

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 14th June, 2016

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

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

PRAYERS

STATEMENTS

The Speaker (Hon. Ethuro): Order, Members, do you have any requests? Then, we will go to statements to be issued.

Let us have Statement (a) issued. Vice Chair, Sen. Adan!

STATUS OF THE NATIONAL SECURITY COMMUNICATION SYSTEM

Sen. Adan: Mr. Speaker, Sir, the Statement is ready but the Chairman has not signed it. I had it in the morning but I have not received it back. Sen. M. Kajwang is also not in but we can issue it tomorrow afternoon.

The Speaker (Hon. Ethuro): A statement is never ready until it is signed. So, it is not ready. Therefore, it will be issued tomorrow afternoon.

(Statement deferred)

Let us go to Statement (b). The Chair, Committee on Education.

MANAGEMENT OF MASINDE MULIRO UNIVERSITY OF SCIENCE AND TECHNOLOGY

Sen. Karaba: Mr. Speaker, Sir, the Statement is ready and I am waiting for it to be brought here any time from now. However, whoever requested for it is also not in.

The Speaker (Hon. Ethuro): We will come back to it.

Sen. Karaba: Thank you.

The Speaker (Hon. Ethuro): Let us have Statement (c) issued by the Vice Chair of the Committee on Health.

THE DECLINING STATE OF HEALTH
SERVICES IN NANDI COUNTY

Sen. Kittony: Mr. Speaker, Sir, the Statement is ready but the Member, Sen. Sang, who requested it is not in the House. Could we issue it tomorrow?

The Speaker (Hon. Ethuro): I got some communication from the Member. So, we can defer the Statement to next week.

Sen. Kittony: Most obliged.

(Statement deferred)

The Speaker (Hon. Ethuro): Let us go to Statement (d).

INCREASED CASES OF PNEUMONIA IN
CHILDREN AND ELDERLY PERSONS

The Speaker (Hon. Ethuro): Vice Chair of the Committee on Health, the Statement was requested and the Member is present.

Sen. Kittony: Mr. Speaker, Sir, I do not have the Statement and I am requesting that we look at it tomorrow.

The Speaker (Hon. Ethuro): Why tomorrow? Anyway, it is so directed. Let us look at it tomorrow afternoon.

(Statement deferred)

The Speaker (Hon. Ethuro): Let us move to Statement (e). Sen. Mwakulegwa.

REDUCTION OF ELECTRICITY CONNECTION FEE

Sen. Mwakulegwa: Thank you Mr. Speaker, Sir. The request was from Sen. Khaniri who wanted a Statement from the Government on the move to reduce electricity connectivity fee. In that Statement, he wanted to know the following:-

(a) State the amount of money charged for connection of electricity by customers whose premises are within 500 metres and those that are more than 500 metres from the existing electricity transformer. The response is as follows:-

The company will charge Kshs15,000 to all domestic customers who are located within a radius of 600 metres from an existing transformer and have loads of equal to or less than 8 Kilovolt-ampere (KVA) single phase - that is charged at Kshs15,000. All commercial and industrial customers whose load and free phase exceed 8KVA shall be charged full cost of connection. Those who are beyond 600 metres from the existing transformer will be charged the cost of transformer and the network expansion or they will wait for the expansion of the network to their area. This cost will vary depending on

the distance, type of load, method of connection, supply-demand and the actual cost established during the design period.

However, there will be systematic and organic expansion of the network so that all Kenyans are reached and covered so that they can pay Kshs15,000 KVA domestic load or less. The connection charges of the customers beyond 600 metres will also gradually reduce as the network gets closer and closer to the prospective customers.

(b) Explain why the Government is discriminating against sections of the public in terms of the allocation when determining charges of electricity connection. The response is as follows:-

The company is not discriminating against any section of the public in terms of their location but is implementing several projects which are aimed at achieving the Government target of access of 70 per cent of Kenyans by June 2017 and the universal access by the year 2020. The company has ensured that the ongoing projects are supported by donors and the Government and are spread throughout the constituencies and counties using the Constituencies Development Fund (CDF) distribution formula.

There are several projects that are ongoing that will enable customers with loads of 8KVA and are located beyond 600 metres from the existing transformers to access electricity. Electricity to schools, public facilities and markets which are being reached by Rural Electrification Authority (REA) and the Last Mile Connectivity Projects (LMCP) are as follows:-

(i) Phase I is enhancing electricity penetration. The first phase is funded by African Development Bank (ADB) at 90 per cent and the Government of Kenya at 10 per cent. A total of US\$150 million which is Kshs15 billion would cover 5320 distribution transformers selected and which will be distributed across the 47 counties in Phase I. It will cover about 314,200 customers.

The installation contracts were signed on 11th December, 2015. Negotiation between the bank and the Government of Kenya for additional US\$150 million which is Kshs15 billion to be funded by ADB has been concluded and is awaiting the bank's approval. The additional financing from ADB window will cover 87 per cent while the Government of Kenya (GOK) will cover 13 per cent. The total is to minimize approximately 5320 distribution transformers which will bring on board 385,000 customers in all the 47 counties. That will enable access of 1.7 million Kenyans.

(ii) Phase II is extending connectivity to high density population zones; peri-urban. The second phase is funded by the World Bank and the International Development Association (IDA) at a cost of US\$150 million which is Kshs15 billion and a target of 312,500 potential customers across the country. This phase involves short extension of high voltage lines and further densification of transformers in peri-urban areas of all counties and constituencies.

(iii) Phase III - Further electricity penetration. The French Development Agency (FDA) together with the European Union (EU) aim at making available to the GOK a total of €120 million which is Kshs13.7 billion for the implementation of the LMCP. Of this amount, €90 million will be a concessional sovereign loan from the French Government and €30 million will be a grant from the EU. A total of 197,000 customers

will be connected under this component, thereby increasing access by a further 985,000 Kenyans.

In addition, the European Investment Bank (EIB) has proposed to support the LMCP by providing financing up to €70 million. The funds from EIB will be co-financed with the ADB for the LMCP phase described above. A total of 115,680 customers will be connected under this component thereby increasing access by a further 580,000 Kenyans. The GOK in a programme dubbed GOK Last Mile has also put counterpart funds into the LMCP as other development partners including Japan International Cooperation Agency (JICA) and others continue to show interest so that they can increase connectivity.

(c) Explain the plans that the Government has put in place to connect electricity to the premises of Kenyans living in a radius more than 500 metres from an existing transformer.

Mr. Speaker, Sir, to be able to connect electricity outside 600 metres radius of existing transformers and also loads of three phase and above 8KVA, Kenya Power will need more support from the Government and other donors. As mentioned in part (b), the transformers densification through World Bank under the International Development Association (IDA) at a cost of US\$150 million across the country is one such initiative to increase reach. Kenya Power has pre-invested projects and is seeking more support from the Government and other donors in order to finance the network expansion to all areas in Kenya. The actively engaged partners are ADB, World Bank, Alternative Dutch Fund (ADF) and EIB, among others.

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

Sen. Khaniri: Mr. Speaker, Sir, allow me to thank my very good friend, Sen. Mwakulegwa, for the very elaborate response that he has given to my request. I will be quick to say that Kenya Power has taken advantage of its monopoly to exploit Kenyans. Research has shown that Kenya Power charges the highest rates not only for connectivity but also for consumption of electricity. This explains why we are losing so many investors to the neighbouring countries in the region.

Paying Kshs15,000 is too high for connection of electricity for a peasant Kenyan. I wanted the Vice-Chairman to give us concrete measures on what they are doing to further reduce this figure because not many people can afford Kshs15,000 in the rural villages. Kenya Power makes its money from usage, so they should minimize the cost of connection because they make their profit through usage. They should broaden the base and connect more people so that there is more consumption and therefore more income. The LMCP is heavily funded and the Vice Chairman has given us a list of people who are putting in their money like JICA, EU, the French Government and I do not understand why they are asking for more money from GOK to connect Kenyans. Could the Vice Chairman explain those two factors that I have just raised?

The Speaker (Hon. Ethuro): Could we hear from the Vice Chairman?

Sen. Mwakulegwa: Mr. Speaker, Sir, Sen. Khaniri has said Kenya Power has taken advantage of being a monopoly in the business of power supply. I think it is upon this House and the National Assembly to bring a Bill that will compel other players to come to provide this product.

Regarding why they are still charging Kshs15,000 which is on the higher side for many Kenyans, it is important to note that a while ago, up to December 2016, the charges were Kshs35,000. This has now been reduced to Kshs15,000 which---

The Speaker (Hon. Ethuro): Order, Vice Chairman. Did I hear December, 2016?

Sen. Mwakulegwa: Mr. Speaker, Sir, it was Kshs35,000 up to December 2015. It has recently been reduced to Kshs15,000. Therefore, from the future plans that they have and the money that the donors and the GOK is putting in place, I am sure that it will be in the interest of Kenya Power Company to reduce it further. For now, it has been reduced from Kshs35,000 to Kshs 15,000 and he can take this appeal from this House to Kenya Power Company and policy makers to reduce it further so that all Kenyans will be able to access power by 2020 as is stated in this Statement.

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

Sen. Karaba: Mr. Speaker, Sir, it is important to know that Kenya Power being a monopoly of power supply has also made Kenyans behave like that it is only---

The Speaker (Hon. Ethuro): Order Sen. Karaba. This is Statement hour.

Sen. Karaba: Mr. Speaker, Sir, is the Vice-Chairman aware that the shortage of transformers is causing many problems for Kenyans in the rural areas who would like to connect electricity? There is an acute shortage of transformers and manpower.

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. This programme started during the successful Kibaki Government. Farmers in Trans Nzoia, Bungoma, Kakamega and Vihiga counties responded by planting eucalyptus trees. This is a species that is fast growing. It is now harvest time and farmers are being told the policy has changed to concrete poles.

Could the Chairperson clarify that, indeed, the real reason for the policy change is that the company is being held captive by three politicians who own concrete making firms?

Finally, at the funeral of the late Soita Shitanda, the Jubilee Government announced to the people of Kakamega County that connectivity would be at 70 per cent by June next year. They left my people salivating for it because there is no power in Kakamega County. Could he tell us if Kakamega County is one of the counties that will be beneficiaries of Phase I?

Sen. Kagwe: Mr. Speaker, Sir, I congratulate the Uhuru administration for bringing down the cost from Kshs35,000 to Kshs15,000.

The Speaker (Hon. Ethuro): Order, Sen. Kagwe! Who is Uhuru administration?

Sen. Kagwe: Mr. Speaker, Sir, I meant President Uhuru Kenyatta's administration.

The Speaker (Hon. Ethuro): That is correct.

Sen. Kagwe: Mr. Speaker, Sir, for the benefit of Sen. (Dr.) Khalwale, the Jubilee administration.

It is an achievement for this Government to have reduced the cost of electricity connectivity from Kshs35,000 to Kshs15,000. At one time, it was announced that customers would be allowed to pay this Kshs15,000 in installments after connection. This

is to be amortized over a period of time because of the cash flow that wananchi are experiencing at the moment. Could the Chairperson confirm that that will be the case?

The Speaker (Hon. Ethuro): Sen. Kagwe, when Sen. (Dr.) Khalwale talks of the successful former President Kibaki's administration, he was not refuting the fact that there were also two Deputy Prime Ministers in his administration and one of them is the current President. So, it seems to be a continuum.

Proceed, Sen. (Dr.) Machage.

Sen. (Dr.) Machage: Mr. Speaker, Sir, indeed, the other one was Hon. Raila Odinga; the only Prime Minister.

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

(Sen. (Dr.) Machage stood up in his place)

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Machage!

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, we are a House of records. Is Sen. (Dr.) Machage in order to mislead the country that the Rt. Hon. Prime Minister, Raila Odinga was a Deputy Prime Minister when we know that the other Deputy Prime Minister was Hon. Musalia Mudavadi?

Sen. (Dr.) Machage: Mr. Speaker, Sir, lest he never heard me well, I said the other principal who should take credit for this programme is the Rt. Hon. Raila Amolo Odinga. It was not only Kibaki's Government. Mr. Raila was a co-principal with a 50 per cent share. Do you remember *nusu mkate*?

Mr. Speaker, Sir, is the Chairperson aware that despite the instructions that the citizens should only pay Kshs15,000 connection fee, more often than not, they are given higher rates of payment with a reason that the consumption is high? If that is so, what is the limit for the Kshs15,000 payment?

Sen. Ndiema: Mr. Speaker, Sir, while we appreciate the effort of the Government in power reticulation, there are still very high charges for connection of power to small scale industries, including farmers in the rural areas. Could the Chairperson give a Statement on why small scale companies which use power for irrigation, coffee milling and so on, are being charged to the tune of Kshs1 million while the Government says the cost of electricity connectivity has been reduced to Kshs15,000? Why are they charging Kshs1 million for connectivity yet these small scale industries are the ones which have the potential to create employment for our people?

