

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 12<sup>th</sup> May, 2015

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

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

### PRAYERS

### PETITION

MANAGEMENT OF REVENUE FROM MAASAI  
MARA GAME RESERVE

**The Speaker** (Hon. Ethuro): Order, Senators! We have agreed with the Senator that the Petition will come on Thursday this week.

Next Order!

### PAPER LAID

REPORT OF THE COMMITTEE ON LANDS AND  
NATURAL RESOURCES ON THE MINING BILL, 2014

**Sen. Kivuti:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table, today, Tuesday, 12<sup>th</sup> May, 2015:-

Report of the Standing Committee on Lands and Natural Resources on the Mining Bill, 2014.

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

### STATEMENTS

**The Speaker** (Hon. Ethuro): Order, Senators. Because of the three Bills with a constitutional deadline of 27<sup>th</sup> May, 2015 – and of course, we need to conclude them much earlier before going back to the other House – I propose that we only take two Statements; (a) and (c). We must conclude that business by 3.00 p.m. and then take the

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votes under Order Nos.8 and 9. The rest of the Orders are deferred until we deal with the Bills with a constitutional deadline. So, be guided.

## BILLS

### *Second Readings*

THE PARLIAMENTARY SERVICE (AMENDMENT) BILL  
(SENATE BILL NO.21 OF 2014)

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL  
(NATIONAL ASSEMBLY BILL NO.40 OF 2014)

THE FAIR ADMINISTRATIVE ACTION BILL  
(NATIONAL ASSEMBLY BILL NO.10 OF 2014)

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

THE COUNTY EARLY EDUCATION CHILDHOOD  
EDUCATION BILL (SENATE BILL NO.32 OF 2014)

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

*(Bills deferred)*

**The Speaker** (Hon. Ethuro): Regarding the first Statement, of course, the Senator is not here.

Sen. Halima, do you have a request?

**Sen. Mohamud:** Yes, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Why do we not take the request first then?

### STATUS OF CHILD ADOPTION IN KENYA

**Sen. Mohamud:** Mr. Speaker, Sir, I rise under Standing Order 45 (2) (b) to request for a Statement from the Chairperson of the Standing Committee on Labour and Social Welfare regarding child adoption in Kenya.

In the Statement, the Chairperson should:-

- (1) State how many adoption agencies are registered to operate in Kenya.
- (2) Explain how long it takes on average for a single adoption to be conclusively processed.
- (3) Provide adoption statistics in the country for the last three years.
- (4) Indicate on average how many adoptions are processed on a daily basis.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Is the Chairperson of the Committee not here? Is there any Member of the Committee on Labour and Social Welfare?

*(Sen. Madzayo walked into the Chamber)*

Order! Chair, you are directed to answer the question in the request for the Statement in two weeks' time. You can get the details from the Senator.

CONTINUED CLOSURE OF GARISSA TTC

**Sen. Obure:** Mr. Speaker, Sir, I requested a Statement regarding the predicament of students of Garissa Teachers Training College in Garissa. The Speaker directed that the Statement be given today.

**The Speaker** (Hon. Ethuro): Chairperson, Committee on Education.

*(Sen. Karaba walked into the Chamber)*

**Sen. Karaba:** Mr. Speaker, Sir, I wish to report that the Cabinet Secretary is having a meeting with stakeholders about the same---

**The Speaker** (Hon. Ethuro): Order, Chair! First, you need to apologize for coming late.

**Sen. Karaba:** I apologize, Mr. Speaker, Sir. But I am from a very crucial undertaking.

**Sen. Obure:** Mr. Speaker, Sir, while we appreciate that the Chairman has tendered his apology for coming late, I really did not understand what he said in respect to the specific assignment that he had this afternoon.

**Sen. Karaba:** Mr. Speaker, Sir, I said that the Cabinet Secretary is right now holding a meeting on the same subject. He assured me that as soon as he is ready with the Statement, it will be tabled here this week.

**Sen. Obure:** Mr. Speaker, Sir, you will recall that last week, in fact, under your direction, you did stress the urgency of this particular matter. Although I remember that the Chairman has argued for a longer period, you did direct that, taking into consideration that these students are at home, this answer be given today. Is he in order to give the impression that the Cabinet Secretary is at liberty to choose the moment when he answers questions raised in this House?

**The Speaker** (Hon. Ethuro): Chairman, Committee on Education.

**Sen. Karaba:** Mr. Speaker, Sir, I thought I was clear when I stated that I am just from the Cabinet Secretary's (CS's) Office. I had gone to see whether I could get the answer which I was supposed to table here today. However, they are still engaged in a meeting with other stakeholders, including the principal of the institution and, therefore, the answer is not ready. I will table it as soon as it is ready, preferably on Thursday.

Thank you, Mr. Speaker, Sir.

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

**The Senate Minority Leader** (Sen. Wetangula): On point of order, Mr. Speaker, Sir. On a procedural issue, when Statements are sought in this House, it is the Office of the Clerk that administratively must process and seek responses from the Executive. On what basis, other than exuberance and enthusiasm, that has no help to this House, would the Chairman walk to the CS's Office? This is demeaning the status and standing of the Senate. The Chairman of a Committee in this House is a very important person in terms of pecking order and in terms of standing. Why would he walk to the CS's Office to solicit for a Statement to bring to the House?

**Sen. Karaba:** Mr. Speaker, Sir, it was important to meet the CS to tell him how serious it is so that I can table it according to the Speaker's order. It was supposed to be today and therefore I had to prove to him that I am a serious person by going there. He saw that I am a very serious Chairman. That is why I was late.

**The Speaker** (Hon. Ethuro): Order, hon. Members. They are both right in this case. First, I want to confirm for a fact that a Chair or a Senator of this House is a very important person. The obligation of a Chair is really to help other certain entities. The minimum they can do is to furnish you with the requisite information in good time so that you do not have to walk there. That point must be made clear to all and sundry.

**Sen. Karaba:** Thank you. Most obliged.

**The Speaker** (Hon. Ethuro): Therefore, we expect the Statement on Thursday. I hope you have impressed upon the CS that we are talking about schools and colleges that have already opened where some of the students cannot manage to continue with their studies. That is the most important issue. I am sure he is not creating the impression that he runs the Ministry by consulting on each and every issue, including the school calendar.

FORTHCOMING STATE VISIT BY THE PRESIDENT OF THE  
UNITED STATES, MR. BARACK OBAMA

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I notice that the Leader of Majority is in the House. I raised a Statement last week directed to him in respect of the forthcoming visit by President Barack Obama. However, there was no confirmation as to when the answer would be brought because he was not around. Could he tell us if he received the information and when he is going to bring the respective answer?

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr) Khalwale. That is another matter for the Leader of Majority. To conclude on the one for Education, the Chair has given us the Thursday of this week.

*(Sen. Karaba stood in his place)*

You do not need to respond. I am just amplifying what you had already registered.

**The Senate Majority Leader** (Sen. Kindiki): Mr. Speaker, Sir, I am aware that Sen. (Dr.) Khalwale addressed an issue about the former Senator who is also President Barack Obama on his proposed visit. I thank Sen. Karaba for taking the question on my behalf. That visit is in the process of finalization. Whereas Sen. Karaba undertook, the

answer could be provided within one week, which is not over yet. That matter is still in progress and we shall be in a position to provide whatever information we will have before that time is over.

PLANS TO OPEN MORE CONSULATES IN USA  
TO SERVE AS POLLING STATIONS

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Speaker, Sir. There was a Statement that I sought from the Committee of Legal Affairs and Human Rights regarding the pronounced intention, in fact process, of the Executive purporting to open polling centres in certain choice cities in the United States of America (USA). That Statement is due today.

**The Speaker** (Hon. Ethuro): Chairperson, Legal Affairs and Human Rights Committee?

**Sen. Sang:** Mr. Speaker, Sir, I indicated that we needed two weeks to respond to the Statement sought by the Minority Leader. Unfortunately, our Clerk has requested for the same Statement from the Attorney- General's (AG) Office but the AG is yet to respond. Based on the point of order that the Minority Leader raised, I am not willing to indicate a lot of things I have engaged myself in, lest I suffer the same consequences as Sen. Karaba. I have tried something and we should have a response in the next one week. There are efforts that we have made but we cannot reveal some of them since he stood on a point of order. We will give progress of the same in the next one week.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. If you have heard what the Senator for Nandi is saying, a clear announcement needs to come from the Chair to various institutions in this country because the Government seems to frustrate our attempts to access information domiciled in various institutions. He is not the only one. You remember that I also wanted to be given information in the possession of the Parliamentary Service Commission (PSC). I am again frustrated that I am yet to be given that information. You need to remind them that it is our constitutional right as citizens to have access to information that is held by the State and its organs.

**The Speaker** (Hon. Ethuro): I suppose you have already done such a reminder by your Statement.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, Sen. Sang has mentioned to me what he has said. We do not raise questions and seek Statement for the fun of it. When the respondents tell us that they will bring the Statements in two weeks, we take it as true and wait patiently until after the two weeks when we start to request that our Statements be delivered.

This is a very important Statement we are seeking; we are trying to prevent the pre-rigging of the next election. We want to get very clear assurance. Could the Vice Chair tell us exactly when he will bring the Statement to the House, his failed efforts notwithstanding?

**Sen. Sang:** Mr. Speaker, Sir, I share in the frustration of the Senate Minority Leader. Some of us in this House on several occasions have also requested for Statements and they sometimes take quite a long time. As chairpersons of the various committees,

we cannot do much; we have to keep on reminding them. In this case, today, we met with the Attorney- General on a different matter but I still took up the issue with him, that we have had serious issues with the slow pace of responses to Statement from his office. We ended up agreeing on having one person within his office and one of our clerks liaising, so that we have faster communication on this issue. I hope with that kind of structured agreement on how to transact business, we should respond to these Statements quite fast. On this issue, I request that I respond on Tuesday afternoon.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I request it to be on Tuesday the week after.

**Sen. Sang:** That is okay.

**Sen. Okong'o:** On a point of order, Mr. Speaker, Sir. I do not know whether you noticed my party leader giving himself permission and interacting with the Senator who is holding brief as a Vice Chair. I do not know whether you noticed and whether it was in order for him to go on to the microphone and interact without your permission. Did you notice that?

**The Speaker** (Hon. Ethuro): I noticed that, and I am particularly pleased that you also noticed.

*(Laughter)*

He requested but was too impatient; but given that he was bringing the issue to a closure, I think the Chair appreciated that more than the transgression.

The Chairman for the Committee on National Security and Foreign Relations, you are supposed to issue Statement 2 (b).

