I wish to congratulate the Chairman and Members of the Mediation Committee for having agreed on the way forward and coming up with a mediated Bill. It may be recalled that one of our major concerns was the big role the Cabinet Secretary was going to play in this matter. In as much as the natural resources belong to the county governments, they had very little or no say whatsoever in what was to happen. In the history of the world today, it has been said that Africa, in terms of the natural resources and minerals, is the richest continent in the world followed by Russia or what used to be the USSR. Despite having the richest God-given resources in the world, it has not translated into development. Our resources have been exploited completely. Our continent has been raped, if I may use that word. In fact, we have read and seen films that have been created on how some of the resources in some African countries have become a curse. When oil or diamonds are discovered, one wonders whether it will be a curse or a benefit. A number of civil wars have been fought and deaths have occurred because of these natural resources.

I thank Sen. Kivuti and his Committee for coming up with a progressive Bill that recognises that the resources belong to the community where they are found. The Bill also recognizes that we have county governments in place. It, therefore, recognizes the role of county governments, governors and the communities in which the resources are found. I was a member of the Select Committee that was chaired by Sen. (Dr.) Zani which toured some of the areas where mining has been taking place. We saw the poor state of the so-called miners in Taita-Taveta, Turkana and other counties. Our fear was that unless some legislation was put in place, people living in those areas would not benefit.

I support and thank the Committee for coming up with this mediated Bill.

Sen. Adan: Mr. Deputy Speaker, Sir, I join my colleagues to congratulate the Mediation Committee for having resolved the outstanding issues. Kenyans will have something to smile about, especially if this Bill becomes operational.

For us in northern Kenya, over the years, we have had a lot of challenges, especially in terms of how licences for mineral explorations were issued. This is because over the years, licences are issued in Nairobi without the consent of the communities on the ground. In the process of mining, owners of mines who are given licences do not respect communities on the ground. We have had several fights on the ground over these issues, but our cries have fallen on deaf ears. We thank this country for giving us the new Constitution which gave us the right to resources within our counties.

Mr. Deputy Speaker, Sir, secondly, previously before the promulgation of the new Constitution, land in those areas used to be allocated where the minerals are without even consulting the local communities on the ground. This has actually come to an end. We are having fewer fights between the counties because of resources. I remember when we went to Kapedo, one of the allegations by the communities was that the conflict was because of the mineral resource available in Kapedo. That is why the two counties were fighting. Once this Bill is enacted, all these issues will be resolved. Kenyans will get their rightful share of the resources within the county and also generate revenue.

Mr. Deputy Speaker, Sir, having perused the Bill, I have seen there is also right to graze livestock and cultivate land within those areas which is something that is really

useful to the communities within those counties. I urge the Government, especially the President and also the relevant Houses, to fast track the process of assenting to this particular Bill, so that it is enforced as quickly as possible. We want to see Kenyans benefiting from these resources available within the counties while being protected by the Constitution.

I support.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I also rise to congratulate the Mediation Committee and the report given by our colleague, Sen. Kivuti. I would like to make my contribution very much in the line with what my sister, Sen. Adan, has spoken; that is, minerals and community land rights. According to our Constitution, The County Governments Act, the Intergovernmental Relations Act and so on, there are bodies presumed to be in existence. These are the county land management boards. I would say that almost across the nation, the county governments have been extremely slow in establishing the county land management boards.

Mr. Deputy Speaker, Sir, if you look at Clause 38 of the Bill that Sen. Adan has referred to about mineral rights and community land, the law as provided is very good. However, the law as it will be implemented is doubtful because first, the law says very clearly that a prospecting and mining right shall not be granted under this Act or any other written law over community land without the consent of the following---. Part of the following, are the authorities which have obligation to look at the land, the National Land Commission (NLC) and so on. My experience with the NLC as it exists today – I hope it will be better in future – is that when it comes to community land, it is extremely negligence. When it comes to proper establishment of the county land management boards, it is extremely compromised by governors because the law says that they should have a process of interviewing these people and appointing them.

I have a case in Kisumu County where after the NLC had done its job, the appointment of those people was interfered with by the governor. The NLC had no courage, whatsoever, to stand by the law. I want to report here that fears of Sen. Adan must be taken into account. I went to the Chairman of the NLC and he told me that he will do the right thing, but he did not. Up to now, he has not done it. The law is as good as it is implemented. If a law is not implemented, it remains a chimera that the people cannot relate with.

Secondly, Mr. Deputy Speaker, Sir, we passed Sen. (Dr.) Zani's Bill on mineral rights to the National Assembly. It was a Bill that was meant to make sure that there is equitable share of royalties for minerals up to the community and the villages. I have not heard any report that the National Assembly ever passed or approved that Bill that was sent there long time ago. Indeed, if we can establish a mediation committee to pass this very important Bill that relates to a previous Bill that we passed in this House, there is a disjuncture somewhere. Therefore, I would like to be informed by the Clerk's Office what happens to the very important Bills that we sent to the National Assembly.

Another Bill that we piloted here and passed was the Public Collections Bill, which relates to Harambees. It went to the National Assembly over a year ago and we have not heard about it. Let us be serious because the dispensation of devolution will only work if laws are properly passed by Parliament and implemented.

Mr. Deputy Speaker, Sir, there is one last point that I want to make regarding community land. There is a lot of extraction of minerals from land, including land itself. The extraction of land to make bricks, for example, is causing an environmental disaster in rural areas. Land is the home of minerals. So, if land itself is being mined to make other things, it should also be treated as a mineral because it is a very useful substance being used for production of other things. Therefore, in protection of the environment, the extraction of minerals from land, especially in communities which are so vulnerable to capital and not properly protected by established institutions like the NLC--- This Senate and the National Assembly should be extremely vigilant on how this law will be implemented.

To me, the appeal process or the redress process when this law is not implemented seems to be Cabinet Secretaries-centred. What is the recourse in the event that this law is violated? Maybe, I am not quite observant, but I did not see any reference to an institution, except the ordinary courts of law. I do not know whether we have such bodies like the national minerals commission or the national minerals authority in this country. If there is, it should be cause for worry because if this Bill is not properly implemented and there is no recourse or appeal process that is vigilant, what will happen because I am very skeptical of the NLC. Like any other established commission in this country, at the moment, it has fallen into the decay of corruption that is eating every national institution in this country. It is not really functioning in the interest of the ordinary *mwana* that will be affected by this law, especially in communities with regard to Article 38 of the Constitution.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Senator.
Sen. (Prof.) Lonyangapuo.

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, I join my colleagues in expressing gratitude to the Mediation Committee that was co-chaired by Sen. Kivuti and Hon. Amina Abdallah of the National Assembly. This is a key Bill in Kenya today because it focuses itself on prudent management of our natural wealth found within our counties.

Article 96(1) of the Constitution of Kenya stipulates the role of the Senate. It says:-

“The Senate represents the counties, and serves to protect the interests of the counties and their governments.”

One such key interest that we must protect diligently, whole heartedly, is the availability of God-given resources in our counties. Those resources are the minerals which have never been exploited before. To this extent, it was essential that the two Houses agree on this Bill so that Senate can play its critical role in protecting the interests of those counties. This way, we can eliminate people that have been doing a lot of business in the area of mining.

Clause 10 of the Bill is on the General Principles, it says:-

“A person shall not search, prospect or mine any mineral deposits or tailings in Kenya unless the person has been granted permission.”

Clause 11(d) says:-

“A mineral right has been granted to or beheld by a person who;

(d) has the required technical capacity, expertise, experience and financial resources. However, this shall not be a requirement for artisan and small scale mining operation wholly-owned by Kenyans.”

In my county, there are people who are roaming around with licenses. We do not know who gave them. I am told they acquired them under the previous Constitution. They even own where we live. They claim to have mining rights on private land. We have community land and also trust land.

It is very dangerous when there are brokers who roam around looking for investors on behalf of communities, yet they are not part and parcel of those communities. No wonder we have problems in countries such as Congo. They are perpetually at war because of people who own licenses yet they do not reside in those countries. Some do not even reside in Africa.

This Bill stipulates what is supposed to be done. One must be technically sound and must know what is supposed to be done. Consultation with local residents is key. When this Bill graduates into an Act, these briefcase fellows who have been roaming around with licences should be wiped out. This is because these licences were given to them prior to the promulgation of this Constitution.

On page 40, there is composition of the board of the corporation which will be established. It talks about the caliber of people who must sit in that board. The functions of the board are also clearly indicated. On page 43, they talk about establishing the Mineral Rights Board. This board will license companies to mine and direct which areas are supposed to be mined.

My county has over 32 different types of minerals. I walk around and see somebody claiming land that they are supposed to be prospecting yet we, as a community, are now aware. That defeats logic. The functions of the board are given here in a detailed manner.

Of interest to me is what is on page 51. It talks about mineral rights on private land. It spills over to what Senators, Prof. Anyang’-Nyong’o and Adan talked about. That is Clause 38, on Mineral Rights on Community land. In West Pokot County, for example, we have the largest deposits of limestone. An area that has a lot of limestone in my county is called Sebit-Ortum. It runs for almost 150 kilometres to Nasal, Pokot North.