Sen. Obure: Mr. Speaker, Sir, ideally, the connection fee should be free. It should not exist at all. However, I want the Chairperson to indicate how many people have taken advantage of the reduction in connection fee, so far.

Secondly, I would like to know if the Chairperson is aware that because of the very high electricity bills, a number of water companies in counties have shut down because they cannot afford to supply water to people.

Sen. Okong'o: Mr. Speaker, Sir, what measures has the Government taken to assure Kenyans that there will be availability of power in their homesteads? I have a caretaker of my house in the rural areas who tells me there is no electricity. Electricity

bills are exorbitant and many villagers cannot afford to pay. Traders in Nyamira County cannot operate their businesses after 7.00 p.m.

Sen. Mwakulegwa: Mr. Speaker, Sir, Sen. Karaba wanted to know why there is a shortage of transformers. The Kenya Power (KP), through the Rural Electrification Authority (REA), has actually intensified the placement of transformers. That is why schools, markets and institutions continue to be connected. So, customers within 600 metres of these transformers will get connected. As I said earlier, money given to us by donors will be used in buying more transformers in order to extend these programmes to many people.

Sen. (Dr.) Khalwale wanted to know why farmers who supply poles to KPC cannot now do so because the policy dictates that they use concrete poles. I would like to inform him that KPC uses only 15 per cent of concrete poles. We still have 85 per cent demand for other poles and this was confirmed by the Cabinet Secretary (CS) when we had a meeting with him. He assured us and the farmers that they will continue to buy the wooden poles now and for the future. So, that market is still available. He even went further and informed farmers that KPC will continue buying those poles from them.

With regard to the deadline of June 2017, I was not privy to what was said during the late Hon. Soita Shitanda's funeral about connectivity of power to people in Kakamega County. In this Statement, I have stated that by 2016 June more transformers will be placed. The countrywide access will only happen in 2020.

Sen. Kagwe had wanted to know---

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

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, the clarification was whether powerful politicians are or not holding Kenya Power Company (KPC) at ransom. I wanted a clarification and now that he is dillydallying about it, can he clarify whether the Deputy President, who has invested in production of concrete poles is, in fact, the one who is frustrating our farmers so that his concrete poles can be sold and our farmers have nowhere to sell theirs? If that is so, what is the Government doing to protect the poor farmers against this kind of greed?

Sen. Kagwe: Mr. Speaker, Sir I just heard Sen. (Dr.) Khalwale say that the Deputy President is an investor in poles. Would it be possible for him to substantiate and prove, indeed that, that is the case?

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

Sen. (Dr.) Machage: Mr. Speaker, Sir, it would only be fair, now that Sen. (Dr.) Khalwale has mentioned one of the three, to tell us the other two concrete suppliers and if there is anything illegal with that.

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, you have been challenged to substantiate; proceed.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, my concerns are not about the interest of the politicians. My interest is about the *wanyonges* who have planted those trees. The clarification I sought was whether KPC is being held hostage by these politicians. I said that since one of the investors in that venture is the Deputy President, could he be interfering? All I wanted to be told is that he is not interfering. Thereafter, my farmers

will sit pretty well. That was all. If the Senator wants to ask his own question, he should ask it.

The Speaker (Hon. Ethuro): Order Sen. (Dr.) Khalwale. You are entitled to your questions while Members are also entitled to their questions. When you are challenged to substantiate, it is their right to do so and you must also substantiate. What is it Sen. Murkomen?

Sen. Murkomen: Mr. Speaker, Sir, there is a general growing obsession on the other side of the political divide, led by the Senate Leader of Minority and Sen. (Dr.) Khalwale, that every time you want to mention somebody, there is a total obsession with the name of the Deputy President. The Standing Orders are very clear that if you mention somebody or something, you must be ready to substantiate. Can the aspiring Governor for Kakamega County, Sen. (Dr.) Khalwale, provide evidence that the Deputy President is an investor in concrete poles, as we have no problem with what he is talking about?

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

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Is Sen. Murkomen in order to label this side of the House of being obsessed with questioning issues of this country? What does he mean by the word 'obsession' in its context?

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Machage! You have completely paraphrased that statement. Sen. (Dr.) Khalwale, I am still waiting for your substantiation although Sen. Murkomen almost let you off the hook by referring to you as gubernatorial aspirant. As far as I am concerned, such a person does not sit in this House. However, he quickly redeemed himself by referring to you as Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, the Standing Orders are very clear and I have faith in you that you are going to use them effectively this afternoon to protect me. One way of doing so is by dismissing the point of order by Sen. Murkomen because Standing Orders are clear that when you are referring to a Senator, there is a way we do it. There is no Senator here called "aspiring candidate for Kakamega County", because I am not. I am the Senator for Kakamega County and therefore protect me, as I will not respond to a question that is posed to an imaginary person.

Mr. Speaker, Sir, since Sen. Murkomen is still in his early days of pupilage on parliamentary practice, allow me to guide him that in the highest court in the United Kingdom (UK), a ruling was made that a person who sits in a public office cannot at any one time be cushioned from scrutiny, directly or indirectly. I hope that satisfies you. Thank you.

The Speaker (Hon. Ethuro): Order Members. It may or may not satisfy Sen. Murkomen, but will definitely not satisfy the Chair. This is because your defence that the House is shielding public officers from being scrutinized is not the issue here. You have not told us which ruling it was and whether it is relevant, yet you could easily access it from your neighbourhood if there was such a ruling.

The issue you are being asked is to substantiate that some Kenyan investors whose names you have mentioned are frustrating farmers who grow eucalyptus trees in Kakamega, on the understanding that they would supply to KPC. You know, when you were generic, it was fine, but the moment you dropped names, surely you have to substantiate. Sen. Murkomen and Sen. Kagwe are saying that they are not protecting

anyone but you must produce some evidence. That is the case which is also provided in the Standing Order.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, knowing the shenanigans at the Registrar of Companies, even if you were to give me time to go and get certificates, I will be frustrated. I, therefore, most humbly want to drop the specific name of Deputy President and apologise and appeal to the Deputy President that he should use his high office to make the office of the Registrar of Companies to be more efficient so that when I am challenged next time, I can get the information on the spot. I apologize most unreservedly.

The Speaker (Hon. Ethuro): Order Sen. (Dr.) Khalwale. There are two components.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I also withdraw the usage of that name and leave the word ‘politicians’. I am also glad that the Chairman has confirmed that, indeed, 15 per cent has been allowed for concrete, but that 15 per cent in keeping with the corruption in Jubilee is being abused.

The Speaker (Hon. Ethuro): Order Sen. (Dr.) Khalwale. I wanted to say that I read English but you and I did not read English, though we have an excellent command of the English language. You cannot apologize and withdraw and then still go ahead and make further submissions. That is my understating of those three words and I have all reasons to believe that we have a similar understanding since I have been with you long enough to know that you know. Can you make your submission on the basis of ordinary understanding of those three words which we share?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, delete all the above and substitute with, ‘I apologize and withdraw’ Thank you.

The Speaker (Hon. Ethuro): Good enough. You could have done better but you can get away with that one.

Order Senators, that matter has been settled.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Did you hear Sen. (Dr.) Khalwale, ordering for the deletion of the HANSARD, a duty which is only given to the Speaker of the House?

The Speaker (Hon. Ethuro): Since he was responding to me, my understanding is that you have actually clarified. He was putting the request to me, so I order that it is expunged from the HANSARD as per the request of Sen. (Dr.) Machage.

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION OF STAFF FROM SIAYA AND KAKAMEGA COUNTY ASSEMBLIES

Hon. Members, I wish to acknowledge the presence in the Speaker’s Gallery of visiting staff from Siaya and Kakamega County Assemblies. The County Assembly staffers are here on a five day attachment to the Senate. I request each member of the delegation to stand out when called out so that they may be acknowledged in the usual Senate tradition.

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From Siaya County Assembly:-

1. Eric Ogenga
2. Charles Ochieng Onyango
3. Martin Kissinger Sumba
4. Regina Akoth
5. Gloria Miganda
6. Raphael Juma Akeyo

From Kakamega County Assembly:-

1. John Simwa
2. Kultum Atemba
3. Tracy Florence
4. Felix Barasa
5. John Ambunya
6. Phyllivane Inziani
7. Titus Osundwa

I hope you have a fruitful programme in the Senate. On my own behalf and on behalf of the Senate, I welcome you to the Senate and wish you well for the remainder of your stay.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, today is a very exciting day for me. This is the first time that the County Government of Kakamega has set its foot in this House. Allow me to congratulate them and more importantly, the Clerk in charge of Finance because they did an excellent job on the Budget Oversight Review Paper which confirmed that Kshs1.6 billion had been misappropriated by the County Government of Kakamega in the year 2013/2014.

Congratulations and may they be trained very well because the second generation of governors on 8th August, 2017 want to get an efficient county assembly, whose backbone is the clerks.

Sen. Murkomen: Mr. Speaker, Sir, on behalf of my colleagues, I would like to congratulate the team from Siaya and Kakamega Counties for coming here. Again, I want to reiterate that we are strong and committed to ensuring that our counties are carrying out oversight responsibilities robustly and for the better interest of our people. I also want to congratulate the Chair for the continued exchange programme and capacity building for our counties. That is the way to go.

On the part of Kakamega County, I want to tell them to continue with that good path and to spare our Senate the kind of spectacle we have been watching when it comes to his robustness in accountability. There has been too much teargas directed at the Senator of that county. I hope more respect and responsibility will be carried to ensure--- I saw him struggling last week in a public function where some lady wanted to snatch the microphone from him. I think he is too senior to be treated that way.

The Speaker (Hon. Ethuro): Order, Sen. Murkomen! This is a very solemn occasion. Definitely, the Senator for Kakamega has many more capabilities than the one you are referring to, which maybe more relevant to the visiting delegation and to the programme you are praising to the high heavens.

VISITING DELEGATION FROM ST. AUGUSTINE
MLOLONGO SECONDARY SCHOOL, MACHAKOS COUNTY

Hon. Members, I wish to recognize the presence of visiting students and teachers from St. Augustine Mlolongo Secondary school, Mavoko Constituency, Machakos County. They are seated in the Public Gallery. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and on behalf of the Senate and on my own behalf, wish them a fruitful visit.

(Applause)

(Loud consultations)

Order, hon. Senators! I thought we had finished. I was dealing with one and I have not called out the next one. The Senator for Nyeri cannot purport even in his wildest dreams or statue of imagination that he can direct you from where he is sitting.

(Laughter)

Hon. Senators, we will come back to Statements later. We will go to Order No.8, 9, 10, 11 and 12.

Order No.9 is deferred for further consultations at the request of the Senate Majority Leader.

BILLS

Second Reading

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

(Bill deferred)

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. I rise on a point to request that we stand down Order No.9. This is the Order of Precedence and Titles Bill---

The Speaker (Hon. Ethuro): Order, Senator. You approached the Chair and I have already communicated to the House.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Sorry, Mr. Speaker, Sir. I was looking at the next Order and I did not hear your guidance.

The Speaker (Hon. Ethuro): I read all the orders except that one.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Speaker, Sir. I thought in your directions also, you would give directions on Order No.16 and 17 that have been placed in the Committee of the Whole yet we did not complete the Second Reading last

week. They have been placed in the Committee of the Whole yet we did not even commence.

The Speaker (Hon. Ethuro): Hon. Members, what I did not mention is that we should now turn to the Supplementary Order Paper. If you are referring to the Supplementary Order Paper, those items are not under the Committee of the Whole. The Committee of the Whole has Order Nos. 13 and 14 only.

I hope that is clear.

I order that the Division Bell be rung for one minute. I encourage you not to leave the Chamber.

(The Division Bell was rung)

The Speaker (Hon. Ethuro): Order, Members. We will vote on all those Orders. I suggest that the assisted voters should prepare to vote for all of them at a go.

You may now log in and proceed to vote.

Second Reading

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

(Sen. (Prof.) Kindiki on 2.6.2016)

(Resumption of Debate interrupted on 8.6.2016)

DIVISION

ELECTRONIC VOTING

*(Question, that the Natural Resources (Classes of Transactions Subject to Ratification)
Bill (National Assembly Bill No.54 of 2015) be now read a Second Time, put and the
Senate proceeded to vote by County Delegations)*

AYES: Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Karaba, Kirinyaga County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mbuvi, Nairobi County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui 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. Sang, Nandi County; Sen. Wako, Busia County; and, Sen. Wamatangi, Kiambu County.