#### ABORTED VISIT TO THE USA BY PRESIDENT UHURU KENYATTA

**Sen. Haji:** On a point of order, Mr. Speaker, Sir. Yesterday, the Cabinet Secretary (CS) for Defence called me to say that they are trying to write a joint Statement with the Ministry of Foreign Affairs and International Trade. She communicated with me today at around 1.30 p.m, to say that they should be given more time so that they can bring the Statement. I request that it be deferred to Thursday this week.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I sympathize with my Committee Chairman. The Executive, in particular the Permanent Secretary (PS) for Foreign Affairs and International Trade has been dishing out Statements that would fit into the Statement being sought by the distinguished Senator for Nyandarua through the media. Why would the Executive find it easier to address the Press than to bring information to the distinguished Senate of the Republic of Kenya, on a matter that is so important affecting the security of the Head of State of this country?

First, they said that Yemen is at war and so they could not fly through it. Then, they said Eritrea stopped them from flying through. Finally, they said that Ethiopia said that they cannot fly. When they keep on sending these wrong and mixed signals, it raises anxiety in the country for no reason. We need a very strong direction from the Chair on a

matter as important as this. We do not want the Executive to continue playing games with this House.

**Sen.(Eng.) Muriuki:** Mr. Speaker, Sir, I want to confirm because I did not hear the last words of the Chair as to whether or not he committed to bring the Statement on Thursday. I will be happy to wait for Thursday.

**Sen. Okong'o:** Mr. Speaker, Sir, sometimes I get surprised in this House. The Chairman who has spoken has given his frustration in this House, even quoting some powerful woman withholding information. Are we going to be taken for a ride? We need directions because we can summon the entire team to tell them that we need information.

**The Speaker** (Hon. Ethuro): Order, Senator! Today, the Chair of the Committee on National Security and Foreign Relations did not talk of any woman; he talked of the Permanent Secretary who has been in constant communication with him.

**Sen. Okong'o:** Mr. Speaker, Sir, I am saying the same Chair has shown in the past a lot of frustrations in procuring Statements for this House. So, it is not the first time and it is on record. This continuous stalemate makes this House look like we are a House in futility which we are not.

**The Speaker** (Hon. Ethuro): If there is anybody who will look bad, it is not this House. This House is definitely delivering, Members seek Statements, dates are given and the Chairs report, so somebody else is sleeping on the job and not the House. That is where you should zero in your frustrations.

Proceed, Chair.

**Sen. Haji:** Mr. Speaker, Sir, on a point of correction. It is not the Permanent Secretary, it is the Cabinet Secretary, Madam Omamo, who has been communicating with me. I find it quite reasonable to give them up to Thursday. If they do not comply, then we will address the issue but with regard to the question of frustration, I think every Chairman is frustrated. For example, I have been speaking to you that we are going to address some of these issues.

**The Speaker** (Hon. Ethuro): Order, hon. Members. I do not think every issue should translate into a frustration because when there is communication and some of the reasons have been given that there are more Ministries involved; that they are gathering information---. Definitely, you would not want to be given information that you might find not acceptable. That delay may be accepted but when we have three Statements and no Statement is coming, then there is definite concern. This House expects Government officers to be ready with information, they do not need to wait for Members to ask. I concur with what Sen. Wetangula had suggested, that they find it easier to communicate through the media and not the proper institution of accountability.

Let us proceed. What is it, Sen. Karaba? Proceed, before Sen. Sang speaks.

**Sen. Karaba:** Mr. Speaker, Sir, at times, we are not to blame.

**The Speaker** (Hon. Ethuro): Order, Senator! I have given you a lifeline from the Chair; you do not want to go through that again.

**Sen. Karaba:** Okay, Mr. Speaker, Sir.

STATUS OF THE COUNTY GOVERNMENTS  
STAFF PENSION SCHEME

**Sen. Sang:** Mr. Speaker, Sir, I sought a Statement on the issue of county staff pensions management from the Chairperson of the Committee on Labour and Social Welfare. This Statement is long overdue; it was due two months ago and he has not responded. Could I get an indication as to when he is going to respond to this?

**Sen. Madzayo:** Mr. Speaker, Sir, I need a week to be in a position to respond. I thought I had already done that but it is unfortunate that among the questions that I have answered, his is part of it. I should be in a position to respond in one week's time.

**The Speaker** (Hon. Ethuro): It is so ordered. The Statement shall be issued in one week's time.

Proceed, Sen. Sijeny.

Next order!

*(Sen. Musila stood up in his place)*

What is it Sen. Musila?

STATUS OF CASH TRANSFER PROGRAMMES

**Sen. Musila:** Mr. Speaker, Sir, I requested for a statement quite some time ago. My issue concerns the matter of the status of the Cash Transfer Programme, and the Chairperson gave a Statement last Tuesday. You ordered that the Statement be interrogated today but it does not appear on the Order Paper. May you designate a date; is it tomorrow or Thursday? I prefer that this matter be dealt with tomorrow.

**The Speaker** (Hon. Ethuro): How about next week, because of the Bills which are subject to a constitutional deadline? I direct that this matter appears on the Order Paper on Tuesday next week.

Next Order!

**BILL**

*Third Reading*

THE POTATO PRODUCE AND MARKETING BILL  
(SENATE BILL NO. 22 OF 2014)

*(Sen. (Eng.) Muriuki) on 4.12.2014)*

*(Resumption of debate interrupted on 7.05.2015)*

**The Speaker** (Hon. Ethuro): Order, Senators. Do we have the requisite number of delegations?

I wish to put the question which is that The Potato Produce and Marketing Bill (Senate Bill No. 22 of 2014) be now read a Third Time.

I order that the Division Bell be rung for one minute. I hope that in the meantime, you are checking on your digital capabilities.

*(The Division Bell was rung)*

Order, Members. I think the one minute is over. Draw the Bar and close the door.

*(The Bars were drawn and the doors closed)*

Are we ready? Order, Senators. We will take one minute to vote. You may vote now.

### DIVISION

#### ELECTRONIC VOTING

*(Question, that the Potato Produce and Marketing Bill  
(Senate Bill No.22 of 2014) be read a Third Time put  
and the Senate proceeded to vote by county delegations)*

**AYES:** Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy, Juma Boy, Kwale County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Kajwang Moses, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; and Sen. Wetangula, Bungoma County.

**NOES:** Nil

**The Speaker** (Hon. Ethuro): Order, hon. Senators. The results are as follows:

**AYES:** 28

**NOES:** Nil

**ABSENTION:** Nil

Hon. Members, I would like to mention that we will only open the door to allow the Speaker to exit. The rest of you will remain because the next Order is on Committee of the Whole. We will not ring any other Bell.

*(Question carried by 28 votes to nil)*

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

## COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

### IN THE COMMITTEE

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

THE PUBLIC FUNDRAISING BILL  
(SENATE BILL NO.28 OF 2014)

*(Resumption of Consideration  
in Committee interrupted on 5.5.2015)*

**The Temporary Chairperson** (Sen. Murkomen): Order, hon. Senators. I want you to follow me very clearly. You will recall when we were at the Committee Stage, there were very many clauses. It is possible that there is one that you do not agree with. We will vote for all of them at ago. If we were to vote for each and every clause, we would vote for two to three days. However, we will combine clauses without amendments and clauses with amendments, new clauses, the title and clause 1. I will request you to be very alert. If you have a problem with a particular item that we will be voting for, you should raise it.

Secondly, we need to move fast. If you want us to finish fast, then you have to be attentive so that we vote. I will start with clauses without amendments.

You will vote for one minute. Since we are having roll call voting, we will need two tellers.

Before we start the voting, is there anyone who has an issue with any Clause among the ones that have no amendment? I suggest that we make one vote using the Electronic Voting system for the clauses without amendments. When we come to the Clauses with amendments, we will use the Roll Call system.

Senators, you have one minute to vote as the system is ready.

*(The Electronic Voting System developed a technical hitch,  
and the Senators resorted to Roll Call Voting)*

**The Temporary Chairperson** (Sen. Murkomen): The microphones are now working.

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We need a Senator from the right hand side because we are doing a roll call voting. The electronic voting system is not working. They had volunteered Sen. Sijeny. We also have Sen. Joy Gwendo.

## DIVISION

### ROLL CALL VOTING

*(Question that, Clauses 6, 8, 9, 11, 12, 15, 17, 19, 22, 24, 28, 30, 31, 34, 36, 38, 40, 44, 46, 47, 52, 53, 55, 58, 60 and 61 be part of the Bill put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Adan, Isiolo County; Sen. Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma boy, Kwale County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. M. Kajwang', Homa Bay County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Nabwala, Trans-Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang', Nandi County; Sen. Sijeny, Nairobi County and Sen. Wetangula, Bungoma County.

**Teller of the Ayes:** Sen. Gwendo

**NOES:** Nil.

**Teller of the Noes:** Sen. Sijeny

**The Temporary Chairperson** (Sen. Murkomen): The results of the division are as follows:

**AYES:** 30

**NOES:** NIL

**ABSTENTIONS:** NIL

*(Question carried by 30 votes to nil)*

*(Clauses 6, 8, 9, 11, 12, 15, 17, 19, 22, 24, 28, 30, 31, 34, 36, 38, 40, 44, 46, 47, 52, 53, 55, 58, 60 and 61 agreed to)*

**The Temporary Chairperson** (Sen. Murkomen): Hon. Senators, we will now move on to the next Division, which I presume concerns clauses with amendments. I am assuming that there is no one who has an objection on one or two clauses, so we will take that vote electronically.

Hon. Senators, I now wish to put the question that Clauses 4, 5, 7, 10, 13, 14, 18, 23, 25, 26, 27, 29, 32, 33, 35, 37, 39, 45, 48, 49, 50, 51, 54, 59, Schedule and Clause 2 be amended as proposed and be part of the Bill.

Let us proceed.

### DIVISION

#### ROLL CALL VOTING

*(Question, that Clauses 4, 5, 7, 10, 13, 14, 18, 23, 25, 26, 27, 29, 32, 33, 39, 45, 48, 49, 50, 51, 54, 59, the Schedule and Clause 2 be amended as proposed and be part of the Bill put and the Senate proceeded to vote by county delegations)*

**The Temporary Chairperson** (Sen. Murkomen): Order, Sen. Kivuti, Sen. Sang and Sen. Kembi-Gitura. You are supposed to silently sit down.

*(The Senators took their seats)*

**AYES:** Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. M. Kajwang', Homa Bay County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Nabwala, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; and, Sen. Wetangula, Bungoma County.

