

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 22nd November, 2016

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

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

PRAYER

SENATOR'S GENERAL STATEMENT

DISORDERLY CONDUCT IN CPAIC BY
THE GOVERNOR OF MURANG'A COUNTY

The Speaker (Hon. Ethuro): Order, Members! Sen. (Prof.) Anyang'-Nyong'o!

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I would like to deliver the following Statement from the Public Accounts and Investments Committee regarding the disorderly conduct by the Governor of Murang'a County, Gov. Mwangi wa Iria.

I rise pursuant to Standing Order No.45 (2)(a) to make a Statement on an issue of topical concern. The Sessional Committee on County Public Accounts and Investments (CPAIC) has been considering the Auditor-General's reports on financial operations of county executives and county assemblies for the Financial Year 2013/14 pursuant to Articles 228(b) and 229(7) of the Constitution and Standing Order No.212.

Mr. Speaker, Sir, I wish to bring to your attention that the Committee invited the County Executive of Murang'a County to appear before it on Thursday, 27th October, 2016. The County Executive and Governor honoured the Committee's invitation and pursuant to Standing Order No.199, the Senator for Murang'a County attended and participated in the session as a friend of the Committee.

As is the practice, the Committee proceeded to welcome the Governor and began to interrogate various audit queries as raised by the Office of the Auditor-General. The County Executive under the direction of the Governor gave responses to various queries. However, when the Committee reached the audit query on purchase of land, the Governor refused to give any response to the query and instead referred the Committee to his impeachment proceedings held in the Senate between 28th October and 6th November 2015.

I impressed upon the Governor on the investigatory mandate of the CPAIC especially with regard to audit queries raised in the Auditor-General's Report. Several Members of the Committee intervened and informed then Governor that the

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impeachment process was a different process from that being carried out by the Committee. The Committee was discharging its oversight role in line with the Standing Orders and the Constitution of the Republic of Kenya.

The Governor did not take heed and instead referred the Committee further to the HANSARD reports of his impeachment process before the Senate for further information. The Governor then proceeded to accuse the Senator for Murang'a County of politicizing the issue of purchase of land. Needless to say, the Governor went round and round mere issues surrounding the political arena in the county without giving any information on the queries raised by the Committee.

Due to the hostile nature of the Governor as a witness, I had to prematurely adjourn the meeting and especially when the Governor threatened to storm out of the Committee. I ordered the Serjeant-At-Arms to escort the Governor out of the precincts of Parliament. The conduct of the Governor contravened Article 73(1) of the Kenyan Constitution on the responsibilities of leadership; specifically, the authority assigned to a State officer as a public trust which is to be exercised in a manner that demonstrates respect to the people of Kenya and brings honour to the nation and dignity to the office.

The Committee will bring a request to this Senate to refer the matter to the Director of Public Prosecutions as provided for under Section 31 of the National Powers and Privileges Committee Act. We also seek to bring this matter to the attention of the Senate and table the HANSARD proceedings of that meeting.

Thirdly, I would like to draw the attention of the Senate Committee mandated to deal with matters of powers and privileges to look at the Parliamentary Powers and Privileges Bill now before the Senate with a view to taking into account the prevailing inadequacies of the existing law to deal with matters such as the one facing the CPAIC.

I beg to table the report.

(Sen. (Prof.) Anyang'-Nyong'o laid the document on the table)

The Speaker (Hon. Ethuro): Sen. Kembi-Gitura!

Sen. Kembi-Gitura: Mr. Speaker, Sir, I thank the Chairperson of the CPAIC, Sen. (Prof.) Anyang'-Nyong'o, and his Committee for taking up this issue on their own volition and tabling that very able report before the Senate. The conduct of the Governor of Murang'a during those proceedings was very abrogable. It was, indeed, a major abuse of the privileges that are accorded to people when they come to Parliament. I am happy that that report has been tabled before Senate. I believe the recommendations made by the Committee will be taken seriously and that the Director of Public Prosecutions and all other people in authority will do what is necessary and what is right to uphold the dignity, not just of the Committee but also of Parliament.

On the same day that the Governor of Murang'a behaved so badly in the Committee is the same day that he had come with goons to the Committee. One of them was ejected out of the Committee room. Those goons, in the precincts of Parliament, threatened me. They said that there would be bloodshed if I set foot in Murang'a.

I reported that issue to the Serjeant-at-Arms and the Parliament Police Station where I recorded the statement. Therefore, investigations are going on. This happened within the precincts of Parliament. I have not been and will not be intimidated. In fact, I was not intimidated during the Committee's sitting. I know that investigations have been carried out. Therefore, findings will be known very soon. I also believe that

this Report which has been tabled by Sen. (Prof.) Anyang'-Nyong'o will show what happened that day. We need to treat this matter with the seriousness that it deserves so that we can uphold the dignity of Parliament.

I believe that although the Governor for Murang'a County was declared a hostile witness and ejected out of the Committee Room, action will be taken so that the issues that were raised are fully investigated. The issue of the land in question should be fully investigated. It is an issue I raised even after the impeachment proceedings because the money belongs to the people of Murang'a County. Therefore, it must be restituted to them when the findings are made. However, the land was grossly overvalued.

I thank the Committee very much and you for the opportunity.

Sen. Khaniri: Thank you, Mr. Speaker, Sir, for the opportunity to make my comments. I have the privilege to sit on that particular Committee chaired by Sen. (Prof.) Anyang'-Nyong'o. I thank him for tabling the Report. I also happened to be present during the said meeting.

I join Sen. Kembi-Gitura in condemning the conduct of the Governor for Murang'a County during that particular session with our Committee. I know for us to substantially discuss a governor, we need to have a substantive Motion. For devolution to succeed the County Public Accounts and Investments Committee (CPAIC) must be given its full powers to ensure that they play the oversight role in the counties. We, as Senators, must ensure that we bring legislation to operationalise Article 125 of the Constitution. This article gives this House the same powers as those of the High Court. However, we find it difficult to invoke this particular article in the Committee because we need to bring a Bill that will enable us to operationalise it so that we can have powers to compel witnesses to produce documents and to give evidence as required by the Constitution. That will be the way forward.

However, in this particular case, I want to encourage my good friend, the Senator for Murang'a County, not to be cowed because he was given the responsibility by the people of Murang'a County and he is rightfully playing it. Do not be cowed by anybody because we all support you to ensure that people of Murang'a County get justice in this matter.

Sen. Billow: Thank you, Mr. Speaker, Sir. I strongly deplore the actions of the Governor for Murang'a Country. I do not sit in that Committee, but I have seen it on television that a number of times he appears, his actions are deplorable. I know people of Murang'a County are very respectable and business oriented. However, it is very unfortunate that they have to live through the spectacle of watching the current governor serve them in a manner we have seen. In the few days that he has appeared before the Committee, he has always been combative and impolite. In fact, Sen. (Prof.) Anyang'-Nyong'o who is the Chairperson has dealt with him in a very sober and generous way. If we had some other people there, he would, probably, not behave the way he has been behaving. I think it is an indication of the failure of the institutions that we have.

This is because the Constitution, under Chapter Six is very clear on the conduct and behaviour of public officers. There are institutions which have a mandate to deal with officers who found themselves in those offices and are behaving in a manner that is contrary to the provisions of Chapter Six. There are ways of dealing with it. When you take that level of impunity to Parliament, it just shows you how much rot there is in

public service. You can imagine what service the residents of those counties and this country are getting from those offices. If this is the way that they can deal with parliamentarians or the Senate, then you can imagine the way they deal with the public out there.

Mr. Speaker, Sir, I strongly support the proposed action by the Committee in their Report. However, I do not think it is enough. We must implore public institutions which have that mandate, particularly the Ethics and Anti-Corruption Commission (EACC) that has always jumped to investigate when there is a small fracas in the county assemblies, they should do a similar thing when something like this happens, especially with governors. This is because there is a point that is always raised by governors that when they are cornered in a Committee meeting, then they argue that a Senator raised it in public. That is why Senators are in this House. We can politic out there on any subject that we want. However, when the governors appear before the Committee of the House, they must address themselves to the issues that have been raised before that Committee, either by the Auditor-General, petitioner or any other institution. I think it is a good report and we should go further and deal more strongly with governors who belittle the activities or functions of the Committee.

Sen. Sijeny: Mr. Speaker, Sir, I also condemn that uncalled for behaviour. I watched it on television as I was not at the meeting. It was deliberate and more of a defence mechanism to try and hide and avoid answering questions. We need to be treated with a lot of respect because we are doing our job. Anybody who is to appear before any Committee in the Senate should respect the institution. Campaign time has not reached and you do not have to use violence and uncalled for threats here and there. We urge the responsible authorities to take proper action so that in future, other people should not be tempted to deliberately endanger other people's lives or incite Kenyans to hurt them.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I also thank the Committee Chairperson, Sen. (Prof.) Anyang'-Nyong'o, for bringing that Report on the gross disorderly conduct of the Governor for Murang'a County.

The law applies evenly and equally to the high and mighty and to the poor and the rich. When this House is discharging its mandate and questions put to those who appear before committees, those to whom questions are put, have absolutely no business seeing malice in these questions. The duty of this House is to oversight and anybody who is a public officer has to adhere to Chapter Six of our Constitution. This House should send out a clear message that you cannot possibly aspire to hold public office on behalf of the people of any county or this country and then remove yourself from the realm of accountability. Questions will be asked repeatedly; they may irritate you, but you have a duty to answer them.

Mr. Speaker, Sir, I salute the conduct of our colleague from Murang'a County who, from what I saw on television clips, remained composed and conducted himself with decorum and in a manner befitting the person that he is. We have seen this bravado. Last weekend, the same governor hired tractors and lorries and used them to dump material on a field where a perceived opponent was going to have a meeting. He sent goons to expel the opponent and the people who had come to listen to him.

This wild behaviour that is cropping into the body-politic of this country has to be checked. That is why I agree with Sen. (Prof.) Anyang'-Nyong'o that the

relevant arm of State that can deal with criminality of this nature and whatever nature should be brought into play, because to do anything less is to crown impunity, misconduct and behaviour that shows that probably crime and impunity pays. It does not and should not pay.

Thank you.

Sen. (Dr.) Zani: Mr. Speaker, Sir, I will be brief. The mandate of the various organs are outlined clearly in the Constitution. The Senate has a clear mandate. Oversight is a critical mandate. The Senate plays this role through the County Public Accounts and Investments Committee (CPAIC). Some governors and members might not like it, but is it there because public funds must be accounted for. You cannot treat public funds as though they are personal funds and when queries are asked, you overreact and want to over-assert and create a character and mannerisms that move away from what you are expected to do.

An audit query is a straightforward process. I have sat in the CPAIC which conducts its work in an orderly and clear manner. An audit query is raised and the governor gets a chance to respond. If the governor is not in a position to respond on their own, I have seen some of them come with officers from various departments to answer the questions. There is nothing that elicits some level of need for highhandedness and a tone that is completely unwarranted.

Mr. Speaker, Sir, we take great exception to this sort of mannerisms. It does not mean that when you behave in that manner, the audit query goes. The audit query has to be answered satisfactorily, so that people can know whether the funds have been used in the way they are meant to be used. Such behaviour will not deter the Senate from doing its work. The Senate will continue to play its oversight role with a lot of authority, honesty and concise articulation of the issues that come up, as per the Article 96 of the Constitution on the oversight and protecting the counties.

Thank you, Mr. Speaker, Sir.

Sen. Nabwala: Thank you, Mr. Speaker, Sir. I thank the Chair of the CPAIC, Sen. Prof. Anyang'-Nyong'o, for the Report that he has Tabled in the House. I watched a clip of the meeting where the scuffle took place. It was embarrassing because I respect Sen. Kembi-Gitura as a Member who means his words when he speaks.

Governance is a challenge in our counties. This House has a mandate to carry out oversight in counties, which involves supervision and knowing what is happening to the monies that are allocated to the counties. It also involves protecting the people in the counties because they cannot talk for themselves. They have elected Senators to represent them. When audit queries are raised by the Auditor-General, governors are expected to appear before us to answer them. We do not expect sideshows.

Mr. Speaker, Sir, I encourage the Senator to continue with their work by carrying out oversight and protecting the monies that are allocated to the counties. We know that there is a lot of theft going on out there and people know that the Senate should speak for them.

This morning, a county appeared before the Committee on Finance, Commerce and Budget and we raised many queries. They did not have all the answers and we told them to go back and prepare themselves to give us proper answers.

I encourage and thank the CPAIC. We should shoulder on because we are the protectors of devolution.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. Kembi-Gitura.

Sen. Kembi-Gitura: Thank you, Mr. Speaker, Sir, for giving me a second opportunity. I have looked at the Report and appreciate what the Committee has done. I note that the Committee requires the matter to be referred to the Director of Criminal Investigations. That is important.

You will recall that during the impeachment proceedings, although the Impeachment Committee reported that the threshold for several issues had not been attained, it recommended that many of the issues that were raised by the County Assembly of Murang'a needed further investigation. I raised that issue in this House.

Since the Committee has not yet given a final answer to my request for a Statement on that issue, the matter should not be left in abeyance. When the report is made to the Director of Criminal Investigations, the issues that were raised by the Impeachment Committee should also be raised at this point, so that the money that was said to have been lost - although the threshold was not attained - may be pursued and if necessary, surcharges made.

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. I rise under the Standing Order No.86. Our own Standing Orders do not allow a Member to speak twice on a matter. You recall that after the Report was tabled, you gave Sen. Kembi-Gitura the first opportunity to make a comment, which he did. Several of us have made comments. He has stood for the second time to contribute on the same matter.

Mr. Speaker, Sir, is this in order in view of the provisions of our Standing Orders, in particular Standing Order No.86?

The Speaker (Hon. Ethuro): What is it, Sen. Kembi-Gitura, for the third time?