Clause 37(1) says:-

“A prospecting and mining rights shall not be granted under this Act with respect to private land without the explicit consent of the registered owner.”

What do we do with these people who move around with a licence yet own no title deed? They say they have rights to the limestone on our private farms. I am very happy to have this Bill discussed. I hope that it graduates into an Act soon. With that, we can terminate some of the people that have become a hindrance to foreign investors.

Last week we had an investor who came. The very renowned Kenyan investor, Devki Group of Companies wants to put up a cement plant. Somebody emerged from the

ground claiming to own rights. The portion he had purchased himself, which is now private land is the part he should use to do his mining. He should not interfere with another private land that somebody else has purchased.

The new county governments apparently do not know what is happening. The governors and their deputies arrived thinking they were kings and queens of the counties. They thought they could entertain and run around with some of these investors. Yester night in my county, the Deputy Governor for West Pokot went to a local radio station pretending to chase a new investor who is coming to put up a cement plant.

It is clearly stipulated here that private land is private land. However, one has to seek permission if they want to claim mining rights. I am happy that these things have come out. About 70 per cent of land in West Pokot County is community land. The authority obligated by the law relating to administration and management of community land is indicated here. These are the people who are supposed to negotiate. One cannot just walk in.

The disputes in Turkana land have to be put to rest. We have oil. Two weeks ago, the Cabinet Secretary for Energy, former Senator, Sen. Keter, said that there is a new discovery of oil along the Kerio River Belt. We also have this discussion between Kenya, Tanzania and Uganda about how the pipeline for crude oil should be built. This Bill will put to rest some of these issues within communities. For a long time, some communities have been taken advantage of. This law was not there.

Clause 47 on page 56, talks about preference in employment. If a factory will be built as a result of mining minerals found in that area, the holder of the mineral right shall give preference in employment to members of the community and citizens of Kenya in that order. Communities have suffered where an investor arrives with foreigners or aliens who do not even speak English or Swahili language and yet the people who can do some of these jobs can be found locally. If they are not found in my county, try the next one. If they are not found, try the whole country. This is clearly stipulated here on what is supposed to follow for communities to benefit.

Mr. Deputy Speaker, Sir, we know that we have over 5,000 megawatts of unexploited geothermal resources in Kapedo. The Pokot Community in Tiaty, Baringo County, has not gone to school. What are their interests? How will they be safeguarded so that they are fast-tracked to go to school and then some of these mining can start? I would prefer that these people go to school first before opening up their resources and they can then come to enjoy. Let it not turn out to be like what we heard about Nigeria where oil was mined before the people were educated and some king just signed things off.

It is key that Kenya gets the Bill right, once and for all. Like our colleague has clearly put it, Sen. (Dr.) Zani brought a Bill here – I was a Member of the *Ad hoc* Committee that generated the Bill – which stipulated 20-25 per cent of the profit that the investor will mine should go to the immediate community and then shared with the county. I support this mediated version Bill. We need to discuss it and fast-track it to enactment. In the meantime, county governments and the relevant department dealing with mines should be told to put everything on hold. That way, they will not run around in the process and end up messing like the Mui Basin in Kitui or Mwanjala in Taita-

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

Taveta County, where we are losing a lot of minerals which are being ferried to China in the name of going to test. You cannot take 40 lorries each carrying 40 tonnes per day for testing. Which laboratory is that? That is not a laboratory. You are already exporting our raw material.

I hope that the Ministry of Mining together with the Ministry of Industry, Investment and Trade and the Ministry of Foreign Affairs and International Trade will sit down, sub-divide and simplify it to make sure that counties understand. For your information, all counties have raw material which are yet to be explored. I am told even the lake region of Kisumu has a lot of oil that Tullow Oil is also exploring. If we start exploration of these resources, how much will our people, especially the unemployed youth, benefit? However, training has to be key. I found that it is written here that training is very key and you train the people from around before you bring the technical staff from outside if you cannot get them within.

I support.

Sen. Musila: Mr. Deputy Speaker, Sir, thank you for giving me the Floor. Indeed, I join my colleagues in congratulating the Mediation Committee for coming up with the proposals that are acceptable to both Houses. These proposals will help us make progress in enacting this piece of legislation which has been in the making for a very long time.

As you are aware, we have been operating under a law that is colonial in nature and was not done by us after Independence. Therefore, dynamics have changed and hence, the importance of having this legislation which will be in accordance with our new Constitution.

I represent Kitui County which has huge deposits of coal. I am happy to see that in the First Schedule of this Bill under the fuel mineral group, non-nuclear coal is listed there. The only issue that I have is that as we speak, coal comes under the Ministry of Energy instead of the Ministry of Mining. In my view, this has made it impossible for us to make progress in exploiting the coal that is so much in abundance in Kitui County in the Mui Basin. From the outset, I appeal to the Executive to see how it can be done to move coal from where it is at the moment in the Ministry of Energy to the Ministry of Mining. That way, it will, indeed, be classified in the First Schedule and then we can make progress in exploiting this mineral.

Mr. Deputy Speaker, Sir, I say “progress” because on the 23rd December, 2013, the Government gave a concession to a Chinese company to mine coal from the Mui Basin. The licence was eventually issued many years ago, but to date, nothing has been done in Mui Basin in as far as coal mining is concerned. People have been left wondering. They were warned that they would be asked to leave their land so that mining could take place. They do not cultivate because they expect to be moved any time. Therefore, we have a situation in my county where, yes, we have abundant quantity of mineral in the form of coal, a licence was issued three years ago, but no mining is taking place. I, therefore, appeal to the Executive to see to it that my people benefit from the proceeds of this mineral, non-nuclear coal, which is in the Mui Basin.

Having said that, there are certain areas of this Bill that I must applaud. In particular, Clause 89 goes to give conditions of the licensee. One of the most important things that must be done is environmental assessment. Whether you are mining oil, coal

or gold, environmental assessment is of importance. In countries where mining started, particularly in Europe in places like Birmingham, you will find huge gullies that were once mines and were left “like that”. Even in Taita-Taveta County, you will find areas which have been left “like that”. People extracted whatever mineral they wanted and they left the place without returning it to its original form. Therefore, Clause 89 takes care of this because it says that the licensee must clearly state that he will return the place in the manner that he found it.

In the case of Mui Basin, one of the biggest worries that we have is that if this mining takes place and the coal is finished after 30 years, huge damage would have been done. It is, therefore, important that in the licence, as it is provided in this Bill, it is specifically stated that the land will be returned to its original state.

Mr. Deputy Speaker, Sir, I went to the Western part of China four years ago to see how mining is done. What is going on in that area is what we would not like to see in this country. In as much as they want this mining to take place, as you travel towards the mining area, all the trees were black. They were not green. Everything around that mining zone was black because of the manner in which the environment was interfered with, the carrying of the coal and the dust that went on. We are told many communities were suffering from various diseases.

Therefore, environmental assessment is of importance if we are to ensure that the future generations will benefit from this mining, whether it is gold or any other minerals. We have many examples like in Nigeria where the Ogoni people are now suffering because of irresponsible mining. Therefore, we must make sure that in whatever we do, we do it right, not only for us, but for future generations.

Mr. Deputy Speaker, Sir, the other issue is that of record keeping. Countries have been exploited in the past by miners. Even the royalties that we are talking about that are going to be of benefit to the communities and counties, will be meaningless, unless a proper record is kept of the extracted minerals and their value. The books of accounts must be kept to ensure that the calculation of these royalties is correct so that whatever is due to the county is correctly recorded and paid accordingly.

I say this because we know that we have a lot of countries; I have given an example of the Democratic Republic of Congo where mining has taken place for generations, but the people are getting poorer and poorer, yet the royalties are payable just like in any other place. They do not give the actual value. For example, a gold mining company would say that they mined a billion shillings worth of gold and just declare several millions. Therefore, when you calculate the royalties, peanuts are given to the people or the local authority. This is covered by Clause 69 of record keeping to ensure reporting requirements are properly done. There is no cheating, but people will be getting their rightful share of the royalties as prescribed in this law. Otherwise, it will be meaningless for us to say 20 or 10 per cent and the rest be given to various stakeholders and yet we do not keep proper records.

Mr. Deputy Speaker, Sir, again, here comes in caution on the issue of corruption which is so rampant in this country. Unless we apply anti-corruption laws in this sector which is a very lucrative sector, we are bound to find corruption getting into the people who will be working in these areas, particularly in the record keeping. They will be lured

to put incorrect figures in the amounts extracted from these mines. Therefore, the whole country and the communities will lose. So, a word of caution on corruption and record keeping is important.

I also want to talk about capacity building. As I speak, we do not have enough capacity for our own people to do mining. The Senate Committee on Energy toured the oil prospecting areas of Turkana. We were amazed to find almost 99 per cent are expatriates. Going to Eldoret, for example, you will find a hotel which is reserved for expatriates who are working in the oil sector. This country lacks capacity. We do not have capacity with regard to people who can do mining. We do not have capacity for people to classify the kind of minerals we are talking about in this House.