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NOES: Nil

The Speaker (Hon. Ethuro): Hon. Senators, the results of the Division on Order No.8, on the Natural Resources (Classes of Transactions Subject to Ratification) Bill (National Assembly Bill No.54 of 2015) are as follows:-

AYES: 26

NOES: Nil

ABSENTIONS: Nil

(Question carried by 26 votes to 0)

(The Bill was read a Second Time and committed to a Committee of the Whole tomorrow)

Second Reading

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

(Sen. (Prof.) Kindiki on 9.6.2016)

(Resumption of Debate interrupted on 9.6.2016)

DIVISION

ELECTRONIC VOTING

(Question, that the Access to Information Bill (National Assembly Bill No. 36 of 2015) be now read a Second Time put, and the Senate proceeded to vote by County Delegations)

AYES: Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Karaba, Kirinyaga County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mbuvi, Nairobi County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui 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. Sang, Nandi County; Sen. Wako, Busia County; and, Sen. Wamatangi, Kiambu County.

NOES: Nil

The Speaker (Hon. Ethuro): Hon. Senators, the results of the Division on Order No.10, the Access to Information Bill (National Assembly Bill No. 36 of 2015) are as follows:-

AYES: 26

NOES: Nil

ABSENTIONS: Nil

(Question carried by 26 votes to 0)

(The Bill was read a Second Time and committed to a Committee of the Whole tomorrow)

Second Reading

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

(Sen. (Prof.) Kindiki on 9.6.2016)

(Resumption of Debate interrupted on 9.6.2016)

DIVISION

ELECTRONIC VOTING

(Question, that the Energy Bill (National Assembly Bill No. 50 of 2015) be now read a Second Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Karaba, Kirinyaga County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mbuvi, Nairobi County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui 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. Sang, Nandi County; Sen. Wako, Busia County; and, Sen. Wamatangi, Kiambu County.

NOES: Nil

The Speaker (Hon. Ethuro): Hon. Senators, the results of the Division on Order No.11, the Energy Bill (National Assembly Bill No. 50 of 2015) are as follows:-

AYES: 26

NOES: Nil

ABSENTIONS: Nil

(Question carried by 26 votes to 0)

*(The Bill was read a Second Time and committed to
a Committee of the Whole tomorrow)*

Second Reading

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

(Sen. (Prof.) Kindiki on 9.6.2016)

(Resumption of Debate interrupted on 9.6.2016)

DIVISION

ELECTRONIC VOTING

*(Question, that, the Seeds and Plant Varieties (Amendment) Bill (National Assembly Bill No. 43 of 2015) be now read a Second Time put, and the Senate proceeded to vote by
County Delegations)*

AYES: Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Karaba, Kirinyaga County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mbuvi, Nairobi County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui 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. Sang, Nandi County; Sen. Wako, Busia County and Sen. Wamatangi, Kiambu County.

NOES: Nil

The Speaker (Hon. Ethuro): Hon. Senators, the results of the Division on Order No.12, the Seeds and Plant Varieties (Amendment) Bill (National Assembly Bill No. 43 of 2015) are as follows:-

AYES: 26

NOES: Nil

ABSENTIONS: Nil

(Question carried by 26 votes to 0)

(The Bill was read a Second Time and committed to a Committee of the Whole tomorrow)

The Speaker (Hon. Ethuro): Order, hon. Senators! You may now draw the Bar and open the Doors.

Hon. Senators, I also wish to thank you for a very good job this afternoon. Since we came from recess you have done very well. We now proceed to the next order which is order No.13. Order No.14 is deferred. After Order No.13, we can go back to statements.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE POLITICAL PARTIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.2 OF 20156)

The Temporary Chairperson (Sen. (Dr.) Machage): Order, hon. Senators. I appeal to hon. Senators that we have a lot of important business to transact. Please let us maintain the numbers.

We are in Committee of the Whole, Order No.13; The Political Parties (Amendment) Bill (National Assembly Bill No.2 of 20156).

What is it, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Temporary Chairperson, Sir. For record purposes, I reiterate that I had proposed amendments to this Bill. I am aware that my amendments have been subverted. However, for the record, I would like to say this so that Kenyans will know that I had proposed to amend Clause 15 and 19 for being unconstitutional but since my amendments have not seen the light of day, the record will always reflect on the HANSARD that I had proposed those amendments.

The Temporary Chairperson (Sen. (Dr.) Machage): Order, Sen. Mutula Kilonzo Jnr. You talked of subversion. Who subverted your proposed amendments? That is a serious allegation.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairperson, Sir, the Senate process.

The Temporary Chairperson (Sen. (Dr.) Machage): Order! Are you accusing the Speaker's office?

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairperson, Sir, I do not know which office.

The Temporary Chairperson (Sen. (Dr.) Machage): You are completely out of order. I order that that statement be completely deleted from the he records.

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

Sen. (Dr.) Khalwale: Mr. Temporary Chairperson, Sir, the reason why the office of the clerk is rich in human resource is to do exactly what they have failed to do on the proposed amendments by Sen. Mutula Kilonzo Jnr. Why did the office of the clerk not go all out of its way to make sure that his proposed amendments are on this Order Paper?

The Temporary Chairperson (Sen. (Dr.) Machage): I may not be able to answer that now because I have to investigate the whole scenario. I have actually removed out of the record the word “subversion” towards the office of the Speaker which is unfortunate. However, I will take it up and investigate what happened. That is a serious issue.

What is it, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairperson, Sir, it is just for the record. However, when it comes to voting I will vote “no”, I must say so in advance because I cannot participate in an illegal process. For whatever purpose, the expediency does not justify making an illegal Act. That is my position.

The Temporary Chairperson (Sen. (Dr.) Machage): Order! You do not have to declare how you will vote before the voting is done. You are anticipating issues on the Floor of this House.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairperson, Sir, it is for the record. I am at liberty to say so and nobody bars me.

The Temporary Chairperson (Sen. (Dr.) Machage): But you are out of order!

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairperson, Sir, but I am at liberty to say so.

The Temporary Chairperson (Sen. (Dr.) Machage): What is it, Sen. Obure?

Sen. Obure: Mr. Temporary Chairperson, Sir, what Sen. Mutula Kilonzo Jnr. is saying is a fairly serious matter. It is so in the sense that he has talked about infringement of the Constitution. We have all vowed to protect that Constitution. I have reason to believe that he knows what he is talking about. We are about to embark on a very dangerous path.

The Temporary Chairperson (Sen. (Dr.) Machage): I appreciate the seriousness of Sen. Mutula Kilonzo Jnr.’s assertion. I cannot say it is true or not, because I really have to look at the records.

What is it, Sen. Sang?

Sen. Sang: Mr. Temporary Speaker Sir, while appreciating the concerns raised by Sen. Mutula Kilonzo Jnr., it is important to state that this Bill was committed to our Committee, of which Sen. Mutula Kilonzo Jnr., is a member. We had deliberations on that Bill and finally came to a decision that approved it without amendments.

We all agreed that the concerns that Sen. Mutula Kilonzo Jnr. had raised needed to be looked into. There was a unanimous decision within the Committee, and we have done this before, that we would be able to re-look comprehensively, not just on the provisions of this amendment Bill, but the entire Political Parties Act for purposes of addressing that.

The issues that he raised in terms of certain clauses being unconstitutional are largely points of argument. We understood how he understood the provisions, but a number of the members in that Committee had a different interpretation on those provisions as to whether or not they were unconstitutional. Therefore, it is important that the House appreciates that the proposed amendments that Sen. Mutula Kilonzo Jnr. is talking about were amendments by himself as an individual, but the Legal Affairs Committee to which this Bill was committed, had addressed and noted a number of those issues. Therefore, his concerns were part and parcel of the discussion that led to the approval of that report, as it were.

The Temporary Chairperson (Sen. (Dr.) Machage): Whereas your information may be useful to the House, I do not think it addresses the complaint by Sen. Mutula Kilonzo Jnr. His complaint was that he submitted amendments to the office of the Speaker, and because of “subversion”, they are not here. That is the allegation. That is a serious issue. I think the HANSARD should capture all his words. It is so ordered.

What is it, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker Sir, the correct position for the HANSARD is that the Second Reading came before the Committee Report. We sometimes expedite Bills before the Committee finalizes its work. However, during the Second Reading, I had made my reservations to those clauses. When the Bill came to the Committee, we agreed that the reservations I had would be part and parcel of the report which has not been presented. That is the correct position. The reservations I have about those two clauses are already part of the report of the Legal Affairs Committee. So, it is not something that I am imagining.

The Temporary Chairperson (Sen. (Dr.) Machage): If that is the case, then you are completely out of order. This is because what we accept at this level is the Committee report. I know you have expressed dissent. The majority will have their way, but the minority will have their say. That is what democracy is all about. Democracy is not necessarily the best form of a system, but that is what it is. I call it a system of oppression of the marginalized. Let us have clauses.

Clauses 3 – 28, the Title, Clauses 2 and 1

(Question, that Clauses 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28, the Title, Clause 2 and 1) be part of the Bill, proposed)

What is it, Sen. (Dr) Khalwale?

Sen. (Dr) Khalwale: Mr. Temporary Speaker Sir, allow me to congratulate the Committee and the Mover of the Bill for those clauses specifically Clause 8, which states that:-

“Any Member who is a President, Deputy President, Governor or Deputy Governor, Member of Parliament or Member of the County Assembly who does not desire to be a member of the new political party to be registered after the

merger, shall continue to serve in such elected position for the remainder of the term and may join a political party or choose to be an independent member within thirty days of registration.”

I must thank this forward thinking. I was a victim under the hands of the Leader of the Majority, once upon a time in the life of this Parliament, for exactly this reason, that Jubilee was arm-twisting me because I was in United Democratic Front (UDF), so that I could join Jubilee, something I could not do.

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Speaker Sir. While I thank the Senator for Kakamega for acknowledging that we are helping him---

Sen. (Dr) Khalwale: Yes!

The Senate Majority Leader (Sen. (Prof.) Kindiki): Is he in order to mislead the country that the Senate Majority Leader has victimized him, while the true position is that after the small episode in which I de-whipped the Senator for Kakamega, I went out of my way to campaign for him and support him to become the Chairperson of the County Public Accounts and Investments Committee (CPAIC)?

Sen. (Dr) Khalwale: Mr. Temporary Speaker Sir, I have to reply to that.

The Temporary Chairperson (Sen. (Dr.) Machage): Order! You are both out of order.

What is it, Sen. Murungi?

Sen. Murungi: Mr. Temporary Speaker Sir, you are a surgeon and, therefore, very precise. These two Senators want to deflect us from the Bill.

(Laughter)

The Temporary Chairperson (Sen. (Dr.) Machage): I was interrupted. Can you repeat?

Sen. Murungi: Mr. Temporary Speaker Sir, I said that the two Senators want to introduce a sideshow and focus on themselves instead of the Bill. Could we focus ourselves on the clauses in the Bill, instead of the histories that they are trying to tell us?

The Temporary Chairperson (Sen. (Dr.) Machage): You are also quite in order. What they have shown us is egocentrism and we are not interested in that. So, Sen. (Prof.) Kindiki and Sen. (Dr.) Khalwale keep your peace.

Sen. (Dr) Khalwale: Mr. Temporary Speaker Sir, I was still having the Floor. I was contributing---

The Temporary Chairperson (Sen. (Dr.) Machage): Yes continue and be very brief in congratulating them.

Sen. (Dr) Khalwale: Mr. Temporary Speaker Sir, I wanted to congratulate the Senate Majority Leader for this forward looking amendment. I hope that this House will expeditiously pass this Bill, so that the President can sign it into law. I want to enjoy my space.

I beg to support.

The Temporary Chairperson (Sen. (Dr.) Machage): I will put the question later.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Chairperson, Sir. There is a circular here from the office of the Clerk indicating that Sen. Mutula Kilonzo Jnr. has been allowed to move his amendments. It has just been circulated.

The Temporary Chairperson (Sen. (Dr.) Machage): Order! If there was a circular to be circulated in this House, I would be the first to be privy to it.

Sen. (Dr.) Khalwale: Even the Senate Majority Leader has it.

The Temporary Chairperson (Sen. (Dr.) Machage): Order! Whether or not the Senate Majority Leader, the Senate Minority the Leader, leader of independence or whatever leader has it, the Chair of the Plenary does not have it. So, it is null and void.

Mover!

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Chairperson, Sir, pursuant to Standing Order No.139, I beg to move that the Committee do report progress on its consideration of The Political Parties (Amendment) Bill (National Assembly Bill No.2 of 2016) and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

PROGRESS REPORTED

THE POLITICAL PARTIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.2 OF 2016)

Sen. (Dr.) Machage: Mr. Temporary Chairperson, Sir, I beg to report that the Committee of the Whole has considered The Political Parties (Amendment) Bill (National Assembly Bill No.2 of 2016) and seeks leave to sit again tomorrow.

Sen. (Eng.) Muriuki: Mr. Deputy Speaker, Sir, I beg to move that the House do agree with the Committee in the said Report.

Sen. (Dr.) Khalwale seconded.