(Laughter)

Sen. Kembi-Gitura: Thank you, Mr. Speaker, Sir. With the greatest respect to my good friend, Sen. Khaniri, who is a guru, as it were, on Standing Orders, I think he is wrong on this specific one. It says 'shall speak more than once to a Question.' It does not refer to a point of order. I rose in the first instance on a point of order. I rose for the second time on a point of order. A point of order is not a question that has been referred to in the Standing Order No. 86. I am correct on that.

The Speaker (Hon. Ethuro): Order, Sen. Kembi-Gitura!

Sen. Kembi-Gitura: Mr. Speaker, Sir, I have not finished my Statement.

The Speaker (Hon. Ethuro): Order! You have made your point.

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

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

Sen. Khaniri: Mr. Speaker, Sir, on top of violating the provisions of Standing Order No.85, I rose on a point of order and expected the Speaker to make a ruling. Is the Senator for Murang'a County in order to purport to give a ruling on a matter that has been dully put to the Speaker?

The Speaker (Hon. Ethuro): Order, Sen. Khaniri. I am afraid that I have to agree with Sen. Kembi-Gitura. This was a Statement by to the Chairperson of the Committee under Standing Order No.45. All of you contributed through points of order and that is why I allowed you to have a second bite to the cherry. Any requests to the third and the fourth is definitely abuse of this particular privilege. I thought you pointed it out to encourage him not to persist. Paragraph (1) of Standing Order No.87, on points of order, states that any Senator may raise a point of order at any time during the speech of another Senator.

A Senator can raise as many points as they find necessary; that was the understanding.

According to Standing Order No.86, under Part XVI on the rules of debate, if we were debating a Motion, that rule would definitely apply.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Is Sen. Khaniri in order to completely disregard Standing Order No.86 (2)(a), which exclusively gave permission to Sen. Kembi-Gitura to make some certain remarks in trying to explain what he had hitherto said?

(Sen. Moi resumed his seat while the Chair was on his feet)

Sen. Sang: On a point of order, Mr. Speaker, Sir. When you stood to give directions, Sen. Moi was standing here. While you were on your feet, he majestically sat down when Sen. Mositet and others froze. Is he in order to commit such small mistakes, being a 'regular' Senator who understands the rules of this House?

(Sen. Moi stood in his place)

The Speaker (Hon. Ethuro): Order, Sen. Moi. Just because you have been mentioned does not mean you should stand up.

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

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I request for guidance. We need to have a clear understanding and interpretation of Standing Order No.86. The operative word is 'question'. Could you clarify to the House what a question is? As far as I am concerned, when a matter is before this House, it is in question; it is an issue.

The fact that Sen. Kembi-Gitura spoke on this matter, he was not speaking to the point of order; he was speaking to the matter in question. He has spoken twice to the matter in question. Could you clarify so that the record is clear?

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

Sen. Billow: Mr. Speaker, Sir, I agree with the Senator for Kakamega. In addition, you need to clarify Standing Order No.87, which states that when a Senator rises on a point of order, he must state under what standing order he is rising. It is specific to when something is out of order. The case before the House was on contributions to a report that was tabled. That is why there was no reference to any specific Standing Order. It is important for the record.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I agree with those who say that an interpretation of Standing Order Nos.85 and 86 is important. Standing Order No.85 reads

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‘after the question’ and Standing Order No.86 reads ‘speak more than once to a question’. The question under Standing Order No.85 cannot be a question under Standing Order No.86. Therefore, to some extent, Sen. Khaniri and Sen. (Dr.) Khalwale are right. It is important that we get an interpretation of what a question is, because it reads like an issue.

The Speaker (Hon. Ethuro): Order, Members. First and foremost, all of you rose on points of order. My understanding and practice of the Standing Orders gives me one clear understanding. At any one time, any Member can rise on a point of order, either to challenge the one who has the Floor about it or basically when there is a Communication from the Chair, most of you enjoy on the basis of points of order. At that time, there is no question put.

Standing Order No.85 states that:-

“No Senator shall speak to any question after the question has been put by the Speaker”.

The question is usually: “Will as many of that opinion say ‘aye,’ or to the contrary.” That is why we are not allowed to speak.

We must make a distinction between that particular part and Part X on Statements. Part X gives a lot of latitude to Members. The other day, Sen. (Dr.) Khalwale rose on an issue about Kakamega Stadium and I was disappointed that his colleagues did not support him. The only way to speak to that particular matter is to rise on a point of order. He raised a fundamental matter. How else will you get the kind of support that the Members gave to the Chairperson of the County Public Accounts and Investments Committee (CPAIC) if not through the points of order?

When Senators rise on points of order, it literally means that they can speak as many times as they can. Of course, you should be careful not to abuse the procedures, just like in any other matters. That is why I allowed the Senator for Murang’a to speak twice on this particular matter. We do not have a debate, a Motion or a Bill before us; we have a Statements Hour. There is no question to be put and no question shall be put.

Sen. (Dr.) Machage reminded me of something we should have addressed previously, which has escaped my mind. However, the one by Sen. Sang to his neighbour, Sen. Moi, if it is indeed true, that he did what Sen. Sang has alleged, then I am not sure whether the use of the word “regular” is not a contradiction of terms.

(Laughter)

Our Standing Orders are very clear that you freeze when the Speaker is on his feet just as Sen. Karaba is doing. However, what do you have to say, Sen. Moi, for you not to have done that and then the manner in which you allegedly walked was majestic?

Sen. Moi: Mr. Speaker, Sir, you know that I am a regular Member of this House and I adhere to the Standing Orders of the House. I think my colleague, Sen. Sang, was distracted and did not see that I had already sat before you stood up. However, if Sen. Sang in any way was correct, I sincerely apologize.

(Laughter)

The Speaker (Hon. Ethuro): Order, Senators. Let us proceed to the next Statement. Sen. Nabwala, were you seeking a Statement?

Sen. Nabwala: Mr. Speaker, Sir, I think there is a technical fault. I did not press the button.

The Speaker (Hon. Ethuro): Order, Senator. How come the technical fault disappeared as soon as you started talking? Let us proceed to Statements to be issued. The Chairperson, Committee on National Security and Foreign Relations is absent but the Vice-Chairperson is here.

Proceed, Vice-Chairperson.

STATEMENTS

KENYA'S PARTICIPATION IN AND COMMITMENT TO THE OPEN GOVERNMENT PARTNERSHIP

Sen. Adan: Mr. Speaker, Sir, thank you for the opportunity to issue this Statement. However, before moving to the specifics of the request by Sen. (Dr.) Zani, allow me to give a brief background on the Open Government Partnership (OGP). It is a voluntary initiative that brings together domestic reformers committed to making their government more open, accountable and responsive to citizens.

Kenya declared its intention to join OGP through a letter by the Ministry of Foreign Affairs dated 26th August, 2011 and formally joined on submission of the first National Action Plan in February, 2012. She is one of the 66 countries in the OGP that has committed itself to implement ambitious principles and commitments on promotion of transparency, public accountability, civic participation and innovation.

To join OGP, a state must meet the following criteria:

- (a) Fiscal transparency.
- (b) Access to information.
- (c) Public asset disclosure.
- (d) Citizen engagement.

Secondly, send a letter of intent to join OGP Steering Committee Commission-Chairs which was done on 26th August, 2011 in the case of Kenya.

Thirdly, identify a lead Ministry and begin developing a national action plan. The Ministry of Information Communication Technology (ICT) was identified and provides leadership on this agenda.

Fourthly, commit to OGP independent reporting mechanism process. Kenya's first National Action Plan was reviewed in 2013.

Mr. Speaker, Sir, the OGP is not a programme for the Government alone. It requires that the civil society remains integral and a strong partner in the entire process as provided for in the OGP guidelines through:-

- (1) Co-creating national action plan.
- (2) Assisting in implementation
- (3) Assessing performance

Contributing to learning by working with other civil societies and governments with OGP Global Network to support those in need of expertise.

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Having shared that background information alone, allow me to respond to the specific question as asked by the Senator:

To answer the first question as stated in the introductory remarks, in 2011, the Government wrote to the OGP's Steering Committee Commission-Chairs expressing interest to join partnership. In line with OGP recommendations, and best practice for the development of a dialogue forum for commission and creating a national action plan, the office of the Deputy President and the Ministry Of ICT in consultation with the Ministry of Foreign Affairs, constituted a national OGP Steering Committee comprising of the following Members:

- (a) National Government – 6
- (b) Civil society – 3
- (c) Private sector – 1
- (d) Parliament – 1

The Steering Committee is co-chaired between the Office of the Deputy President and the Ministry Of ICT to ensure high level coordination.

Mr. Speaker, Sir, the third pillar of the harmonized Jubilee manifesto which is *Uwazi* (openness), the Coalition commits to improve accountability through tackling corruption, working with non-state actors in improving oversight on Government and empowering citizens in governance through devolution.

The President takes personal interest in ensuring that the era of opaqueness in Government comes to an end. Proactive disclosure constantly features in his action as a hallmark of his administration. The President has voluntarily pointed out endemic corruption in Government including his office.

During the State of the nation Report of 2015, he further took an unprecedented decision to attack a list of allegedly corrupt Government officials and also publicly reviews performance of Cabinet and Principal Secretaries.

Mr. Speaker, Sir, these actions are projected at ensuring public officers act with prudence within the law and guarantee value for money. This is augmented by the review by this administration of the code of conduct of state corporations; *Mwongozo*, as is commonly known to address issues of transparency, disclosure, accountability, ethical leadership and good corporate governance.

The list of actions and initiatives to make the government transparent and accountable is long, including a framework for *e-procurement* and *e-citizen portal* for quick access and more transparency in providing Government services such as *Huduma* Centers that continue to receive global accolades where all citizens are treated equally and receive the same standard of service across the 47 counties.

Mr. Speaker, Sir, in addition, the Government has established the Open Data Portal where over 600 plus data sets by the Government are published. The Kenya Law Report which provides accurate information on all legal matters, including the Kenya Gazette and court rulings, establishment of court users committees, the Capital Markets Authority for fiscal prudence within the private sector, live radio and televised parliamentary proceedings, availability of the HANSARD online and parliamentary compliance with the best practices in pushing citizen budget.

As we are aware, Kenya voluntarily joined the African Peer Review Mechanism in March, 2003 which is a mutually agreed and voluntarily acceded to

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instrument by the African Union member States as an African self-monitoring mechanism. Kenya was the third country after Rwanda and Ghana to submit herself for review by members in 2004.

Mr. Speaker, Sir, OGP is among the many other initiatives that Kenya has joined to further consolidate her commitment to openness and optimal services to her citizens. In that pursuit, Kenya and the United States of America (USA) will in September, 2016 host a Global Open Data for Agriculture and Nutrition summit for stakeholders and lead a session for the Group of 77 (G77) on data gaps on Sustainable Development Goal 2 to achieve food security and improve nutrition and promote sustainable agriculture.

(2) In 2012, the Government submitted its first National Action Plan as earlier stated. It was independently reviewed in 2013. The second National Action Plan and the first under the Jubilee Administration was submitted in July 2016. As a requirement, the Open Government Partnership National Steering Committee has met regularly to create the second National Action Plan and requisite commitment within four themes – Transparency, ICT and Innovation, Accountability, and finally, citizen responsiveness. This has been achieved with the support and active engagement with the OGP Support Unit based in Nairobi to ensure the Steering Committee drafts a strong commitment.

(3) In the course of developing the Second National Action Plan, consultation began in May 2015 between the Ministry of Information Communication and Technology (ICT) and Office of the Deputy President to evaluate the challenges of implementing the first NAP and how best to ensure success of the OGP. Steering Committee comprising of four civil society organizations and one umbrella private sector body the Parliament and Government Agencies was formed and co-chaired by the Ministry of ICT and Office of the Deputy President. These institutions, bodies and urgencies were tasked to consult widely with their members and peer for review.

(4) The first Action Plan has already been independently reviewed which testifies Government commitment to form and comply with all requirements under the programme.

The Speaker (Sen. Ethuro): Order, Vice-Chairperson! Summarise. I suppose the Member has a copy.

Sen. Adan: Mr. Speaker, Sir, I agree you with you because I have shared the statement with the Member.

(6) Reading through the question, I am of the opinion that these resources have been utilised as approved in the budget and where there may have no reports of the Auditor General, I have so pointed out.

Sen. (Dr.) Zani: Thank you, Mr. Speaker, Sir. I want to thank the Committee for that answer. Yes, indeed, I had gone through it and most of the issues have been articulated. At least, the potholes that had been established had been indicated in that report.

Sen. Billow: Mr. Speaker, Sir, on a point of order. I heard the lengthy submission by the Vice-Chairperson of this Committee regarding the OGP. What she said really is contradictory to what we see in reality in this country. She talked of accountability. The Government's commitment to accountability, transparency, disclosure and ethical practice; that is the last thing anybody would say in this House, that the Government at

county level and at the national level hardly observe those four themes. There is nothing to write home about on the officers.

The Speaker (Sen. Ethuro): Order, Sen. Billow! There is anything hardly to debate because this is Statement Hour. Seek your specific clarification.

Sen. Billow: Mr. Speaker, Sir, I will lay ground now that you have insisted. I want the Vice-Chairperson to tell this House, in view of the many cases of corruption and the abuse of office that the Government's top leadership as admitted to itself, could the Vice-Chairperson reconcile that commitment to OGP and the reality that we see which the Government in itself has accepted is happening?

Sen. Adan: Mr. Speaker, Sir, if Sen. Billow had listened to me properly, I have clearly explained regarding the question that was asked by Sen. (Dr.) Zani, and I believe she was satisfied in her case, we have indicated commitment in OGP partnership and accountability.

Sen. Billow: On a point of order, Mr. Speaker, Sir. When a Statement is read in the House, it is for the Members of the House to be satisfied and not only for the person who sought. So, as far as I am concerned with regard to the purported commitment by the Government, could the Vice-Chairperson explain why there is a contradiction between the purported commitment to the Government to those values and the reality that we are seeing which the Government in itself is complaining about? She must answer the question and not about the satisfaction of Sen. (Dr.) Zani.

The Speaker (Sen. Ethuro): Order, Members! Indeed, Vice-Chairperson, the Senator for Mandera is absolutely correct. You must respond to the question and that was specific. Compare the practice and the theory.