Mr. Deputy Speaker, Sir, this is why it is easy for a miner to get a commodity and tell us that it is not what we think it is. It is not gold, but something else because we do not have the capacity. So, capacity building is important in mining. Talk about coal which is in my area. Do we have experts in mining coal in this country? The answer is obviously, no. We have many universities in this country. I want to feel that every area that mining is taking place, one university around that area should be nominated to specialize - this is important - in the kind of mining that goes on in the area. For example, in Kitui County, we have South Eastern Kenya University. Why do we not ensure that in the university, there is a faculty in coal mining so that, at the end of the day, we will have experts in that area?

Mr. Deputy Speaker, Sir, why do we not have a faculty dealing with issues of oil in Moi University, Eldoret? In the coastal region where we have a lot of minerals like gold and others, we could have a university offering courses specializing in that field. I emphasize this because all the leakages that we want to prevent will be preventable easily by having our own people taking charge of these mining. This is because no matter what kind of law we put in place, human beings being what they are, we are likely to earn little or nothing from our minerals. We should have our own people with enough capacity to identify the kind of minerals available and ensure that, as Kenyans, we take control of the minerals that are in Kenya.

Finally, I want to talk about compensation. Inevitably, people will be moved from their areas where they have settled so that mining can take place. For example, the coal fields in Ukambani. Coal is an extensive mineral and hundreds of acres will be required. Therefore, people will be displaced to give way for this kind of activity. I am advocating for fair compensation and settlement. It is easy to say that we will give you this amount of money so that you can leave. As a representative of the people who have lived in their indigenous land for generations, it will be unfair to tell people to leave a place without proper compensation simply because an investor has been identified. So, I am advocating for proper compensation of persons and their properties before any mining takes place.

Mr. Deputy Speaker, Sir, financial compensation may not be sufficient. Therefore, I urge for land in exchange of---

The Deputy Speaker (Sen. Kembi-Gitura): Your time is up. Thank you, Sen. Musila. It appears that there is no further interest in the issue.

Sen. Murkomen, are you ready to reply?

Sen. Murkomen: Mr. Deputy Speaker, Sir, on behalf of the Chairman of the Committee, Sen. Kivuti, I would like to reply. I have been encouraged by the fantastic contributions of Senators and their interest. Sen. Musila has just completed by explaining to us the complex challenges that people face. When he goes back home and tells people that coal has been discovered and the Government will start mining it the following week, but it takes five years for that to happen, it dents his reputation as a politician and leader because people anticipate jobs and prosperity. The same applies to Sen. (Prof.) Lonyangapuo. For about five years, the people of West Pokot County have been waiting for a cement factory to be established there. Somebody acquired the licence, but had no interest or capacity to do the mining.

One of the most embarrassing things for a political leader is launching. You hold big meetings where the Head of State comes and everyone claps and is happy. Some people even give you their Curriculum Vitae (CVs) only for the company that was supposed to do the mining to become a sham. What happened in Kitui and West Pokot are some of the cases that we need to bring to an end by ensuring that some unscrupulous characters pretending to be persons with the capacity to mine do not hold licences. When Cabinet Secretary, Hon. Balala, cancelled some licences, a confused blogger who writes a lot of things on *Facebook* and *Twitter* and insults people left, right and centre, complained that he held a licence for a particular company. We know very well that he is a middleman or broker, who has absolutely no capacity to mine anything, except to write useless things on social media. You will meet somebody who does not have the knowledge about coal, gold or any other minerals telling you that they have a licence. Therefore, the transparency will ensure that the right people are given licences.

It is important to remind Kenyans that the Act states that minerals are not owned by individuals; they are the property of the Republic of Kenya. It is emphasised by the Constitution and Clause 6 of this Bill, which states that: -

“All minerals in their natural state which are under the river, lake, stream, water course, land or exclusive economic zones are the property of the Republic and vested in the national Government in trust for the people of Kenya.”

People wonder why there is compulsory acquisition. If someone has his or her own plot, they can be told to vacate and be compensated. Someone else will then be licensed to mine the minerals on behalf and for the benefit of the people of Kenya. Yesterday, I saw the Permanent Secretary for the Ministry of Transport and Infrastructure talking about the desire for us to have in mind public interest. There is too much personal enrichment; people bragging of owning this or that, forgetting that natural resources such as minerals are the property of the people of Kenya. I need to remind the person who owns the licence to mine fluorspar in Kerio Valley that he cannot pretend and tell us that he has a company. He needs to be reminded that it is the property of the people of Kenya. He is holding that licence and mining in trust for the benefit of the people of Kenya.

Therefore, it is important that the local community where the natural resources are being mined benefit from this activity. If it is Kerio Valley, the people around Kimwarer, Soi North and Soi South should be the first beneficiaries of that mining. If we are doing it in trust and dealing with these resources as the property of the people of Kenya, how much more must we be careful in dealing with the local community around that place?

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

That mineral is owned by someone from Coast, Central Kenya or Nyanza. How much more must we be careful in protecting the people who live around there to make sure they get employment?

The other provision that I love in this Bill is that in terms of employment the first priority should be to the local community whether or not they have the expertise. It is also important to remind the people of Kenya that this law creates two important directorates; the Directorate of Geology Survey and the Directorate of Mines. There will be clear departments in the Ministry that will deal with matters of geology and mines. There will be persons who will manage and those serving in the public service who will be directors in those ministries. They will have responsibilities as enunciated in Clauses 20 and 21 of the Bill.

There is also establishment of other mining institutions. In this case, there is the establishment of the National Mining Corporation, a company that can trade and hold certain resources on behalf of the people of Kenya. It is also important for them to appreciate that if a private investor is unable to do anything, it is possible for this public company to take over from the private investor who is unable to continue. I need to sound a warning to the person who has the licence for fluorspar mining that never again shall he threaten our people, close their company and do as he wants.

We have now provided for a corporation, which will engage in mineral prospecting and mining, invest on behalf of the national Government on matters of mining and acquire by agreement or hold interest in any undertaking enterprise or projects associated with exploration, prospecting and mining. Therefore, our people will not be watching him helplessly as he closes and opens the company as he wishes. They must answer to the institution established by law that gives the licence. If someone is incapable, unable, unwilling or does not desire to operate with the licence as it is, then, there is a national Government institution that can take over from them and do business just like any other State enterprise recognized globally to carry out that function. Those who have been taking our people for granted must beware of the establishment of the new law.

Mr. Deputy Speaker, Sir, the functions of the board are clearly set out. We also have provisions for application of licence, which as I said earlier, must be applied in a transparent manner that requires the knowledge and public participation, which is an important aspect. There will be no possibility of someone knowing the Cabinet Secretary for them to get a licence or getting it through the back door and then later auctioning it.

I want to emphasize the provisions related to royalties in Clause 183. This is critical and it is what I promised the people of Elgeyo-Marakwet County. It is the reason I was part and parcel of the Committee that was considering the Benefit Sharing Agreement Bill that Sen. (Dr.) Zani was leading. As I return back to my people this weekend, I shall talk about Clause 183 of this Bill. I will tell them that they will no longer be by-standers on matters of minerals. They will no longer see others benefiting from resources that are within their area. They will be equal beneficiaries in many ways as provided for in Clause 183.

Sub-section 1 of Clause 183 states that the holder of mineral rights shall pay royalties to the State in respect of various mineral classes won by virtue of mineral right.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

Subsection 5 states that 70 per cent of those royalties shall go to the national Government, 20 per cent to the county governments and 10 per cent to the community where the mining operations occur. If you look at the agreed definition of the word “community” in the Mediated Bill is it very broad. It defines it as “a people living in a ward or wards within which minerals are situated and who are affected by the exploration of the minerals or the mining operations with respect to the minerals.”

Mr. Deputy Speaker, Sir, using the example of my county, that definition will fit very well within Soi South and Soi North wards where the fluorspar mining is taking place in Kerio Valley. That community will have 10 per cent of the royalties paid by that company to benefit them. Again, Elgeyo-Marakwet County Government would retain another 20 per cent of the proceeds. Assuming that you have a county government that is responsive to the needs of the people, with that kind of money, they can progress.

We need to come up with a law to say what that money can do in a county. We do not want them to spend all of it on recurrent expenditure. This kind of money should only go into the provision of water to people, construction of roads, hospitals and other infrastructure development. These are very critical resources. Assuming a company pays Kshs1 billion in royalties every year, it means that Kshs200 million will go to Elgeyo-Marakwet County and Kshs 100 million would go to the local community yearly.

The Benefit Sharing Act defines how sharing should be done. However, we need to establish a trust fund. We may use this fund to give scholarships to the needy students in order to promote education of the community. I emphasise on education because people in those areas where mining is done are marginalized. These places have been neglected for a long time. Therefore, many people are uneducated. It is, therefore, important that proceeds from mining support free education in those areas.