(Question proposed)

(Question put and agreed to)

The Temporary Chairperson (Sen. Sang): Hon. Senators, as had been indicated by the Speaker earlier on, we will now go back to Statements.

(Resumption of Statements)

STATEMENTS

Statement (a) is by Sen. M. Kajwang who is not in the House. Statement (b) is by Sen. Elachi and the Chairman of the Committee is not here. The Chairperson of the Committee on Health is not here to deliver Statement (c). The next statements are by Sen. Khaniri who is not in the House. Under the circumstances, we cannot process anything under Statements.

STATUS OF THE NATIONAL SECURITY COMMUNICATION SYSTEM

MANAGEMENT OF MASINDE MULIRO UNIVERSITY OF SCIENCE AND TECHNOLOGY
THE DECLINING STATE OF HEALTH SERVICES IN NANDI COUNTY

INCREASED CASES OF PNEUMONIA IN CHILDREN AND ELDERLY PERSONS

REDUCTION OF ELECTRICITY CONNECTION FEE

MISAPPROPRIATION OF TEXT BOOK FUNDS BY PUBLIC SCHOOLS

(Statements deferred)

BILL

Second Reading

THE PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION)
BILL (NATIONAL ASSEMBLY BILL NO.44 OF 2015)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move:-

That, The Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No.44 of 2015) be now read a Second Time.

This is one of the Bills that have a constitutional deadline of 27th August, 2016. As the Senators know, we are doing very well so far with regard to the Bills that have come to us in the last few weeks; especially the nearly two-dozen Bills that have constitutional deadlines. We hope that when this Bill goes to the Committee on Energy, they will propose any amendments that we need to consider. Especially, issues of interest to counties may need to be spotlighted.

This Bill modernizes our petroleum exploration, development and production operations. The law which is in place is very old. I remember when the Senator for Meru was the Minister for Energy, he tried to initiate some of the things that I see in this Bill. He had even formed an advisory committee, where I served as a Member. I can see some of the things that he was trying to breathe life into, like developing a production sharing

contract between the Government and contractors in the area of petroleum exploration, development and production. Some of those issues are now taken care of in this Bill.

This Bill is about upstream production activities. These are activities that have to do with exploration and production of petroleum, as opposed to downstream operations, which involve distribution of petroleum to residential, industrial or other end user facilities. The activities, therefore, involve all operations related to exploration, development, production, separation, treatment, storage and transportation of petroleum up to the agreed delivery point.

In Clause 4, the Bill is described as the framework Bill in upstream petroleum operations. In other words, in matters of upstream operations in the area of petroleum, this Bill will supersede any other law. In Clause 5, the Cabinet Secretary is under obligation to develop national upstream petroleum policy plans and strategic plans, and publish such plans.

In Clause 8, no one may engage in exploration or production of petroleum without the approval of the relevant authorities established under this Bill. In Clause 12 there is the composition of an institution known as the National Upstream Petroleum Advisory Committee. It is of interest to this House to note that the Council of Governors will have a representative in that committee. That is something in the right direction in terms of the sharing of responsibilities between the national Government and county governments.

Allow me to also highlight a few other provisions, in particular, Clause 41, on the ownership of petroleum resources in the country. The Clause vests the ownership of all petroleum resources in this country on the people of Kenya. This is a major paradigm shift from what we have had in the past, where the state used to own resources. That has now been changed. The State can only hold those resources as a trustee, but the ownership is in the people of the Republic of Kenya. That is a major point of departure from what has been prevailing, especially under the old petroleum law.

Clause 44 says that it is only contractors with the required financial, technical and professional capacity that may be engaged to do operations in the area of petroleum exploration, production, *et cetera*, so that we do not have briefcase contractors. In this country we have had cases of people with no known expertise and financial or technical capacity being given exploration blocks and they are unable to engage in exploration or production of petroleum. There is an obligation now on the Government to ensure that only contractors with the relevant and predetermined capacity, in terms of human resource, technical, professional and financial capability are given contracts to explore or produce oil.

Mr. Temporary Speaker, Sir, Clause 54 says that the contractor must notify the Cabinet Secretary (CS) who is the only authorised person to announce to the public the discovery of petroleum products. Still under Clause 54(4), the contractor is also under an obligation to notify the CS in the event of discovery of any other natural resource in the course of oil exploration or production. In the event that they discover other minerals or other natural resources in the course of oil exploration, there is a duty to disclose.

Under Clause 72, the contractor is under an obligation to give information and to report to the relevant authorities established under this Bill all geological, geochemical, geophysical surveys, drilling, completion and production data and any other information

in accordance with the petroleum agreement and regulations made under this Act. That is provision of information and reporting which never used to exist in the previous law.

Clause 77 deals with local content training. Again, this is a major point of departure and a paradigm shift in the way we manage and govern our petroleum resources in this country. There is a duty on contractors to ensure they comply with local content requirements in all that may be in place from time to time, so that you do not give contracts to foreign companies and they have no obligation to ensure that there is a local content in that contract. We have already seen emerging conflictual issues arising from the exploration that is taking place in northern Kenya, especially in Turkana County.

Therefore, this Bill will go a long way in resolving some of those tensions. The contractor must give priority to services provided and goods manufactured in Kenya where the goods meet the specifications of the petroleum industry as prescribed by the Kenya Bureau of Standards (KEBS) or, in the absence of a Kenyan standard, any other internationally acceptable standard that the authority established under this Bill may approve. In other words, when those companies that are exploring for oil need to procure goods and services, they must give priority to service providers from Kenya or the manufacturers of Kenyan goods so long as they meet the relevant technical specifications.

Mr. Temporary Speaker, Sir, allow me to highlight two other issues. The first one is on Part 8 on Environment, Health and Safety Provision which again never used to exist in the old law. Clause 86 going downwards requires that the law relating to environment, health and safety in upstream petroleum operations must apply to each contractor. The contractors and people involved in our petroleum undertakings must ensure the safety of people working for them and they must invest in environmental friendly technology. This is important in these days of environmental sensitivities, so that they do not use technologies that can be harmful to the natural environment and destroy plants and animals.

The last point I want to highlight is on the proposed production sharing contract which must be entered into every time there is an upstream petroleum undertaking. Every time a contract is being issued for the undertakings that have to do with the exploration for oil and petroleum, there must be a standard of a model production sharing contract which has been elaborated as very extensive. It must have very useful modern provisions that state for how long the contract exists, the obligations of those who are given exploration rights, how it can be terminated, the minimum exploration work and expenditure obligations *et cetera*. It must be a very detailed technical but also community sensitive production sharing contract. This is something which was missing from the previous law.

Mr. Temporary Speaker, Sir, allow me to say that this Bill will go a long way in modernizing our exploration for oil. Going by recent discoveries, Kenya, and indeed much of East Africa, is the next frontier for exploration activities. So, we will see many of these undertakings taking place. We already have discovered oil in Turkana. Recently, another discovery was announced in Elgeyo-Marakwet County. I am also aware that other counties, including Tharaka-Nithi, are potentially oil rich counties. The future of

our country looks bright, especially now that all along we have been sitting on the “black gold” which is petroleum.

Mr. Temporary Speaker, Sir, with those few remarks, allow me to stop there. I beg to move. I request the Senator for Meru County who is the former Minister for Energy and also my neighbour and the future governor of Meru County to second this Bill.

The Temporary Speaker (Sen. Sang): Sen. Murungi, the Mover of the Bill has just given you another title, “future governor.”

Sen. Murungi: Mr. Temporary Speaker, Sir, first, I want to thank the Mover of this Bill, the Senate Majority Leader, Sen. (Prof.) Kithure Kindiki, who is also the spokesman of the Meru Community. We in Meru appreciate his very able leadership and also the leadership that he has provided to this House.

I think this is the most important Bill that has come to this House this year. The Bill will revolutionise the economy of this country and especially the economy of the marginalised areas of this country which have been blessed with enormous fossil fuel resources.

Mr. Temporary Speaker, Sir, I was lucky that I was the Minister for Energy in 2012 when oil was discovered in Turkana region by Tullow Oil and other partners. You will remember the celebration that day as we moved with President Kibaki from Harambee House to a meeting of Ministers in the Kenyatta International Convention Centre (KICC) where we announced for the first time in this country that; “Oil has been discovered in Kenya” and we were given a standing ovation. After the initial excitement, a debate raged in the media about whether the oil that was discovered in Kenya was a blessing or a curse for this country.

In the usual Kenyan style, there was a lot of negativity. Some people said that all the oil was going to be stolen by a few people and the people of Turkana will never benefit. I even saw some commentaries from a lady in the University of Warwick who said that Kenya does not have the capacity to manage oil resources and, indeed, there was going to be war between the Pokot and Turkana and the surrounding communities because of those resources.

Mr. Temporary Speaker, Sir, we are now in 2016 and there is no war in Turkana. We would like to put to shame those prophets of doom.

It is my very sincere and deep felt belief that the discovery of oil in Kenya will be a major blessing for this country. The economies of the Middle East countries have become magnets of international investment and major capitals of international business. When I see them and look at the situation we are in Kenya, I see Kenya becoming a most vibrant economy where people will enjoy a very high quality of life because of the higher resources that we are continuing to discover in Turkana and Eleyo-Marakwet counties, among others. I believe it is a matter of time before we discover oil around Isiolo, Marsabit, Lamu and, indeed, within the 200 nautical miles and beyond in our maritime zones.

Mr. Temporary Speaker, this Bill seeks to correct some of the mistakes that have happened in the past, not only in this country, but also in Nigeria where revenue generated from oil production does not benefit the local community. There has been a lot

of money generated in the entire oil chain, but the local community has become spectators. They just see foreigners and Europeans flying around in choppers, but they do not benefit from the oil resource.

The previous oil exploration regime which was captured in the Petroleum Exploration and Production Act of 1986 was terribly outdated and did not capture the current trends in this industry. That Act had very little to say about environmental issues which were not prominent in 1986. They became prominent after the Rio United Nations Conference.

Mr. Temporary Speaker, Sir, 1986 was the height of one party rule in this country when the Central Government was very powerful; the height of the imperial presidency. The local communities were powerless. All resources belonged to Central Government. This Bill seeks to correct that by putting resources in the hands of the local communities and also to bring fairness in the distribution of resources.

Mr. Temporary Speaker, Sir, I want to highlight two innovations; one which you will find in Part VI of the Bill which leads to local content issues. The question that arises even as we explore and develop the field is; what is in it for us, as Kenyans?

Clause No.77(1) says:-

“A contractor and a sub-contractor of the contractor conducting upstream petroleum operations shall –.

- a) comply with local content requirements in all of the contractor’s or sub-contractor’s operations;
- b) give priority to services provided and goods manufactured in Kenya where the goods meet the specifications of the petroleum industry as prescribed by the Kenya Bureau of Standards or in absence of a Kenyan standard any other internationally acceptable standard that the Authority shall approve; and
- c) ensure that priority is given for the employment or engagement of qualified and skilled Kenyans at all levels of the value chain:

Provided that the cost of local content shall not be higher than at any other place.”

Mr. Temporary Speaker, Sir, this is a very important innovation that this Bill is bringing to the oil exploration industry. When Tullow Oil first started to explore for oil in Turkana, we even had foreign doctors who came to treat people for scorpion bites as if there were no doctors in Kenya. What this Bill requires is that, as much as possible, that an international oil firm which is exploring or producing oil in this country must employ Kenyan professionals and workers.

Mr. Temporary Speaker, Sir, you remember there was a riot in Turkana when the local community felt that they were not being involved in the operations. For example, they were not even providing transport. Indeed, we were so happy that after negotiations with the local leaders, a deal was done with Toyota Kenya to provide vehicles to some local businessmen in Turkana where they could have capacity to provide transport for the contractor.

Mr. Temporary Speaker, Sir, the Senate Committee on Energy has extensively explored these local content issues. We have been to Brazil to study their local content system which is the most developed one in the world. In Brazil, which is one of the top producers of oil and gas in the world, all oil insurance companies must be Brazilian, all

financial services that are provided to oil exploration activities must be done by Brazilian banks. All the lawyers that are providing the legal services to these companies must be Brazilian. The technicians; people providing pipes and other engineering services must be Brazilians.

Indeed, Brazil took an unprecedented step of sending 3,000 people to school so that they could qualify to work in the Brazilian petroleum industry. This is what we need in this country. We do not need to be told that Tullow or whatever company has done this or that. We want to know how many Kenyans are working there, who is providing the services there, among other things.

We also have insurance companies in this country. This law should make it very clear that no oil exploration company will come to Kenya and seek insurance services from foreign insurance companies when our insurance companies can provide the same service. Similarly, our banks can form a consortium and fund all oil exploration activities in this country unless Kenyan banks are not able to do so. We cannot accept foreign banks to benefits from our resources.