Sen. Adan: Mr. Speaker, Sir, according to my understanding, I have actually explained in the statement what is in practice as a Government. So, I have nothing more to add to that.

Sen. Billow: On a point of order, Mr. Speaker, Sir. The Vice-Chairperson is not taking this House seriously. You cannot tell the House that that is all I have and that is the end of the story. She must satisfy the House on the question that I raised.

The Speaker (Sen. Ethuro): Is that what you said, Vice-Chairperson?

Sen. Adan: Mr. Speaker, Sir, I did not say that. I have said in the statement I have read, the commitment the Government has on OGP. That is my explanation.

The Speaker (Sen. Ethuro): Order, Members! If Sen. Billow may be listened to, the Vice-Chairperson raised issues of processes. So, unless you have a specific thing, I am afraid she has answered you satisfactorily.

MESSAGE FROM THE NATIONAL ASSEMBLY

AMENDMENT OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (SENATE BILL NO.6 OF 2014)

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40(3) and (4), I have received the following message from the Speaker of the National Assembly regarding the amendments by the Assembly to the Statute Law (Miscellaneous Amendments) Bill (Senate Bill No. 6 of 2014)

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“PURSUANT to the provisions of Standing Orders Nos.41 and 144 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly.

THAT WHEREAS the Statute Law (Miscellaneous Amendments) Bill (Senate Bill No.6 of 2014) published by the Kenya Gazette Supplement No.19 of 3rd March 2014 as a Bill originating in the Senate to effect minor amendments to various statutes was referred to the National Assembly for consideration following its passage by the Senate on 20th August 2014.

WHEREAS the National Assembly passed the said Bill with amendments on 15th November 2016.

NOW THEREFORE in accordance with the provisions of Article 110 (4) of the Constitution and Standing Order No.144 of the National Assembly Standing Orders, I hereby refer the said Bill to the Senate for concurrence.

Hon. Senators, Article 112 (1) (b) of the Constitution provides that if one House passes an ordinary Bill concerning counties and the second House passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration.

Hon. Senators, it is in this regard and pursuant to Standing Order No.150 of the Senate Standing Orders that I direct that the National Assembly amendments to the Statute Law (Miscellaneous Amendments) Bill (Senate Bill No.6 of 2014) be circulated to all Senators and the same be listed for consideration in the Order Paper for Thursday, 24th November 2016.

I thank you.

COMMUNICATION FROM THE CHAIR

CONCLUSION OF PENDING BUSINESS BEFORE THE HOUSE

The Speaker (Hon. Ethuro): Hon. Senators, you may recall from the business appearing on the Order Paper of today and even in the past couple of weeks that we have numerous Bills pending before the Senate either at the Division, Second Reading or at the Committee of the Whole. Some of these Bills are extremely important and urgent. I am certain that you are also aware that in accordance to the Senate Calendar, you are scheduled to proceed for the Christmas recess on Thursday, 1st December, 2016. That is next week on Thursday.

This is, therefore, to reiterate the appeal made in the past by the Senate Majority Leader and request Senators to make themselves available to dispose all the pending business, especially the Bills, before we break for the Christmas Recess and avoid other measures that may be considered by the Senate Business Committee to clear pending business which may include revising the calendar to extend the Session.

You must also be reminded that as we come to the end of the calendar year, it also marks the end of the Fourth Session where most of the business usually collapses. It is, therefore, important that we clear all the pending business before we go for recess. That means full quorum for this week and next week.

I thank you.

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

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

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Did you notice that three Senators were consulting loudly and laughing recklessly when you were on your feet to the detriment of me hearing what you were saying? The three Senators are Sen. (Dr.) Khalwale, Sen. Moi and Sen. Khaniri. Are they in order?

The Speaker (Hon. Ethuro): Indeed, they were loud enough for me to hear. Sen. Moi, there was an issue when you were on my right hand side. You have moved to my left hand side and there is still an issue. That can only mean one thing, you are the issue.

(Laughter)

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

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

STATEMENTS

COLLAPSE OF A SECTION OF BUKHUNGU STADIUM IN KAKAMEGA COUNTY

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I requested for a Statement from the Chairperson of the Committee on National Security and Foreign Relations two weeks ago and she promised to provide an answer today. It was a Statement on the collapse of Bukhungu Stadium.

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, if you have your Order Paper, you will notice that the last page is on the Statements to be issued and Statement (g) bears your name as well as Bukhungu Stadium. Are you talking about the same thing?

(Sen. (Dr.) Khalwale spoke off record)

Sen. (Dr.) Khalwale, be on record.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I was doing it in a cheeky manner because I noticed that she was stepping out. I hope she will be back but I am so guided.

The Speaker (Hon. Ethuro): Order. Sen. (Dr.) Khalwale, (g) refers to Chairperson of the Committee on Labour and Social Welfare and the last time I checked, the Chairperson was a man, Sen. Madzayo.

Sen. (Dr.) Khalwale, your track record of thorough knowledge of Standing Orders means that any aberration will be met with equal force. On your own admission, you have used the word “cheeky” and to be on the path of just getting it all wrong not in the first instance but also in the second instance, you need to withdraw that word and apologize to the House and the Chair.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. Before I apologise, may the record reflect that when I said “cheeky”, I was referring to “tongue in cheek”. But since it has come out like it is “cheekily”, I want to profusely apologise and withdraw those words from the record.

The Speaker (Hon. Ethuro): Order Sen. (Dr.) Khalwale. The English Language is very clear and it is our official language by the Constitution. By practice, this country knows that you know the language. It cannot be true by any stature of imagination that “cheekily” could be “tongue in cheek”. You should give an unconditional apology.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I am so guided and I appreciate the guidance. I want to withdraw from the record of this House the word “cheekily” and apologise for the same to the Chair.

DEATH OF A NEWBORN BABY GIRL STELLA ADHIAMBO OWINO

The Speaker (Hon. Ethuro): We do not have a response for Statement (b) and it is not at the Table. A copy should be made available to the clerks at the Table, then we will revisit the matter.

(Statement deferred)

AFFIRMATIVE ACTION ASSISTANCE TO PASTORALIST COUNTIES

We do not have a record on the Table. Could we hear from the Chairperson of Committee on National Security and Foreign Relations? Order. Sen. (Prof.) Lonyangapuo, wait for the response from the Chairperson. You are just a beneficiary.

Sen. Adan: Mr. Speaker, Sir, I have discussed with Sen. (Prof.) Lonyangapuo. This Statement is not ready but we are still pursuing it. Could he give us until Thursday?

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, the Vice-Chairperson has misreported our communication and you can see it from the way she is behaving. She was asking me about something else that had nothing to do with my Statement. I want to know why this Statement has taken this long. It has not been responded to and it is good that it is in the Order Paper today.

Sen. Adan: Mr. Speaker, Sir, I am requesting Sen. (Prof.) Lonyangapuo to allow us to respond on Thursday.

The Speaker (Hon. Ethuro): Order, Senators. We are not interested in your private discussions. It is not acceptable for you to contradict yourself in the Plenary. Did the Vice-Chairperson consult the Member previously or not? Are you making the request now or you made it to him before? Those are the issues that you need to address first.

Sen. Adan: Mr. Speaker, Sir, I have.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, for the sake of making progress, I will go by what she requested. She will issue the statement on Thursday, which is just a day away.

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

(Statement deferred)

Let us move to statement (d). The Member is not present.

INVASION OF BOMET POLICE STATION

(Statement deferred)

We proceed with statement (e). Both are present. Proceed, Chairperson of the Committee on Finance, Commerce and Budget.

COUNTY GOVERNMENT FUNDS HELD IN DUBAI BANK,
IMPERIAL BANK AND CHASE BANK

Sen. Billow: Mr. Speaker, Sir, I seek the indulgence of the House. This statement is not ready. I had informed the Clerks-at-the-Table earlier. We request to be given a couple of days. We are stilling pushing the National Treasury and the Controller of Budget to give us this statement so that we can table it in the House. It is an important one. We take it seriously. We are trying to get the response.

Sen. Ndiema: Mr. Speaker, Sir, I sought a statement on this issue in April and we are now in November, almost going on recess. It is on an important issue that concerns possible loss of money for the counties that were banked in the collapsed banks.

Mr. Speaker, Sir, I wish that you give direction that it be answered before we go on recess.

The Speaker (Hon. Ethuro): Sen. Ndiema, were you addressing me or the Chairperson of the Committee on Finance, Commerce and Budget? Let us hear the Chairperson of the Committee on Finance, Commerce and Budget first.

Sen. Billow: Mr. Speaker, Sir, I have undertaken that by Thursday we will give a response to this matter. It is important. These are banks that have gone into liquidation. They are under the control of entities. I will endeavor to get it by then.

The Speaker (Hon. Ethuro): Order, Senator. Which Thursday?

Sen. Billow: Mr. Speaker, Sir, Thursday this week. We are trying to push as much as we can.

The Speaker (Hon. Ethuro): Order, Chairperson. First, on your admission, it is an important matter. So, you should get the response latest on Thursday this week.

Secondly, this House cannot sympathize with Government institutions that do not have information. The information should have been available from the very moment that the bank collapsed or else how do you put them under receivership?

(Statement deferred)

Let us move to Statement (f). Where is the Chairperson of the Committee on National Security and Foreign Relations?

MURDER OF MR. MUSA KOECH FROM NANDI COUNTY

Sen. Adan: Mr. Speaker, Sir, I have this statement but we have agreed with Sen. Sang, that I issue it tomorrow because we have not gone through it properly.

The Speaker (Hon. Ethuro): It is so ordered since I have not seen any complaints from Sen. Sang.

(Statement deferred)

Let us proceed with statement (g).

THE COLLAPSE OF A SECTION OF BUKHUNGU STADIUM
IN KAKAMEGA COUNTY

The Speaker (Hon. Ethuro): The Chairperson of the Committee on Labour and Social Welfare is absent while the Member, Sen. (Dr.) Khalwale is present.

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

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I am ready to receive the statement, both written and oral.

(Laughter)

The entire County of Kakamega with two million people is waiting for this statement.

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

Sen. Khaniri: Mr. Speaker, Sir, I would like to confirm that the statement sought by Sen. (Dr.) Khalwale regarding what happened in Bukhungu is very important not only to Kakamega County but to the counties that form the former Western Province.

Mr. Speaker, Sir, I want to correct the HANSARD on what you said from Chair; when Sen. (Dr.) Khalwale raised this issue, we all rose on points of order. We contributed and asked further questions on the same. So, it is very important that the statement comes in time.

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

First, once a statement has been listed, it is very important. You do not need to support it to demonstrate its importance.

Secondly, it is not true. The statement I referred to was made by Sen. (Dr.) Khalwale under Standing Order No.45(2)(a), after he had submitted this particular request. Sen. Khaniri, it is always helpful just as I do whenever you rise on a point of order; I have to check my facts before I contradict them. You may wish to do so, more from your Speaker.

Sen. Khaniri: Mr. Speaker, Sir, I stand corrected. Thank you.

The Speaker (Hon. Ethuro): Order. This statement should appear on the Order Paper tomorrow afternoon. The Chairperson must be informed to be present; if not, the Senate Majority Leader must be present to respond to it. If both are absent, then we will invoke the necessary sanctions.

(Statement deferred)

Let us proceed with statement (i).

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STATUS OF RABUOR-CHIGA-KIBOS ROAD

The Speaker (Hon. Ethuro): Order, Members! Sen. Sang, you need to be our agent of necessity in conveying my directives to the Chairperson of the Committee on Labour and Social Welfare; in his absence, the Senate Majority Leader to be available in the House tomorrow afternoon.

Proceed, Sen. Sang.

Sen. Sang: Mr. Speaker, Sir, I do not intend to defy your order but when the Senate Majority Leader was here, he verbally instructed the Senator for Kericho to act as the Senate Majority Leader. Whereas I would have been excited to undertake that responsibility, he instructed the Senator for Kericho to act on his behalf.

The Speaker (Hon. Ethuro): Senator for Kericho, can you confirm or deny that?.

Sen. Cheruiyot: Mr. Speaker, Sir, indeed, I can confirm that after a protracted debate where Sen. Sang wanted to be given those orders, I eventually won.

(Laughter)

So, I am duly the acting Majority Leader this afternoon.

The Speaker (Hon. Ethuro): Order, Members! Especially, the two neighbours. Unfortunately, the Chair is not privy to that discussion. More so when it has been confirmed it was contested and finally delivered verbally. Even the President is required to put it in writing. Fair administrative action also requires written responses from Government entities. Under the circumstances, I am afraid, my directive still stands.

Sen. Sang, you will convey my directive to the two persons mentioned previously. Order, Sen. Sang. You need to be on record so that this is very clear.

Sen. Sang: Mr. Speaker, Sir, much obliged.

(Statement deferred)

Let us move to statement (h).

The Speaker (Hon. Ethuro): I thought I saw the Chairman. The Vice Chairperson of the Committee on Land and Natural Resources is here.

Proceed, Sen. Khaniri.

HYACINTH MENACE IN LAKE VICTORIA

Sen. Khaniri: Mr. Speaker, Sir, a little while ago I saw my Chairperson here. I am sure he has the Statement. Kindly give him a little time to consult and report back to the House.

(Sen. Kivuti entered the House without bowing to the Chair and assumed his seat)

(Laughter)

The Speaker (Hon. Ethuro): Order, Chairperson! You do not just sneak into the House and assume your seat and keep quiet as if nothing has happened.

Chairperson, Standing Committee on Lands and Natural Resources, Sen. Kivuti, do you have a response?

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

The Speaker (Hon. Ethuro): Proceed!

Sen. Kivuti: Mr. Speaker, Sir, I wish to make a Statement on the water hyacinth menace in Lake Victoria. The occurrence of water hyacinth in the Winam Gulf is estimated to be about 11,000 hectares as of December, 2010 through a study commissioned by Lake Victoria Environmental Management Project. The most affected areas were Asembo Bay, Sangorota, Rakwaro, Kunya, Homa Bay Pier, Kananga, Kichinjio/Kisumu Port and Asat. Infestation levels ranged from 200 and 4,000 hectares. Massive sinking of hyacinth mats was experienced in 2013. As of March, 2016, the infestation level was estimated at 1,700 hectares of lake water hyacinth surveillance and monitoring exercise.