Mr. Deputy Speaker, Sir, I thank my colleagues here and those in the National Assembly and the Ministry of Mining for coming up with this Bill. In fact, the Cabinet Secretary in charge of Mining called me today to find out how far this Bill has gone. He is anxious to implement it considering that he comes from Malindi County where similar challenges like the one Sen. Musila talked about, are faced. He is a person who appreciates the challenges of marginalized communities where resources are.

The people in such areas are marginalized. They have cement factories in their areas yet they do not benefit. With the youthful energy that the Cabinet Secretary in charge of Mining has, and the anxiety to serve given that this is his first appointment to the Cabinet, we have now given him the tools to run the Ministry. We, as politicians, will be around to oversight and ensure that the law is implemented to the letter.

Mr. Deputy Speaker, Sir, as soon as this Bill is assented to, the Cabinet Secretary should move with speed to write to all the existing mining companies to immediately comply with it. Secondly, he should write to all who are licence holders who have been holding licences for mortgaging and auctioning, to tell them that there is a new sheriff in town in terms of a new Cabinet Secretary and law. This law is capable of biting and will deal with corrupt elements who have been holding licences to the disadvantage of those who are capable of using to exploit our resources for the benefit of the people of Kenya.

I beg to reply and request that, under the provisions of Standing Order No.54(3), you use your discretion provided for under that Standing Order to postpone the voting on

this Bill to tomorrow so that we clear this Bill before we go on recess and our people begin to enjoy the benefits that come with that important legislation which has been pending for a long time.

The Deputy Speaker (Sen. Kembi-Gitura): So ordered. The question will be put at a later date.

(Putting of the Question on the Bill deferred)

Next order!

BILL

Second Reading

THE COUNTY GOVERNMENTS (AMENDMENT) (NO. 4) BILL (SENATE BILL NO. 18 OF 2014)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murkomen, you had 51 minutes left.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I thank you for this opportunity. This is a Bill that I had moved already. I will continue with the remaining provisions. I may not utilize all the 51 minutes because I know many hon. Senators, including Senior Counsel, Sen. Wako and Sen. Mutula Kilonzo Jnr. want to make their contributions to this important Bill. Therefore, I will take half of that time or less, so that they can also have a chance to also contribute and enrich it.

As I said last time while moving this Bill, it came about not just as a result of my personal observations, but I had the benefit of serving in the task force on devolved government that came up with the parent County Governments Act. From practice, there are things that we have overlooked. Some of them were straight forward. I do not think that anyone has a problem with the recognition of the office of the deputy speaker in law or recognition of the deputy governors in law. The courts pointed out during Governor Wambora's impeachment that it needs to be made clear in the law that the removal of a deputy governor also applies the same procedure as that of a governor as well as the removal from office of the deputy speaker. They also said there is need to recognize and anchor the deputy speaker's position in law.

Mr. Deputy Speaker, Sir, what is critical in this Bill is the functioning of the office of the deputy governor. In an attempt to make a case for this office, there are many people who say that a deputy governor is just an appendix of the governor and that he or she must serve at the will and wish of the governor. In speaking from a practical application of this law in this country, the deputy governor's position, in my opinion, is very important. It is not only important because someone has been elected, but because that person plays a critical role in ensuring that governors are elected. You will find that in most of the counties, the deputy governor comes from one political party as the governor.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

We have a situation like the one obtaining in Nairobi County, where the CORD Coalition wanted to maximize their support in Nairobi; they got the governor from ODM and the deputy governor from ODM (K) or Wiper party. I must confess that unless there are things that we do not know publicly, the two are working in tandem. I am told that the reason they are able to do so, is because they signed a memorandum of understanding that binds them together. However, it may also be the civility of the persons that run both offices. It might be that Governor Kidero and the Deputy Governor Mueke are people who are civilized enough to appreciate their situations.

Mr. Deputy Speaker, Sir, not everybody is civilized and not every county had the benefit of people who have mature minds. We have seen governors and their deputies fighting in this country. During election people from different communities came together and elected their governor and his deputy. If you go to Narok County, you will discover that the governor is from the Maasai Community while the deputy governor is from the Kalenjin Community. I assume that they came together to pool resources just like the governor of Nairobi and his deputy. The same case applies to Nakuru County. The Governor is a Kikuyu while his deputy is a Kalenjin. This also applies to Trans Nzoia County where the Governor is a Luhya while his deputy is a Kalenjin. In Busia County, the Governor is a Teso while his deputy is a Luhya. The Senator is also a Luhya.

Mr. Deputy Speaker, Sir, so, there was a balancing act. In places where there are homogenous communities, for example, in my county, the Governor is a Marakwet, one of the Kalenjin sub-communities while his deputy is a Keiyo - again, assuming that it brings people together. The argument then was that it is important to put people together. In Baringo County, the Governor is a Tugen or Aror and his deputy is a Pokot, a sizeable but critical minority in the county. In the north eastern region whether it is in Lamu or Mombasa, one clan produced the governor while another one produced the deputy. In the coastal region, one race produced the governor while another one produced the deputy.

Mr. Deputy Speaker, Sir, therefore, we cannot ignore the position of a deputy governor as a uniting position in the county. People were promised results. They were told; this is an inclusive county. When we are making decisions on the table, the governor and the deputy will sit together to make decisions that will unite people; but what happens? Once the governor comes to office, he or she tells the deputy governor that there is no provision in law for you to consult with me or define what you do. That is why there is a case like Machakos County where the governor and his deputy are chasing each other left, right and centre. The governor goes out of the country for a whole month yet the deputy has no clue even where documents are in the office. He or she cannot even receive any meaningful visitors.

In Kisumu County, where one assumes that, perhaps people come from one community, the deputy governor has no clue of what is happening. So, many deputy governors who have spoken to us, including hon. Members who are seated here – even in anonymity - they go to the office, read newspapers and check whether the governor came. They are sent to funerals to read the governor's speech. Nobody sends them to any serious and meaningful function. Nobody consults them and they do not know when the governor is in Kenya or when he is not.

Mr. Deputy Speaker, Sir, it is important that this position is anchored in law in terms of functioning. That is why provisions are made here; as in Clause 4. There are some people who say that if the Constitution does not provide for the functions of the deputy governor, why are you providing for it through an Act of Parliament? I would like to remind them that the parent Act, the County Governments Act, in Section 30 provides for the functions and responsibilities of a county governor. They are listed from 2(a) to (l). They were provided for because the Constitution had not listed all of them.

The Constitution says that Parliament shall enact legislation to provide for more functions of offices that exist under the Constitution. This is captured under Article 200. Under this Article, we have the leeway for deputy governors to work with the governors. That is why I am proposing that Section 30 be amended to include deputy governors. While governors are working for the county, they should consult with the deputy governors.

Consultation is a very important factor. Now, it is mandatory for us to consult the public before we do anything. Even in this House, public participation is compulsory. So, having a provision that says that a deputy governor needs to be consulted on matters – and consulting is not concurrence, it is not that he will agree with everything but it helps in building good manners and good provisions of leadership. As I said earlier, if common sense was common, there would be no need for law. If everybody was reasonable and civilized, we would not need law in this country. Law in most cases is made for the uncivilized and unruly.

Therefore, because we know and there is evidence that there is a lot of unruly behaviour in the counties among our governors; that, deputy governors sit and read newspaper, are assigned non-constitutional duties, for instance, reading funeral speeches and attending harambees which are not provided for in any law to be performed on behalf of the governor. It is important that those who are paid colossal amounts of money using taxpayers' money must have a responsibility and be consulted.

I would like to make a second case before I read the amendment in Section 32. All the governors in this country are male. There are only seven women deputy governors. One would have said that, at least, you have deputy governors who are women. They will have a chance to grow leadership qualities by learning from what the governors are doing. This will show and demonstrate to the electorate that electing a man or a woman is not an issue as long as that person is competent. So, we have a situation where you want to celebrate the election of seven deputy governors – while campaigning the governor has said – in Embu County, the governor is an Embu while the deputy is a Mbeere but the additional value is that she is a Mbeere who is a woman.

I am sure that when the governor was campaigning, he said; I have not only included the Mbeere people in this county government, I have also included the other gender so that in the table of discussion in my county government, we will not only have gender representation of the deputy governor but we will also have another community being represented. You will deny the people the benefit that you promised in the campaign if you lock this other gender out. So, they become, as is said in Nigeria, that deputy governors are just spare tyres. They are there and if the governor does not die –

one said that, the deputy governor comes to the office, sees if the governor is still alive, reads newspapers and goes home until the day the governor dies.

We did not elect deputy governors to be spares to wait for governors to die. If that was the case, then they should have just been appointed so that they can serve in such a manner not provided for by the law. Therefore, it is important to provide for proper functions of this office in the law. In an attempt to provide functions for the deputy governor, this is what we have done: we have emphasized that the deputy governor shall be the principal assistant of the governor and shall deputize the governor in execution of the governor's functions. It looks obvious but it is important for emphasis; that when you say the word "principal assistant of the governor" and "shall deputize the governor in execution of the governor's functions" it means a proper deputy.