**Teller of Ayes:** Sen. Gwendu

**NOES:** Nil

**Teller of the Noes:** Sen. Sijeny

**The Temporary Chairperson** (Sen. Murkomen): The results of the Division are as follows:-

**AYES:** 30

**NOES:** Nil

**ABSTENTIONS:** Nil.

The "Ayes" have it.

*(Question carried by 30 votes to nil)*

*( Clauses 4, 5, 7, 10, 13, 14, 18, 23, 25, 26, 27, 29, 32, 33, 39, 45, 48, 49, 50, 51, 54, 59, the Schedule and Clause 2*

*as amended, agreed to)*

*New Clauses 25A, 48A and 51A*

## **DIVISION**

### **ROLL CALL VOTING**

*(Question, that the New Clauses 25A, 48A and 51A be read a Second Time put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. M. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. Leshore, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Musila, Kitui County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Nabwala, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County and Sen. Wetangula, Bungoma County.

**Teller of the Ayes:** Sen. Gwendu

**NOES:** Nil

**Teller of the Noes:** Sen. Sijeny

**The Temporary Chairperson** (Sen. Murkomen): Hon. Senators, the results of the Division are as follows:-

**AYES:** 29

**NOES:** Nil

**ABSENTIONS:** Nil

The "Ayes" have it.

*(Question carried by 29 votes to nil)*

*(New Clauses 25A, 28A and 51A  
were read a Second Time)*

*New Clauses 25A, 48A, 51A, Clause 3, Title and Clause 1*

## DIVISION

### ROLL CALL VOTING

*(Question, that the New Clauses 25A, 48A, 51A,  
Clause 3, Title and Clause 1 be part of the Bill,  
put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. M. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Musila, Kitui County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Nabwala, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County and Sen. Wetangula, Bungoma County.

**Teller of the Ayes:** Sen. Gwendu

**NOES:** Nil

**Teller of the Noes:** Sen. Sijeny

**The Temporary Chairperson** (Sen. Murkomen): Hon. Senators, the results of the Division are as follows:-

**AYES:** 30

**NOES:** Nil

**ABSENTIONS:** Nil

The "Ayes" have it.

*(Question carried by 30 votes to nil)*

*(New Clauses 25A, 48A, 51A, Clause 3,  
Title and Clause 1 agreed to)*

**The Temporary Chairperson** (Sen. Murkomen): Hon. Senators, remember when we go back to the Plenary, we will have the final vote on the Bill. So, do not leave.

**Sen.(Prof.) Anyang'-Nyong'o:** Mr. Temporary Chairman, Sir, I beg to move the Committee do report to the Senate its consideration of the Public Fundraising Appeals Bill(Senate Bill No. 28 of 2014) and its approval thereof with amendments.

**The Minority Leader** (Sen. Wetangula) seconded

*(Question proposed)*

*(Question put and agreed to)*

*(The House Resumed)*

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

**REPORT, CONSIDERATION OF REPORT  
AND THIRD READING**

**THE PUBLIC FUNDRAISING APPEALS BILL  
(SENATE BILL NO. 28 OF 2014)**

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, I beg to report that a Committee of the Whole has considered the Public Fundraising Appeals Bill (Senate Bill No. 28 of 2014) and approved the same with amendments.

**Sen. (Prof.) Anyang'- Nyong'o:** Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said Report.

**The Senate Minority Leader** (Sen. Wetangula) seconded.

*(Question Proposed)*

*(Question put and agreed to)*

**Sen. (Prof.) Anyang'- Nyong'o:** Mr. Temporary Speaker, Sir, I beg to move that The Public Fundraising Appeals Bill (Senate Bill No. 28 of 2014) be now read a Third Time.

**The Senate Minority Leader** (Sen. Wetangula) seconded.

*(Question Proposed)*

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I would like, at this tail end of the process, to appreciate the industry of Sen. (Prof.) Anyang'-Nyong'o. I would like to throw the ball right at the door step of the President; he is yet to sign even one of the many Bills that have gone through the Third Reading in this House, apart from the Division of Revenue Bill and the County Allocation of Revenue Bill. I hope he signs this Bill into law and remembers to sign the others which we have passed.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order. The Constitution is very clear on the timelines. If he does not sign, the Bills will automatically take their course. So, that should be none of your concern.

*(The Division Bell was rang)*

*(The Bar was drawn)*

## **DIVISION**

### **ROLL CALL VOTING**

*(Question, that the Public Fundraising Bill (Senate Bill No.28 of 2014) be now read a Third Time put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Haji, Garissa County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwalwe, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. M. Kajwang', Homa Bay County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; and Sen. Wetangula, Bungoma County.

**Teller of Ayes:** Sen. Gwendu.

**NOES:** Nil

**Teller of the Noes:** Sen. Sijeny.

*(Sen. Karaba walked around the Chamber)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Karaba! Let me read Standing Order No. 80(4). It says:-

“During division, Senators shall maintain order in the Senate and shall be in their designated seats and shall remain seated until the result is announced.”

*(Sen. Karaba resumed his seat)*

*(Laughter)*

Very well.

Order! I now want to announce the results of the Division:-

**AYES:** 30

**NOES:** Nil

**ABSENTIONS:** Nil

The “Ayes” have it.

*(Question carried by 30 votes to nil)*

*(Applause)*

**The Temporary Chairperson** (Sen. (Dr.) Machage): Can you open the doors and withdraw the Bars.

*(The Bars were drawn and the doors closed)*

*(Sen. Karaba consulted loudly)*

Order, Sen. Karaba! Let us continue.

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

Next order!

## **BILL**

### *Second Reading*

#### THE PUBLIC AUDIT BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2014)

**The Temporary Speaker** (Sen. (Dr.) Machage): Proceed, Senate Majority Leader.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki: Mr. Speaker, Sir, I beg to move that the Public Audit Bill (National Assembly Bill No. 38 of 2014) be read a second time.

This is one of the three Bills that are required by the Constitution of Kenya to be enacted by both Houses of Parliament, latest 27<sup>th</sup> May, 2015, after an extension of an earlier deadline was given sometime last year. This Bill is very important. It touches on public finances and how those finances are audited for purposes of ensuring that there is accountability and effective use of the money that tax payers generate in this country. It is meant to replace the Public Audit Act of 2003.

Allow me at the outset, first and foremost, to decry the late arrival of this Bill to this House. This Bill could not have come here earlier for the reason that it had to originate from the National Assembly and it is only now that this Bill is before us, having arrived two weeks ago. Senators may recall that some two to three months ago, there was some purported chiding of this House by the Speaker of the National Assembly where he was reported to have said that the Senate has refused to enact a number of Bills including this one. I want to assume that---

*(Sen. Mutula Kilonzo Jnr. stood up in his place)*

**The Temporary Speaker** (Sen. (Dr.) Machage): What is it, Sen. Mutula Kilonzo Jnr.? Please give Sen. Mutula Kilonzo Jnr. the microphone.

**Sen. Mutula Kilonzo Jnr.:** On a point of order, Mr. Temporary Speaker, Sir. I need your direction. The Committee on Finance, Commerce and Budget is conducting a public hearing tomorrow morning on this Bill. I was just wondering whether we are in order to proceed to the Second Reading before we get the views and before the Committee gives its report. You should give us direction because the public is watching our debate.

*(The Temporary Speaker (Sen. (Dr.) Machage)  
consulted with the Clerks-at-the-Table)*

**The Temporary Speaker** (Sen. (Dr.) Machage): After consultations with the clerks, this is my ruling on the point of order sought by Sen. Mutula Kilonzo Jnr.

There is really nothing wrong because the Senate Majority Leader only discussed the principles. The public hearing will still continue tomorrow. This would not be right if the Bill was at the Third Stage. If it were at that level, he would have been completely out of order.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I was decrying the late arrival of this Bill before this House and the misrepresentation that was out there that this Bill has been delayed by this House. We want to make it clear, for the record, that it is not true that this Bill has been here. The Bill has just arrived. This is the kind of pressure that we can avoid. We want to implore, going forward, that our partners in the legislative process will do their work early and be truthful. The information that was out there that this House had delayed in making progress on this Bill was distorted. For the record, this Bill has just arrived now.

As I have said, this Bill generally replaces the Public Audit Bill, 2003. It is required by the Constitution that five years after 2010, there would be a new legislation regarding public audit. The long title of the Bill, since I do not intend to go to every other clause, describes this as an Act of Parliament to provide for the functions and powers of the Office of the Auditor-General in accordance with the Constitution and connected purposes.

As I have said, this is an important Bill because it is about the audit of public money. The guiding principles and values that will henceforth govern the auditing of public finances are the national values found in Article 10 of the Constitution, the principle of equality; non-discrimination as provided for in Article 27 of the Constitution, provisions on responsible leadership in Article 73 of the Constitution; principles on Leadership and Integrity in Article 75 of the Constitution; principles of public finance in Article 201 of the Constitution and the principles and values of public service in Article 232 of the Constitution.

This Bill principally establishes the Office of the Auditor-General of the Republic of Kenya. In Section 3, the Office is established as a body corporate with its own legal

personality with the capacity to sue and to be sued, to contract and to acquire assets just like other legal persons established by law.

In Section 4(4), the Bill empowers the Auditor-General, as the head of that institution, to have staff and to also ensure that the office, although shall be headquartered in the capital city, will have offices in as many parts of the country as possible so that Kenyans can access the public audit services, especially, given the fact that the Bill empowers the public to lodge complaints and to move the Auditor-General to audit where it is suspected there is misuse of public funds, either as a deterrent or as a corrective measure.

In Section 5, qualifications of who becomes Auditor-General are provided for. These qualifications are set out in Article 229 of the Constitution of Kenya.

“The Auditor-General shall be nominated by the President, approved by the National Assembly and appointed by the President.”

Therefore, the nomination is by the President. The National Assembly approves and the President appoints. I think by now we should be used to the nominations, approvals and appointments of such like public officers.

Mr. Temporary Speaker, Sir, the Auditor-General must be somebody who has knowledge in matters of public finance, ten years experience in auditing, accounting or public finance; must meet the requirement of Chapter 6 of the Constitution; must be a practising member of a professional body of accountants recognised by law so that we do not have quacks or people with unsubstantiated qualifications coming to pose as our Auditor-General. This should be a person who is a practising member of a professional body of accountants recognised by law, among other things.

In Clause 6 of the Bill, the term of office is eight years which is non-renewable. This is such an important office where you want to achieve two objectives. One, we want to make sure that the Auditor-General is in office long enough to establish themselves and their independence. At the same time, to remove the anxieties of reappointment where you have a shorter term of four years and have a reappointment.