As a lawyer, I would like to open up this business for local lawyers as well. We do not want to be told that the only people who understand this business are in New York, Dallas or in London. We now have educated Kenyans who have, for example, studied in the University of Dundee which specializes in energy issues. We want Kenyan lawyers to be the lawyers for these companies. It was very sad to see Chinese welders being imported to come and fix pipes in Kenya. Now we have so many polytechnics. I am so happy that a university is being built in Turkana County. Let us not only focus on the academic degrees, but also have diplomas. This is because we need fellows to fix pipes so that it is the Turkana loaders who are working in Turkana County.

Mr. Temporary Speaker, Sir, even before we start drilling the oil, there are many business opportunities available for Kenyans in this industry. This Bill is opening them for Kenyans. It is not only oil, but there will be food to be eaten. We do not want to hear that there is a foreign company bringing food from South Africa. There will be transport provided as well as security services. We want to hear that Turkanas are providing security. We want them to be involved in top management. We have Turkanas with Doctors of Philosophy (PhDs). We want to see some of them working as managers of these firms.

The next innovation that the Bill has brought is the sharing of oil revenue in Clauses 84 and 85. Briefly, under the Production Sharing Contracts (PSCs). In the past, revenue was shared between the national Government and the international oil company. This Bill has gone further to provide that the share of revenue coming to the national Government must be divided into three. The national Government will take ---

(Sen. Murungi's microphone went off)

The Temporary Speaker (Sen. Sang): I will add you two more minutes.

Sen. Murungi: Mr. Temporary Speaker, Sir, 10 per cent of the revenue will go to the local community. I would have wanted to speak a little more, but ---

The Temporary Speaker (Sen. Sang): I have added you two more minutes.

Sen. Murungi: Mr. Temporary Speaker, Sir, if I could explain, 10 per cent will go to the local community. This means the area where the oil wells have been sunk. They will get 10 per cent of the revenue. So, we are talking about Lokichar in Turkana County. The constituency in which Lokichar is based will get 10 per cent of the revenue. Turkana County will get 20 per cent of the revenue and the national Government 70 per cent. That 70 per cent will not go to general revenue of the Government. It will be deposited into a petroleum account in the National Treasury and it will be used for specific purposes. For example, we could say it is for supporting education, infrastructure or health. So, it is a very good management system that is being introduced here by this Bill. I request all the Members of this House to give this Bill 100 per cent support.

I am sorry that I cannot speak a little more about this subject that I am so passionate about. I believe there will be other opportunities to contribute. With those few remarks, I beg to second this Bill.

(Question proposed)

Sen. Elachi: Mr. Temporary Speaker, Sir, I also rise to support this constitutional Bill of Parliament. In 2012, oil was discovered in Turkana County by Tullow Oil which is a British company. At that time, as the former Minister said, many of us were doubting Thomases. However, our doubts were laid to rest because, indeed, we have oil deposits in Turkana County and exploration is going on in different parts of the country.

Clause 77 of this Bill is about Local Content and Training. The biggest challenge we are facing is that many residents of Turkana are given menial jobs. These jobs do not require skills. I urge the Government to pressurize the companies involved in oil exploration in this country to engage local communities in the same way the company constructing the Standard Gauge Railway (SGR) has done. We need them to organise training programmes for young people in Turkana County and other counties so that they pass on the knowledge of oil exploration to our people.

In 2015, a Japanese company decided to train its top officials in Tokyo. I hope those senior officers are making use of their knowledge for the benefit our country. They should train others in the same field. That is why Clause 77 is very critical. Clause 77(c) says:-

“Ensure that priority is given for the employment or engagement of qualified and skilled Kenyans at all levels of the value chain:

Provided that the cost of local content shall not be higher than at any other place.”

Mr. Temporary Speaker, Sir, sometimes local employees are taken advantage of because they lack expertise. We also have Kenyans who can do so. So, we hope that when this Bill is assented to, it will help us deal with this issue.

Mr. Temporary Speaker, Sir, Clause 103(1) says:-

“Any person who objects to a proposal to develop upstream petroleum infrastructure on his land shall raise his objection in accordance with the provisions of the relevant written laws.”

Mr. Temporary Speaker, Sir, there are coal deposits in Kitui County. We thought mining would start earnestly, but it has taken long to start. This Bill will not only take

care of petroleum mining, but also many other natural resources like coal and geothermal. Even in Turkana County, there are people who own land and would like to develop it. I hope the issue of lease, say of 50 or 60 years will not be an impediment to exploration of oil and other minerals in this country.

This Bill creates many boards and I hope they will be devolved to counties. Sen. (Dr.) Zani prepared the natural resources Bill. We all agreed that there will be a percentage to benefit county residents, owners and the Government. I am bit worried here because most of the constitutional Bills create authorities and yet the President formed a taskforce to review them. I do not know whether we are contradicting ourselves on the same or not. In this Bill, we need an authority to deal with petroleum production in this country. I hope this House does justice to this Bill.

Mr. Temporary Speaker, Sir, I know the Bill is detailed, but it is important to read it. A lot is said about the contractor and sub-contractor, but little is said about the local community. You then wonder whether we have really taken care of the local community in this Bill.

Clause 111 (2) states that:-

“For reporting purposes, the transparency and accountability framework of the upstream petroleum sector shall be disaggregated into each petroleum agreement, non-exclusive permit, drilling permit, production permit, and plug and abandonment permit in the following categories-

(a) payment type of each contractor (i.e, taxes, fees and royalties and other charges);

(b) production volumes by each contractor measured at the delivery point of sale;

(c) transfers of all upstream petroleum sector revenues from the national Government to county governments and communities, including the royalties; and

(d) all contractor contributions in cash or in kind to county governments and local communities.”

I do not know how we will do that. Hopefully, we will understand better within the rules that will be passed.

Clause 119 on regulations states that:-

“Without limiting the generality of Section 118, the Cabinet Secretary may make regulations with respect to the following-

(a) the rates or the method of setting the rate at which petroleum and water may be recovered from any well or petroleum reservoir;”

We have to be clear when involving the national Government and the county government to avoid conflict.

“(b) the fees including but not limited to surface fees, training fees and signature bonuses, royalties or any other payments to be made by the contractor under a petroleum agreement;

(c) the opening up of areas of upstream petroleum operations;

(d) terms and conditions of petroleum agreements; and

(e) requirements and procedures for unitization”

All these will be done under the regulation of the Cabinet Secretary; the list goes up to “(hh).” It is important for us to understand this because that is where the county governments will have conflict with the contractor and the national Government.

As I finalize, it is important for us to understand most of the leases, which are 25 years from the date of the development of the plan. If our local investors are to benefit, we must ensure that the leases are friendly.

With those few remarks, I beg to support.

Sen. Murkomen: Mr. Temporary Speaker, Sir, this Bill is very exciting. As a Member of the Committee on Energy, I am happy to note that we appreciate the efforts that the Government has put to ensure that we have a legal framework that deals with matters of petroleum, particularly exploration, development and production. This Bill is critical for the reasons that have been properly presented by Sen. Kiraitu.

First of all, petroleum, oil exploration and gas are of great concern for Africa and the world. The black gold, as they call it, is a very important resource in so far as the development of a country is concerned. Energy is critical and that is why we have countries that are called ‘petroleum producing countries.’ This Bill is also important in terms of ensuring the protection of the social fabric of a country.

I had the opportunity of escorting the former President of Nigeria, President Goodluck Jonathan, on more than three occasions when he was in office. We had critical discussions about matters relating to petroleum. He told me something profound; that if a country wants to develop and produce oil, it must deal with the underlying issues. He told me that one of the most critical underlying issues is the importance of protecting the local community and environment. We remember the fights in Nigeria and the death of Ken Saro Wiwa. His articles, books and poems were about the oppression of minority people in Delta Region, which is the oil producing region of Nigeria. The fights that are going on in Nigeria are about the problems that we have in the region. We look at the benefits that come with the oil to the rich people and the State. Sometimes, the benefits do not go to the State, but a few hands of connected people.

Today I was speaking to PhD students at St Paul’s University. One of the students who come from Angola was sharing with us the challenges of Angola being the top oil producing country in Africa. The resource that comes from oil production is within the family of the President. To start with, the President is the Head of State, his son the Minister for Energy and the daughter is in charge of foreign reserve that deals with money that comes from the oil.

That is why it is important for us to explore the oil, having passed the Constitution of Kenya 2010. It makes it mandatory - as has been replicated in this Bill - that oil agreements are to be signed and approved by Parliament. The Cabinet Secretary will not have unfettered powers to deal with matters relating to agreements of oil exploration and energy related issues. They need the approval of Parliament, which is critical.

What is also critical in this Bill is the fact that the resources that come from oil and petroleum production will be transparently applied to the benefits of the country. The profits and the agreements that will deal with the sharing of profits between the producers and the Government will be open. Many countries in Africa cannot tell how much they get from the oil production because the producers are colluding with a few people in

Government to hide the exact resource that they will receive. We will now have transparent agreements that will be vetted and interrogated by Parliament, to ensure that those resources are transparent and applied for the benefit of the country.

Mr. Temporary Speaker, Sir, I speak with passion because I come from an oil producing county, where oil has been discovered. Two weeks ago I was in that particular spot, a place called Chepsigot in Keiyo South, where Tullow oil company explored and established the preliminaries that there is possibility of commercially viable oil in that area. Our people are anxious because in areas where oil is being discovered, there has never been land adjudication from the past. There is now a stampede by all kinds of people, rushing to that region, with the hope of getting land. Others even think that once they get a piece of land, whatever oil fields that will be discovered, will be part and parcel of their oil. Somebody was jokingly telling locals to buy jerry cans and drums ready for storage and sale of their oil.

Mr. Temporary Speaker, Sir, it is important to remind Kenyans that the Constitution provides clearly that the land where oil and minerals are discovered is public land. This law now operationalizes that principle in the Constitution which provides that in terms of accessing land that is originally private, then there must be agreement between the Cabinet Secretary, the Ministry and the owner of that land for access to exploration and production of oil. If an agreement is not reached, then compulsory acquisition will be done in a manner that will ensure the interest of the people who own that land is protected. Therefore, it is important to tell our people that it is not right to imagine that they will be owners of oil fields because that is part and parcel of public land.

It is also important that this law provides for the benefits of locals. The sharing of petroleum resources according to Clause 85 is critical because it provides that the national Government shares off the profits for having dealt with producers and producing companies. The county governments share shall be equivalent to 20 per cent of the national Government's share. Elgeyo- Marakwet is one of the counties that get little resources from the national Government allocation and division of revenue. Right now, there is a greater incentive in ensuring that exploration is done because 20 per cent of the profits are going to remain within Elgeyo-Marakwet County. Can you imagine what kind of developments are going to make a difference in the county? It is not enough that this law is provided for here. We, as the Senate, must strengthen the institution of counties because some counties may lack absorption capacity for those resources while some may not have enough capacity to deal with oversight related matters.

Can you imagine if a county is struggling with managing Kshs1 billion development fund, what will happen when they have to manage oil revenue of about Kshs1 billion. There must be clear laws beyond what is provided here. There must be proper legal framework that the Senate will have to think through to ensure that the resources are part and parcel of county revenue funds. They are not going to open an account separately. The available funds must go to the county revenue fund so that they are accounted for and the Controller of Budget will have a say and the Auditor-General will have access in auditing so that the resources are not misappropriated.

Mr. Temporary Speaker, Sir, Clause 85 provides that 10 per cent of the generated amount shall be for the local community share and shall be payable to a trust fund managed by a board of trustees established by county governments in consultation with the local community. The challenge that we will experience going forward and which we must work towards defining is the question: What is the local community? Shall it be the village, sub location, location or a ward? How will we define the spectrum of what amounts to local community? Suppose that local community is within a border of one county and another, how will we be able to cover the other counties where oil is found, but the impact of exploration is affecting the next county? These are matters that we will have to sit down and debate to provide a legal mechanism that will ensure that there is no conflict between counties on matters of boundary or communities that are affected.

Sometimes, oil can be found in a community that inhabits two separate counties. We must provide for that legal framework. It is important for the local community themselves to provide a critical legal mechanism for the management of those issues. There must also be a follow-up law to define how that board will be defined, how it will look like and the corporate standards required in management of those resources.

Mr. Temporary Speaker, Sir, Part VIII of the Bill is also very critical because it deals with matters of environment, health and safety. You can have all these resources, but if by the end of the day, you do not have land, healthy people or hazards all over, that will lead to more costs being applied in treating people for diseases that are related to cancer, chest infections and others. There must be proper legal framework which will ensure protection of the environment.

Part VIII further provides for a clear framework of dealing with matters of environmental protection and linking it to other legislations including the National Environment Management Authority (NEMA) and the Occupational Health Safety Act of 2007 that will ensure that there is protection of the health of our people and the environment.

