

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 4th November, 2014

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

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

PRAYERS

COMMUNICATION FROM THE CHAIR

RETREAT ON PLACE OF THE SENATE IN DRIVING DEVOLUTION AGENDA

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I have a small Communication to make.

The Office of the Speaker of the Senate has organized a two-day retreat for all Senators to deliberate and reflect on the achievements of the Senate and strategize on how to fulfill constitutional obligations on devolution. The theme of the retreat is “The Place of the Senate in Driving The Devolution Agenda”. The retreat will be held on Sunday 9th and Monday 10th November, 2014 at the Serena Beach Hotel and Spa, Mombasa County. Participants are expected to travel to Mombasa on the evening of Saturday 8th November, 2014 or in the morning of Sunday, 9th November, 2014. Departures from Mombasa are scheduled for the evening of Monday 10th November, 2014 or the morning of Tuesday, 11th November, 2014. All honourable Senators are requested to attend and participate in this important retreat. Honourable Senators are also requested to indicate their preferred flight time to the secretariat in the Office of the Speaker.

Thank you.

PAPER LAID

REPORT OF THE STANDING COMMITTEE ON HEALTH ON THE 67TH WORLD HEALTH ASSEMBLY IN GENEVA

Sen. (Dr.) Kuti: Mr. Deputy Speaker, Sir, I wish to lay on the Table of the Senate the following Paper.

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Report of the Standing Committee on Health on the 67th World Health Assembly, held in Geneva, Switzerland, between 19th and 24th May, 2014.

(Sen. (Dr.) Kuti laid the document on the Table)

NOTICE OF MOTION

ADOPTION OF REPORT OF THE STANDING COMMITTEE ON HEALTH ON THE 67TH WORLD HEALTH ASSEMBLY IN GENEVA

Sen. (Dr.) Kuti: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:

THAT, this House adopts the report of the Standing Committee on Health on the 67th World Assembly held in Geneva, Switzerland, between 19th and 24th May, 2014.

STATEMENTS

The Deputy Speaker (Sen. Kembi-Gitura): I see there are two Statements on the Order Paper. Let us deal with them first. There is a Statement from Sen. Kittony. She had requested a Statement and I hope it is ready. It involves the Standing Committee on Education. That will be followed by the Statement from Sen. Ong'era.

CRITERIA USED FOR SELECTION OF CONSTITUENCIES FOR CONSTRUCTION OF TECHNICAL TRAINING INSTITUTES

Sen. Kittony: Mr. Deputy Speaker, Sir, I rise to seek a Statement from the Chairperson of the Standing Committee on Education, Science and Technology. The Statement relates to the selection of 60 constituencies to benefit from the construction of technical training institutes. In the Statement, the Chairperson should table the list of the selected constituencies, explain the criteria used to select them and how it was arrived at, explain how the project will be implemented and the total cost of each institute, and lastly, give details of those who will be in charge of these projects in the implementation course, indicating how and why those responsible were given the mandate.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Karaba.

Sen. Karaba: Mr. Deputy Speaker, Sir, I will issue that Statement in two weeks' time.

The Deputy Speaker (Sen. Kembi-Gitura): Is two weeks okay, Sen. Kittony?

Sen. Kittony: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): I notice that Sen. Ong'era is not here. I do not know whether there is anybody who will seek the Statement on her behalf because I see no requests.

REGULATION REQUIRING POLICE TO
CARRY GUNS DURING EXAMINATIONS

Sen. Mositet: Mr. Deputy Speaker, Sir, I rise to seek a Statement under Standing Order No.45 from the Chairperson of the Standing Committee on Education. In the Statement, the Chairperson should state:-

(i) which regulation requires security personnel to stand holding guns next to students doing their exams;

(ii) which arrangements have been put in place for those students who are hospitalized to enable them do their exams comfortably

(iii) the circumstances surrounding the girl in Kakamega Hospital who was intimidated as she was doing her exams as reported in the *Daily Nation* of 4th November, 2014, page six.

Mr. Deputy Speaker, Sir, this happened to me 32 years ago and it is really unfortunate that today, in the *Daily Nation*, a girl doing her exams was in hospital and there is a policeman standing next to her holding a gun. I really do not know what will happen. It happened to me 32 years ago and up to now, it is still happening.

The Deputy Speaker (Sen. Kembi-Gitura): It was actually a policewoman.

Sen. Karaba: Mr. Deputy Speaker, Sir, I will issue the Statement within two weeks.

The Deputy Speaker (Sen. Kembi-Gitura): Is that okay, Senator?