There is also something relating to best practice elsewhere in the Constitution with the Office of the Director of Public Prosecutions, such an important office. This will give adequate time to deliver and remove the anxieties of pleasing people so as to be reappointed for a second term.

Very quickly, the functions of the Auditor-General are to audit the national and county governments' accounts. These are accounts of courts, commissions and independent offices, the National Assembly, Senate, County Assemblies' accounts, accounts of political parties and any other entity that is funded by the public coffers. That will be the function of the Auditor-General.

The Auditor-General will also audit state organs and public entities to establish whether money has been applied lawfully and effectively. The Auditor-General is also empowered to establish, through his or her work, if money is used as was intended and whether it was used by persons authorized to use it. That is the function, broadly speaking.

In Clause 8, there are certain administrative powers to discipline the human resources. There is power to put in place strategic and operational plans for the office.

There is power to develop organizational structure for his office and approve its budget estimates, subject to the powers of the Salaries and Remuneration Commission (SRC) in Article 230 of the Constitution which determines the remuneration and benefits of members of staff. In other words, this clause says that there are certain recommendatory powers that the Auditor-General will have regarding benefits and salaries to be enjoyed by staff working in his or her office.

The Auditor-General also has powers to review and approve a list of audit firms or individual experts shortlisted for provision of outsourced services. It is clear that the Auditor-General in this Bill has the power to outsource certain audit services from private individuals and firms. It is, therefore, in that context that this power is provided for here. The Auditor-General also has the power to review and approve to put in place a code of conduct and ethics for his or her officers, in accordance with established international standards.

There are so many other provisions, but there are also general powers in Clause 9 such as the general powers of the Auditor-General to investigate *suo moto*. By that, I mean “in his own motion.” He or she may investigate on his own motion or if moved by a third party. They may investigate a complaint or suspicion of fraud, corruption or misuse of public funds. The Auditor-General will also have power to engage consultants and also undertake conciliation mediation and negotiation. Clearly, it should be conciliation, mediation and negotiation in the context of his work. I do not think that we are saying here that the Auditor-General would be a mediator like Kofi Annan, going around helping people aggrieved. It should be in the context of audit issues.

Mr. Temporary Speaker, Sir, I want to rush very quickly and highlight Clause 10 which is very important for an office like this one. This is because it talks about the independence of the Auditor-General from the direction or control of any person or authority. This gives the Auditor-General freedom from manipulation by any person or authority while under taking their work. You may recall that the Office of the Auditor-General is one of the offices that fall under Chapter 15 of the Constitution, which deals with constitutional commissions and independent offices. So, for that reason, the independence of the Auditor-General becomes paramount and is guaranteed by Clause 10. The Auditor-General and the staff working in that office are also obliged to perform their functions without fear, favour or prejudice.

I will go through Clause 11 that talks about how a vacancy may arise in the office of the Auditor-General. One is in the case of death. Secondly, in the case of resignation, the Auditor-General will give notice to the President in writing. Lastly, the Auditor-General may be removed from office in accordance with Article 251 or Chapter 6 of the Constitution.

Mr. Temporary Speaker, Sir, the replacement process of the Auditor-General who has vacated office on any of the three grounds that I have highlighted above is elaborately provided for. However, in a nutshell, if you look at Clause 11, it is very long and talks about the selection panel and membership of the panel. First of all, there must be a gazette notice by the President of a vacancy in the Kenya Gazette and also within newspapers with national circulation. After that, there will be a selection panel whose membership is provided for, including representatives of the Law Society of Kenya, The

Association of Professional Societies of East Africa, the Institute of Public Accountants of Kenya, the Ministry responsible for public service, the Attorney-General, representatives of the Ministry of Finance, Office of the President and many others. It is an elaborate process. The Office of the Auditor-General shall develop an organizational structure for consideration and approval by the Audit Advisory Board which is the administrative organ that provides policy direction, which is established much later in this Bill.

Mr. Temporary Speaker, Sir, the other office that is established here other than the Office of the Auditor-General himself, is the office of the Senior Deputy Auditor-General. It is a very senior position, which officer will be competitively recruited with the same qualifications as those of his or her boss, the Auditor-General. The Senior Deputy Auditor-General shall be the head of administration and management in this office, the accounting officer and may perform such other delegated powers as may be delegated to him or her by the Auditor-General. The Senior Deputy Auditor-General shall report to the Auditor-General.

Under Clause 16, the Auditor-General may recruit other staff to assist in the running of this department or office. This is a common practice in an organization like this one. The Auditor-General may also accept in this office seconded officers from other public institutions. In this case, they will be reporting to the Auditor-General. They will be treated as if they are officers of the Office of the Auditor-General even if they will be on secondment. Likewise, the Auditor-General may upon request by a State organ second their staff to other State organs to be entrenched there on the same terms and conditions as those of staff that are seconded to the Office of the Auditor-General from other State agencies.

Mr. Temporary Speaker, Sir, I want to rush very quickly because of time. We have issues to do with budget estimates and plans of the office which must be prepared annually by the accounting officer. In this case, it is the Senior Deputy Auditor-General. Under Clause 20, the Auditor-General has powers to obtain information from others; any institution or person who has information that can help in the prevention or deterrence of embezzlement of public funds. The Auditor-General has power under the law to obtain information from such institutions or persons, of course, subject to the law relating to data protection. Of course, it is an offense to withhold information or documents from the Auditor-General under the offences section.

In Clause 21, we have the power of the Auditor-General to examine bank accounts only when there is a court order enabling him or her to do so. Again, when the Auditor-General has a reason to believe that public money has been fraudulently or corruptly paid into such an account. The Auditor-General may outsource audit service from pre-qualified accountants. Such outsourced audit services will be reported to the Auditor-General.

Mr. Temporary Speaker, Sir, I am just highlighting the key aspects. Part III of this Bill deals with the establishment of a very important institution: The Audit Advisory Board. In terms of membership, this board will include the Attorney-General, the nominees from the Institute of Certified Public Accountants of Kenya, the Institute of

Association of Professional Societies of East Africa, the Law Society of Kenya and the Chair of the Public Service Commission.

The purpose of this board, which shall serve for three years and meet four times a years with a quorum of five members, is explained in detail in Clause 26 and includes recruitment of senior managers in the Office of the Auditor-General, approval of budget estimates prepared by the accounting officer and also determined, subject to the consultations with the SRC and terms of service for staff and also any advice that the Auditor-General may seek from this board.

Mr. Temporary Speaker, Sir, Part IV deals with the audit process and types of audit. We have several types of audit which shall be guided by international standard principles and practices. I also want to highlight Clause 31 which talks about all the reports of an audit which shall be submitted to Parliament or the relevant county assembly as a requirement. Within seven days, both Houses, or the county assembly must publish and publicize these report in their official website and other public spaces. The Auditor-General may, upon request, or *suo moto* may initiate periodic audits which are proactive, preventive and deterrent to fraud and corrupt practices, systemic and shall be determined with a view to evaluating the effectiveness of risk management control and governance processes in state organs and public entities.

The purpose of this clause is to turn the office of the Auditor-General into a professional agency; deterrent of fraud and corruption. There have been a lot of complaints that the office of the Auditor-General has become like the office of a pathologist or a mortician. At the end of every year, this office will tell us how many billions of taxpayers' money were looted and by who. When this audit reports are given, you can see the horror across the country. It does not help in the sense that after these reports, there would be criminal prosecutions and other measures, but the fact remains that the public has lost money and the fact remains that certain services have been denied.

What this clause is seeking to do is to allow the Auditor-General to engage in preventive and proactive audit where there is reasonable suspicion of embezzlement. I am sure there are cases where the public is giving indication that something is not going right. You do not have to wait until the end of the year for the Auditor-General to do the annual audit and give his report. Therefore, this clause is extremely critical because we can prevent some of these corrupt practices and embezzlement before they occur.

In Clause 36, we also have a provision for a forensic audit which may be requested by Parliament. From time to time, Parliament may request forensic audit. The Auditor-General may, upon request by Parliament, conduct forensic audit to establish fraud, corruption and other financial improprieties. These are provisions which are targeting fraud, corruption and other unlawful acts.

Mr. Temporary Speaker, Sir, I also want to highlight Clause 38. Reports of audit must be submitted to Parliament and the relevant county assembly. I also want to talk about Clause 39 which talks about the audit of National Security Organs. First, there is a requirement for the Auditor-General to have a meeting with the relevant national security organs to determine how to carry out the audit in the context of national security. This is because we have to balance between the need for accountability by all institutions, regardless of whatever service they are rendering to this country; they must be open to

scrutiny and accountability. On the other hand, all over the world, we know that there are certain nuances that are attached to sensitive organs of national security. If you ask how the Crime Investigation Agency (CIA) of the United States of America (USA) uses part of its money to gather intelligence, you will discover that it is in interesting and “out of this world” way.

Having said that, the thrust of the Constitution, the Public Finance Act and this Bill is accountability of all organs, including organs of national security. However, Clause 39 brings in the sensitivity that it is inevitable when dealing with national security organs and requires the Auditor-General to be aware of these sensitivities.

I also want to highlight Clause 41 which talks about how the office of the Auditor-General would be audited. Currently, the practice is that it should be audited by an external auditor who is appointed by the National Assembly. If I were asked, I would have said by Parliament. The external auditor should be appointed by Parliament, but this is already in the Constitution. I can see Sen. Wetangula is happy when I talk about amending the Constitution. However, I am not talking about the purported clamour for *Okoa Kenya*.

Mr. Temporary Speaker, Sir, may I also highlight two or three other clauses so that I give my brother, Sen. Wetangula, a chance to second. Let me just mention the offences because the rest is straightforward like the usual financial accounting practices and procedures. I will mention two things; that is, the Code of Conduct and Ethics for audit staff which is covered under Part 7, Clause 53 onwards. It is important in the context of our country and also Part 8 on offences and sanctions.

Let me start with the Code of Conduct and Ethics. This Bill anticipates the highest levels of professionalism by audit staff and people who audit public finances. It binds them to act professionally in accordance with the Public Officer Ethics Act, 2003 and also the professional guidelines that are internationally recognised in this profession. In this context, it is an offence for any audit staff to conceal fraud or corruption; either because they have been induced to do so, or for whatever other reason. The audit staff must also disclose any interests. For example, if they are auditing a certain entity and the staff doing the audit have an interest of whatever nature – may be you are auditing a certain county assembly or government, for example’s sake, the governor, speaker or clerk of the assembly is your cousin, you must disclose interest. These are the cases that are being anticipated. Disclosure of interest is important. There must also be established by the office of the Auditor-General, a system of confidential reporting of malpractices and other unlawful acts by the office of the Auditor-General.