Part IX of the Bill is important because it captures matters in relation to what I talked about earlier; access to land. There must be fair access to land without trampling on the rights of the local community. Part X deals with dispute resolutions that emphasize the need for alternative dispute resolution to avoid a situation where all resources that are accrued from oil production are wasted on legal battles. That is an important provision. Sen. Murungi talked about local content on Part VI which I find critical. It is important not to get foreigners to do everything so that we end up dependent on them forever. There must be transfer of technology, skills and knowledge. For every engineer that comes from outside the country, there must be two local engineers to understudy what they are doing. That will build the capacity of our country in such areas.

Mr. Temporary Speaker, Sir, I agree that our universities must prepare themselves to have energy lawyers and social workers who will work in that area as well as environmental persons who will ensure that resources are protected and the environment is protected. We must also have accountants who will work on accountability in as far as how those resources are concerned as well as auditors who will audit the oil companies. The importance of having those resources in our country is that we have a population explosion in this nation. Therefore, we must be able to attract investments in areas like

petroleum so that we can employ our youth who are currently being misused by other actors in either recruitment in Al Shabaab or ISIS. It is a sad affair that even our university students are being recruited to terrorism. It is, therefore, important to give them hope that they will be able to get jobs.

The youth are now being recruited by terrible and negative political actors. It is sad to see our brothers in the CORD coalition engaging young people who suffer from joblessness in sums like Kibera and Mathare. They hire them for small amounts of money and bring them to town to create chaos in the name of demonstrations. We must learn as politicians to appreciate that this nation must live as one country. Even as we prepare for these resources and deal with matters of creating resources in our country, we must change the communication, language and narrative that we politicians use in this country. We should not continue lying to people.

Those of us who sit in this House know how we laugh and work together; whether it is me with the Senate Minority Leader, Sen. (Dr.) Khalwale or Sen. Hassan. We are brothers and we help each other when we are in need and work as a team. Why then do we lie to Kenyans that they can fight on our behalf? I have said severally that no blood of any Kenyan should be shed for the sake of a politician. This nation must grow up and move from the mentality that because of joblessness, people can be hired to be goons for a political cause.

I beg to support.

The Temporary Speaker (Sen. Sang): Please, proceed, Sen. (Prof.) Lesan.

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, first and foremost, this Bill which has come to the Senate from the National Assembly is timely. This is so because of several things which are going on internationally. We will discuss and set out how we will run the whole industry in Kenya. The international activity with regard to oil is very stable. This is shown by the prices that are exhibited worldwide at the moment. It is appropriate to discuss this Bill when there is no turbulence in the world.

This Bill is also very elaborate as is evident from the number of pages. This is the first major Bill that will allay complications in the management of oil. Though it looks elaborate, we will require several areas of strict examination so that we can close the loopholes. We are aware that countries that have explored and found oil have run into problems.

I would like to mention one or two things on Clause 12. It talks about establishment of the body that will manage oil in the country. I appreciate that the membership of this body is well-thought. However, I notice that the National Oil Corporation of Kenya (NOCK) will form part of the membership of this Committee. Transporting the oil from one place to another will be a major infrastructure need. A member from the Kenya Pipeline Corporation (KPC) would be very appropriate in this case. Ample advice will be given immediately to manage the transportation of oil across and out of the country.

One of the challenges we will face with handling oil and its products is the impact on our environment. Representation on this area of the environment is very important. I notice that the director of the National Environment Management Authority (NEMA) will be one of the members but the introduction of a representative of the Council of

Governors (CoG) is also significant. Therefore, we should get one additional member in this Committee from the CoG, more specifically to deal with environmental issues that will arise in the counties.

In Clause 12(4), the Authority has an opportunity to appoint another four members to this Committee. It is stated that this should be any four members. However, I would like this to be modified so that it is specific. It should state where these four members will come from. I suggest that the four extra members will be selected from the counties that have the oil wells. In fact, this should be given from the counties as well. There are various committees of environment in the counties. They will make a significant contribution to this committee.

Mr. Temporary Speaker, Sir, I would also like to touch on a very important issue that is being looked at in a different manner. Clause 32 talks about keeping of proper books of accounts; recorded income, liabilities, expenditures, assets, undertakings, funds, activities, contract, transactions and any other business. One of the biggest challenges we will have is auditing of the oil. It is often assumed that the auditors audit books and look at numbers and figures. However, we are now aware that some countries produce high grade oils, but because there is no capacity to audit, these oils have been classified as low grade in the production areas yet when it gets to the international market, they assume their correct grade which is the high grade oil.

Therefore, lack of auditing is one of the areas we need to relook at and put in place experts who should audit the oil as it comes off the ground. When oil comes off the ground, it is not the oil that we see at the petrol stations. It is a mass of liquid that has sand, water, hydrocarbons and everything else in it. Therefore, we should know how much of this material we will eventually call oil by auditing the number of barrels that we have got from the ground before we later on audit the books of account.

It is also important to audit the quality of the crude oil. Some countries have lost out in terms of the value of their product. Extractors and miners of petroleum could easily collude and mislead the producing country to think that they are producing low quality oil yet, in fact, they are producing high quality oil whose prices are sometimes double or three times what they have been recorded. So, I suggest that as we continue to look at the prospects of exploring oil in this country, we must prepare to fully audit its products. I presume that part of the training and capacity building that is going on is to train individuals with the capacity to audit oil and not the books of accounts.

In addition, there is a risk of fights over the oil. I am sure this House is aware that currently Kenya has territorial issues with her neighbours with regard to its sea territory. In future, most of the oil fields in this country will be offshore. As we debate this Bill, it is important that we urge our country to resolve any international issues that it has with her neighbours in terms of offshore. We require these rich areas for our exploration. Small issues like the Elemi Triangle should be resolved. These are potential areas where oil can be discovered.

Otherwise, I strongly support the enactment of this Bill. I am very happy that this Bill has moved quickly from the National Assembly. It is now in the Senate. It should not be said that the Senate delayed the passage of this significant Bill. Therefore, I urge my colleagues in the Senate to support this Bill. It is significant in all aspects, including

maintaining peace in our country in future. When we discover resources we can sit down comfortably and share it out among our people not necessary equally, but equitably.

Mr. Temporary Speaker, Sir, with those remarks, I beg to support. I hope my colleagues will do so.

(Sen. (Prof.) Kindiki consulted loudly)

The Temporary Speaker (Sen. Sang): Order! Senate Majority Leader, you are completely out of order.

Sen. Lesuuda: Mr. Temporary Speaker, Sir, thank you for your protection. I also wish to add my voice to this important Bill. It is timely and important for us, as a country. I echo the sentiments of many of my colleagues.

One of the things that we are so sure is that from the time oil was discovered in the country, there was a lot of excitement and expectations. It is those expectations and challenges we are trying to address through this Bill. I hope we will pass it as quickly as possible so that it can be operationalised by the Cabinet Secretary (CS) and the Board members.

Mr. Temporary Speaker, Sir, I want to address myself to two issues. One of them is who will benefit from this resource in the counties? We do remember that when Tullow Oil started exploring oil in Turkana, there were various issues which came about and they required to be addressed within the legal framework. One of them was the local communities being involved in the whole process of oil exploration. There were a lot of expectations from the local communities and they wanted to know what was in store for them.

Mr. Temporary Speaker, Sir, most of the land where oil has been discovered is occupied by pastoralists. For many years, we have continued to have conflict in those areas because of limited resources such as land for pasture and water. However, we need to ask these communities to let us explore oil for their own benefit and the country as whole. So, it is very important for us to have guidelines and a law in place on how these communities will benefit from the resources that sit in their counties. It is also important to know what their share is. This Bill expressly states how the revenue will be shared between the National Government and also the county government. I believe we will have regulations in place on how to spend money that will be given to counties.

We want to see accountability on how this money will be spent. It will be useful if it will be used in provision of education, water and health services. We can also invest in human resource that we have as a country. If we invest this money to education sector, then it will be able to tackle a lot of these issues. It is important like many of my colleagues have said, that the local communities have to benefit, especially on issues to do with the transfer of skills, the work, not just the manual work, but even the human resource aspect, so that those communities who live around where the oil is being explored can benefit from it.

Mr. Temporary Speaker Sir, the environmental aspects and issues have to be looked into and no compromise should be made in these areas, because the people in those communities will be greatly affected. Their livelihoods will be affected if

environmental issues are not keenly looked at. It is good that we have this law in place; it should be implemented to deal with our environment.

Lastly, money has to go back to the locals. Even issues to do with tenders, supply of goods and services have to go directly to the people and the communities that live around this area, and the law expressly states this. The only thing is that we have very good laws that look into communities and everything and we hope that the law will be implemented to ensure that the local content is one of the key issues. We saw issues in Nigeria where people went and burst the pipes. We have been witnessing conflict in oil producing countries. I do hope that we, as a country, are setting a very good foundation through the laws and the regulations to ensure that we will not have these conflicts in these areas between the communities and those companies that have been given licenses to explore oil and other natural resources.

I want to echo the sentiments expressed by one of my colleagues that the young people have to be taken care of and be given tenders to supply goods and services in those firms. I believe 30 per cent of tenders should be given to youth and their interests be taken into consideration. What we are seeing in our country, as my colleague has said, is very unfortunate. We continue to incite our young people and manipulate them so that they continue to spread the hatred instead of finding out how best we can create employment opportunities and ensure they have money in their pockets by enacting good laws that will empower them.

We should ensure that our polytechnics and the technical institutions churn out people who can be engaged in exploring petroleum and gas. We should not use our young people for our own political gains. We should desist from inciting them; instead, we should take care of their interests by passing laws which will benefit them.

I support this Bill and hope that it will serve the intended purpose.

The Temporary Speaker (Sen. Sang): Since I cannot see any Senator who is interested in contributing to this matter, I call upon the Mover to reply.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move. However, given that we do not have enough Senators to go into a Division, I request that you direct that the putting of the question be deferred to tomorrow under Standing Order No.54(3).

The Temporary Speaker (Sen. Sang): I so direct.

(Putting of the question on the Bill deferred)

Next, order No. 16.

*Second Reading*THE COMMUNITY LAND BILL (NATIONAL
ASSEMBLY BILL NO. 45 OF 2015)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker Sir, I beg to move that the Community Land Bill (National Assembly Bill No.45 of 2015) be read a Second Time.

This is a Bill to give effect to Article 3(5) of the Constitution in particular, to recognise land that is vested in communities. For a long time, we have had only three categories of land: public, private and trust land. Under the current constitutional order we no longer have trust land. We have community land, which is land vested in communities.

Secondly, under the old order, community land or rather trust land used to vest in the defunct Local Authorities. In the proposed Bill, community land which is the successor nomenclature for trust land shall vest in communities.

Thirdly, for the first time community land will be registered. This Bill establishes a register for community land. It provides for the process of registration and the steps that need to be taken. Before community land is registered, it shall vest in the county government which is enjoined under this Bill to hold the community land in trust. So, the principles of trusteeship apply to county governments.

Mr. Temporary Speaker Sir, I want to highlight that it is only the unregistered community land that shall be held in trust by the county government on behalf of the community. Once the registration process is complete and the community is issued with a title conferring ownership rights, the county government is obliged to transfer that land to the respective community.

I also want to highlight another issue that is in the Constitution. Article 63(4) which I am afraid may not have been honoured up to now provides that with regard to the former trust lands, that is land belonging to communities which was previously under the defunct local authorities, there should be no transaction associated with it. It cannot be disposed of or dealt with in any way whatsoever. In other words, a moratorium has been imposed by our Constitution on dealing with the former trust land which is now community land until this Act is in place. I hope with the interlude we have had between 2010 when the new Constitution entered into force and now, those who are responsible have not transacted in or disposed any trust land because that will be a contravention of the Constitution.

Mr. Temporary Speaker, Sir, allow me to also point out that the principles of the National Land Policy (NLP) will apply to community land; so will the national values and principles of governance.

Mr. Temporary Speaker, Sir, the Bill, in Clause 4, recognises a number of land tenure systems for community land, including customary land, freehold, leasehold and such other tenure that might be recognised under this Act or any other written law. The land rights in community land are protected in Clause 5 in terms of land of any

description and in any part of Kenya. Customary land rights belonging to community land have equal force of law as the land under freehold or leasehold title.

The Bill provides that the Government may compulsorily acquire community land, subject to compensation and parameters of Article 40 of the Constitution. The role of county governments is to hold community land in trust for the community until it is fully registered. While holding such land in trust, county governments are not permitted to transact that land because, as I said, they are trustees. Once the registration takes place, county governments must hand over management of community land to the community in question following registration.

Mr. Temporary Speaker, Sir, finally, there is a protracted process for registration of community land. The last issue I want to talk about is with regard to the community land management, communities which might be established and also the fact that for the first time, community land rights maybe enjoyed in a new way, especially with regard to common areas and grazing rights. This will go a long way in minimising the disputes and conflicts we have seen in our country over community areas, especially with regard to grazing and watering of animals.