Sen. Mositet: It is okay but I have another request for a Statement.

The Deputy Speaker (Sen. Kembi-Gitura): Go on.

RESPONSIBILITY OF KENHA IN THE MAINTENANCE
OF ROADS IN KAJIADO COUNTY

Sen. Mositet: Mr. Deputy Speaker, Sir, I wish to request a Statement from the Chairman of the Standing Committee on Roads and Transportation on the responsibility of the Kenya National Highways Authority (KeNHA). In this Statement, I would like the Chairperson to state why the bushes along Emali-Loitoktok Road are almost covering the road and the culverts are also blocked but there is no attendance. Secondly, he should state why the Athi-River-Namanga Road between Ibisil and Namanga, together with the Kiserian-Magadi Road, have not been attended to. Thirdly, he should explain to the Senate when the roads will be attended to and when the roads in Namanga Town will be completed.

The Deputy Speaker (Sen. Kembi-Gitura): Is the Chairman of the Committee on Roads and Transportation here? Is anybody from the Committee here? If there is nobody, then the Senate Majority Leader should come to the rescue.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I request that the Committee be given two weeks and I undertake to inform the Chairman.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Mositet, does that suit you?

Sen. Mositet: Yes.

DISBURSEMENT OF FUNDS TO POLITICAL PARTIES AS
PER THE PROVISIONS OF THE POLITICAL PARTIES ACT

Sen. Abdirahman: Mr. Deputy Speaker, Sir, on behalf of Sen. Ong'era, I want to request for a Statement.

Pursuant to Standing Order, No.41(2)(b), I wish to seek a Statement from the Chairperson of the Standing Committee on Legal Affairs and Human Rights regarding the allocation and disbursement of funds to political parties as per the provisions of the Political Parties Act. In the Statement, the Chairperson should;

(i) state the amount of money appropriated to the Political Parties Fund in the last and current financial years;

(ii) state the amount of money allocated to each of the eligible political parties in the last and current financial years;

(iii) explain why despite court orders, the Government has been unable or unwilling to allocate not less than 0.3 per cent of the revenue collected by the national Government as required by Section 24(1)(a) of the Political Parties Act; and,

(iv) explain why the Registrar of Political Parties has refused and/or delayed the disbursement of funds to eligible political parties.

Sen. Khaniri: On a point of order, Mr. Deputy Speaker, Sir. I do not know if you heard what Sen. Abdirahman said when he was requesting for the Statement; he quoted Standing Order No.41(2)(b). To the best of my understanding, Standing Order No.41 talks about Messages from the President and not seeking Statements. Is he in order?

The Deputy Speaker (Sen. Kembi-Gitura): He is completely out of order. In fact, there is no Standing Order No.41(2)(b). Can you correct that?

Sen. Abdirahman: I stand to be corrected. It is Standing Order No. 45(2)(b).

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Khaniri, is he okay now?

Sen. Khaniri: Yes.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Sang, when do you want to issue that Statement?

Sen. Sang: Mr. Deputy Speaker, Sir, I would have preferred if the Senator stuck with that particular Standing Order because then I would be delivering the answer as the president but now that he has withdrawn, I am requesting for three weeks.

The Deputy Speaker (Sen. Kembi-Gitura): Why do you want three weeks?

Sen. Sang: We have difficulties dealing with the Attorney-General's office and we have brought this to the attention of this House.

The Deputy Speaker (Sen. Kembi-Gitura): You are asking for three weeks because you had problems with them?

Sen. Sang: We know the pace at which that office works.

The Deputy Speaker (Sen. Kembi-Gitura): Do you want us to work at their pace?

Sen. Sang: We have tried in the past---

The Deputy Speaker (Sen. Kembi-Gitura): I think that is unfortunate. We must change things. We need to change things and we do not want to work at the pace of another officer who wants to delay our business. I am going to allow you two weeks so that you can go and deal with it and then come and tell us whether they are too slow. You still have the powers under the Constitution and the Standing Orders.

Sen. Okong'o: Mr. Deputy Speaker, Sir, I am not sure whether I am the only one who heard Sen. Sang saying that if the Questioner would have stuck with the first Standing Order mentioned, he could be happy to be answering as a president. Is he in order to give such a statement?

The Deputy Speaker (Sen. Kembi-Gitura): I think we need to distinguish between light and serious moments so that the House can proceed.

Sen. Okong'o: That is a very serious remark and I am very serious on the same. If a Member stands to say that if the person asking the question could have stuck to the earlier Standing Order, then he could answer it as a president. Is he in order? I am very serious on that, it is not a joking matter in this House.