Finally, Mr. Temporary Speaker, Sir, there are a number of offences that are established by this Bill such as corruption, concealing audit findings for whatever reasons, failure to disclose audit information on fraud or corruption. The other offence is failure to disclose conflict of interest and publishing or publicisation of audit reports before they are finalized or before they have been submitted to Parliament or county assembly in relevant cases. The last one is especially very common because you will find leakages to the press of audit reports which have not been submitted to Parliament or verified. This is because the whole idea of submitting audit reports to parliamentary or

county assembly processes is to verify and clarify, so that you do not lynch people because of interim or unprocessed reports.

The other offence is obstruction, hindering, assaulting or threatening a member of staff of the Auditor-General. The other offence is failure to provide information within reasonable time. I am aware there are cases where the Auditor-General and other agencies have complained that some audited entities are withholding crucial information until much later. This is now an offence, especially considering that the Auditor-General himself is time-bound to finalise the report and hand it to Parliament and copy them to certain entities within a certain period of time, after the expiry of the financial year.

Mr. Temporary Speaker, Sir, misrepresentation is an offence. Interference with the audit process or trying to influence the audit process unduly is an offence as well and they are punishable by up to three years in prison and a fine of up to Kshs5 million. I do not think this is adequate enough, but that is the position now. Any other offence whose punishment is not provided here is liable to a fine of a maximum of Kshs2 million or one year imprisonment maximum or both. Generally, those are the offences.

The Auditor-General has power to report corruption or fraud to the police, the Ethics and Anti-Corruption Commission and to the Public Procurement and Oversight Authority. In the past, the Auditor-General's reports have not generated much action. This Bill is now trying to correct that by ensuring that once the Auditor-General establishes fraud, embezzlement or misuse, they should report such practices to the police for investigation and prosecution later on. One of the consequences of being recommended or listed in the Auditor-General's reports, especially with regard to breaching public procurement processes, is debarment from participating in procurement.

Another consequence of breaching the public audit processes, especially for public officers, is that any person who is convicted of an offence under this Act is debarred from holding public office for a period of 10 years after the conviction. This would be a big deterrent for people who have been violating the law and getting away with it.

Mr. Temporary Speaker, Sir, this Bill repeals the Public Audit Act. There are some transitional and saving provisions to make sure that there is a smooth transition into the new dispensation.

With those remarks, I thank the Senators for the attention. I beg to move that the Public Audit Bill (National Assembly Bill No.38 of 2014), be read a Second Time.

I request the Senate Minority Leader to second.

**The Temporary Speaker** (Sen. (Dr.) Machage): Before Sen. Wetangula takes the microphone, we are having a challenge with the record system. I am unable to communicate with you from where you are sitting. So, re-log your cards. It will take 30 seconds.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Temporary Speaker, Sir, for an opportunity to second this Bill. This is one of the critical Bills that are a consequence of the passage and promulgation of the Kenyan Constitution, 2010.

Mr. Temporary Speaker, Sir, it is unfortunate that this Bill comes to this House when we are on the brink of the constitutional deadline. The impression given out there is that the Senate has not worked hard enough to comply with the constitutional

requirement. That is not true because from the Rules and Business Committee (RBC) where we process work and business for this House, this Bill arrived only last week.

For a Bill as critical as this to arrive a week or two to the deadline, that simply means that the Senate is being called upon to act as a rubberstamp. This is because we are denying Members of this august House an opportunity to scrutinise the Bill in great detail and, where possible, seek professional advice and conduct public hearings that will bring on board the principle of public participation. That notwithstanding, the Bill is here and we will go through it. I believe, even if the time is tight to prepare appropriate amendments, we have the opportunity to make sense of the law that we want to pass.

Mr. Temporary Speaker, Sir, audit of public finances in this country is one of our weakest links in our public management. Every year, when the previous Controller and Auditor-General now the Auditor-General releases their report, it is like a crime novel. You will see very detailed and hair-raising descriptions of misapplication of funds, fraud, outright theft and looting of public resources. However, constantly the office of the Auditor-General has been overwhelmed by work and we have been reduced to what my distinguished colleague called “morticians or pathologists” carrying out postmortems of frauds.

Mr. Temporary Speaker, Sir, you have seen certain cases going on in the criminal courts. Today, persons who left public offices 10 or 15 years ago are being arraigned in court for transgressions of public confidence that they committed when they were in office. In fact, some have left us on account of old age before issues of accountability while they were in office are dealt with.

Mr. Temporary Speaker, Sir, in this new law we are proposing we have an opportunity to correct the wrongs. You may recall when the previous governments, in a bid to split and weaken the office of the Controller and Auditor-General, set up something called Controller and Auditor-General (Corporations) so that the Office could not audit public corporations that had become gravy trains for well-connected persons. Now, we have an opportunity to consolidate the law, remove all the leakages and make sure that public funds are accounted for and those who fail to account for them are appropriately acted upon in accordance with law.

Mr. Temporary Speaker, Sir, in this country, if you look at the history right from Independence, you will find that persons who are super rich have at one time held public offices. Persons who have been given positions of responsibility, trust and confidence have ended up becoming the owners of this country; be it theft of public land or flawed processes of procurement that give advantage to people in offices. We have lost the opportunity to hold people to account. In the end, public resources have ended up in private pockets and hands. It is the same persons who loot public funds and resources that go around obscenely displaying wealth in harambees and other donations that make little sense to many of us.

Over the weekend, you saw the President and his Deputy contributing a whopping Kshs7 million to a harambee. Obviously, those are proceeds of corruption. This is because---

**Sen. Murungi:** On a point of order, Mr. Temporary Speaker, Sir. The Senate Minority Leader is making very useful contribution. However, is it in order for him to

say, without any substantiation, that the Kshs7 million which was contributed through the efforts of the President and the Deputy President during the weekend at a harambee in Rift Valley were proceeds of corruption? That is a reckless statement. We should request him to either substantiate or withdraw and apologise.

**The Temporary Speaker** (Sen. (Dr.) Machage): I would like to remind the Senate Minority Leader that according to Standing Order No.90 and Standing Order No.91, he has been challenged by a Member.

Sen. Wetangula, could you go ahead and reply to the challenge?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, the distinguished Senator for Meru County is my learned colleague and senior. He knows that there is a doctrine called *res ipsa loquitur* which means, "Things speak for themselves." When a person turns up in a harambee and places Kshs5 million cash and another one places Kshs2 million cash on a table, respectively, and there is no way they can explain or account for the money and yet one of them is being embroiled in all manner of scandalous and corrupt transactions, then the conclusion is very clear.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Wetangula!

I have to maintain the dignity of this House. Unfortunately, this House does not have the doctrine mentioned by the Senate Minority Leader. The issue at hand is very simple; you either withdraw or substantiate. I would be very happy if you moved on. If your latter statement is part of substantiation, let me know so that I give you the latitude.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I believe that substantiated to the satisfaction of the distinguished Senator who raised the issue; by pointing out that, indeed, when people run around every weekend obscenely displaying wealth that they cannot account for, it is a *prima facie* case of corruption. But let that not---

**Sen. Murkomen:** On a point of order, Mr. Temporary Speaker, Sir. When someone that talks about a donation in a harambee, because it is Kshs5 million, yet he, himself, donated Kshs200,000, does he mean that the Kshs5 million could be stolen, but the Kshs200,000 that he gave could not be stolen? Could he substantiate? I was in a fundraising where the Senate Minority Leader donated Kshs200,000. At what limit does one begin to imagine that this amount is from corruption and the other is not? Is it corruption because of the amount you give or is giving an issue of the heart?

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Murkomen! The subject in the House is very straightforward; an allegation. Do not dilute the issue because that is what you are attempting to do.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, I apologize, but I just wanted to indicate that considering that the Senate Minority Leader is a man of immense wealth, from his past stint in the Government, which we do not want to go into now, at what level can we say that someone is corrupt if they are holding onto their money?

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Murkomen, you have introduced a new subject, again, by imputing improper motive on a Member of this House. Could you substantiate?

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, the Senate Minority Leader is a man of means as a practising advocate of many years, but particularly as a Minister for

Foreign Affairs. Reports were all over that, that position was according him privilege and honour to make as much money as possible, sometimes - it was alleged - at the expense of the public.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Murkomen! This House does not rely on newspaper reports. I repeat that you should not dilute the subject of the matter before the House.

Sen. Wetangula, you do not have to reply to that. Could you substantiate the allegation on the President and his deputy?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I will not reduce myself to cheap indignities that are being brought to the Floor of this House.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Wetangula! Members of this House do not talk cheap or in an undignified manner. These are Senators.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, you have already said it was not worth my response, which means that it was cheap and undignified.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! You do not have to repeat what I said.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, the two young men who have run in always hold brief for some people that we know. So, we understand---

**Sen. Sang:** On a point of order, Mr. Temporary Speaker, Sir. I did not come here running. I am a Senator, representing a county. Is the Senate Minority Leader really in order to refer to us as "these young men?" We are Senators in this House. We have come here to listen to you.

**The Senate Minority Leader** (Sen. Wetangula): You are my distinguished, well learned junior and I respect you. You brought here the Bill that we are fighting over with the Governors and we supported you. But I want to---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Could we go back to the matter at hand?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I want to say here and now that we have just passed a Bill this afternoon, controlling and limiting harambees because they have fueled corruption in this country. We know it, unless the Chair lives outside this country. If you live in this country and you are rational, like I know you are; you have an ability and duty to question when somebody turns up in a harambee and contributes Kshs5 million cash and another one contributes Kshs2 million in cash, then the conclusion is clear.

On the heels of that, the President himself has confessed in this Parliament that this country is chocking with corruption and under a weight that it cannot carry from corruption. He even brought a list to this House and said that no stone will be left unturned. We know that some stones are too heavy to turn and, at some point, we shall turn them.

Mr. Temporary Speaker, Sir, allow me to proceed on this.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Wetangula! The Bill on fundraising in this House is not yet law. It has not been assented to by the President. I do not want whoever is listening to you to think that, that Bill is already law.

Secondly, we do not also want somebody to think that production of Kshs5 million and/or Kshs2 million in a fundraising is equal to corruption. That is what I do not want to be carried in today's deliberations. You have already made your point. The best thing that you can do is to just withdraw and apologize.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, before I reached that bridge, I sat down and counted. In one month, one senior leader in this country donated Kshs25 million in harambees. Even a fool will tell you that these are proceeds of corruption. Corruption is rolling out every day before the Public Accounts Committee, Public Investments Committee and everywhere. If you want me to withdraw, I can do so, but the truth remains the truth. You cannot hide, kill, suppress or alter the truth; it remains the truth. I withdraw and replace with "persons donating huge sums of money questionably acquired, in harambees."