Clause 40 towards the end of the Bill provides for alternative dispute resolution mechanisms in respect of any disputes with regard to community land rights. It encourages alternative dispute resolution.

This Bill makes it unlawful to occupy community land when such occupation is not based on any rights under this law. This law will go a long way in unfreezing the already frozen community land transactions by virtue of operation of Article 63(4) of the Constitution.

Mr. Temporary Speaker, Sir, with those few remarks, I beg to move. I request the Senate Deputy Majority Leader and Senator for Elgeyo-Marakwet County, Kipchumba Murkomen, to second this Bill.

The Temporary Speaker (Sen. Sang): Senate Majority Leader, it has always been the practice in this House that when you move a Bill, you ask your counterpart or somebody from the other side to second. Why is it not so, this time round?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, it is true that is the tradition of this House, but it is not written anywhere. A Bill can be seconded by any Senator. Ordinarily, when Members of the Opposition are present, we give them an opportunity, but they are not here. I do not speak for them and I do know why they are not here because this is Senate time. I just wanted to highlight that there is nothing wrong in a Member from the Majority side seconding this Bill.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I would like to thank my boss, the Senate Majority Leader, for moving this Bill eloquently. While I recognise that in our tradition, the Opposition side could have had a chance to second the Bill, I also recognise that they have been having dialogue in the streets. We are more than ready to have a dialogue with them in this House and that is what we have been insisting because they are our colleagues. Instead of having dialogue where it cannot be documented and put into law, they should come so that we have dialogue together here in the House.

Mr. Temporary Speaker, Sir, this has been a very controversial and protracted Bill; a product of a lot of negotiation. I am a Member of the Pastoralist Parliamentary

Group. I do not know why the Senate Majority Leader is not a Member, but he ought to be. Sen. Lesuuda is officially a Member and there are a lot of things that have been raised in so far as this Bill is concerned. However, having gone through all the negotiations and come through the National Assembly, I believe that the issues have been ironed out.

Mr. Temporary Speaker, Sir, this Bill is critical in unlocking the potential of almost 80 per cent of the land mass in Kenya. Can you believe that pastoralist areas in the country occupy 80 per cent of the land mass? Largely, these areas have not been adjudicated. Therefore, it is necessary that legal instruments are put in place to ensure that the communities which live in the pastoralist areas take advantage of the benefits that come with land adjudication, land registration and land titling and they can use their land for investment purposes.

Mr. Temporary Speaker, Sir, if you read some areas in the previous Energy Bill that we discussed here, you will realise that most of the areas where oil exploration is taking place are largely are part and parcel of community land. This law is very necessary. It provides the role of county governments in management of community land, working together with the NLC to ensure that community land interests are protected until such time that a conversion is done to either private or public land. It also provides the procedure for recognition and adjudication of community land.

Mr. Temporary Speaker, Sir, Clause 8 is very critical because the CS has a responsibility to issue a public notice on survey, demarcation and registration of community land. That notice must reach everybody. There is a stampede now for people who have migrated initially from community lands to urban areas or the White Highlands areas like Uasin Gishu. For example, people have been moving from Elgeyo-Marakwet and Kerio Valley to Uasin Gishu. Because of the benefits that are now beginning to be discovered in the pastoralist areas, you can see that many people are going back to those places. It is important that proper notice is given and proper dispute settlement mechanisms must be put in place to ensure that conflicts that are related to conversions of these lands from community to private land do not lead to unnecessary fights, squabbles and conflicts and derail development in our counties and marginalised areas.

Mr. Temporary Speaker, Sir, this Bill also provides for administration and management of community land, especially the functions and powers of the Community Land Management Committee which must be established as far as Clause 15 of the Bill is concerned. The functions of that committee involves running day-to-day functions, administering land on behalf of the community, coordinating and developing community land and promoting cooperation and participation, among all the members of the community on the management and benefits of the land.

Mr. Temporary Deputy Speaker, Sir, after leaving the School of Law, I spent many years dealing with registration and providing constitutions for community lands in Laikipia County. I learnt a lot that if proper management structures are not put in place, some members of the community can easily disenfranchise others, particularly those who may have been widowed or without education. Therefore, the county government, being a trustee of the community, will assist the community to put in place proper management structures and systems that will ensure that everybody is taken care of. It

will also provide for the rights of the community as the propriety of land and on matters of land use and management. Conservation matters are also dealt with here. Clause 5 deals with issues of conversion of this land from one form to another; whether it is from community to public, public to community, private to public and public to private.

I would also like to take note of Clause 7 which talks about environmental natural resource management. Once these large tracts of land are converted to private or use by the community, there are concerns that, first of all, there must be protection of the environment. Dealing with transparency and accountability; Clause 36 talks about benefits sharing to ensure that impact assessment is done and that you have stakeholders' consultation in investment and benefits from community land.

In summary, this Bill is about transparency and bringing communities that previously lived in marginalized areas to putting their community land to proper use and to benefit the community. The Bill also ensures that you protect the country and communities from squabbles and fights. This is because there will be a proper adjudication system and mediation processes as provided by the law. The dispute settlement mechanisms that are provided will ensure that as we harness the benefit that comes with the use of community land, communities are not disenfranchised and the country does not fight.

Lastly, there is a great link with current development of natural resources, whether it is minerals like oil, with community land. It is because most of the discoveries are on community land. I know that adjudication processes are going on. We need to ensure that this law is put in place so that adequate compensation is achieved by communities and that it goes to the intended people.

With those many remarks, I beg to second.

(Question proposed)

Sen. Lesuuda: Mr. Temporary Speaker, Sir, I rise to support the Bill. I have read it and compared it with the current Act dealing with community land. There was a mediation process before this Bill was drafted. We, as pastoralists, are affected by this Bill. We had various concerns which we sat and looked at. One of them is to do with various definitions. One of the key issues is unregistered community land and how it will be handled. The issue of trustee and the role of the county government in unregistered community land is given prominence in this Bill.

Clause 6(7) says:-

“A county government shall not sell, dispose, transfer, convert for private purposes or in any other way dispose of any unregistered community land that it is holding in trust on behalf of the communities for which it is held.”

Mr. Temporary Speaker, Sir, this Bill needs to go further to explain the role, meaning and extent of the trustee role of the county government in relation to the unregistered community land.

There are various other issues that communities would be keen to see addressed by this Bill. One issue is to do with communal and reserve land and issuance of title deeds. We continue to see these issues even in our own counties where we have

community land that was adjudicated by the previous county councils. Now, county governments have come into place. There are issues between the communities and if they would want to dispose of this community land and it is important to look at them.

We also need to look at the kind of use that these communities have put this land. This is found in Clause 6 where we have issues of grazing rights. We also have individual rights on community land, transactions in community land and leases over community land. I know that other Members will have issues to raise on this Bill. As we go to other stages of this Bill, we hope that we will raise our concerns. This is a very important Bill in that communities that benefit from communal land will then definitely benefit from their land and from this Bill.

I support.

(Interruption of debate on Bill)

Sen. Murkomen: On a point of order, Mr. Temporary Speaker, Sir. I have a Procedural Motion to move if you allow me. I had sought your permission, I will just move it.

PRECEDURAL MOTION

ELECTION OF SEN. LESUUDA TO PRESIDE OVER
THE HOUSE PURSUANT TO ARTICLE 107(1)(C)
OF THE CONSTITUTION AND STANDING ORDER NO.18

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

THAT, pursuant to Article 107(1)(c) of the Constitution and Standing Order No.18, the Senate elects Sen. Naisula Lesuuda to preside over the proceedings of the House for the rest of the sitting today, Tuesday 14th June, 2016.

This is to enable the Temporary Speaker to be assisted by a Member who is not ordinarily a Member of the Speaker's Panel. This is proper, considering that you, Mr. Temporary Speaker, have been on the Chair for over two hours and your colleagues in the Speaker's Panel are away for various official duties.

I beg my colleagues to pass this Motion so that you can also be assisted by Sen. Lesuuda. Perhaps, she can also have something in her Curriculum Vitae (CV) that once in her lifetime, she sat there as the Temporary Speaker.

I ask the Senate Minority Leader to second.

Sen. Lesuuda: Pardon?

Sen. Murkomen: Mr. Temporary Speaker, Sir, sorry. I apologise for calling my boss the Senate Minority Leader. I would like to ask the Majority Leader of the Senate of the Republic of Kenya to second.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I second. The Senate Deputy Majority Leader might be subject to party disciplinary processes for insubordination.

On a serious note, I beg to support. This should help relieve the Chair. We have done it before, so, this is not the first time.

I support.

(Question proposed)

(Question put and agreed to)

(Resumption of debate on Bill)

Sen. Elachi: Mr. Temporary Speaker, Sir, I rise to support this important Bill that every Kenyan has been awaiting for, for the last 50 years. I want to thank Parliament for unlocking the issue of community land. This Bill provides for a legislative framework to give effect to Article 63 of the Constitution. It also provides the recognition, protection, management and administration of community land. The Bill proposes an institutional framework through which community land shall be owned, registered, managed and administered.

The definition of “community” in this Bill is interesting. I hope that as we move on as a country, we will never try to interpret it the way we interpret issues, depending on how we see them. It states that:-

“‘Community’ means a consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following attributes-

- (a) common ancestry;
- (b) similar culture or unique mode of livelihood;
- (c) socio-economic or other similar common interests;
- (d) geographical space;
- (e) ecological space; or
- (f) ethnicity”

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

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

Madam Temporary Speaker, I hope that as we move on none of us will stick to one definition under “(f).” The issue of land has always raised tension and caused conflict.

Clause 7 of the Bill states that:-

“(1) A community claiming an interest in or right over community land shall be registered in accordance with the provisions of this section.”

(2) A community shall, by notice in at least one newspaper of nationwide circulation invite all members of the community with some communal interest to a public meeting for the purposes of electing the members of the community land

management committee, which notice shall also be given to the deputy county commissioner in charge of the area or the relevant sub-county administrator.”

I appreciate that we have looked at it at a national level. If we are not careful, county governments will think that they are the ones to manage this. This could lead to many conflicts. We must read this Bill and make sure that it takes into consideration the fact that Kenya has a principle that anyone can live anywhere in the country. I hope that none of our brothers and sisters will be evicted from anywhere in this country. Let them do farming, conservation and take care of the cultural and heritage sites. Let us do urban development as it is.

Clause 15 (1) is on administration and management of community land. It states:-

“Functions and powers of land management committee are that a registered community shall have a community assembly, which shall consist of all members of the community.”

The word ‘community’ means both men and women. For a long time women have been victimized and discriminated against on issues of community land. This Bill will ensure that both men and women are beneficiaries of community land. If a woman is a widow, her land should be protected because she is part of that community.

(Sen. Murkomen spoke off record)

Madam Temporary Speaker, I was about to finish, but I will now continue for a few minutes, because I have another ‘speaker’ just next to me, who says that we have another Bill.

Clause 22 states that:-

“Community land may be converted to public land by-

- (a) compulsory acquisition;
- (b) transfer; or
- (c) surrender.

We have always had problems whenever the President wishes to do a project that will benefit the whole country and community. The Government has to pay hefty fees and compensation, yet the project is for the community. I hope that when public land is converted into private land by compulsory acquisition, transfer or surrender, it means that the surrender is for any project that the Government will want.

With those few remarks, I beg to support.

Sen. (Prof.) Lesan: Thank you, Madam Temporary Speaker. From the outset, I support my colleagues, especially those who come from the pastoral areas, where community land is a common feature. I want to make two brief comments with regard to Clause 8 (1), (2) and (3) which gives the impression that the Cabinet Secretary has so much power in regard to decisions of adjudication programmes, as well as mapping, developing, survey and demarcation of community land. He is the only one who is given the mandate of making this decision.

Madam Temporary Speaker, I would wish that the Cabinet Secretary consults with the county governments at all stages, either when it comes to adjudication programmes or development of inventory and all those other things. The Cabinet

Secretary should share these responsibilities and resolve any emerging issues, as a result of the consultation that will take place, since this will be provided for by law.

There is the issue of disposal of community land. Clause 15(4) provides that any two-thirds of the members of the community can agree to dispose of the community land. In Kenya, if we consider 'family' as a small community, it is the two sides of the family; the husband and the wife, who can agree 100 per cent on the disposal of property of this nation. This requirement should not be farfetched or tall. There should be a requirement that every member of the community participates in the drastic decision of disposing of community land; it is my suggestion that it should be done by the whole community. Therefore, this must be done in consultation with the entire community.

Madam Temporary Speaker, I see nothing in this Bill that addresses the issues of disputes. The dispute resolution mechanisms should be in this Bill. If, for example, the community has a dispute as a result of historical injustices, these are the issues that should be highlighted because a lot of community land will be affected.