To explain the economic and social impact of the water hyacinth on the communities that live around and depend on Lake Victoria, the water hyacinth has out-competed and displaced native vegetation leading to a reduction in biodiversity and decrease in habitat and an overall in the Winam Gulf ecosystem.

The weed has also altered the natural hydrological cycle by transpiring greater quantities of water reducing the light penetration levels of the lake waters infested by the weed. Hence, this affects the natural habitat for certain fish species to thrive and increase Biological Oxygen Demand (BOD) in the lake waters while sunken hyacinth rots to the detriment of fish and other fauna.

In addition, infestation by water hyacinth in the Winam Gulf has led to reduction of fish catches, increased cost in the fish value chain, blockage of the Kisumu, Homa Bay and Kendu Bay Ports, blockage of the fish landing beaches, irrigation canals, and water intake points, increased water transport cost and inaccessibility to domestic water points by lakeshore adjacent communities.

In some cases, there has been loss of lives in the fishing fraternity, water transport operators and passengers as a direct consequence of the water hyacinth menace on the source of the lake.

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

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

Mr. Deputy Speaker, Sir, the national Government has taken to control the spread of hyacinth and lessen the suffering of these communities. The Ministry has been managing water hyacinth in the Lake Victoria over the years through Lake Victoria Environmental Management Project (LVEMP). The Ministry also supported biological control using weevils in collaboration with the Kenya Agriculture and Livestock Research Organization (KALRO) through the KALRO Kibos Research Station with

resources from LVEMP. A total of 14 weevil rearing units were set up during the LVEMP 1 in schools near the water hyacinth hotspots.

In 1998, Aquarius Systems of the USA was contracted to clear 1,500 hectares of the weed. However, the initiative was terminated as the monetary and environmental costs were prohibitive. The system was only shredding the hyacinth mats and leaving the material to sink, hence causing further environmental damage. Manual removal was introduced in 1998 and 2011 in five areas around the lake. This was not sustained as the method was not effective in view of the large area of water hyacinth mats and the numerous risks of drowning, snake bites and hippo attacks.

On the request by the Senator to describe and quantify the resources allocated to the affected counties to help the mitigation and control of the hyacinth; the World Bank resources to help in the mitigation and control were channeled through LVEMP I and now LVEMP II. At no point have such funds been disbursed to the affected counties since there are no such provisions in the expenditure schedule for funds provided by World Bank. However, the Ministry is in discussion with the National Treasury with a view to creating a specific budgetary item at the Ministry Headquarters to help in sustaining mitigation and control of the hyacinth. This will also make it possible for some resources to be allocated to the affected counties in future, as and when need arises.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kajwang!

Sen. M. Kajwang: Mr. Deputy Speaker, Sir, I thank the Chairperson of the Committee for bringing the response within the three weeks that we had agreed on. However, I would like to make further requests for clarification. Homa Bay, Kendu Bay and Kisumu ports look like tea plantations because of the infestation of the hyacinth. The chairperson has quantified the area covered by water hyacinth as at March at 1,700 hectares. From March to date, the area under hyacinth has spread and increased tremendously.

The Chairperson has also told us the economic and social impact of the hyacinth and enumerated them very clearly including loss of life and livelihoods. If we have a situation like this where lives are being lost and livelihoods are at risk, the Government should be directly concerned and involved. The Statement says that the Government has ceded its responsibility, as set out in the Constitution, to Lake Victoria Environmental Management Programme. This is a programme under the Lake Victoria Basin Commission which is a commission under the East African Community. The Chairperson should tell us why the Government has left the matter of 5 percent of citizens of this nation facing a direct threat to their livelihood in the hands of a regional body.

Secondly, the question was very clear that we would like a quantification of the amounts of money invested by the Government in the control of hyacinth. No quantification has been given. The Statement talks about World Bank resources. The people of Homa Bay, Migori, Kisumu and Siaya may assume that it is only the World Bank that is concerned about the hyacinth and not the national Government to which we pay taxes. We should get the actual figure that the Government has invested in the control of hyacinth.

Thirdly, could the Chairperson confirm that the national Government acquired a hyacinth harvester worth Kshs76,000,000 and if, indeed it is true, where is this harvester and what effect has it had on the hyacinth menace?

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Finally, could the Chairperson confirm that the national Government is not concerned about the plight and the livelihoods of the fishing folks and the people who live around Lake Victoria? That is why, to date, there is no specific budgetary item to deal with the water hyacinth menace in Lake Victoria. Could we be told whether the people of Homa Bay, Migori, Siaya and Kisumu are indeed Kenyans?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Machage!

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, when there is a problem in the coffee industry, for several budgets previously, the Government has always intervened. They allocate a lot of money for the maintenance on the propagation of cultivation of this crop and especially so, in the area of Mt. Kenya. Why is it that the Government has not done the same to the fishing industry in Migori County and the surrounding counties that border Lake Victoria? Fishing is an industry on which the people of the said area depend on.

Secondly, could the Chairperson tell us how much the Government spent on the weevil research and the manual removal of the hyacinth from the lake; two systems the Chairperson mentioned had been used for the removal of this hyacinth.

Third, is the hyacinth menace only on the Kenyan side of the lake or does it equally affect the other East African countries? If it is so, the Chairperson should tell us what the other East African countries have done towards eradication.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Sijeny!

Sen. Sijeny: Mr. Deputy Speaker, Sir, I also wish to seek clarification or further to enquire from the Chairperson whether the fishing around Lake Victoria - as one of the main economic factors interfered with according to the Statement - been affected by the spread of the hyacinth. If so, he should tell us what the Government has done about it.

Could it be the reason why fish from China has been imported into Kenya and finding its way in the supermarket even in Kisumu? Also, who in particular is importing these fish?

The Deputy Speaker (Sen. Kembi-Gitura): Do you expect the Chairperson to tell you who is importing the fish?

Sen. Sijeny: Yes, Mr. Deputy Speaker, Sir. It is an economic activity.

The Deputy Speaker (Sen. Kembi-Gitura): It is not part of the Statement that was sought.

Sen. Sijeny: Well, Mr. Deputy Speaker, Sir, he has said it is affecting the economic activities. It is related directly.

The Deputy Speaker (Sen. Kembi-Gitura): Respond Chairperson.

Sen. Kivuti: Mr. Deputy Speaker, Sir, I will give supplementary information as requested. I agree with Sen. M. Kajwang that the growth of hyacinth is not static. If it was 1,700 hectares early in the year, it is definitely more by now. If this is causing loss of life, I assure the Senator that the Government of Kenya has not ceded protecting Kenyans, a responsibility that is clear in the Constitution. However, that is not to say that if somebody fell in the Lake with or without hyacinth and his life was endangered, the Government is not concerned, it is very concerned.

As to whether it is necessary to give responsibilities to regional bodies or the World Bank, this is a management agenda whereby monies available to Kenya from the World Bank, the Consolidated Fund or revenue collected, all those monies are channeled

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and budgeted by the National Treasury. This, therefore, means that all the resources which have gone to hyacinth mitigation have been channeled from or are part of the Kenyan budget.

Regarding the question of the Kshs76 million hyacinth harvesting machine, I have already explained that hyacinth harvesting is not sustainable. This is because when you cut the hyacinth, the roots and whatever material remain at the bottom rot and further degrade the environment.

On the question of the plight of the residents around Lake Victoria as to whether they are Kenyans, we all know we are all Kenyans whether someone is around the lake or atop Mt. Kenya. That is not to say that the people who live around Lake Victoria are lesser Kenyans than others. In fact, Kenyans from all walks of life are found around the Lake.

On the clarification sought by Sen. (Dr.) Machage about why the Government bails coffee, sugar or any other industry in this country, sincerely, the Government takes cognizance of all production levels and issues affecting Kenyans economically or security wise. That means that the Government may go through special programmes or budgetary provisions to bring up an economic activity irrespective of which part of Kenya the activity is. To demonstrate this, we all know that coffee and sugar cane farmers have been helped by the Jubilee Government. I do not have to quote all of them but such kind of economic assistance has nothing to do with the water hyacinth *per se*.

On how much was spent on the beetle and manual removal, this was not part of the question sought but I can go a step further and request for the numbers. Whether the hyacinth affects Uganda and Tanzania, again, my Committee did not do any research in those countries. I do not think that we have that mandate at the moment. However, so that we do not look mean, I am sure that that information is available from all the records available on the Lake Victoria Environmental Management Report, which is part of what is happening in Kenya.

On the clarification sought by Sen. Sijeny on the effects of hyacinth on fishing---

Sen. (Dr.) Machage: On a point of order, Mr. Deputy Speaker, Sir. Is the Chairperson in order to say that the question on the cost of removal of the hyacinth using beetles and mechanization sought by me is not part of the question, when the question being answered by him, is on the issue of hyacinth menace in Lake Victoria?

Sen. Kivuti: Mr. Deputy Speaker, Sir, with all due respect, while answering, I stated that any additional information can be availed. It is only that it was not specifically sought for. If we go to the research on water hyacinth, I am sure the reports which have been given by the Lake Victoria Environmental Management Authority (LVEMA) are in big volumes. It was not the intent of this question to bring all the volumes of research which have been made. Nonetheless, if a Member seeks a number like the cost, I do not think there will be a big problem to ask about the cost of the project. That answer can be availed although I do not know whether the Member may want to push that way.

Mr. Deputy Speaker, Sir, allow me to conclude with the comments requested by Sen. Sijeny on the effects of the water hyacinth on fishing. I already mentioned this. Among the socio-economic degradations that I talked about were the loss of fish and change in the eco-system. So, where you have water hyacinth, there is almost no fish

because the rotten material under and the cover by the water hyacinth does not allow oxygen to go into the lake. So, the effect is negative.

On the question of what the Government has done to mitigate these effects, that is the essence of what I have been answering today. Manual removal has been tried but it is unsustainable. We have tried the beetles to ease up the weeds but it did not work as it became too expensive.

Lastly, the Government of Kenya should set aside some money to address this issue. Since that request was tied to counties around the lake, I would also like to add that counties in those areas should budget and take some measures to mitigate this menace. This is because the environment is one of the devolved functions. I believe every county has a County Executive Committee (CEC) member in charge of the environment. I am sure that if this effort was addressed by the counties and through the national budget, the fishing industry in Lake Victoria, which is a big resource, will be realised.

Finally, on the question of who is importing fish from China, I do not have an answer to that. Maybe that question could be forwarded to the Committee on Agriculture, Fisheries and Livestock. I do not know which committee is actually responsible for the import of fish and other imports and exports.

I thank you.

The Deputy Speaker (Sen. Kembi-Gitura): What is your point of order, Sen. (Dr.) Machage?

Sen. (Dr.) Machage: On a point of order, Mr. Deputy Speaker, Sir. It seems that the Chairperson has no idea on the menace of the hyacinth in the Winam Gulf. Would I be in order to demand that the Chair tours the Winam Gulf to look at the field of the hyacinth and note the level of proliferation of the weed in the lake? It is exponential.

Sen. M. Kajwang: Mr. Deputy Speaker, Sir, I support the point raised by Sen. (Dr.) Machage. However, I request for your direction regarding the response by the Chairman. He should go and get more information, so that he can respond with certainty. On the purchase of the hyacinth harvester, the Chairperson neither denied nor confirmed. Why is the Government purchasing a hyacinth harvester, when in the words of the Chairman, harvesting of hyacinth is unviable? Why is the Government spending Kshs76 Million? We need that confirmation because it is in the public domain. For good order, the Chairperson needs to do some research and confirm that.

When we put money to revamp the *miraa* industry, where the Chair comes from--

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The Deputy Speaker (Sen. Kembi-Gitura): Sen. M. Kajwang, I will not allow you to go back. You have already sought your clarification. I will not allow you to make another Statement on the same issue. You raised the issue of the revamping of the fishing industry and you compared it with the coffee sector, and he answered you. If you want him to give further clarification or seek further information from the Ministry, then say so and I shall give the necessary directions on the specific issue, like Sen. (Dr.) Machage did.

Sen. M. Kajwang: Mr. Deputy Speaker, Sir, allow me to cite the specific areas of clarification. I am just drawing parallel with the *miraa* industry. We know that the Government has invested Kshs1 billion in the *miraa* farming. We are asking how much the Government has invested in the control of hyacinth. We are looking for a figure. We

do not want to be told that it has been sent to Lake Victoria Environmental Management (LVEM) or to the East Africa Community (EAC).

The other specific matter that I would like the Chairperson to investigate and report on is: We have LVEM, which is an agency of the EAC, but we have got the Lake Basin Development Authority (LBDA), which is an agency of the national Government. What are they doing to deal with this menace? If the Chairperson could get the specific responses and furthermore, tour the site we would join them, so that when we come back to the House, we will not tire the House with many supplementary questions. If you could rule on that, it would be useful to us.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kivuti, do you have any answers to the issues that have been raised?

Sen. Kivuti: Mr. Deputy Speaker, Sir, I only need to know from Sen. M. Kajwang whether he is aware that the harvesting machine was bought then. If there is another machine that was bought recently, I am ready to go and get further information. That would be something slightly different from me trying to look into the problem of hyacinth. Instead, I will be looking at the misappropriation of public finance for equipment that has been bought and is not in use.

I do not think it is necessary to tour the area because we have given data as recent as this year. Since I do a lot of mapping, I know that the water hyacinth is a Kenyan problem. A Kenyan problem may not necessarily be addressed by visiting and seeing. We already have the documentation on the problem, unless we are not satisfied with it.

Mr. Deputy Speaker, Sir, on how to solve that big problem, Sen. M. Kajwang has brought in the issue of what the LBDA is doing. We are about to bring a Motion on whether or not all the regional developments authorities should be scrapped, as recommended by the Committee on Devolved Government.