It is mandatory that where the governor is not present to do something, the deputy is there to step in and do the work, so that you do not have a situation like the one in Machakos County where a deputy governor attempts and he is told that you were not delegated. This will ensure that he or she will not depend on a written delegation. It will be automatic. If the governor is not there, it is automatic that the deputy governor carries out the functions of a governor except the ones that are provided in law that says he or she cannot hire or fire for the period unless he or she is substantially the governor.

Under sub clause 3, we are providing that the deputy governor shall coordinate the functions of the county executive committee. This is where there is controversy. I have consulted with a few of my colleagues. I would be very happy with further suggestions that they would give. The governor is the overall leader of the county but you need someone to coordinate the functioning of the County Executive Committee, reminding them that they were supposed to do this and that, basically what the former Prime Minister used to do when he was a coordinator of Government. It is borrowed from those provisions that he would coordinate matters of the Cabinet in the same way the deputy governor would coordinate.

There are complaints that then that would create a conflict, that, everybody would want to be the boss, and that there would be no clear structure of leadership.

However, in a situation where everyone appreciates their respective positions, the deputy governor, who was chosen by the deputy governor voluntarily, will help in coordinating the county executive committee.

Secondly, the deputy governor shall coordinate service delivery in the county. What is anticipated here is that, in each county, there will be a service delivery unit. This will carry out monitoring and evaluation. Counties will not be moving forward without direction. The President has created an office under the Secretary to the Cabinet called the Presidential Delivery Unit. Therefore, it is important that we inculcate the culture of monitoring and evaluating what is done in the counties. The county government will evaluate the progress they have made. I will not mind if there will be an amendment on varying of the previous function of coordinating the county executive committee. I request the Members here to put this into law so that we have a service delivery unit coordinated by the deputy governor. That does not in any way take away the responsibility of the governor.

Mr. Deputy Speaker, Sir, once the deputy governor has done the coordination of service delivery, he or she reports to the county executive committee where decisions will be made. This will make the deputy governors busy by checking the progress of various dockets. It will also inculcate the values that are in the private sector where results must always be delivered. If possible, later on, there should be a separate law or an amendment of the County Governments Act that will provide for service delivery and define what the service delivery unit is as well as its functions.

There can be introduction of quarterly service delivery in the counties. As Senators, we will not worry about running up and down in every office to check what various departments have done. Our work will involve visiting a service delivery office and asking for the monitoring and evaluation reports of the county. From there, we can proceed to check on the actual projects on site. It would be important if we gave the deputy governors the responsibility of coordinating these sections other than just reading newspapers. We thank God that no governor has died so far. We also do not want our deputy governors to pray for their governors to die. We condemn that. We should be celebrating that the governor and the deputy governor are working as a team.

Mr. Deputy Speaker, Sir, I urge honourable Senators to appreciate what we are doing here and support the deputy governors. Some of the Members here will be governors. It is rumoured and reported that most Senators will be governors. I suspect the Chair is among them.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Murkomen. Actually, it is not true that most Senators will be governors. It is true that most Senators will vie for gubernatorial positions. There is a lot of difference between the two. I do not want you to drag me into the debate.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I have faith that those who will run for the position of governor from this House will be governors because I have seen their commitment and passion. However, I do not want to drag you into that.

May I remind Kenyans of a quote from the Chair that I liked; it was reported in the newspapers two days ago. The Chair said he is eligible to run for every office. However, because of his friendship and support for the incumbent President, he will not run for the presidency. I suspect you will not run for a Member of the National Assembly or a Member of County Assembly (MCA). It is only possible that you will be vying for a governor's position.

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Murkomen! Kindly, stick to the debate.

Sen. Murkomen: Mr. Deputy Speaker, Sir, we have Members like Sen. (Dr.) Khalwale, Sen. (Prof.) Anyang'-Nyong'o and Sen. Sang who have confirmed they will run for the position of governor. Sen. Wako and Sen. Mutula Kilonzo Jnr. are "rumoured". There are many Members who are still thinking of vying for that position. Sen. Okong'o has also been "rumoured". However, Sen. (Prof.) Lesan has not hinted yet.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murkomen, you are slowly getting out of order.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I am coming to the point. The point is that, if we have to attract quality deputy governors - men and women who will bring value to the position of the deputy governor and who will add value to the running of the county government - we must make that office honourable. We must make the office desirable and more than a spare tyre. We must make it functional and pay for the resources that we are putting in that office so that they give back to society.

The office of the deputy governor and the deputy president are similar in terms of the position but there is a difference. When running for the position of the president, the deputy president contributes to the 50 plus one threshold. Therefore, a deputy president is a sizeable political threat and any possibility to withdraw his or her support will injure the presidency. This is not the case with the deputy governors. They do not need to achieve a 50 plus one threshold. Therefore, they are not necessarily a representation of the counties, hence not a threat to the position of the governor. They do not command the respect that the governors have. In fact, few command the kind of respect the governor's have. That is the reason why it is important to support the weak through legislation.

Mr. Deputy Speaker, Sir, we are glad that the President and his deputy have behaved in a civilized manner. They have shown exemplary leadership. If there was bickering between them, it is possible that it would have made all of us wonder about the position of the deputy president. The deputy president is the principal deputy to the president and the manner in which President Uhuru Kenyatta and the Deputy President William Ruto have operated is an example of how a future president will be judged.

The Members from the Coalition of Reforms and Democracy (CORD) party may not agree with it but you can tell for sure that the office of the deputy president is honoured by the Office of the President. One can see how respectful they work. This is the kind of response we expect from the governors and their deputies. Since they have not been doing so - because we protect devolution - I urge the House to support this Bill with a desire to ensure we bring honour and respect to the institution of the county government. It is a small amendment but the implication is huge.

Mr. Deputy Speaker, Sir, the amendment under Clause 33 introduces what is in our Standing Orders; that when voting on matters of impeachment of governors or their deputies, the county delegation shall vote and not any other. It is not about the "majority vote" but the "county delegation shall vote".

I beg to move and request Sen. (Prof.) Lonyangapuo to second.

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, I rise to second The County Governments (Amendment) Bill (Senate Bill No.1 of 2014) which proposes to give functions and powers to offices that were created by the Constitution of 2010 that seemingly are not coordinated very well in practice today. As the Mover has mentioned, we have the two offices; one of them is the office of the deputy speaker which is not clearly stipulated in law and the other one is the office of the deputy governor which is indicated and properly put down. However, in practice today, the most misunderstood position which has many issues in county governments is the office of the deputy governor.

We have seen drama on television or read in newspapers of some counties where, perpetually, the governor and deputy governor have been at loggerheads and have never seen each other eye to eye because they have always been fighting. What a pity that people went to elections in 2013 without reading and understanding properly that a deputy governor is somebody who is eligible to be voted as a governor. He or she has substantial votes or voters who he or she was supposed to bring to the table in order to make the governor win. I do not know whether some of them read the law quite well. A classic example of that is what we saw; the one which came to the Floor of this House about the impeachment of the Deputy Governor for Machakos and the case of Embu.

It is like when a governor wakes up in some bad mood or realises that the deputy governor is on good terms with the Senator who seemingly is his opponent or enemy – nearly, all Senators have been misunderstood by governors – they quickly direct their anger to deputy governors. It is very sad that even the deputy governors themselves do not read the law properly to know that nobody can remove them “just anyhow” from their positions. You will find some of them going along.

A good example is the deputy governor of my county. In December, 2014, they went into some dispute with the governor. Next morning, the first thing was the governor to send somebody to drive a car to hit the deputy governor’s car. When he came out, they towed the car. Unfortunately, some of the law enforcing agencies in our land like the police---

The Deputy Speaker (Sen. Kembi-Gitura): Are you discussing fiction or a real situation?

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, this is real and not drama. It looks like a movie.

The Deputy Speaker (Sen. Kembi-Gitura): The way you are putting it, it looks like you are dramatizing it.

Sen. (Prof.) Lonyangapuo: It is very true. They timed when the deputy governor had taken his car to a car wash. Then, they drove another one at high speed to knock it. It was like the police were told to be on standby and they towed it away. That is exactly what they did. So, you will really be shocked about what happens. Some of them, like I heard of the case of my colleague, Sen. Kembi-Gitura, got out, locked the door and pretended to be doing repairs.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Lonyangapuo, you know I cannot give a point of order or join the debate from where I am sitting. Do you understand that? May I request you to give examples that will not touch on me because you are making it extremely difficult for me. If I were sitting where I normally sit, I would have risen on a point of order or a point of information as the case may be.

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, I am updated very much about what is happening in some counties that I am authoritatively in a position to say “some.”