Sen. Murkomen: On a point of order, Madam Temporary Speaker. I do not mean to interrupt my colleague, but it is not correct to say that there is no dispute resolution mechanism in this Bill. It is not in order for us to let the record reflect what Sen. (Prof.) Lesan has said. It is not in order for him to say that there is no section on the resolution of disputes when, in fact, Chapter 8 is dedicated to settlement of disputes relating to community land which has mediation and judicial process arbitration on this process.

Sen. (Prof.) Lesan is out of order and should apologize.

Sen. (Prof.) Lesan: Madam Temporary Speaker, I entirely agree with my colleague because I had not exhaustively read this Bill and I might have misled the House by the statement that I made. Therefore, I withdraw and apologize.

Thank you for giving me opportunity to contribute.

The Temporary Speaker (Sen. Lesuuda): There being no other interest to contribute to this Bill, I call on the Mover to reply.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I wish to reply and thank all those who have contributed to this Motion. Given that we do not have adequate quorum for Division, I request that you direct that the putting of the question be deferred to tomorrow in accordance with your powers under Standing Orders No. 54(3).

The Temporary Speaker (Sen. Lesuuda): I defer the putting of the Question to tomorrow.

(Putting of the Question on the Bill deferred)

Next order!

Second Reading

THE LAND LAWS (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.55 OF 2015)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I beg to move that the Land Laws (Amendment) Bill (National Assembly Bill No.55 of 2015) be read a second time. This Bill gives effect to aspects of the Constitution by aligning the existing land laws to the new Constitution. The land laws in question are three; the Land Act of 2012, the Land Registration Act of 2012 and the National Land Commission Act of 2012. This Bill is trying to bring a number of amendments that align these laws to the Constitution.

I would like to highlight four things in terms of these amendments. First, in the Land Registration Act of 2012, an office of the Chief Land Registrar is created. This Bill creates subordinate offices to support that office. In particular, it creates the Deputy Chief Land Registrar's office, and more importantly for county governments, the office of the County Chief Land Registrar.

Secondly, the Bill looks at the three land related Acts to synchronize the workings between the Ministry of Lands on one hand and the NLC on the other hand, especially with regard to the provision of Article 67 of the Constitution which in particular gives very broad functions to the NLC without clarification. For example, Section 67(2) states that the NLC shall recommend to the national Government a land registration system. However, how to go about it and the effects of those recommendations is not clarified. In the past, we have had turmoil and conflicts between the NLC and the Ministry of Lands, especially during the tenure of the previous Cabinet Secretary.

Madam Temporary Speaker, we have seen some improvement of late and the information I have is that there is a cordial working relationship between the Ministry of Lands, Housing and Urban Development and the NLC. However, that is not enough. There is need for legal clarity. Therefore, those clarifications have been provided and this Bill has gone through extensive stakeholder discussions involving all the parties. That notwithstanding, I hope that the Committee on Lands and Natural Resources will look at it and see how else to improve it, especially from our ambit of protecting the interests of counties and county governments.

Thirdly, this Bill provides clarification on a very important part of the Constitution; Article 67(2)(e) which without clarification states:-

“67 (2) The functions of the National Land Commission are—

(e) to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress”.

This Bill offers a framework upon which historical injustices which have troubled our country for many years can be addressed, once and for all. We, as a country, are all aware that the time, we have tension, conflicts and disputes. A lot of these relate to land and the injustice that is associated with land. This Bill improves the legal framework in addressing the historical land injustices in our country for the first time.

Finally, this amendment Bill gives procedures for conducting evictions. The other thorny issue in this country around land is how people who have lived in a certain parcel of land for long, but do not enjoy certain long term tenure rights are evicted. When such people are evicted from that property, there has been no law on how and when to do it or the minimum human rights standards that must be observed. We should not have a situation in this country as we have witnessed before, where families were evicted at 2.00 a.m., regrettably by Government agencies.

Madam Temporary Speaker, Sir, I remember when my friend, hon. (Prof.) Kivutha Kibwana was the Minister for Lands wanted to obstruct the eviction of some people somewhere around Uhuru Park. He did it physically. He stood in front of a bulldozer and was almost run over in the process. Therefore, this Bill is trying to clarify the issue of evictions, when they must be done, how they must be done and the human rights standards that must be followed in line with applicable international legal standards on evictions worldwide.

Madam Temporary Speaker, with those few remarks, I urge Senators to support this amendment Bill. I beg to move and request the Deputy Majority Leader, Sen. Murkomen to second.

Sen. Murkomen: Madam Temporary Speaker, I beg to second this Bill and say the following three things: One, since the passing of the three land laws in 2012, there has been significant confusion among those of us who are practicing law and in conveyance. The confusion is emanating from the failure to draft the legislations with close referencing to the three Bills that were in place. Therefore, the instruments for transfer of property and the persons responsible for the transfer have caused significant confusion in the sector itself. That has in a big way affected investments in the country. When investors from outside purchase property, they want to be sure about the interest they get from it and the lease which the Constitution says cannot go beyond 99 years.

This Bill will rectify the confusion that existed among the three Bills. It allows for a proper legal framework that protects issues that are related to management of land.

In addition, it deals with the confusion that was there between the NLC and the Ministry. Article 67 of the Constitution provides that the NLC advises on registration of private land and management of public land on behalf of national and county governments. There was a conflict as to which entity should sign a title deed and at what time. This law has made it succinctly clear that registration of land shall be responsibility of the registrar whose responsibility is to the Ministry. However, there will be continuous collaboration, particularly when transferring public land to private land or *vice versa*, with the NLC.

The other issue that this law deals with is other general miscellaneous issues; property that is co-owned by spouses and what happens in the existence of a marriage between spouses when they are co-owning land. It also deals with issues related to changing of map. Sometimes someone changes the map. You may have the title deed, but your land has already been moved in the main map. Protections of those changes are provided for in amendment No.9 which amends Section 16, No.3 of the Act of 2012. There are other provisions that are related to historical land injustices, how to deal with them and the period within which historical land injustices can be addressed. There are

provisions related to long term leases, registration of land and making sure that proper clearances are achieved before land is registered. You must pay all the necessary fees as provided for in these amendments.

There are many other provisions for instance, Section 43 that deals with the establishment of a register that addresses a case where if land is converted from public to private, the NLC must put in place a register to ensure that Kenyans can find out whether there was corrupt practice, improper transfer or conversion of public land to private land so that it can avoid situations of corruption as was the case in the past where forest land was allocated to individuals and national entities for research and development, but ended up benefiting individuals.

Madam Temporary Speaker, I support all these amendments. I believe that it is in the best interest of our nation to have a harmonized legal framework. Since the new Cabinet Secretary came to office, there has been less friction between the NLC and the Ministry. This is how public servants should work. They must work in harmony and peace for the interest of the people. More importantly, we would like to see the current Cabinet Secretary issuing more title deeds. We want the Jubilee Government which all of us who are seated here this evening serve to ensure that four million title deeds are distributed to Kenyans before next elections. Good progress has been made. They must complete the remaining one million title deeds to allow Kenyans to exploit their property.

Madam Temporary Speaker, with those remarks, I beg to second.

(Question proposed)

Sen. Elachi: Madam Temporary Speaker, this is an Act of Parliament to amend the laws relating to land, to align them with the Constitution and give effect to Article 68(c)(1) and 67(2)(e) of the Constitution and also to provide for procedures on evictions from land and for connected purposes.

We have had many challenges after the promulgation of the new Constitution. This Bill ensures that we harmonize the conflicts between the NLC and the Ministry. It will also ensure that devolved units work together. As the Deputy Majority Leader has said, it will ensure that people receive their title deeds.

The Bill also brings out the issue of property clearly. We should respect private property. Considering what is happening in the country, it will safeguard those who are in fear. In times of conflict, those who have bought land somewhere else suffer. They are targeted and eventually, they lose property. As we unlock this impasse, let us bear in mind that land in our country is there for everyone. One can own land anywhere in this country.

Madam Temporary Speaker, with those few remarks, I beg to support.

Sen. (Prof.) Lesan: Madam Temporary Speaker, I join my colleagues to support the amendments that have been presented to the Senate this afternoon. The amendments to these land laws are timely. We have experienced frustrations with the laws as they are. The fact that they are being amended to conform to each other is timely. The fact that these laws were not conforming to each other and the Constitution has consequences in terms of jobs, careers and time wasted in courts to resolve them.

Therefore, I support these amendments to make sure that these laws conform, not only to the Constitution, but to each other as well in order to make them function as a tripartite; as a way of resolving any problem that they may have been caused.

Madam Temporary Speaker, with those remarks, I beg to support this amendment.

The Temporary Speaker (Sen. Lesuuda): There being no other interest to contribute to this Bill, I call upon the Senate Majority Leader to reply.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I take this opportunity to thank colleague Senators for supporting this important Bill. Land is a critical resource. More importantly, it is a finite resource. It is limited. The land mass of Kenya will never expand unless we reclaim parts of the territorial sea like the Dutch have done in Holland.

Therefore, considering that land is a finite resource, we must use it well. For it to be used well, the working relationship between the institutions concerned with the administration of land must be improved. It is in that connection that I am very happy that this Bill will improve the previously difficult relationship between the NLC and the Ministry of Lands.

Secondly, I reiterate the importance of addressing historical injustices in our country. This country is pained by the numerous tensions, conflicts and disputes around land. In fact, the very essence of the struggle for freedom and Independence of our country is centred on land. Since then I do not think we have got the land issue correctly. Hopefully, with the new land legislation, we will resolve this issue. Kenya is a great country, but the land issue is an area that has blotted our happiness and cohesiveness as a country.

Madam Temporary Speaker, the third issue I want to talk about is the issue of elections. We have had numerous cases of the so-called developers and other people with rights on land, removing people who might not have absolute or long-term rights on land, but have short-term rights. World over, the rule is that the rights of those dwellers must be respected, including when to conduct an eviction. You can imagine some of the cases we have had where bulldozers invade some settlement at 2.00 a.m. when people are asleep. Children and women are harassed and removed by force. By the time it is daybreak, they have been thrown out. So, we need this law to straighten up issues to do with evictions, so that when we must do them, we can do them in an orderly and lawful manner that is respectful of the human dignity and the human rights of the people concerned.

Madam Temporary Speaker, I do not want to say any more than I have done. Once again, I thank those who have contributed. I beg to move.

Madam Temporary Speaker, again, given that we do not have numbers to carry out a Division, I request that you direct that the putting of the question be deferred to tomorrow in accordance with your powers under Standing Order No.54(3) of the Standing Orders of the Senate.

The Temporary Speaker (Sen. Lesuuda): That is in order.

(Putting of the Question on the Bill deferred)

Next Order!

Second Reading

THE MICRO AND SMALL ENTERPRISES
(AMENDMENT) BILL (SENATE BILL NO.12 OF 2015)

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Madam Temporary Speaker. In exercise of your powers under Standing Order No.39, for the convenience of the Senate, I do not know whether I am in order to request that – given that many of the Sponsors of the other Orders are not here – could you consider possibly interrupting the business of the House because I do not think we can transact any order successfully in the next two minutes.

The Temporary Speaker (Sen. Lesuuda): Hon. Members, I now invoke those powers.

THE NATIONAL HOSPITAL INSURANCE FUND
(AMENDMENT) BILL (SENATE BILL NO.9 OF 2015)

THE COUNTY GOVERNMENTS (AMENDMENT)
BILL (SENATE BILL NO.21 OF 2015)

THE MEDICAL PRACTITIONERS AND DENTISTS
(AMENDMENT) BILL (SENATE BILL NO. 2 OF 2016)

THE AGRICULTURE, FISHERIES AND FOOD AUTHORITY
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 17 OF 2015)

(Bills deferred)

MOTIONS

ADOPTION OF REPORT OF CPAIC ON THE FINANCIAL
OPERATIONS OF HOMA BAY COUNTY EXECUTIVE
FOR THE FINANCIAL YEAR 2013/2014

THAT, this House adopts the Report of the Sessional Committee on County Public Accounts and Investments on the Inquiry into the Financial Operations of Homa Bay County Executive for the Financial year 2013/2014 laid on the Table of the House on Wednesday, 4th November, 2015.

ADOPTION OF REPORT ON THE SECURITY SITUATION
IN MANDERA, LAIKIPIA AND KAPEDO

THAT, this House adopts the Report of the Standing Committee on National Security and Foreign Relations on the assessment of the security situation in Mandera County, Laikipia County and Kapedo (Border town of Turkana and Baringo counties) conducted between 19th January and 5th February, 2015 laid on the Table of the House on Wednesday, 29th July, 2015.

(Motions deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Lesuuda): Hon. Senators, there being no other business, the House stands adjourned until tomorrow, Wednesday, 15th June, 2016, at 2.30 p.m.

The Senate rose at 6.30 p.m.