I do not want to go to the legal part of it, but whatever the LBDA will do, it will still come from the budgetary provisions that I have stated earlier. The most important thing is for this menace to be eradicated. In order to do so, we must employ new technology, because we tried the other two, but they did not work. Secondly, we need funds. That is exactly what my last statement was about. We should get funds from the national Government. The county governments can also allocate a budget to fight the menace.

Sen. (Dr.) Machage: On a point of order, Mr. Deputy Speaker, Sir. Today is a sad day because a Chair of an important Committee, who has powers equivalent to a Cabinet Secretary, in the setting of Parliament, is denying the people of South Nyanza service. We do not expect him to tour the place himself; we expect that they go as an office, with technicians, research fellows and all the necessary people in order to get a proper report on the menace. Is he in order to deny openly the plight of the people of South Nyanza and refuse to go and attend to their problems?

Sen. Omondi: On a point of order, Mr. Deputy Speaker, Sir. Is the Chair in order to answer the questions in a casual way when Kenyans are suffering? Is he in order to run away from the responsibility, when we well know that the menace is affecting the fishermen who depend on fishing as a livelihood? Could the Chair tell us how many households have been affected due to lack of fishing in Lake Victoria as a result of the menace?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. M. Kajwang, if you want to make a point of order, you should press the correct button.

(Sen. M. Kajwang stood in his place)

The Deputy Speaker (Sen. Kembi-Gitura): I hope it is a point of order.

Sen. M. Kajwang: On a point of order Mr. Deputy Speaker, Sir. Is the Chairman in order to mislead the nation that county governments have been given full control on environmental matters, when the Fourth Schedule of the Constitution provides that county governments shall implement specific national Government policies on natural resources and environmental conservation? What are the counties to implement when the national Government has not come up with a policy on the control of water hyacinth? Is he in order to pass the buck to the county governments, yet the same Constitution says the national Government shall be responsible for protection of the environment and natural resources?

Sen. Kivuti: Mr. Deputy Speaker, Sir, I would like to respond to the comments by Sen. Godliver. I do not know which other description I could use for the hon. Senator to know that the Government and everybody else gets concerned whenever a disaster happens in Kenya, irrespective of where it happens.

The answer to the question on who has been affected is simple and straightforward. Everybody who lives around the lake depends on the resources of the lake. As I have clearly indicated, those resources are diminishing because of the water hyacinth menace. For us to fight it, we need a budget and technology. As far as my answer is concerned, the researchers, who Sen. (Dr.) Machage proposes should visit the area with, are the ones who gave us the same answers this year. Unless, we want to go back with them to verify that this menace exists. I have no doubt in my mind that it exists.

Sen. M. Kajwang has raised an important point of the constitutional requirement for the environmental concerns. I believe that all counties deal with the maintenance and control of environmental issues. Each one of us come from a county and we know that there is no county government that does not deal with environmental issues. The major question should be on the budget or the technology and not asking whether the policy has been developed. It would be a waste of money to engage someone to remove the hyacinth manually. Again, it would be expensive to use weevils to eradicate the hyacinth and it may not be sustainable. I would like to assure this House that the Government of Kenya will look further for a better way of clearing this menace.

Sen. Omondi: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Very well. Sen. Godliver, I hope that your point of order is something new.

Sen. Omondi: Mr. Deputy Speaker, Sir, I am shocked when the Chairperson of the Committee talks about 'important' points by Sen. M. Kajwang. Does that mean that my concerns were not important to him? Is he in order to say that my concerns are not important, when I have sought to know the number of people affected by the hyacinth menace? Is he in order not to tell us whether they have done mapping to know the

number of households affected and what the Government is doing to cushion those households from poverty?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Godliver Omondi, in my view, the point that you are raising is important. Sen. Kivuti was not casual in answering you. In fairness to Sen. Kivuti, he has done his best in this situation. A Chairperson of a Committee would normally give a Statement based on the question that was raised, in this case, by Sen. M. Kajwang. You have raised an important issue, but it is completely new. I heard him say that his Committee has something to do with the environment, but not with fisheries specifically. If you want him to answer the question on the numbers, the best thing would be to raise it with him now, so that he can come back with a specific answer.

Sen. Kivuti, my understanding is that there are a few issues that you want to come back with answers to. If that is the case, at that point, you can also deal with the issue raised by Sen. Godliver.

Sen. Kivuti: Mr. Deputy Speaker, Sir, I sought the indulgence of Sen. (Dr.) Machage and promised to look for an answer on the amount of money that was spent on the weevils and the manual removal, if he still needs it. I could easily get that information from the Ministry.

I answered the question regarding the number of people affected. I said that all the people who live around the lake---

(Sen. Omondi spoke off record)

Mr. Deputy Speaker, Sir, protect me. It is unprocedural for me to answer directly when somebody asks a question on the side. Not all the people who live around Lake Victoria depend on the fish; there are other economic activities that they depend on. At one time, I saw women making baskets from hyacinth. That does not mean that all the hyacinth should be used to make baskets. There are other economic activities around the lake, fishing being one of them. The question on counting the number of people who live around Lake Victoria is a different one.

With the indulgence of Sen. (Dr.) Machage, I will get the cost of ---

The Deputy Speaker (Sen. Kembi-Gitura): Are you able to deal with the issue of how many households are affected by the water hyacinth?

Sen. Kivuti: Mr. Deputy Speaker, Sir, if the Senator asked me how many people live 10 or 100 kilometers from the lake, I can get that information from the Kenya National Bureau of Statistics (KNBS) and avail it.

The Deputy Speaker (Sen. Kembi-Gitura): She asked that question in relation to the number of households affected by the impediment to fishing by the water hyacinth. That is what I understood her to mean. It was not a general question; she was specific to the fishermen.

Sen. Kivuti: Mr. Deputy Speaker, Sir, it is good to be honest. I cannot tell this House that I will do a census on the fishermen around Lake Victoria because it is a tall order. I would like to reiterate that the main concern is that there is a menace which is affecting Kenyans and the Government does not seem to have done enough.

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

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The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Machage, what is your point of order?

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, the Chairperson challenged me whether I am interested to know how much money was used in the exercise of removing the hyacinth from the lake. Yes, I am. With the advent of Anglo Leasing and National Youth Service (NYS) scandals, I am very much interested to know whether this was not another scandal that has gone hidden.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Dr.) Machage. You must be contextual in your debate. That will be the end of this matter.

Sen. Kivuti, you will give the figures on the manual of harvesting of the hyacinth to Sen. (Dr.) Machage. You will also give further information, if possible, on the issue raised by Sen. Godliver Omondi.

Hon. Senators, it is going to 5.00p.m., and we still have not done with Statements. How soon can you come back to the House, Sen. Kivuti, for those issues?

Sen. Kivuti: Mr. Deputy Speaker, Sir, may I request for two weeks?

The Deputy Speaker (Sen. Kembi-Gitura): Very Well. Let us have the next Statement from Sen. Gwendo.

HYACINTH MENACE IN LAKE VICTORIA

The Deputy Speaker (Sen. Kembi-Gitura): I do not see the Chairperson, Sen. Gwendo. Sen. Sijeny, do you have a response?

Sen. Sijeny: No, Mr. Deputy Speaker, Sir. I request for one more week up to Thursday next week.

The Deputy Speaker (Sen. Kembi-Gitura): The only question remaining is a Statement but neither Sen. Chelule nor the Chairperson of the Committee on Health. That will be the end of Statements. Sen. (Dr.) Machage, are you seeking the Floor?

(Statement deferred)

Sen. (Dr.) Machage: No, Mr. Deputy Speaker, Sir. It is the machine that went on.

The Deputy Speaker (Sen. Kembi-Gitura): The machine cannot seek the Floor. You pressed the button. Sometimes it is good to own up to your transgressions.

I have to reorganize the Order Paper. We do not have the numbers for Divisions, so Orders Nos. 8 to 19 will have to be deferred to tomorrow for Division. Just a reminder that tomorrow, we will do the Divisions. The Speaker earlier on reiterated the importance of all of us being in the House tomorrow and Thursday.

BILLS

Second Readings

THE COUNTY STATISTICS BILL
(SENATE BILL NO. 11 OF 2016)

THE TREATY MAKING AND RATIFICATION
(AMENDMENT) BILL (SENATE BILL NO. 5 OF 2016)

THE WAREHOUSE RECEIPTS SYSTEM BILL
(NATIONAL ASSEMBLY BILL NO. 12 OF 2015)

THE IMPEACHMENT PROCEDURE BILL
(SENATE BILL NO. 8 OF 2016)

THE CONSTITUTION OF KENYA (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 26 OF 2013)

THE CONSTITUTION OF KENYA (AMENDMENT) (No. 2) BILL
(NATIONAL ASSEMBLY BILL NO. 2 OF 2015)

THE CONSTITUTION OF KENYA (AMENDMENT) BILL
(SENATE BILL NO. 16 OF 2015)

(Bills Deferred)

COMMITTEE OF THE WHOLE

THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT
OF ECONOMIC AND SOCIAL RIGHTS BILL
(SENATE BILL NO. 8 OF 2015)

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL
(SENATE BILL NO. 13 OF 2015)

THE BASIC EDUCATION (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 35 OF 2014)

THE NATIONAL CEREALS AND PRODUCE BOARD (AMENDMENT)
BILL (SENATE BILL NO. 15 OF 2015)

THE COUNTY STATUTORY INSTRUMENTS BILL
(SENATE BILL NO. 10 OF 2015)

(Committee of the Whole deferred)

BILL

Second Reading

THE CYBER SECURITY AND PROTECTION BILL

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(SENATE BILL NO.12 OF 2016)

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, we also have to defer Order No.20 because Sen. Kagwe is not in the House.

(Bill deferred)

Next Order

BILL

Second Reading

THE LOCAL CONTENT BILL (SENATE BILL NO. 13 OF 2016)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Mutula Kilonzo Jnr., you do not have the authority to give directions in the House.

Proceed, Sen. Moi.

Sen. Moi: Mr. Deputy Speaker, Sir, I beg to Move that The Local Content Bill (Senate Bill No. 13 of 2016) be now read a Second Time.

This is an important Bill. It does not deal exclusively with the revenue which will be gotten, but it deals with what and how Kenyans will benefit from the natural resources through the value chain. It seeks to provide for a framework to facilitate the local ownership, control and financing of activities with the exploitation of gas, oil and mineral resources.

There is great knowledge and skills gap that exists between developed countries and our own. It is due to this that we singly cannot serve certain industries such as those in the extractive sector. However, this knowledge gap can certainly be reduced. Through Clauses 23 and 24, an operator is obliged to develop the skills and capacity of local persons and enterprises to participate effectively in extractive industry operations.

This Bill seeks to foster local industries. Further, for Kenya's economy to grow, we must always seek to promote local industries through the use and purchase of Kenyan made goods and services.

The Bill, through Clause 39, requires an operator to use goods produced in Kenya and services rendered by local persons. This is intended to expand the demand for Kenyan made goods and foster local industry.

In Clause 31, the Bill further augments the goal of fostering local industry through specific provisions necessitating operators to transfer technology know-how. The Bill also seeks jobs creation and maximum value addition. The potential benefit of natural resources extends far beyond the fees and royalties received from the extraction. Across the entire value chain, there are numerous possibilities to set up businesses, learn new skills and gain meaningful employment.

We want a situation where every Kenyan has the opportunity to benefit from this God-given natural resource. We are not only talking about communities but the entire nation. We are talking about lawyers, bankers, transporters, *Jua-Kali* artisans,

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sukumawiki, hawkers, doctors such as my colleague Sen. (Dr.) Khalwale and all those willing to take that opportunity which is going to come by through this Bill, in order to create their personal wealth and the country's.

Mr. Deputy Speaker, Sir, through Clause s26 and 38, the Bill places an obligation on an operator to give first consideration and preference to the employment of local persons with requisite expertise and qualifications and local companies in contraction of services respectively.

While we were formulating this Bill, we were fortunate enough to go to Brazil and Nigeria and see exactly how they have developed their Local Content Bill. It may come as a very wonderful surprise that in Nigeria, we saw what they have done and what comes through their Local Content Bill to the extent that today in that country, the oil transporters - those who own ships - are indigenous Nigerians. That is what we would like to see here in Kenya where the transporters and those who own ships that transport our oil are Kenyans. Those who have expertise in drilling and extraction should be Kenyans, or their companies should have a strong Kenyan component.

Mr. Deputy Speaker, Sir, in the proposed Bill, there are clear guidelines for multinational corporations and how they are supposed to operate. While this Bill is primarily focused at ensuring local communities and Kenyans at large reap their due rewards from the extraction of their own resources, it also carefully recognises the role of multinational firms. These firms are an integral part of the extractive process and must be taken into consideration. So, there is a clear set of guidelines and expectations to the multinational firms through Clause 10(3) and they give the players in the extractive industries direct representation on the Local Content Development Committees, which will be tasked to implement the content of this Bill.

One important issue is that of comparative advantage. This provides an opportunity for Kenya to develop new and dynamic comparative advantages around the extractive industry. This is directed at developing globally competitive supplementary industries across the value chain of the various extractive successes. This will go a long way in ensuring that Kenya continues to benefit from natural resources long after we have run out of our own to exploit. This is not outlined in any specific clause but it is a long term vision of what the Bill will ultimately achieve. We cannot belabour the need for legislation such as this at such a time. National resources have been known to abound great wealth and challenges as well. From the outset, this Bill presents the opportunity of factoring locals and ensuring their involvement in the development of natural resources.

Mr. Deputy Speaker, Sir, I wish to highlight that this is not a law designed with a bias against the private sector but instead it is one that seeks to provide much needed clarity, direction and procedures when it comes to matters of local content.