Mr. Deputy Speaker, Sir, you can quote a number of them because there are very many. That really happens the moment there is a dispute. Two weeks ago when there were campaigns in Malindi, we saw in the newspapers – whether genuine or not – what happened to the Deputy Governor for Mombasa. They sent *askaris* to go and take her car.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

The reason for doing that was that she had a dispute with the Governor. Since when did a constitutional office become a monopoly of an individual? It is for this reason that the Mover of this Motion, Sen. Murkomen, has said that we should elevate and magnify some of the functions that a deputy governor can do. They should know that nobody can just remove them “anyhow”.

Regarding Clause 32 on Page 313, it states the functions of the deputy governor as given and they are indicated. It says that the deputy governor shall take and subscribe to the oath or affirmation as said in the Schedule to this Act before assuming office. The second part states that the deputy governor shall deputise for the governor in the execution of the governor’s functions which have been listed clearly. However, you may note that even when the governor is away, unless you are in good talking terms, you are not allowed even to do some of the functions or even represent them in functions and so on and so forth.

Amazingly, the office of the governor has become a one-man show. In my county, one time, the Governor launched seven building projects in one day. By 7.00 p.m., he was excessively tired yet there are Members of Parliament (MPs) who should have assisted him. The deputy governor and even the Senator who was also present in the county during that day could have also assisted him. When the deputy governor bows down before the governor, that is when they are elevated.

Going back to an example I gave about my county, they took away the car from the deputy governor and he went without a car for three months. By April, 2015, they told him to go and kneel down before the governor which I do not know what that meant and the car was returned to him. Now, he talks like a parrot everywhere about the governor praising him in the morning, during the day and in the evening even when there is nothing to say about the governor. So, we should prescribe duties that they can do. I will request during the Committee of the Whole---

The Bill provides that the governor may also assign duties and other responsibilities to the deputy governor. Let us not give room to this by using the word “may”. Why can we not just say “shall?” By saying “may,” they will continue doing what we have been seeing them doing for the past three years. We should be bold to say “shall” assign the deputy governor other responsibilities and duties like any other County Executive Committee (CEC) member. This is because there are many portfolios that can be created or loaded to some of the CECs. Some of the portfolios have also been misunderstood. A deputy governor in some county said that if they are given a function of a CEC, they will get money for entertainment and other things. It appears as if there are just there reading newspapers and there is nothing to do in the office. Therefore, as we do this, we should also note that by giving them more duties, that does not mean that they will get opportunities to pinch and squander money that belongs to the public.

Mr. Deputy Speaker, Sir, it has been cited here a number of times how a deputy governor is removed from office. It is a pity what we saw in Embu when the governor was impeached. Ideally, by law, the deputy governor was supposed to assume office. However, drama took place immediately. The deputy governor became an immediate target of the governor. It was like elevating her beyond what was already put there after reading that the law gives her power to step in.

My colleague, Sen. Murkomen, talked about counties where the governor and his deputy come from the same ethnic group. That is where more trouble is found than in the opposite situation where they come from different communities. I do not know whether that is true. You need to do more research and check whether it is true that by just having a governor and his deputy from different ethnic groups like in the case of Trans Nzoia, where the Governor is a Luhya and his deputy is a Kalenjin, there is cohesion. Is it because they are working together? I also know in Uasin Gishu County, the governor and his deputy come from the same community and they have no problem. I think that should not be the case although I support that we should encourage as much as we can, to have a deputy from a different background from the governor's so long as they come from the same county.

Mr. Deputy Speaker, Sir, the position of the deputy speaker has also been mentioned in this Bill. It is good to also anchor it in law. It is not there in the previous law but somehow, county assemblies ended up electing their deputy speakers. The deputy speaker is elected by the Members of the County Assemblies (MCAs). How do you remove the deputy speaker who is elected? We do not need to follow the other one because when you remove the deputy speaker, does he exit completely as a Member? So, the cloud needs to be cleared properly so that we see how that one can be removed. However, I support that these provisions need to be put in the law so that we have clear positions and we have people who can assist.

We also need qualifications of people who will vie as deputy speaker, so that we do not just carry anybody. In my county, we have a deputy speaker who was a councilor before. Just because we had more former councilors elected as MCAs, when it came to voting, they voted one of their own when we still had degree holders who needed to be considered. It may be necessary that we see how to tailor that. Although I also discovered that it is not necessary that for you to be a speaker, you must be a lawyer. However, you have to be a politician. That is what I have just discovered in practice. You must be a politician for you to manage the others.

These are some of the things that we need to look at as we continue with this. For the first time, we need to move this one so that when we go to the elections, we have a law that people can read in black and white. The governor and his deputy can then see that. Maybe we need to amend the ones that we have at the moment.

I second this Bill.

(Question proposed)

Sen. Wako: Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to talk on this very important Bill. I forgot my reading glasses so, I am finding it a bit difficult to read and I am developing a headache in the process.

This is a very important Bill and on the outset, I must say ---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wako, you are a lawyer of great repute and experience and you do not need to read anything. I am sure you read before deciding to contribute. Go right ahead.

Sen. Wako: The truth is that I am developing a headache because of not having reading glasses. I support the provisions of the Bill in so far as it relates to the removal of a deputy governor, deputy speaker and the others. However, I strongly feel that one cannot regulate something that is a political process. No reason has been advanced. It may be true, I think it is. We hear it particularly me who sits in the sessional Committee on Devolved Government, that governors are not treating their deputies properly in the way they are supposed to be treated under the Constitution. We have heard many of those complaints. We have met many deputy governors and so on but that should not in itself be a reason to amend this.

If you look at the entire history of presidents and vice presidents, the only clause that has been there under all constitutions in the world has been that vice presidents assist presidents; full-stop. The mechanics, their relationship and synergies is never legislated. In American history, the vice president has played a very big role but that has been because the president allowed it. At other times, he has played a minimal role and that is because the president does not want him to play a big role because of maybe some political differences that may have arisen, since they were elected into office. So, it is very difficult to regulate the relationship between the president and the vice president.

Mr. Deputy Speaker, Sir, in our constitutional review process which led to the promulgation of the new Constitution, many other sections were amended, replaced, repealed and so on. However, the one common feature in both the old and the new is that the vice president, whose title was changed to deputy president, even though he is now elected alongside the president, his job is to assist the president. That is all. Therefore, the excellent relationship that exists between the President and the Deputy President today is because they get along very well, they know that they depend on each other and they are gentlemen. That is what we should be aiming at. Not so much to regulate but create what people will appreciate.

The argument that because deputy governors have been instrumental in elections and there were some memoranda of understanding between different ethnic communities and so on, is not a new one. Even in the USA and everywhere else, the president chooses his vice president from a community which is very far from his. The vice president is always chosen because he can add value and bring votes to that ticket and ensure that the president wins. So far, the argument that has been advanced from what I have heard here is not new to warrant an amendment the way we want to amend it. Had they said that if we adopt some of the amendments – I have been coming to it – in the way that they want us to amend, then you will be creating a prime minister, and the deputy governor and the governor will become ceremonious. In my view, it also verges very close to being unconstitutional.

The amendment that the governor consults the deputy governor is a very pregnant clause. “Consult the deputy governor.” If the governor wants to go to the loo, he must consult the deputy governor. If the governor wants to do anything, he must consult his deputy. What amounts to consultation? Challenges can be brought that on this decision, the deputy governor --- There can be many cases which can be brought up in a court of law by saying that on this particular issue, the deputy governor was not consulted.

It is not like what we have under our Constitution where it says that the two Speakers must look at various Bills and agree on which Bill concerns the county. That is consultation in a very narrow area. But just to say widely that the governor must consult the deputy governor without prescribing in greater details what areas of consultations the governor must consult the Deputy Governor is too wide and it is subject to abuse. There can be many challenges arising out of that.

Therefore, that is not necessary. If it has to be there, then we have to prescribe areas where the Governor must consult the Deputy Governor in a greater detail than just a simple phrase of “consult the deputy governor”.

Under Clause 5 Mr. Deputy Speaker, Sir---

The Deputy Speaker (Sen. Kembi-Gitura): Order Sen. Wako! What is your point of order, Sen. Murkomen?

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for Sen. Wako - I did not want to interrupt him - to say that there is no limit to the consultation when the clause says; “in performing the functions under sub-section 2 of Section 30”. There are provisions there that say there is a limit.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murkomen, I think you are being unfair to Sen. Wako because he is contributing. You must allow him to give his understating of the proposals that are in the Bill.

Continue, Sen. Wako.

Sen. Wako: Of course, we know that limit---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wako! I have dealt with that issue. So, continue with your contribution.

Sen. Wako: Mr. Deputy Speaker, Sir, those are all the functions to be performed. So, must the governor consult the deputy governor and all those functions? That is too wide and I submit. The only one that I agree on is in Clause 5 where it says:-

“A deputy governor shall be the principal assistant of the governor and he shall deputize for the governor in the execution of the governor’s functions”.

Mr. Deputy Speaker, Sir, I totally agree with this amendment because it is a refinement of what is already in the County Governments Act. In fact, it repeats word by word what is there under the Constitution, and I believe it is Article 147 of the Constitution which touches on the duties of the Deputy President. All those words are lifted from that section to the extent that the deputy governor is like the vice president in a county. I agree with that uplifting of that to apply to the deputy governor which will be a refinement to what is already there under the County Governments Act.