The Deputy Speaker (Sen. Kembi-Gitura): What did you say, Sen. Sang? Let me get you right because I may have missed an important point.

Sen. Sang: Mr. Deputy Speaker, Sir, you remember that the Senator for Vihiga brought to your attention that Sen. Abdirahman, on behalf of Sen. Ong'era, sought a Statement under the wrong Standing Order relating to Messages from the President. Then I said that I would still have preferred to answer in accordance with that Standing Order in the capacity as provided for by that Standing Order. Since that was retracted, I am very happy to do it as the Chair of the Committee – and there is nothing wrong with being ambitious. I think that suggests that those are good things to come in future.

The Deputy Speaker (Sen. Kembi-Gitura): Of course, you realize that Standing Order No.41 is for messages from the President, so you will not be the one to read them, it will be the Speaker.

Sen. Sang: Nonetheless, I withdraw.

The Deputy Speaker (Sen. Kembi-Gitura): I would not have asked you to withdraw. I think it was made with a light touch but since you want to do so, it is okay with me.

Sen. Kagwe, you want to make a Statement. Sen. (Prof.) Kindiki, you also want to make a Statement because I can see a request for the Floor.

The Senate Majority Leader (Sen. (Prof.) Kindiki): It is a Statement which was requested by Sen. Billow on Thursday.

The Deputy Speaker (Sen. Kembi-Gitura): We will deal with it but I notice Sen. Billow is not here although it is the property of the House and it is urgent.

Sen. Kagwe: Mr. Deputy Speaker, Sir, I wish to respond to a Statement which was sought by Sen. Mositet. Before I do so, allow me to ask; a while back I sought for a Statement from the---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kagwe, one thing at a time. You are now out of order. Deal with the reason why you are at the Dispatch Box.

SUBSTANDARD SERVICES FROM MOBILE PHONE PROVIDERS

Sen. Kagwe: Mr. Deputy Speaker, Sir, let me deal with this one and then I will go back to my request. I am answering Sen. Mositet's question regarding the quality of service standards as far as mobile providers are concerned. Sen. Mositet wanted to know why the quality of service from service providers, particularly Safaricom has fallen below expected standards and the first part of the answer is as follows:-

The International Telecommunication Union (ITU) standards for quality of service (Quality Assurance Service (QAS)) are presented in the form of recommendations spread across a series of recommendations, key of which is known as Recommendation E 800. A comparative analysis of the ITU, QAS standards *vis-à-vis* the national standards is presented in an annex which I am going to table here. It is to be noted that the development of the national QAS standards which are largely based on ITU standards were subsequently subjected to negotiations with the operators, with a view of taking into account of among others, the level of development of local networks, other conditions and progressive attainment of international standards. The results of the said negotiations have been adopted and are then gazetted to give effect.

Mr. Deputy Speaker, Sir, attached also – I am going to table this – is a copy of the latest gazette notice of September 2009 on the prevailing quality of standards parameters and assessment methodologies.

The Senator also wanted to know why the rate of call drops is as high as it is. With regard to the average call drop rate in respect of Safaricom's network, the last official result in 2012/2013 indicated an overall call drop rate of about 1.9 per cent against an overall target of 2 per cent and below. The QAS assessment for the period 2013/2014 is currently being analyzed with a view of having the official results released before the end of this year.

As far as the quality of service in the counties is concerned, the hon. Senator wanted to know what the call drop is county by county and the service provider thereof. In terms of the indication of the counties where the QAS is below standards, we wish to note that the current gazette assessment framework is based on an average of either designated QAS assessment regions of the country and in areas where there is network coverage in the said regions. An indicative QAS performance in each of the eight provinces for the period 2012/2013 for all operators is again attached.

Please, note that we are currently unable to present county by county status given the assessment framework in use presently. We are however in the process of reviewing the assessment in the coming period. In general, however, better performance is noted in urban and highly populated areas compared to sparsely populated rural and remote areas. On the universal service funds, in terms of the remittances of the universal service fund which is based on a 0.5 per cent of the annual gross turnover of the licensees, the figure currently stands at approximately Kshs66 million. You may wish to note that invoicing for the levy started in the current year and the remittances are beginning to be realized though there is still some level of resistance on the part of the licensees. The basis of the resistance being witnessed is currently being addressed and the situation is expected to improve significantly in the coming months.

Mr. Deputy Speaker, Sir, in terms of the analysis that I have given, all I can say in the form of a summary is that all four mobile network operators in Kenya did not meet the minimum overall target of 80 per cent and above. The operators are required to meet 80 per cent of the total QAS parameters and targets in order to be deemed compliant. Therefore, they are not compliant.