I humbly urge my colleagues to support this Bill. I would like now to ask my colleague the Senator for Makeni, Sen. Mutula Kilonzo Jnr., who will be the Attorney-General (AG) in my future government, to please second this Bill.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Deputy Speaker, Sir. I rise to second this Bill.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, on a point of order. The rules of this House demand that a Senator when called upon must substantiate any fact and state it

on the floor. Could Sen. Moi substantiate his allegations that he is going to form a future government?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, earlier in the day, we were discussing points of order, were we not? You contributed to the debate. Standing Order No. 87 says:-

“Any Senator may raise a point of order at any time during the speech of another Senator stating that the Senator raises a point of order and that Senator shall be required to indicate the Standing Order upon which the point of order is based.”

You are raising this issue when Sen. Moi has long left the Dispatch Box and taken his seat. So, you are out of order.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Deputy Speaker, Sir. From the outset, I second the Local Content Bill (Senate Bill No. 13 of 2016). I hold a very glossy copy of this Bill done by Sen. Moi. I hope I am not the only one who has the privilege of receiving such a nice copy. However, as I do so, the first quotation in this nicely done document which contains the Bill is that by Theodore Roosevelt. For the record, I will read:-

“To waste or destroy our natural resources, to scheme and exhaust the land instead of using it so as to increase its usefulness will result in undermining in the days of our children the very prosperity which ought by right to hand down the amplified and developed.”

This Bill could not have come at a better time. I have laboured to talk about some of the things that Sen. Moi has proposed in this Bill. The first one is on the transfer of skills. The Standard Gauge Railway (SGR) passes through Makueni with about 177 kilometres. I have asked, and in the presence of the Head of State, President Uhuru Kenyatta, the level of transfer of skills to the local community in terms of the SGR. Since we are importing all nuts and bolts on the SGR, I thought it would have been nice if Kenyans were trained so that they are able to maintain the SGR up to where it is now. That is something we cannot confirm because the Chinese Government gave us verbal undertakings. I am not quite sure whether in the absence of a Bill and a policy proposed by Sen. Moi, then we can enforce it in any form. I was offered lip service.

Secondly, under the Wildlife Conservation and Management Act, there is a very interesting provision, that where a park bestrides a county, the communities are entitled to 5 per cent of the proceeds arising out of the income of the parks. I have followed this matter since 2013 from the Ministry concerned. However, four years after that Bill was signed into law by His Excellency the President, we do not have regulations that ensure that communities where national parks are can benefit from the resources. That would mean that the people around Tsavo, Amboseli, Turkana and Samburu national parks, would benefit from either labour or revenue and this would be ploughed back into the community.

I was very surprised when I travelled to Tanzania and particularly the Serengeti National Park. Before you get into the Serengeti National Park, you will find the reserve and between the reserve and the Park, there are no fences. I was curious to know what there is between communities; the Maasai and the national park, what do they do to ensure they do not have the conflict we have in Kenya? The response was that the communities are getting 60 per cent of the proceeds from the national parks. Those

proceeds go into building of schools and health centres while 40 per cent goes to the national Government. Therefore, the communities living next to the parks have an interest in ensuring that there is no poaching because it directly affects their income. That is the spirit of the Bill by Sen. Moi.

A week ago, in my forays with my party leader in Taita-Taveta County, we were given a story about young men who by mistake happened to find very nice looking gemstones in the park. They sold them somewhere outside the country and thus have created millionaires. They said that if the communities in Taita-Taveta County were given the opportunities that Sen. Moi is talking about in this Bill, they would create employment and wealth. Therefore, the question of poverty in a county where we have records that shows have the greatest minerals has made billionaires in this country, yet people there are marginalised and they live in poverty. This is a national shame. We must thank Sen. Moi for coming up with this Bill because from now henceforth when you get an investor, that investor will have to provide a plan like he has proposed for employment.

We must thank Sen. Moi for coming up with this Bill because an investor will now be expected to provide a plan like that of employment, public participation and even income on oil and gas because we know that it is a money changer. I am sure that Sen. Moi knows what I mean when I say game changer and money changer because he knows what he is talking about here. This is not only capable of transforming communities, but it is also bound to do what the national Government has been unable to do since we got independence, which is, empowering the local communities. This is because we have been exploiting them. I know that Sen. Moi was shy to say that the local communities have been exploited too much. This is because these multinational companies only offer labour when they exploit all these minerals. People always think labour is a source of wealth yet it is not. Money should be ploughed back.

On industrial development, we should insist that there should be industries where these local content or minerals are exploited so that there is local capability building of skilled workforce and creation of competitive supplier base. For many reasons, we must thank the new Constitution. I defend the new Constitution because Article 69(1) (a) which is the premise upon which this Bill is predicated says:-

“You shall ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources and ensure the equitable sharing of accruing benefits.”

When we say equitable, it means equity which means 50/50 and not 30/70. Therefore, when Sen. Moi breathes life into what the Constitution contemplates under Article 69 (1), I feel proud because these are the benefits that will go into the counties, the people who we represent as stated in Article 69 (1) (h):-

“Utilize the environment and natural resources for the benefit of the people of Kenya.”

There is nothing that is more people friendly than the Local Content Bill. This is the way to go. In some countries including India, when a multinational company comes into the country, they have to sign a deal where the majority shareholder must be a local company. I am glad Sen. Moi has pointed it out. That is the way to do it otherwise, Kenyans will continue to be exploited. In his forwarding remarks, he has said that the

timing of discovery of oil, gas and other mineral resources in Kenya is God send. This means that in another 50 years when Sen. Moi and I are long gone, we would have created a different country for ourselves. This is because 50 years---

The Deputy Speaker(Sen. Kembi-Gitura): What is your point of order, Sen. (Dr.) Machage? Is it the machine again?

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, I am not on a point of order---

(Sen. (Dr.) Machage spoke while seated)

The Deputy Speaker (Sen. Kembi-Gitura): Order, whether you are on a point of order or not, you cannot speak when you are sitting down.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, I was requesting to contribute. I have not pressed my intervention button unless your machine is out of order.

The Deputy Speaker (Sen. Kembi-Gitura): Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I do not want to belabor on Part 4 which is on local content plan. Employment and skilled development plan is unbelievable. The water geysers in Baringo County have most likely made a lot of money for the country. It is possible that we would have reduced the poverty levels in Baringo County if this Bill was in place and we would be talking about the millionaires in Baringo County. There is nothing that Sen. Moi can do better than creating other millionaires like him.

I wanted to point out that I was privy to sit in the public participation of this Bill and there were unbelievable responses. Everybody said that we should harmonized the Bills like the Energy Bill and the Oil Exploration Bill. I do hope that Sen. Moi is the angel we were waiting for to open doors for those Bills that have been stuck somewhere in the pipeline. I know that with his influence, this can become one of those model laws that this Senate has passed. Everything about this Bill points out to the benefits of the local person. It shows how riches will move from the pockets of the billionaires of this country to the persons who we should have concentrated on who are the majority.

I have also benefited from some of the memoranda submitted. They have said that local content, Cabinet Secretary and company should be defined. On this Bill and the other companies law, operators say that there should be a representation and relevant Ministry of the extractive industry. We have exploited Kenyans. I want to use the word “we” and assume the responsibilities of the leaders who have come before me to their detriment. This amongst other things is the answer in making sure that Kenyans can no longer be talking about poverty. Kenyans do not get value for their land until there is a big project like the land acquisition in the standard gauge railway, the dam project and all those big projects that I have seen in my county. I know there are Kenyans whose lives have been transformed because of the big projects and this will do the same.

Low levels of education and capacity to engage, we will walk away from the idea that one day, people will stop thinking of the idea that for you to be like Sen. Moi, you have to go to a good school. This is because we will have good schools in the village when we plough back the money that we get from these industries. Governments will no longer promise people 100,000 jobs in the next 100 days because this Bill provides an avenue for employment.

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I beg to second.

(Question proposed)

Sen. (Dr.) Machage: Bw. Naibu Spika, nampongeza Sen. Moi kwa kupendekeza Mswada huu ulio na manufaa kwa jamii ya Kenya. Yeye ni mkombozi wa uchumi. Labda angekuwepo wakati wa uhuru, maendeleo yangechukua mkondo tofauti. Labda wakati ule Mswada huu ungepewa aliyekuwa Rais Idi Amin wa Uganda, Rais Robert Mugabe wa Zimbabwe na wengineo, wangetekeleza waliyoyafikiria kwa Mwafrika kwa njia bora na utu. Lakini maziwa yakimwagika hayazoleki. Walichukua mkondo mwingine.

Binadamu wote ni sawa. Yeyote aliye nchini ni wetu; hasa wananchi wazalendo, tulipewa raslimali na Mwenyezi Mungu, kwa mfano, mafuta, madini kama vile makaa ya mawe, dhahabu na labda almasi itapatikana kwa sababu huko Taita-Taveta tuna mawe yanayokaribiana na almasi. Hivyo basi, Mswada huu unapendekeza kwamba wananchi wanapaswa kufaidika kwa njia ya haki. Sio kama vile tuna Tullow Oil ambayo inachimba mafuta kaskazini mwa Kenya. Tunaeleza kwamba Kenya ina asilimia kidogo sana, chini ya 40 kwa faida itakayopatikana kwa kuchimba madini kama haya. Hata hivyo, tunaletewa viwanda ambavyo hatujui kuviendeleza. Hatuna watu wa kuendesha viwanda hivi. Hatuna ujuzi kama wao. Mswada huu unapendekeza kwamba wakati wowote ambao lazima tuanze kutumia raslimali iliyopo nchini, hata tukiwa na mfadhili, lazima kwanza Wakenya wafunzwe na waelewe ni nini kinachotendeka; wafunzwe kwamba wakati wa kuondoa hayo madini ardhini, mazingira yataathirika kwa namna gani. Na kama yataathirika, yanaweza kutibika vipi? Ni hasara gani tutapata kutokana na uharibifu wa mazingira. Tukiwa na mashine za kazi hiyo, isiwe kwamba mfadhili akikasirika kwa sababu moja au nyingine, na aondoke, basi kazi hiyo muhimu inakwama. Kwa hivyo, lazima kuwe na orodha ya mambo ambayo lazima yatekelezwe kabla ya mambo kama hayo kutekelezwa; kama vile, mafunzo ili tuwe watu wenye ujuzi ambao hata wafadhili wakiondoka, sisi tunaweza kujitegemea.

Bw. Naibu Spika, nguzo ya Mswada huu ni kipengele cha 69 cha Katiba yetu ya Kenya ambayo tulipitisha hivi karibuni. Ndoto ya Sen. Moi inaweza kutekelezwa. Kwa hivi sasa ni ya kufikirika lakini yanaweza kutekelezwa iwapo tutayachukua mawazo yake. Sheria hii itatoa mwongozo wenye manufaa kwa watu wa Kenya. Ameangazia maendeleo yatakayokuwa mashinani. Amesema tutakuwa na kamati maalum kwa serikali kuu yenye wajibu wa kufunza na kuonyesha wizara mbali mbali mambo muhimu kwa ajili ya kazi hii.

Pia, amependekeza kwamba wanakamati watakuwa na elimu kiasi fulani. Iwapo mmoja wao ataacha kazi au kufariki, basi mwingine atachaguliwa kwa namna fulani. Ameangazia mawazo yake kwa kazi yote ya kamati hii; mpaka ukatibu. Amesema iwapo wanataka kufikiria mipango yoyote ya kutumia raslimali za Kenya, lazima mwananchi mashinani ahusishwe na faida itakayopatikana itabaki mashinani. Ajira itakayopatikana pia itabaki mashinani.

Bw. Naibu Spika, amesema kwamba hata matumizi ya faida yapendekezwe mapema kabla mfadhili aanze kutumia raslimali ya wananchi. Pia, amependekeza

kwamba lazima kuwe na sheria kwamba kila Mkenya ni sawa. Naona kwamba Sen. Moi ameweza kutengeneza sheria muhimu nchini kwetu.

Bw. Naibu Spika, naunga mkono kwa dhati.

Sen. Omondi: Mr. Deputy Speaker, Sir, I thank you for allowing me to make a contribution to this Bill. I support it. It is important. It touches on the lives and interests of Kenyans. It reminds us how Kenyans have been looked down upon as spectators when it comes to having a say in what belongs to them.

We have so many natural resources and local content within the reach of our people but simply because we do not have a law that is a guiding principle, it has left most people in poverty and they have no say on the use of local natural resources.

I thank Sen. Moi for having a passion for the people of Kenya. If we support this Bill, it will lift the lives of Kenyans. It will also promote their dignity and enable them to have a say in what belongs to them. Many a times, investors come and exploit the local resources. The locals are just left empty handed. They cannot have a say, and even the youths of that locality cannot get employment. This Bill will create job opportunities for the locals. It will also give them a voice. It will allow them to have a say in the exploitation of the natural resources.

Mr. Deputy Speaker, Sir, as we implement the Constitution and work towards developing devolution and seeing that it matures, county governments need to do mapping in order to know the local resources within the counties. Locals should be allowed to have a say when it comes to exploitation of natural resources. This Bill will also reduce discrimination and encourage equal distribution of resources and opportunities because the Bill will guide and give room for the locals to be involved in terms of getting a share of what is extracted. The locals will have a say when they come up with industries within a given local area. They will get employment and a percentage of the extracted local resources. There will be room for public participation where they can bargain and have a better share. If we follow this direction, counties will grow and people in the counties will be rich because Kenya is blessed with a lot of natural resources. If these resources are utilized well by investing in them and giving authority and room to the locals to be involved and have a share, we will go far in terms of economic development in our counties and this country.

This Bill will also reduce the issue of elites rushing to a certain area to buy land at a throwaway price and later hike the prices and end up benefitting more than the locals. This is because the owner of that particular land will have a say to any establishment that comes up within their area. This reminds me of when I was young and the Ministry of Roads then used to extract murram from our neighbourhood. They would leave without covering the land creating death traps. Locals could not raise issues. So, the environmental aspect will also be looked into and reduce such issues that can cause death amongst the locals. At the end of extraction and after the establishment and use of local material, an assessment should be done to take note of any health hazards that may affect the locals. If there is, what is the guiding principle and what can the investor do to ensure that the area is left the way it was found?