Mr. Temporary Speaker, Sir, I will proceed with the Bill. This Bill is very critical.

**Sen. Murungi:** On a point of order, Mr. Temporary Speaker, Sir. The Senate Minority Leader is using very many words, some of which are very flowery. But he has not discharged his obligation under the Standing Orders, to substantiate. Even the withdrawal is conditional. He is talking about funds dubiously obtained. Could he also substantiate that the Kshs5 million and Kshs2 million were obtained through dubious means, because that also imputes improper motives and casts aspersions on the names of two great leaders of this country; the President and the Deputy President? Could the Senate Minority Leader, again, substantiate or unconditionally and unreservedly apologize to this House?

**The Temporary Speaker** (Sen. (Dr.) Machage): Let me read to you loudly Standing Order No.91. It reads:-

"A Senator who has used exceptionable words and declines to explain or retract the words or to offer apologies for the use of the words to the satisfaction of the Speaker, shall be deemed to be disorderly and shall be dealt with in accordance with the rules pertaining to disorderly conduct."

I wanted to hear more information for me to be convinced that you are not disorderly. But now that you have not convinced me, I am afraid that you will withdraw and apologize. I repeat, could you substantiate or withdraw and apologize?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, there is news everywhere of a senior politician who has influenced the escalation of a huge contract from Kshs17 billion to Kshs28 billion. On the heels of this, he stands up everywhere contributing millions of shillings in harambees. What conclusion could any reasonable man draw?

Mr. Speaker, Sir, if the Chair wants to me to withdraw, I withdraw, but I will not apologize because to do so, means that I am wrong. I have withdrawn.

I beg to proceed with my discourse on this Bill which is so important.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! The last sentence of Standing Order No.91 says that if what I have demanded is not done, you shall be

deemed to be disorderly and shall be dealt with in accordance with the rules pertaining to disorderly conduct. Let me remind you this; I am on this Chair as the Speaker and not in any case as subject of a leader of my party. I am proud to say I am in CORD, but here and now, I am the Speaker of the Senate, be careful with your next move. Otherwise, I will be forced to throw out the leader of my party.

**Sen. Sang:** On a point of order, Mr. Temporary Speaker, Sir,---

*(There was a technical hitch)*

**The Temporary Speaker** (Sen. (Dr.) Machage): I am completely disheartened and disturbed with the functioning of our system in this House as a Speaker today. I order that this should be rectified tonight and we have an operational system in the House tomorrow.

I am told that the system is hanging somewhere. Is there any microphone that is operating anywhere? Could you re-log your cards again in 10 seconds?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, but this microphone is working. Even the machine is offended by the interruptions that they are visiting on me every minute.

**Sen. Sang:** On a point of order, Mr. Temporary Speaker, Sir. In an attempt by the Senate Minority Leader to substantiate, he went on to quote media reports. We know that in this county, we have had a lot of media reports.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! I have already ruled on the fact that we do not accept media reports. It was one minute before you walked in.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, having directed in the manner that you did, we have a saying that the hyena told a stone that "even if you do not answer me, you have heard me".

I apologize.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well, continue.

*(Loud consultations)*

Order!

Continue, Sen. Wetangula.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, this Bill gives authority to the office of the Auditor-General to give assurance on the effectiveness of the internal controls, risk management and overall governance----

*(Sen. Murkomen walked out of the Chamber)*

**The Senate Minority Leader** (Sen. Wetangula): You have discharged your duties, your boss saw you, now you can go.

Mr. Temporary Speaker, Sir, to undertake audit--- One of these days the Chair should take care of Members who just rush in to interrupt debate and then walk out because that is not orderly conduct either. To undertake audit activities---

**The Temporary Speaker** (Sen. (Dr.) Machage): Which Standing Order are you quoting?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, the same one you quoted to me a few minutes ago.

As I was saying, this Bill gives authority to the office of the Auditor-General to give assurance on the effectiveness of the internal controls, risk management and overall governance in state organs and public entities to confirm whether or not public money has been applied lawfully; to satisfy himself or herself that public money has been used and applied for purposes intended. This is very good discourse in law. It goes on to say; all reasonable precautions have been taken to safeguard the collection of revenue and the acquisition, receipt issuance and proper use of assets and liabilities.

One of the biggest problems we are having with public audit in this country is the weakness of the office of the Auditor-General, not because the persons are unqualified, but it is underfunded. It has little capacity to audit a monstrous organization such as the state of our country, where at every twist and turn, what you see is corruption. We need a very strong office of the Auditor-General, not only to carry out post-mortem on frauds and thefts, but to help track the expenditure of budgets.

Our side will be bringing some amendments at the Committee Stage to strengthen the Bill, the law that will come out of it and the office of the Auditor-General to enhance their independence, capacity and make it possible for the office of the Auditor-General as we describe in this Bill to sniff everywhere and detect with clear early warning mechanisms on how public spending is carried out.

Every other day, you see the obscenity going on in the counties. We have devolved funds. We have actually devolved corruption. We are sending funds to devolved units and greedy fellows are busy sharing the money. Three years down the line, the Auditor-General will come up with a report. By that time, some of the fellows would have been voted out of the office, others will be dead and then they will tell us in this county, Kshs2 billion was stolen. A sum of Kshs3 billion cannot be accounted for in this department or so much money cannot be accounted for in this Ministry. If there was proper tracking of Government procurement, contracts and spending, this country would never have had Goldenberg, Anglo Leasing scams and all the issues that we keep on hearing about every day and night.

For the benefit of my distinguished young colleague across the Floor, the matter of procurement of the Eldoret Hospital is not in the newspapers, but it is before the Public Investment Committee (PIC) of this Parliament. That is my source of information it is not the newspapers.

Mr. Temporary Speaker, Sir, the Auditor-General's office---

**The Temporary Speaker** (Sen. (Dr.) Machage): Then you are completely out of order to discuss an issue that is at the Committee level and whose Report has not been tabled on the Floor of this House.

**The Senate Minority Leader** (Sen. Wetangula): I did not discuss it, but I just mentioned it. I am not going to discuss it at all.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. That is what I wanted to hear.

Continue.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, Clause 8(b) gives the office of the Auditor-General the mandate to recruit and promote qualified and competent staff to perform the functions of the office. I am very happy that my distinguished friend, Sen. Mutula Kilonzo Jnr., will be bringing our amendments here. It is not enough to recruit and promote competent staff. It must also have adequate staff because you can have two or three competent and qualified staff who cannot do the overwhelming work that is available for them. We will bring an amendment to say “qualified, competent and adequate staff” so that the office can function.

I agree in the same clause that the Auditor-General should have the power to exercise disciplinary control over staff, develop his human resource and so on and so forth. Something very dangerous in this Bill that this House must take care of is not to subject the Office of the Auditor-General to the rigmaroles and all the funny happenings that we see from the office of our lady called Ms. Sarah Serem of the SRC. That office behaves like what President Museveni once said of immigration officers. That they think their duty is to prevent people from travelling instead of facilitating people to travel. The office of the SRC thinks only in very cheap and limited phraseology and philosophy of shillings and cents. They do not know something called “value for money.” They do not even appreciate it.

If we will have the office of the Auditor General hiring adequate and competent staff to audit, discover, expose, name and shame fraudsters in our midst, the staff must be beyond reproach and be properly remunerated. What the SRC will do is that they will look at the salary of an internal auditor at Parliament or in some parastatal and say: “this is the cut off point and those auditors at the Auditor -General’s office must be capped at that.” That is the premium audit office of the land.

I would not want to see a situation where an auditor in that office who is assigned to audit a multi-billion enterprise in Government goes there on foot carrying a laptop and a bag on the back. That is why you keep hearing that when they go to audit, the offenders have briefcases in their offices; that this one is enough for an audit of this level, another one for an audit of another level, *et cetera*, and they come back and say: “we found no wrong doing, even the books of account are properly kept.” Even as you see, the people being audited are living in hopeless and reckless obscenity of wealth with no explanation as to how they made that money.

I want to see auditors who audit the State and its organs, properly paid and protected. In fact, I would want to see the security of office, not only extended to the Auditor-General, but his staff as well, only to be removed where, like it has been provided for in the Bill, they have committed fraud, breached confidentiality and so on and so forth. We do not want to see a situation where an auditor in the middle of a major audit is maliciously transferred somewhere else to frustrate the audit so that the culprits can get away with this.

I would want to see a situation where the salaries of the staff of the Auditor-General are not subjected to high profile, but senseless politics played by the SRC, but by bringing the scales to Parliament for approval so that they can have some super scales that can attract good quality staff.

Mr. Temporary Speaker, Sir, we cannot say that the Auditor-General shall not be subject to the direction or control of any person or authority in carrying out his or her functions under this Constitution or the Act and on the same breath say that their salaries are subject to the SRC because that is where they pull the strings and play poker. We must insulate the Auditor-General's office from the office of the SRC. I have also seen something very dangerous and risky. Before I go to that dangerous and risky one, the clause that brings in the SRC is Clause 16(1). It says:

"The Office of the Auditor-General may recruit such other staff as may be necessary for proper discharge of his or her functions, and may determine the salaries, in consultation with the SRC."

It is also mentioned elsewhere that their staff will also be subject to the SRC direction. That point is clear and we need to deal with it.

Mr. Temporary Speaker, Sir, Clause 20 gives the Auditor-General the power to seek production of any official document in anybody's possession and custody for purposes of audit. This is very important. I have seen penalties elsewhere. It must carry very stiff penalties for public officers who frustrate audits. We have had cases, you remember, in the bad old days of impunity, where auditors went to audit a public entity and dogs were unleashed on them. We had also cases where they went to audit and were locked in an office and the boss went away. They stayed there the whole day then they were unlocked in the evening and told to go away, never to come back. We must take care of this. There must be very stiff penalties for these purposes.

Mr. Temporary Speaker, Sir, you heard me talk about the issue of adequacy of staff in Clause 8. You then find the mischief in Clause 22 where we are saying that the Auditor-General should outsource auditors. There is absolutely no need for this. Unless the Auditor-General is carrying out a forensic audit that he may find that in this new era and new area of digital frauds and so on, you need to get some external expertise to conclude your forensic audit---

There is absolutely no way you can rely on externally hired auditors to do the work of the Auditor-General for the simple reason that those you hire out there, many of them, the quality of their work will be dependent on the remuneration that you give them. It is only fair that the auditor's office is given enough resources to hire enough staff. In fact, and Sen. Mutula Kilonzo Jnr. should also think of a clause that obligates the office of the Auditor-General to have a functioning office in each and every of the 47 counties to support audit services and to track the expenditure and use of public resources. This is so that the people of this country can have value for money. We will not stop this by giving the Auditor-General an opportunity to hire external staff to do his work. In fact, the money we want him to hire external staff with to do his work, is the money we should give him to hire adequate staff to do work with necessary guarantees and protection. Clause 22 of the Bill must be looked at and be re-examined very carefully.