Mr. Deputy Speaker, Sir, I now come to the two major ones where I have serious reservations which is Clause 5 (b). There should be an added clause which says:-

“THAT the deputy governor shall coordinate the functions of the county executive committee”.

Mr. Deputy Speaker, Sir, by the use of the word “coordinate”, it is under the Constitution and not a function which can just be assigned to somebody. It is a function of the entire executive committee itself under Article 183 (1) (c) of the Constitution which says:-

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

“A county executive committee shall manage and coordinate the functions of the county administration and the departments”.

So, when you talk about that coordinating role, it is a coordinating role assigned under our Constitution to the executive committee as an executive committee. If you take into account that these are functions of the executive committee and in the executive committee, the membership includes the governor and so on, and you are now giving that function to a deputy governor? What will the governor do? In other words, you are giving the deputy governor the role which he is not supposed to have under the Constitution. There will now be virtually two centres of power; the governor and the deputy governor as far as the executive committee is concerned. It is dangerous to create those two centres of power.

We are told that these amendments must be brought because most of the governors are uncivilized. They have abused their powers. There are many examples of that but taking into account - as I said earlier - this whole thing should be done through a political process. Things develop slowly and we shall come to where we are supposed to be. If you are going to amend the Act just because the county governors are, in the view of some, stupid people; that will not apply after the elections because after the elections, a number of our own Members of the Senate whom I know are civilized, educated and experienced will not abuse those powers.

Mr. Deputy Speaker, Sir, why amend the section now because of the existing governors who are uncivilized when we believe that in the next election, we are going to have civilized governors including my Vice Chair, former Cabinet Ministers, former Assistant Ministers of Foreign Affairs and diplomats?

If those are going to be governors, then we are going to have civilized governors and they are going to use this law properly. There is no need to amend the law just because of uncivilized people. So, to accept these amendments in the form in which they are is not only *ultra vires* to the Constitution, but it is also usurping the powers of the governor. It is creating two centres of power, usurping the powers of the governor and it is not solving the problem.

Mr. Deputy Speaker, Sir, I was telling my learned friend, Sen. Murkomen, for whom I have very high regard as a person of interest, that what he was proposing can simply be achieved if the section which says that the governor under the County Governments Act may assign responsibilities and portfolio to the deputy governor. Because the word “may” was used, the governors felt that they can ignore assigning responsibilities and portfolios to deputy governors. So, if we changed the word “may” to “shall”, then it will be incumbent on all the governors to assign responsibilities to their deputies. Among the responsibilities he may assign – for example, he may say the deputy governor may take charge of the infrastructure and the economic policies of the county, and therefore, he wants him to chair the sub-committee or he may say, in fact, like it has happened in my county, you do the job.

Now that I have mentioned my county, it is true that there have been many quarrels between governors and deputy governors. It appears that as we near the general election, there are conciliations between the governors and the deputy governors. For example, in my own county, the governor has not seen eye to eye with the deputy

governor since the results of the elections were announced, but now they have reconciled and are working together. The governor has given the deputy governor an important portfolio of infrastructure, tourism, trade and development. Before that, the deputy governor did not even know whether or not the governor was in the country. In other words, he did not know whether he could be acting governor because the governor is out of the country. Therefore, people are now maturing as we move towards election. I am quite sure that, that maturity will continue after election.

Subject to a drastic amendment, particularly on those two sections to comply with the Constitution not to make somebody above the governor, I support this Bill to the extent that I have mentioned that I support it.

Sen. (Prof.) Lesan: Mr. Deputy Speaker, Sir, I rise to support this Bill especially because of the provisions concerning the appointment of a deputy speaker at the county assembly. In the previous arrangements in the county assemblies, there has not been a deputy speaker in the House. Therefore, there is the risk of creating a vacuum in the House incase, for some reason, the Speaker vacates office or is removed. This amendment serves to fill in that gap. There should be a deputy speaker elected from the members of the county assemblies. This will form a link between the House which has elected Members and the speaker who is not an elected Member of the House.

All counties in the country do not have a deputy speaker. We have seen the inherent risks of having a House without a deputy speaker in case of removal of the sitting speaker. This amendment is appropriate and I support it subject to specifying the qualifications the deputy speaker should have and, as mentioned by my colleagues, the mode of removal of the deputy speaker when necessary.

Regarding the issue of the deputy governor, the mode in which the deputy governor is elected into office is perhaps the reason we have challenges with the office. We are aware of a signed agreement between the governor and his running mate, which is purely a gentleman's agreement between the two of them. The agreement that they reach together has got far-reaching implications in terms of how they will run the office.

I suggest that the agreement be signed by both parties that are running for election. The agreement between the governors and deputy governors should be the same throughout the country. The most important thing that should be included is that the signed agreement should form part of the oath and affirmation of taking office by the two parties. I also suggest that to have a long-lasting relationship between the speaker and his deputy, there should be facilitation for the office of the deputy from the start. A statement should be included in the agreement such that the facilitation happens at the beginning. There should be no change of this facilitation because this has been used to demean the office of the deputy governor.

Mr. Deputy Speaker, Sir, the deputy governor should have an appropriate office space during the entire term of their office. The deputy governor's office should be assigned the right facilities like vehicles at the assumption of office. There should be a vote head for deputy governors to run their offices. We know that most of the resources that are in the offices of the deputy governors have been interfered with. I suggest that a clause be put to facilitate this at the beginning of the term of deputy governor.

I agree with the speakers who have spoken before me that we do not want to create two centres of power in the country. It is important that we enable the office of the deputy governor to work together with that of the governor. We can do so by making the perks and the remuneration of the deputy governors to be as comfortable and close to those of the governors.

One of the deputy governors who has suffered most in this country and never operated from his office is the Deputy Governor of Bomet. Unfortunately, the Deputy Governor has not had the opportunity to contribute to the provision of leadership and service to the County of Bomet for lack of facilitation. This has become a costly affair for the county in that the Governor has had to traverse the county and do functions that could be done by the Deputy Governor. The Governor uses a helicopter as a mode of transport to traverse the county, which is costly. It is very costly for the Governor to move around the county doing functions which could have, otherwise, been done by the Deputy Governor, if there was facilitation to run the office.

Mr. Deputy Speaker, Sir, I would like to support the two amendments which have been made for the deputy speakers and the deputy governors of the counties so that those two can be useful, operate and assist the counties that they represent. The kinds of squabbles which are brought about by lack of understanding are very costly and interfere significantly in the delivery of services to the counties.

I beg to support the amendments to this Bill. I am sure that the amendments will also be supported by the rest of the Senators, particularly Senators like me who would like to continue being Senators in this country and in Parliament.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I rise to contribute to this Bill. First, before I begin, I would like to thank Sen. Murkomen for thinking it wise to have this Bill on the Order Paper. The drafters of the Constitution made assumptions in many respects and assumed many things. That is why in Article 110(3), there is assumption that the Speakers of the two Houses would agree on the Bills. There is also an assumption that the deputy governors and the governors would not be from different coalitions and would, therefore, be able to agree. However, the case in Machakos and Kisumu counties has proved otherwise. From the complaints that we have had from at least three counties, we now know that the problem is not necessarily that the deputy governors do not have work to do. The major complaint in my humble submission is that the deputy governors are not involved in the decision making process in the County Executive Committee (CEC).

I would like to reiterate what Sen. Wako has said; that in terms of Article 179(5), the Constitution is very clear that in the absence of the governor, the deputy governor takes control. If you look at Article 183 of the Constitution, the composition of the county executive committee consists of the county governor and the deputy governor. The other CEC members come in Article 183(b). In terms of the work, performance of duty and election of the governor and the deputy governors is what we call first among equals. The governor is the first among equals. The two are the same in terms of their election and work.

(Applause)

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

Mr. Deputy Speaker, Sir, the problem is not necessarily what Sen. Murkomen has suggested because you would upset what we call the *numero uno* by attempting to put one in charge of the other or vice versa to supervise the other. I agree with Sen. Wako that the amendment in Clause 5 which suggests that the deputy governor is the principal assistant of the governor is in tandem with Article 147 in terms of the Deputy President.

My view and suggestion is that instead of suggesting the idea of coordinating of functions, because it will create the problem we had in the Grand Coalition Government where there were accusations that the Rt. Hon. Prime Minister was not properly coordinating or was not consulted which is what Sen. Murkomen has suggested; would it not be wise that we propose that the decisions of the CEC, in light of Articles 179 and 183, be in writing and signed by the county governor, the deputy governor and the CEC members. That way, we would then import the clauses in the Constitution about the Cabinet; where decisions of the Cabinet as well as those of the President are also in writing. That is not imported into the county government.

I believe that if that is done, it will solve the problems like those we have experienced in the past where the deputy governor in Kisumu says that several CEC members were appointed and she is not aware and in the case of Machakos County where cars were purchased and he was not made aware or that meetings were called and he was not made aware. That way, we will avoid upsetting the spirit of the Constitution of having one person who is first among equals. If we balance it that way, we will avoid creating a conflict in advance.