We have other natural resources that go undiscovered and, therefore, unexploited. You will find that due to lack of establishment, residents of a certain area move away unaware of the potential resources that can improve their living standards. Some areas in

the Rift Valley are very rocky and mountainous and so they remain unutilised. However, if we get an investor who is ready to utilise the local resources and involve the locals who are the owners of the land, I am sure that it will be a blessing to the locals.

Mr. Deputy Speaker, Sir, when we talk of having skills, there are those that are just hands on and not academicians. There are Kenyans who are very good at that given the opportunity. In giving back to the society, an investor could appreciate the locals by training them and imparting them with the necessary skills. They can engage and hire the locals to perform certain tasks that do not need academic qualifications. Given the opportunity, everybody will be occupied. Our people have the potential and skills which go unrealized because there is no opportunity for them to demonstrate their capacity.

If we have such a Bill to guide this nation and each county exploits their different local resources, growth and competition among counties will be high. This is because each county will utilize their local resources. As we do that, we will grow the economy of the country in terms of development, employment and even health-wise. I thank Sen. Moi for coming up with this Bill because I know it will help this country move forward.

With those remarks, I support.

Sen. Elachi: Mr. Deputy Speaker, Sir, I also thank Sen. Moi. I appreciate that this Bill has come at a time when we have a Ministry of Mining. We also have devolution in place. For the last 50 years, we have seen many communities in our country being exploited. Mining and extraction has taken place but not without exploitation especially in Baringo and Nakuru counties. Many people took advantage of the natural gases that were there.

I hope this Senate will pass this Bill before the end of this Session and ensure that Kenyan communities benefit and start having meaningful employment. We can tap from the foreign investors who come to exploit our minerals.

Mr. Deputy Speaker, Sir, the Cabinet Secretary keeps on advertising that there are new minerals that we need to invest in and exploit, however, Kenyans do not understand even how to get the licence to do that. Therefore, this Bill will empower us to understand that we have minerals that we need to preserve for generations, but at the same time, have a framework to ensure that ownership, control and financing is controlled by the people within the counties.

As we go through this Bill and look at the proposals by the Senator, especially Clause 55 where the Cabinet Secretary (CS) shall consult, the Ministries do not consult the counties even when they do surveys. The Bill will ensure that more awareness will be created in the communities where minerals will be exploited. It will also ensure that private companies will consult within the county before they begin their operations. There will be a committee to ensure that.

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

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

Mr. Temporary Speaker, Sir, under Clause 55 (3), the Bill provides that regulations are made under subsection 2 and may subscribe different standards and other

requirements. That gives the power to the counties to understand that they can set the requirements. It is up to the national Government to consult, negotiate and agree on that.

Mr. Temporary Speaker, Sir, Clause 50 also gives us a good start; that the Committee shall make recommendations to the Cabinet Secretary on the implementation of the strategies that would facilitate and sustain the adoption of local content. Instead of the Cabinet Secretary going to the counties to tell them what they should do so that they subscribe, the process will start from the bottom. Therefore, it is a Bill that brings out what we have been trying to enforce. Let us have committees at the counties that can identify and prioritise. By the time the national Government will come in, there will be a feeling of ownership.

I want to thank Sen. Omondi for talking about environmental issues. An example is the titanium exploration in Kwale. The mining companies should implement the social-corporate programmes. More importantly, they should conserve the environment in that community. If there is a forest, they should conserve it. However, at the moment, there is nobody to monitor this. This applies to geothermal exploration. It is happening without regard to the consequences to the environment. What health challenges does it pose? Who is there to support them? What program has been put in place? Do we have a hospital nearby with doctors? These are some of the considerations we should deal with. I hope this Bill will capture that so that investors will operate within a framework that clearly stipulates the issues relating to the communities in places where exploitation of resources takes place.

Mr. Temporary Speaker, Sir, the other issue relates to mining in quarries. Some people do not realise there are also minerals because we excavate stones for building. You will find that people who live near the quarries do not benefit from the activities there. We must ensure they also benefit. We should not leave those activities to brokers only. This Bill should protect them and take care of the environment. There should be provision for the opening and closing of those quarries.

During mining, different types of minerals could be found. There should be civic education so that people know that if they mine gemstone, for example, they could still find other minerals that are beneficial. Nobody speaks about that today.

Mr. Temporary Speaker, Sir, when Thika Road Super Highway was being constructed, there were some hills. We do not know where the soil was taken and nobody asked about it. Some minerals could have been found and we do not know about it. Those who were doing the construction are the ones who benefited.

I thank Sen. Moi for bringing this Bill. We should find ways of empowering young people so that as they join universities, they train more on this. In turn, they will help to create awareness on the minerals available and their importance to the people and the State. I will give an example of Turkana. The area is dry but you will be surprised at the natural resources available underground. There is oil and other gases that can be exported. However, at the local level, most people do not understand that. They just know about oil when there are other things that can be extracted. Therefore, the beneficiary is the investor. We should come up with programmes that will benefit the local people.

Mr. Temporary Speaker, Sir, we must support this Bill and pass it before we go on recess. If the Bill is lost, we will have to wait for the next Senate to pass it. We must agree with our colleagues in the National Assembly on important Bills like this one and

pass them without any delay. The leadership in Parliament should prioritise the Bills that are critical and ensure that they are passed by both Houses.

Mr. Temporary Speaker, Sir, Clause 23 talks about employment and skill development plan. The Bill proposes that an operator shall, in order to develop the skills and capacity of a local person and enterprises to participate effectively in its extractive industry operations, prepare and implement strategies and plans for the utilization of technical service contracts. I hope that we will start with internships because in the different investments, for example, exploitation and geothermal, we have a number of interns who can learn. That way, we will achieve this goal. If we only take a few of them, we will be hurting other communities. The interns should not only come from Nairobi. These opportunities should be offered to interns from all counties, including Turkana, Nakuru, Kwale and others, so that the local people can also learn. For the last five years, investors have been in Turkana, but we do not have data that shows their output. How many people have benefited and how many Kenyans have been employed? We have given the latitude to the investors to do whatever they want.

As I finalize, I want to thank Sen. Moi for bringing this Bill and Kenyans for voting for devolution. If we did not have counties, we would not be talking about these things. Therefore, we must protect our counties and build their capacity. More importantly, we should ensure that the national Government and the county governments work together so as to protect and guide the new investments.

With those few remarks, I beg to support.

(Interruption of Debate on the Bill)

The Temporary Speaker (Sen. (Dr.) Machage): Before I pick the next speaker, I have a Communication to make.

COMMUNICATION FROM THE CHAIR

INVITATION TO A CONSULTATIVE FORUM WITH THE CS FOR DEVOLUTION AND PLANNING ON THE DROUGHT SITUATION IN THE COUNTRY

The Temporary Speaker (Sen. (Dr.) Machage): Hon Senators, as you may recall, the Cabinet Secretary (CS) responsible for Devolution and Planning was scheduled to meet with hon. Senators on Wednesday, 16th November, 2016, to respond to questions on the current drought situation across the country. The Cabinet Secretary was unable to attend the said meeting due to other engagements and sent his apologies.

The meeting with the Cabinet Secretary has now been re-scheduled to take place tomorrow, Wednesday, 23rd November, 2016, at 11.00 a.m., in the Senate Chamber. I urge all of you to attend the consultative meeting to deliberate on this important matter.

I thank you.

(Resumption of Debate on the Bill)

Sen. Sijeny: Thank you, Mr. Temporary Speaker, Sir. I wish to commend Sen. Moi for coming up with this well thought-out and researched Bill. In his Bill, he has tried to solve all the issues that Kenyans have been grappling with when implementing the Constitution. He has tried to make sure that there is no lacuna. He has even put in a transitional clause to ensure the smooth implementation of the Bill.

This is a good idea that will not only benefit Kenyans but the whole region. I believe that once it is implemented and the results are achieved on the ground, Kenya will make history for the right reasons. Our economy will be enhanced because it will deal with the nitty-gritty that will ensure that the entire nation grows. This will definitely bridge the gap between the have and the have-nots.

Mr. Temporary Speaker, Sir, the sponsor of the Bill has defined what the local content means. It means maximizing the level of usage of local goods and services, people, businesses and finances. It is thorough and every sphere involved. This Bill will resolve or remove the myth from the world that the discovery of oil and gas is a curse instead of being a blessing because the Bill enhances public participation and defines how it should be done. Kenyans will own everything that will come across, including the minerals, ideas and industries. There will be teamwork and the true Harambee spirit that Kenyans have always believed in.

Mr. Temporary Speaker, Sir, once the Bill is passed and implemented, the economy will be enhanced, more industries will come up and there will be an increase in the local capabilities. There are some international partners, especially within the legal profession, who have been going around East Africa building the capacity of lawyers on how they can assist Wanjiku to protect minerals, including oil and gas business and how they can benefit from it. This has helped us to understand the new aspect of the economy with regard to oil and gas. It is not only the legal profession that has been helped to build its capacity, other professions, for example, engineers have also gotten a lot support.

Mr. Temporary Speaker, Sir, I like this Bill because the women and the people at the grassroots who rarely go to the cities will benefit. Women have refused to be left out. They are doing all manner of jobs, including working in the quarries, constructing roads and operating heavy machines. This Bill will help to improve the social status of Kenyans because a lot of social amenities will be built, for example, schools and health facilities. Therefore, we will not only have a wealthy nation, but a healthy nation.

Mr. Temporary Speaker, Sir, the passage and implementation of this Bill will take care of unemployment. In fact, this Bill strengthens devolution because it appreciates that we have a bicameral system. It states the roles and responsibilities of the national government *vis-a-vis* the county governments. That is why I have stated that it has started to solve some of the hiccups that we have in devolution.

It has also enhanced the word “public participation”, because when the local content plans are being created, the national Government works together with the county government and then Wanjiku is also given an opportunity to participate in the planning, to critique and look at all that needs to be done.

The Bill has created its own means, committee and a people-organ which is going to do monitoring and evaluation. Within certain times, we will see after six months or a year, where we were when we started and whether we have achieved the milestones and the outcomes that we intended to. They are then able to correct as they move on instead

of waiting until it is too late only to discover that that they made a blunder. They are then able to control to the benefit of everybody.

I, therefore, wish to commend the sponsor of this Bill and urge my colleagues to support it.

I beg to support.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I rise to support that The Local Content Bill (Senate Bill No. 13 of 2016) be read a Second Time.

I congratulate Sen. Moi who I believe is my kid brother. I have not checked his profile to know his birthday, but looking at his face apart from this premature loss of hair, he is obviously my kid brother.

The Temporary Speaker (Sen. (Dr.) Machage): You seem to both suffer from alopecia, which is genetic and that is none of our business. Continue.

(Laughter)

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I was congratulating him and I am disappointed that we are debating such an important and technical Bill when the House would do with slightly more Senators in the Chamber.

Allow me to refer the House to the story that is told in northern Zambia. Years ago, a copper mine was sold by the Zambian Government to an international consortium for US\$25million. After three months of mining, the consortium sold the proceeds for US\$75million. They had gone into an arrangement that over a period of 50 years, this company would be paying back the people of Zambia. Here are the people of northern Zambia with illiteracy, poverty and disease. That which would have made them greater millionaires than the owners of that consortium was sold off for a song. This is where to start from.

Today, Kenyans watching television are observing that Kenyans are debating the Local Content Bill. Let me tell you, Sen. Moi, Kenyans have no idea what we are talking about. If you ask them what the Bill is all about, they have no idea. I, therefore, want to take this opportunity to clarify to them, that in simple terms, the Bill that we are discussing this afternoon means that we maximize the levels of usage of local goods, be they gas, oil or other minerals, and that as we do so, we shall also maximize on the services for the people of this country, especially those who surround the area where you have the resources. We shall also maximize on the utilization of those people, and those around those areas who will be shrewd enough to create businesses. It is important that people know this.

This being the case, may I remind Sen. Moi that there is something that you would have covered so well, but deliberately left it out. If you are maximizing on services, the people and the businesses, as you have done in this Bill, why have you left out the need to maximize even more on the goods? For example, in this Bill, nowhere do you say that we should not just exploit the goods and then fail to do what they call value-addition. If, for example, you extract diamonds and then you sell them in their raw form, you will not have maximized on the resource. It is important that in such an innovative Bill, we add that we should also insist in value-addition of those goods.

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Mr. Temporary Speaker, Sir, just reading a statement from the Bill:-

“It will facilitate development of local economies through the creation of employment opportunities and ensuring procurement of goods and services that are produced locally and, therefore, stimulating industrial development.” Correct!

It goes further, and says that it seeks to provide a framework to ensure that local content is entrenched in every aspect of the extractive industry value chain through---. How laughable it is? Is this not the reason Donald Trump won the US elections? All that he said was that America was great in the beginning when they were approaching their resources in this manner. However, when they opened up to jobs being exported to Mexico and wherever they manufacture these things, America lost its greatness. This is the very reason that Donald Trump won the election. I will, therefore, be surprised if Sen.Moi attempts to win the election in 2017 using this Bill. I am only saying that because he started by telling us that he will appoint the seconder of the Motion as his Attorney-General.

I now want to look at a few clauses. Sen.Moi, if you look at Clause 6(2) you have said that:-

“In ensuring that the National Government fulfills its obligations under Section 1, the committee shall.”

That is ambiguous. Which committee are you talking about? You should specifically mention the committee that you have established later on in this Bill. So, for purposes of this clause, it must read: “The Local Content Development Committee.” That is my suggestion.

Look at Clause 8. You are attempting to establish the Local Content Committee. You have started by emphasizing that this Bill obligates both the National and county governments. You have then gone on and created a committee that is dominated by the national Government and four people, obviously from the private companies that will be exploiting the resources. As far as the county government is concerned, you have put there one person; that is the Chairman of the Council of Governors. They would be outvoted; they will just be there like flower girls. Therefore, I suggest---

(Loud consultations)

The Temporary Speaker (Sen. (Dr.) Machage): Order! Consult in low tones. Continue.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, thank you for protecting me.