Mr. Temporary Speaker, Sir, there is established an Audit Supervisory Board. The Audit Advisory Board should be chaired by the Auditor-General himself or herself as the constitutional head of the institution. It is inconsistent with the aspirations of the letter and spirit of the Constitution to bring an external person to chair an Advisory Board that

is largely dealing with the work that the Auditor-General is doing. Some of these externals will come there with an agenda to frustrate audits. The functions of the Board under Clause 26 need to be looked at within the context of what I have said about adequate staff, remuneration and protection of staff of the Auditor-General.

Mr. Temporary Speaker, Sir, Clause 31 running through to 32 is very critical. Sen. Mutula Kilonzo Jnr. should also look into this critically. We must have very specific timelines when the Auditor-General must conclude audit on each entity, particularly now that revenue sharing between the national Government and the county governments is based on audited and approved accounts of Government.

We must engrave in this law that every audit of Government revenue must be concluded, submitted to Parliament, examined by Parliament and any queries raised answered and approved by Parliament within six months of its conclusion. We should not have the excuses we are seeing from the Jubilee regime that does not believe in devolution telling the country that they are giving Kshs279 billion to counties representing 33 per cent when they are rolling out a budget of Kshs2.2 trillion. This is because a sum of Kshs279 billion of that is only 9 per cent. That is what we are giving to counties. This is 9 per cent. The rest of the money is being displayed in harambees in the most obscene and detestable manner everywhere. The rest of the money is what they are holding on at the national level, carrying out devolved functions from the centre in total disregard of the Constitution and its provisions.

The Auditor-General and Parliament must equally be obligated by law so that within six months of the closure of the books of Government, he has carried out the audit because the Constitution requires him to finish that in three months. By giving six months, we are being extra generous. By the time we go to the next budget; we should have audited and approved accounts that will be the basis of the revenue sharing between the national Government and the county governments.

There is a very dangerous Clause 39. If we go this direction, we will be insulating and underwriting fraud in security procurement. Security procurement is only protected to the extent that we do not want people to know, for example, how many millions of bullets we have procured, how many tanks we have, how many jet fighters we have among other things. However, we cannot say as it is stated in Article 39 that in auditing national security organs, the Auditor-General or his or her representatives shall hold an inception meeting at the highest level to agree on areas which may touch on national security to determine the scope of audit.

We are saying that when the Chief of Staff goes to Department of Defence (DOD), he will sit with the Chief of Defence Forces and his team so that they tell the Auditor-General which one is a no-go zone and what areas he cannot audit. "These are the areas you can audit and beyond here, you will be swallowed by a crocodile or fall off a cliff." That cannot be called an audit. I cannot come to audit you and you determine how far my audit can go. That cannot be called an audit. We are in an era of transparency.

The Auditor-General can audit these organs and present his reports to Parliament. Parliament can be obligated by law to treat those audits with confidentiality where necessary. However, we must audit each and every public shilling regardless of where it

is being spent. It is an absurdity to say that when you go to audit the Inspector-General of Police, he will determine how far you can with the audit.

When you go to audit the Director-General of the National Intelligence Service (NIS), he determines which areas you cannot go. That cannot be an audit even in layman's language. In fact, it is a mockery of audit. This is a clause that has no business finding itself in this era of transparency and free flow of information. It goes on to say that the Audit Report on national security organs may be redacted to shield identities of persons as well as assets and liabilities as the case may be.

What this means is that if you go to the NIS and find a fraudster there, you must shield his identity. If the fraud was committed on acquisition of an asset, you are obligated to shield the identity of that asset. We are not talking about small money. This is not pocket change. We give these organs billions and billions of shillings, some that are never accounted for.

This is a country where some of the biggest frauds have been security related. You will remember the Anglo Leasing frauds which were all security related. If you say that you cannot go to audit the Spanish Ship that was procured under Anglo Leasing; you cannot go and audit the nerve centre in Karen which was procured under Anglo Leasing; you cannot check the identity of Anglo Leasing which was found to be non-existing and fraudulent. An address was given for some place in Manchester. When people went there, they found this were a laundry. We cannot go that way. We must audit ourselves in every respect. I want to urge that this clause be deleted at the Committee Stage or be recasted to make sense to audit.

More bizarre is Clause 39(3) which says that all staff of the Auditor-General carrying out audit under this section shall undergo a vetting process to be carried out to the satisfaction of the security organ. This means that if Sen. Sang was an auditor and he turned up to audit the Inspector-General of Police, the Inspector-General has the right to reject him and seek to have an auditor whose appearance he likes and whose name and ethnicity he likes. We cannot go this way.

How can you give an institution being audited an opportunity to vet the auditor? Why is the office of the Auditor-General constitutional and independent? Where is the independence? If I send my staff to go and audit Sen. Kiraitu Murungi and he stands by the door with a machete to say we are not auditing this or that?

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Wetangula! Could you be orderly enough to refer to your colleagues as Senators?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, the distinguished Senator for Meru County, Sen. Murungi, who doubles as a "king" and the distinguished Senator for Nandi County, Sen. Sang. Sometimes, when we use too many titles, it becomes a mouthful. You should sometimes allow us to refer to each other in the manner that I did.

**The Temporary Speaker** (Sen. (Dr.) Machage): It is the Standing Orders.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, it is Sen. Murungi and Sen. Sang, respectively.

This is a clause that is dangerous; that is, in fact, going to undermine the independence of the office of the Auditor General. In fact, I am sure that the

distinguished Senator, Sen. Mutula Kilonzo Jnr., in his submissions to the Bill, will bring it out. This clause is completely unconstitutional. You cannot start segmenting and shielding anybody from public accountability. This clause has to go.

Moving to Clause 48, it is part of what I have already said about what to do with final audit reports. They must be dealt with quickly and expeditiously to give meaning to the use of those reports for purposes of sharing revenues between the national Government and the county governments.

Mr. Temporary Speaker, Sir, on the overall, this Bill comes at a time when we are almost at the tail end of the implementation of the Constitution. We, as a Senate, must put it on record that the perceptions being created by our detractors, that the Senate is not working hard enough is false and wrong. A Bill that should have been passed in the last five years has waited until a month to the end of time, to sunset, and then it is brought here. The danger with this is that, a Bill like this will be quickly rushed because we are beating deadlines. At the end of the day, clauses such as the ones that I have pointed out can easily sneak through without proper scrutiny.

As you heard from the protests by Sen. Mutula Kilonzo Jnr., the Committee has not brought any report or conducted any public hearings. Debates in the House are always informed, guided and assisted by reports from Committees that have better time to scrutinize, analyze and give informed opinions, including the possibility of hiring experts to assist. Plenary here cannot bring in experts.

Mr. Temporary Speaker, Sir, I like Part 7 of the Bill which obligates auditors to a code of conduct. We certainly want audits to be carried out within certain ethical behavior, like yours as a medical doctor. You, as doctor, normally subscribe to what is called the oath of hypocrisy which doctors----

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Wetangula! You sometimes amuse me with your play of words. You do not have to hold doctors in that kind of disrespect and dishonor of their oath. Could you, please, withdraw that?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I thought that you were dozing.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Wetangula!

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I am sorry. I invite you to read a book entitled “The Imaginary Invalid” by Moliere. It is a satire on the medical profession and you will appreciate what I am saying. It is a hippocratic oath and not an oath of hypocrisy. However, in our jokes with our educated colleagues, the doctors, we normally say that those are “oaths of hypocrisy.” It is with a light touch.

**The Temporary Speaker** (Sen. (Dr.) Machage): Then it beholds your “unlearnedness” to be entitled that title of learned friends.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, that is for my close friends who are doctors, including you and the “bullfighter” behind me. I have no reason whatsoever to besmirch the profession that keeps us living.

**The Temporary Speaker** (Sen. (Dr.) Machage): What is it Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale**: On a point of order, Mr. Temporary Speaker, Sir. If I heard you right, you directed that the Senator for Bungoma, withdraws. He is yet to withdraw.

**The Temporary Speaker** (Sen. (Dr.) Machage): He should also apologize.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, could I also add that he apologizes profusely to the profession that is the reason his wife has successfully given birth to several sons and daughters?

**The Temporary Speaker** (Sen. (Dr.) Machage): Actually most cultures, including Sen. Wetangula's, talks of two people that one should never despise in life; one, the medicine man, two, the circumciser. The lawyer is not mentioned.

*(Laughter)*

**The Senate Minority Leader** (Sen. Wetangula) Mr. Temporary Speaker, Sir, I am happy that you mentioned the medicine man and not the doctor. However, the circumciser is very critical in my community. He is the most respected person in my community as well as that of Sen. Sang.

Mr. Temporary Speaker, Sir, I withdraw the remark that I made earlier. But as I said, it is with a light touch. In fact, many doctors really get amused every time we say that it is an "oath of hypocrisy." They normally laugh it off and order for a round of beer.

**The Temporary Speaker** (Sen. (Dr.) Machage): Could you today say, "hippocratic oath" and repeat it?

**The Senate Minority Leader** (Sen. Wetangula): Hoppocratic oath, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Machage): Repeat!

**The Senate Minority Leader** (Sen. Wetangula): Hippocratic oath.

*(Laughter)*

Mr. Temporary Speaker, Sir, finally---

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir, I am running the risk of being dewhipped by my Party Leader, but is he in order to refuse to apologize? It was clear that he was supposed to apologize.

**The Temporary Speaker** (Sen. (Dr.) Machage): To my knowledge, he has already apologized. However, you did not run that risk. At one time, I also told him that he stood to be hit by the Standing Order No.110, despite being the Leader of my Party. He understood very quickly because he is a clever lawyer.

**The Senate Minority Leader** (Sen. Wetangula) Mr. Temporary Speaker, Sir, let me end by urging my colleagues, especially those who are reading – I have seen Sen. Murungi prying very carefully through the Bill – that we must give the country good laws. If we do not have a fortified office of the Auditor General, it matters not who is in Government. Public resources are public resources, whether one is in Government or in Opposition. We should never allow Kenya to be turned into a county where national resources are constantly converted into private resources.