I do not agree entirely with Sen. (Prof.) Lesan about this memorandum because any memorandum that is entered between an aspirant vying for the governor's seat and another who is for the deputy governor's seat, is not binding before they are elected. Any agreement that they would make can only be upon election and upon being sworn in as governor and deputy governor, respectively. Therefore, I do not agree with what they would call pre-coalition agreements because that is not the spirit of Articles 179, 180 and 183 in terms of the election, work and deputizing the work of the governor and the deputy governor.

Mr. Deputy Speaker, Sir, therefore, I would suggest and I have said that I do not agree with Sen. Murkomen on the word "consultation." It will create problems because the word in the Constitution in terms of the decision of the County Executive Committee (CEC) which constitutes the governor and the deputy governor solves that problem. So, it is assumed that there is a decision at the first echelon of the CEC which constitutes of the governor and the deputy governor that they have agreed. First, you have that sorted in terms of the decision of both. Therefore, there is no reason to have consultation.

In terms of Clause 3, in Article 183, the word "coordination" is put on the CEC. If the CEC consists of these two people who we are trying to put together, then, the word "coordination of" in Clause 5(3)(a) is not necessary.

Mr. Deputy Speaker, Sir, I would like to repeat what the late Sen. Kajwang said when we were conducting the impeachment of Deputy Governor Kiala. His words were that this is the only marriage where divorce is not acceptable. Therefore, to suggest that we will improve this marriage in this manner will only create mistrust before even these people are elected. Maybe we should find a method. We have suggested that we find a

method where the CEC in terms of the work it will do, then, their decision is put in writing.

Where there is “shall” and “may” in terms of designation of other responsibilities – Sen. Murkomen, I suggest this:- Why can we not say that the deputy governor shall have responsibility as any other CEC member to the extent, therefore, the deputy governor can conduct the functions of the person in charge of water and finance so that we do not have to assign specific responsibilities because these responsibilities that are delegated under Section 30 of the County Governments Act, you do not need to redefine them. We need to put the deputy governor at a higher level than the CEC members. The governors are demeaning their deputies by giving more responsibilities to CEC members.

Secondly, the proposal by Sen. Murkomen that the deputy governor is the principal assistant to the governor would cure what is happening in Machakos, that, the governor then appoints a fellow who is not even a CEC member to read speeches on his behalf and represent him at county functions. Therefore, I suggest that in terms of qualifying, maybe it is better instead of saying that he or she shall be assigned responsibilities by the governor; we then put a specific clause where the deputy governor can perform the functions of a CEC member. That means that the deputy governor assumes a higher responsibility so that then – because the structure of the county executive presupposes that you have a two tier. The first tier is the governor and his deputy and the persons appointed by the governor and approved by the assembly.

That way, we would then ensure that the governors will not demean their deputy governors or in the case of counties, they would assign them the responsibilities that nobody wants to do. They would say, go and inspect toilets and so on. We do not want to remove that balance. We want to ensure that our work is not to legislate too much on this issue based on the conduct of the current governors. As Sen. Wako has suggested, maybe in the next dispensation, we will have better governors.

Mr. Deputy Speaker, Sir, a governor will not deliberately remove the balance that is already in the Constitution and the County Governments Act. To safeguard against this, the only option is to ensure that the ‘may’ in the Act is changed to ‘shall’ but we deliberately--- Because there is a limit as to the number of the executive members any county government can have, we can have these responsibilities performed by the deputy governor. Otherwise, I agree to the amendment to ensure that the deputy speaker is included in Clause 2 and the removal of the deputy speaker to be equal to that of the speaker.

Although Sen. Murkomen takes credit for drafting the County Governments Act, they left out a lot of things. However, it is just tidying it up. We have had problems with the speakers of the county assemblies. They have assumed that they are equal to deputy governors. They feel that they share power with the county government that is elected. I prefer an amendment on the election of the speaker so that it is clear that the speaker does not share power with the county government. This is to avoid a situation like in Makeni County where the speaker has become a problem because having been elected by the 47 Members of the County Assembly, he thinks he has powers equivalent to the governor who was elected by many people.

Mr. Deputy Speaker, Sir, I support, with those qualifications. However, the portion of “assigning” and “consultation” will not solve the problem. In fact, it will raise the disputes. We want the Chair and Sen. Hassan, when they become the governors because he has announced his intention---

The Deputy Speaker (Sen. Kembi-Gitura): Order. You and Sen. Hassan have just come and you discussed me.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, yes. We want Sen. Hassan, when he becomes the governor to understand that the person who is nominated to be a deputy governor, upon election, such a person is not an appointee of the governor but elected in equal measure like the governor.

I support.

(Sen. Cheruiyot stood up in his place)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Cheruiyot, I believe you made your maiden speech.

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, yes.

The Deputy Speaker (Sen. Kembi-Gitura): Now you are an ordinary Member of the House.

Sen. Cheruiyot: Thank you, Mr. Deputy Speaker, Sir. I rise to support this Bill. It gives me great pleasure because having come from an election recently, I have witnessed first-hand the kind of challenges the deputy governors experience. It is our principal duty as the custodians of devolution to ensure that for any emerging challenges, we come up with Bills like this. They will provide an answer to the challenges experienced daily.

If for no other reason other than the fact that a deputy governor is elected alongside the governor and they earn a salary for this and considering the much they will earn in five years because this is like a marriage - that divorce is not an option - it is our duty to ensure that the county residents get value for their money. It is a sad state of affairs when you imagine that someone is paid a lot of money but only reads newspapers as has been the case.

Mr. Deputy Speaker, Sir, when a Senator drafts a Bill that will add value to the work of deputy governors, it is commendable. By the time the governor and his deputy are going for election, the governor normally picks somebody who complements him in terms of their weaknesses and strengths. Many residents of a county vote a particular pair knowing very well that despite the questions of doubts that they may be having about a certain individual. They still go ahead and vote for them because they know the deputy governor is strong in a certain area.

This was widely observed during the last elections. You would find people having questions about somebody's knowledge in, for example, finance matters and issues alongside that line because that was the argument at that time. They picked a good deputy governor who was a top-notch executive. However, when you go to the counties, you will find that the same people that residents of a county voted in to assist the governor, as we are told, are just sitting in the office reading newspapers.

These particular proposed amendments will strengthen what we intend to do as a House. I disagree with some of the proponents who have not agreed with the Clause on consultation saying it is a recipe for disaster and maybe a creation of two centres of power. Why do we not want people to consult? Consultation is a good thing especially if you are consulting somebody that you went before the residents with. These residents are your bosses because they are the people who elected you, and you told them that you would be working with so and so from the first day in office until the last day. How difficult is it to sit down with that individual and agree on certain items?

I believe that by the time you go to campaign, your mind is still quite fresh and ambitious as someone seeking to be elected and you have good vision of the county at that point. That is why you pick a particular individual and say that this is the person that we shall have meetings to discuss how to take the county forward. I do not know what happens at some point during somebody's term in office that it gets to a point where they cannot talk to each other.

I support the inclusion of the clause that governors will consult deputy governors and it should be a requirement. It is good ground that a deputy governor can rise and say that the governor is violating the Constitution because they have not been consulted. I believe decisions are better reached when you sit down and reason out together because it clears out all the grey areas that people may be having.

Mr. Deputy Speaker, Sir, I would also wish to---

(An. hon. Senator spoke off record)

Sorry, I thought somebody was raising a point of order. Being new in the House, I know sometimes I may move along lines that are not correct but now I know I am fully in order.

I want to talk about Clause 5(a) which talks of deleting the sub-section and substituting, therefore, the following new sub-section which states that the deputy governor shall be the principal assistant of the governor and deputise the governor in execution of the governor's functions. I want to support that, having this in mind. We have a case in point where--- I cannot remember which county it was in particular but there was a case where a governor was absent from office due to illness for such a long time. I think it was Nyeri County, if I am not wrong. Members of the County Assembly (MCAs) began to raise very serious questions but the deputy governor could not respond to some of the issues. He said that they have not been given instruments of power and, therefore, he could not execute some of the decisions.

When you have such a law, you can execute functions properly. You do not have to wait for the kind of scenario that Sen. Murkomen envisioned. He said that some deputy governors will have to wait for the governor to die for them to execute some of these functions when it is clear that the deputy governor is the principal assistant of the governor. This is written and confirmed in law; that there are decisions that deputy governors will take and be confident that they are doing the right thing in law.

Finally, in my submission, the Senator for West Pokot drew our attention to the use of the word “will”. I do not seem to get it. Let me rest my contribution at that because I do not seem to get the particular point that I wanted to mention.

With all these submissions, I thank you and support.

ADJOURNMENT

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators.

Hon. Senators, it is now 6.30 p.m., time to adjourn. Therefore, the Senate stands adjourned until tomorrow, Wednesday, 30th March, 2016, at 2.30 p.m.

The Senate rose at 6.30 p.m.