It is important that we are innovative in creating this committee. Whereas we leave there all the positions that we have given to the national Government, but we should also add that the Chairman of the Council of Governors (CoG) be accompanied by three people. That will make four persons. These three persons should be the governor in the Council of Governors who is responsible for enterprise development or/and industry. He should also be accompanied by the governor in the CoG responsible for matters relating to petroleum and natural gas or a representative thereof. Finally, he should be accompanied by the governor in the CoG responsible for matters relating to finance. We will then have a team of four.

At the beginning, it would be that there are foreigners that will be exploiting these resources. You cannot give them four people. If you do so, they will dictate who gets a licence and who fails to be disciplined. Therefore, I submit that we reduce their membership from four persons to two persons.

Further, on Clause 8, the Bill attempts to give the Cabinet Secretary the power to formulate policy and strategies for the development and implementation of local content. I propose that we add there:-

“This should be in consultation with the Council of Governors,” Like the requirement for local content and development of local content, plans should also be in consultation with the Council of Governors.

Mr. Deputy Speaker, Sir, I can see the light is showing, let me quickly go to Clause 23. Here we are speaking about capacity building. The best I can do on this one is to laud this and compare it to the success of Toyota Kenya and DT Dobie. These are the people who have got this template. Toyota Kenya takes local artisans to Japan, trains them and they come with the local expertise. When they are through with employment with Toyota Kenya, they are the ones who go to our Jua Kali in Kakamega, Kapsabet, Kabartonjo and other areas to fix your vehicles there even if it is a Mercedes Benz or a Toyota. This is an excellent provision.

In Clause 54, Sen. Moi is saying:-

“The secretary may revoke or suspend for a period as may be prescribed in the licence issued to an operator under this Act.”

Let us not go through that route. If we go this route, we will be creating a huge opportunity for the Cabinet Secretary to be corrupt because the people involved are doing multi-million dollar businesses. Here, we must add that:

“He can only suspend or make that decision on revocation on the advice of the Local Content Development Committee.”

If it is not a decision of the committee, this guy is going to be so rich and corrupt, you will never manage to use this as a regulatory Bill, but will end up being a Bill to be abused.

Mr. Temporary Speaker, Sir, with those many remarks, I support.

Sen. (Dr.) Zani: Thank you, Mr. Temporary Speaker, Sir. Most communities are very excited when they realise they have discovered a resource around them. This is because they know they will gain and their social-economic cultural life, probably, will change for better and it is not always the reality. Sometimes, they know there are dives like as happened in the Nigerian curse. So, it is always not taken for granted and, therefore, it is important to have legislation which will ensure that the communities gain. So, this Bill tries to do exactly that. It comes up with legislation that will control local content, ownership control and finance if any activity is connected with the exploration of gas, oil and other minerals.

This is critical for the reasons that have been given for the development of the local economies, stimulation of industrial development to ensure that the skilled workforce is built and to ensure that there is a competitive supplier base that is created. These are noble goals that are always created to ensure that such exploitation benefits everybody and various attempts have been made. When we worked on The National Resources (Benefits Sharing) Bill (Senate Bill No.34

of 2014), what came across is that there is a disjointed legislation. This legislation tries to address specifically oil and gas and touches on mineral resources.

There is the Mining Bill that touches again on various provisions and efforts have been made at some sort of synchronization. I do not think we are exactly there. Therefore, this Bill moves away from the issue of percentages and trying to allocate specifics and gives this responsibility to the committee that it creates, so that it can devise such strategies within a particular context and maybe be successful in doing so. However, we need to be careful because it means the legislation does not exactly pinpoint. When I come to the specific clauses, I will talk about this particular committee which is top heavy as you can never be sure that its decisions will be for consideration to the communities.

Mr. Temporary Speaker, Sir, this Bill also puts a lot of focus and gives a lot of responsibilities to the Cabinet Secretary. This position will change depending on the government of the day and the person. There are some Cabinet Secretaries who are very functional and productive, but others are not. So, some sort of control will be needed to ensure that this Cabinet Secretary makes this sector vibrant and has the whole nexus of the whole legislation to ensure that communities gain. Therefore, it is important to get the right person.

When you look at the qualifications of the various members in committee, there are quite high levels of qualifications. For example, for the Chair, it is 10 years and for the board members, it is about five years. So, it does not take just qualifications, it takes the passion and consideration for communities that actually helps us to get there. That becomes very critical. The exploration of natural resources leads to various expectations. For example, these communities will not be able to exploit the resources if they have not reached that particular level. However, this particular Bill brings the idea of using technology, public participation and critical legislative framework that is key is to ensure that these communities change not once, but for a long time.

Mr. Temporary Speaker, Sir, my concerns are across various clauses and I will just be specific and outline them. The first is that Clause 3 that states:-

“The Act shall apply to all commercial activities relating to exploration, extraction development and legislation of gas, oil and other mineral resources.”

The specification is not very clear and we need to have some sort of clarity because if we leave it very broad, then there are certain specific mineral resources that should be included in this Bill that may not be included because they have not actually been completely spelt out.

I will later look at the establishment of the committee that is in Part Three, specifically on the qualification, Sen. (Dr.) Khalwale has just picked on this. It is too top heavy and the voice of the community is lost. When making the amendments, we need to have more representation from the local communities such as the elders and village administrators. The people who are picked should make an input. Those inputs should be listened to and put into consideration. The committee has a broad range of responsibilities.

In Clause 8, the committee implementing this Act will ensure measurable and continuous growth. That is a key word because it becomes tricky when you talk about growth and you do not talk about the level of measurability. It will be important for this

committee to come up with specific indices and indicators that will help them monitor this continuous growth at the time of the development and the adoption of local content.

A comparative analysis that is mentioned in this Bill will be critical. This means that they will not only compare within a time series but also compare across other countries that are related. We could have regional comparison index and a continental comparison index over a certain time. Many other economies have moved very well with the whole issue of development and adoption of local content. We can also use that as a measure for us to upscale very quickly depending on where we are. We might want to have some baseline point for us to tell the changes across the time series.

The other critical thing is the policies and measures in the progressive enhancing capacities and local enterprises to compete effectively on quality price, reliability and supply of goods. The issue of empowerment to ensure that these are directly transferred is key. However, when you give that responsibility to the organizations and tell them that you expect them to employ more locals, you will realize that they only employ them at a certain level while this Bill says at various levels. That should be very specific because the problem is usually at the top levels.

You find that a person who has a Masters degree in a particular extractive industry in some communities does not get the job. That is very discouraging. It is difficult to get into organizations and control who they employ. One would wish that this committee will look at it. If not, organizations always get a way to meander around. I have seen that a direct provision has been provided in this Bill to ensure that external experts are not incorporated unless that particular work that they are doing cannot be done by anybody else. However, the organizations usually find a way to go around it. They usually change the qualification slightly depending on who has been employed. This committee will therefore need to be a bit innovative.

I have also seen that the chairperson is to be appointed by the Cabinet Secretary. I am uncomfortable with that because the whole issue is with the Cabinet Secretary. I wish there was a more vibrant process to appoint the chairperson. This could be through some sort of negotiations or vetting process at a particular level. In propagating this appointment, it is going to be done by a gazette notice. That is not enough because it amounts to handpicking. The chairperson will have a lot of responsibilities yet this is a bureaucratic expert who is not focused on local community issues. If not handled well, we might end up with another business shop where people talk a lot of technological jargon without getting to the bottom of the issues.

The other issue that I would like to raise is the issue of the secretariat that is to be put at the Ministry level. Is that not creating two centres of power? When you look at the provisions, it comes across as though the secretariat is answerable to the committee. The chain for delegation is not very clear. We have two semi-autonomous bodies, one in the form of a committee and the other one in the form of a secretariat though the secretariat might be powerful because it will be dealing with policy issues. We therefore need to find a way and a level for proper coordination or we should spell out who is answerable to who in this Bill so as to avoid having two centres of power.

The rest of the local content plan is very clear and well-articulated especially in Clause 22. It talks about prescribing a methodology for determining a percentage for the local content in goods and services acquired or delivered in Kenya. That is very key. It

prescribes a methodology but once, again, there seems to be no control from the committee. How will they be controlled if they come with a wrong methodology, or even a substandard methodology? The onus remains with a particular committee and a particular Cabinet Secretary and that can be problematic.

Regarding employment and skill development, it has been handled clearly. Clause 24(3) states that the employment and training activity undertaken during the reporting period will be given out and discussed in a comparative analysis of employment and training plan. Employment and training activities are going to be monitored. In regard to the operator, in addition to the requirement and upon commencement; it is instructive that it will submit this quarterly report. This quarterly report will have this basic component that should be given out.

In Clause 25(4), the Bill says an operator shall, for the purposes of subsection (1), prepare in consultation with the Committee, programmes for Industrial and technical education and training including the grant of scholarships and implement such programmes with a view to training local persons to replace foreign personnel as soon as reasonably practicable and to affording local persons an opportunity of occupying senior positions in the operations of the operator.

This is an example of a clause that has proactively ensured that the sectorial players are all able to come and ensure that they provide the necessary technological and educational expertise to create the professionalism that is required for the various positions that are going to be important for locals to intersect with the industries at various points. Therefore, locals will intersect with the industries at various points.

Mr. Temporary Speaker, Sir, Clause 26 gives key provisions to ensure that locals have a chance and are not locked out. I mentioned that earlier. That is key. The Bill gives very clear provisions for the transfer of technology and a research plan. It also gives clarity on research and development plan. Financial services plan is also clearly stipulated. Part IV calls for strategies for local content and development which sums up the overall.

The Temporary Speaker (Sen. (Dr.) Machage: Proceed, Sen. Masika.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, thank you for giving me an opportunity.

(Hon. Senators consulted loudly)

That is my middle name. He is just trying to be mischievous.

The Temporary Speaker (Sen. (Dr.) Machage): What is it, Sen. (Dr.) Zani?

Sen. (Dr.) Zani: On a point of order, Mr. Temporary Speaker, Sir. Is it in order for the hon. Senators to be speaking to each other across the Floor instead of addressing you?

The Temporary Speaker (Sen. (Dr.) Machage): They are completely out of order. Sen. Masika is notorious for that habit.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I know the Speaker in the Chair enjoys---

The Temporary Speaker (Sen. (Dr.) Machage): What is it, Sen. Sang?

Sen. Sang: On a point of order, Mr. Temporary Speaker, Sir. You know for a fact that sometimes I sit where you sit. Every other time I sit there, Sen. Moses Masika Wetangula has never engaged in this kind of engagement that you are suggesting.

The Temporary Speaker (Sen. (Dr.) Machage): Order! You are not sitting on this Chair. I am sitting on it.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I thank the distinguished Senator for Nandi County, my distinguished learned junior, Sen. Stephen Sang, for bringing the attention of the House to the fact that in my entire history in Parliament from 1993, I have debated very well. I do not engage in the habit that has been described as habitual by the Chair that probably is pursuing an agenda known to him.

The Temporary Speaker (Sen. (Dr.) Machage): Order! Do not invite my wrath.

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, from the outset, I will take my full hour on this Bill. I hope at the end if I will not be through with what I want to say, you will give me more time.

The Temporary Speaker (Sen. (Dr.) Machage): You will utilize five minutes today then the rest will be accorded to you as per our Standing Orders in the next sitting.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I congratulate the distinguished Senator for Baringo, the Chairperson, and his Committee for developing this Bill. It is long overdue. If properly structured, passed and administered, it is likely to bring a new trajectory and profile to the growth of the economy of this county: An economy that needs to grow with its people not only on statistics and Gross Domestic Product (GDP) figures.

In Africa, from the Cape to Cairo, the only country – each and every African country I have been to either once or more than once – the only country I can say without any fear of contradiction that its economy has grown, the statistics, the GDP figures are good and has helped to spring its people through social transformation to a better life is Morocco. There is no other. Most African countries, from Egypt, South Africa to Nigeria have continuous very handsome GDP growth figures and statistics but the poor remain poor, they continue slipping into even greater poverty. The rich remain at the apex of the pyramid as a very small group.

It is because we have not developed sufficient legal administrative and philosophical structures that carry everybody along the growth path of the economy to the extent that, for example, in South Africa, you have people like my friend, Cyril Ramaphosa, the current Deputy President who has billions. He is a dollar billionaire; a man who did not have anything at the time South Africa became independent but the people who live in Alexandra, Soweto and all the shanties remain there, confined and sentenced to be there. This is so all over the continent.

Nigeria has overtaken South Africa as the largest economy on the continent; thanks to devolution but that growth has not sprung Nigerians out of poverty. That is why I think that the philosophy that has informed Sen. Moi in bringing this Bill is very good for the country. I hope that as we go along, he will be sufficiently liberal and open

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minded to broaden the Bill in the manner that we will suggest to him so that it is not narrowed to the prism of the sector that his Committee is narrowing on; the extractive industry.

The economy is not about extraction. It is all encompassing; we have the service sector that this country has lived on for a long time. We have the agricultural sector and the value addition chain that goes with it. Then, we have the extractive industry which we can classify to go into hard minerals, oil and gas. Then, we have an industry that nobody talks about. Koreans, Indians and other nationals are busy battling each other on our high seas, stealing our fish. The profile of the Indian Ocean indicates that the greatest population of tuna rolls down from the Horn of Africa down up to Pemba, Zanzibar towards the Seychelles.

Mr. Temporary Speaker, Sir, to my credit, when I was your Minister for Foreign Affairs, I negotiated and extended our maritime boundary from 200 kilometres to 450 kilometres from the shoreline. With all this bounty of oil, gas and above all fish, our high seas are a battle ground between Korean, Indian and Chinese fish poachers. Of late, even the Spanish fish poachers have reached our territory. We want this Bill to be broadened to cover fish. In Lake Victoria, the biggest outpost for fish is Migingo Island. Uganda is occupying it with police and the army. From the Kenyan shore of Lake Victoria to Migingo---

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Machage): Nidhamu. Sasa ni saa Kumi na Mbili na nusu za jioni, wakati wa kuahirisha kikao cha leo cha Seneti. Tutakuwa na kikao kingine kesho, Alhamisi, Saa Nane na Nusu za mchana.

The Senate rose at 6.30 p.m.