When you go to a country like South Korea, which I like quoting, it has fairly high levels of corruption. However, in that country, the sanctuaries of corruption are nonexistent; they catch up with you and you face the full force of the law. You may recall

six months ago, that a former President of South Korea, drove onto a cliff, leaped into the sea and died when they were about to catch up with him. This is because they were going to catch him and deal with him ruthlessly.

Mr. Temporary Speaker, Sir, nobody walks the talk on corruption. The primary “buster” of corruption is the Auditor-General. Therefore, he must be empowered fully, not only to come and tell us that money was stolen – that is like wailing on graves. We do not want that. We want the Auditor-General to stop thefts. He should have enough people to see that when you send Kshs3 billion to a county, he is there with a microscope to see how the money is being spend. When you give billions to the National Intelligence Service (NIS), it is not money that is going to be used to track Kiraitu and find out who he is meeting or talking to. We want them to secure our country.

**The Temporary Chairman** (Sen. (Dr.) Machage): Did you mean, Sen. Kiraitu?

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

Mr. Temporary Speaker, Sir, everyday NIS officers are just churning out reports that Sang’s graft has gone high or low. As they do that, Al Shabaab are walking into our country the way you walk into a public market, killing our people and doing all manner of things. We have been told internally and externally that part of our security challenges is because of corruption. We must start by slaying the dragon. This is one step towards slaying the dragon of corruption.

With those few remarks, I beg to second.

*(Question proposed)*

**Sen. Murungi:** Mr. Temporary Speaker, Sir, I want to thank you most sincerely for giving me this opportunity to make some comments on this important Bill. I find myself almost in complete agreement with my brother, the Senate Minority Leader, except his opening remarks, touching on harambees. Otherwise, whatever else he said, we are largely together. The Senate has been unfairly accused of sitting on this Bill which most of us are seeing for the first time today. When we were on recess, our colleagues in the “Lower” House addressed the media and said that the Senate had refused to pass this Bill hence it risks being disbanded for failing to fulfill its constitutional obligations. How can we fulfill obligations when they are not before us?

The conduct of some senior public officials, some of whom have constitutional mandates, seeking to rise on the graves of others, must stop. The truth must be told; that the Senate got this Bill today and we are debating it now. Kenyans should know that as the “Upper” House, we are efficient and we do not sit on any Bill. Indeed, we expect to meet the constitutional deadline even within a period of less than two weeks whereas the national Assembly had nine months with this Bill. Therefore, I would like to go on record as strongly defending the Senate against those malicious accusations.

Mr. Temporary Speaker, Sir, it is quite clear from the long title that this is a Bill for an Act of Parliament to make provisions for the functions and powers of the Auditor-General. We have had an Auditor-General in this country since Independence. Indeed, an officer sat in that office with unlimited tenure until the new Constitution came into force

in 2010. For all those years, the story was the same. They came out with reports about what had already happened; for example, Kenren, Goldenberg and so on.

They were voluminous reports which were debated by the Public Accounts Committee (PAC) year in, year out. Indeed, if you take stock to find out what happened, you will find that we only raise temperatures in the country. We only screamed after hearing from the Auditor-General. After that, nothing happened, except that the Auditor-General continued to write more reports. What I like about this Bill is that we are now getting out of the era of post-mortem reports and getting into the era of pre-mortem reports by the Auditor-General.

Mr. Temporary Speaker, Sir, I will look at the Constitutional provisions which now create the office of the Auditor-General. It says that he will be nominated by the President with the approval of the National Assembly. He should have extensive knowledge of public finance and at least ten years experience in auditing and public finance management. Therefore, the time when you could appoint your relatives into this big office is gone. The focus is now on qualifications.

If you look at Clause 229(4), the range of organizations that the Auditor-General is supposed to audit is very broad. He audits national and county governments, all funds and authorities of the national and county governments, all the courts, all commissions and independent offices established by the Constitution, the National Assembly, the Senate, county assemblies, political parties funded from public funds and so on. Therefore, CORD and Jubilee are supposed to be audited by the Auditor-General. He also audits public debt and accounts of any other entity that legislation requires the Auditor-General to audit. The Auditor-General may audit and report on the accounts of any entity that is funded from public funds. So, if we establish a committee tomorrow, so long as it is funded by the public, the Auditor-General has mandate. This is a very broad mandate.

What we are saying is that in view of the expanded mandate of the office of the Auditor-General, time has come for us to expand the resources that we allocate to that office. As of now, the Senate has not received even a single report from any county government from the Auditor-General. Those reports should be tabled in Parliament, which includes the Senate and also the county assemblies. I wonder whether the office of the Auditor-General as constituted has the capacity or human resources to audit all the 47 county assemblies and other funds established by those entities.

If there should be a bigger office in the Government, it should be the office of the Auditor-General. You have heard them cry that their budget has been slashed by a Committee of the National Assembly. How can we talk about independence of the office of Auditor-General if they are not financially independent? We can continue reading the Constitution; saying that they will not act under the authority or direction of any person, but you and I, know that there are issues of psychological independence. If somebody has hunger in his stomach, he will be pushed into the direction of food. Some of the auditing staff in the counties will threaten other officers saying we shall meet in the evening to discuss the audit queries arising in the department. This is in the hope that they will eat properly, get two bottle of beer or something like that.

If we are ready to ensure independence of this office, maybe, we should think of treating them the way we treat the Kenya Revenue Authority (KRA) staff, where we even

give a bonus at the end of the year. That way, the temptations arising out of “survival corruption” do not affect the operations of this critical office.

For me, the critical functions of this office are the ones which are now new and set out in Clauses 34 to 38. Clause 34 says:

“The Auditor-General shall conduct audits of financial statements under Article 229 for state organs and public entities and report annually to Parliament and the relevant county assembly.”

Those are for the organizations I have mentioned. Clause 35 says:

“The Auditor-General shall conduct performance audit to examine the economy, efficiency and effectiveness with which public money has been expended pursuant to Article 229 of the Constitution.”

Regarding performance audit, the Auditor-General does not have to wait until the Greenfield project is finished at the Jomo Kenyatta International Airport (JKIA). Immediately the contractor breaks ground, the Auditor-General should appear there to find out whether the resources which have been allocated for mobilization have been used for that purpose or not. Whether, indeed, what the functionaries at the county level say they have used to build Early Childhood Development (ECD) classes are being properly used; if the money sent to counties has been used to buy stones or has gone into people’s pockets. You do not have to wait for the ECD classroom to be complete; you can be there immediately the first stones have been purchased.

Clause 36 says:

“The Auditor-General may, upon request by Parliament, conduct forensic audit to establish fraud, corruption or other financial improprieties.”

When Sen. (Dr.) Khalwale grows old, he will be remembered in the history of the National Assembly as the person who took many bulls by the horns. However, we have heaped heavy responsibilities on him. When he brings information here, we ask him to go and substantiate.

**The Temporary Speaker (Sen. (Dr.) Machage):** You are sure Sen. (Dr.) Khalwale has ever held a bull by the horns?

**Sen. Murungi:** Mr. Temporary Speaker, Sir, I know he is a bull fighter. He must have.

*(Laughter)*

Mr. Temporary Speaker, Sir, instead of asking a Senator to investigate and bring information, we can request the Auditor-General to do a forensic audit of a project where we have heard those rumours, and bring us a report which we can now use in our debates.

Article 37 says:

“The Auditor-General may examine the public procurement and asset disposal process of a state organ or a public entity with a view to confirm as to whether procurements were done lawfully and in an effective way.”

Again, we do not have to wait until the process is completed.

We normally hear that after envelopes have been sealed and sent, there are some clerks who are sent to open them at night and reseal them so that they are presented the following day to the press and other people to show them that there was transparency while they had tampered with them the evening before. If such things happen, then the Auditor-General should be empowered to examine the process and find out whether the allegations are true. Even if something appears to be transparent, we need to ask ourselves whether it was really transparent. Therefore, these are very broad powers. We grant powers to the office of the Auditor-General to protect us against fraud, corruption and financial improprieties.

Mr. Temporary Speaker, Sir, they said that reports will be submitted to Parliament or the relevant county assembly. I think our problem starts there. What does a county assembly do once a report is presented to them? When a report is presented to Parliament, we make recommendations. We recommend that other organs of Government to carry out investigations and do other things.

Mr. Temporary Speaker, Sir, we were told of a case in Uganda which I would recommend to this country. In Uganda, the Director of Criminal Investigation and Crime Intelligence (CICI) sits in the meetings of the Public Accounts Committee and they listen to him. He makes notes as officers are grilled. Some of them are arrested at the door as they leave the committee room. If we tell the police to start again investigations from the beginning as if nothing happened, that is how criminals will disappear. Therefore, we have to give Parliament and our committees teeth so that a special investigation unit is attached to Parliament to make sure that reports do not gather dust in the Criminal Investigation Department (CID) offices or other places.

Mr. Temporary Speaker, Sir, I know that an issue has been raised about audit of security organs.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Senator!

**Sen. Murungi:** Mr. Temporary Speaker, Sir, I have a very important contribution to make. Could you give me one minute?

**The Temporary Speaker** (Sen. (Dr.) Machage): You have two minutes.

**Sen. Murungi:** Thank you, Mr. Temporary Speaker, Sir. This matter is of special interest to me because one of my constituents, the Principal Secretary (PS) Mutea Iringo, as you know, was asked to step aside because of the role he played in the national security business when he was in the Office of the President. You have heard about audit queries of Kshs2.8 billion. However, officers are put under very difficult circumstances because some of the expenditures that they incur are supposed to be secrets for purposes of undercover activities of the Government. They cannot come to Parliament and explain exactly what they did because they are bound by the Oath of Secrecy; not to disclose.

Mr. Temporary Speaker, Sir, a system has to be developed using international standards. This is not the only country where we have Strengths, Weaknesses, Opportunities and Threats (SWOTs) analysis. The United States of America (USA) Government operates the Central Intelligence Agency (CIA) and the Federal Bureau of Investigation (FBI). We can borrow experiences from them to see how audits are done so that we do them in this country.

Mr. Temporary Speaker, Sir, I agree with the Senate Minority Leader that this provisions be looked at a little more closely, maybe, with international experience so that we do not unnecessarily either victimise our people or let the criminals go free.

With those few remarks, I beg to support.

### ADJOURNMENT

**The Temporary Speaker** (Sen. (Dr.) Machage): Order Senators. It is now 6.30 p.m., the time to end the House business. Therefore, the House stands adjourned until tomorrow, Wednesday, 13<sup>th</sup> May, 2015, at 2.30 p.m.

The Senate rose at 6.30 p.m.