In terms of compliance with the individual targets, all licensees complied with QAS targets on drop calls, hand over success rates, call set up time and signal strength. All operators failed to meet the call set up success rate and completed call targets.

Thank you.

The Deputy Speaker (Sen. Kembi-Gitura): Any short reactions?

Sen. Mositet: Mr. Deputy Speaker, Sir, the Chairman went on to read very technical things that I could not even understand and I also doubt whether the House understood while my questions were very clear. All what I was asking was the performance of the service providers in the mobile industry and particularly Safaricom where we know very well that the public and the Government of Kenya have shares. I would have expected a very comprehensive and simple answer on the performance of the every county.

Kajiado County which is next to Nairobi County is a metropolis county. When I ask this, my people happen to be suffering a lot with the service providers in the mobile industry. Apart from a very small section of my county, the rest of it has no signal at all. I heard the Chairman trying to explain that they concentrate on the urban and the populated areas, but I think that is not true because quite a number of places in my area have a lot of problems.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Mositet, this is Statement Hour and not time for debate. Therefore I expect you to seek clarification and not to take us back through the whole question issue.

Mr. Mositet: Mr. Deputy Speaker, Sir, could the Chairman come up with a comprehensive answer particularly to do with Safaricom where we can note the percentage of each and every county? I have a pin card here where one of the residents of the county has been used to market Safaricom cards whereas the person appearing on this portrait is not aware and he was not consulted. I would also want---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Mositet, without trying to stop you, I recall the Statement you had sought very well, but now it appears to me that you are raising completely new issues. I remember you had asked about the quality of the providers; for example, how often you lose the signal when you are travelling from Thika to Nairobi. Now, if you bring in the issue of advertisements, that is completely new. I want you to seek a clarification because I can see there is some interest from other Senators, so that we can progress with the debate.

Sen. Mositet: Mr. Deputy Speaker, Sir, on the earlier Statement, I would like the Chairman to come up with a clearer Statement than the technical terms he was using where the performance of each and every county can be indicated.

The Deputy Speaker (Sen. Kembi-Gitura): Had you sought an explanation on county by county?

Sen. Mositet: Yes, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): You are not satisfied with the answer?

Sen. Mositet: Mr. Deputy Speaker, Sir, I am not.

The Deputy Speaker (Sen. Kembi-Gitura): Which areas would you like to seek clarification on?

Mr. Mositet: Mr. Deputy Speaker, Sir, we have 47 counties, if it is Kajiado County, I would like to know which areas have better performances.

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

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, is the Chairperson aware that despite poor reception, Safaricom counts payment immediately the handset is on, whether you are receiving or not? Is he aware that that amounts to stealing? How can he protect the population from that kind of fraud?

Sen. Khaniri: Mr. Deputy Speaker, Sir, I want to thank the Senator for Kajiado County for raising this issue. Besides the issue of substandard services and cases of no signals in some parts of the country, there is also the issue that Sen. (Dr.) Machage has alluded to. These are the exorbitant rates that are charged by these mobile service providers, particularly, Safaricom. I guess they do this because of the monopoly that they enjoy. What action is the Ministry taking to ensure that calling charges are within reach to the general populace of Kenya?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Kindiki, do you want to intervene on this because I can see your name? Briefly, Sen. Kagwe.

Sen. Kagwe: Mr. Deputy Speaker, Sir, from the outset, I want to confirm that the Senate Committee on Information and Technology has been discussing this matter regarding the performance of the mobile service providers and particularly that of Safaricom which, as Sen. Mositet rightly put it, is partially owned, in fact, majority owned by both the Government of Kenya and the Kenyan public. We have agreed that the performance of Safaricom currently is definitely below the expected standards of this nation. In fact, we have said that in terms of best practices across the world, we are way below that. Given that this is the flagship provider of mobile services then, indeed, it is very disappointing. We have even pointed out to Safaricom that it is disappointing that instead of progressing and becoming better, there seems to be clearly a drop in their performance.

The Senator wanted me to simplify this data and I want to do so. I would like to take this data back to the Ministry and ask them to give us data that we can have as usable information on the floor of this House. In terms of the county by county performance, what I have here is region by region. Clearly, that did not satisfy us and, indeed, did not even satisfy the Committee. As is very clear we are here to protect the counties, all counties, not some counties. When a licence is given to a mobile service provider, it is given on condition that the licensee is going to provide mobile services across the country, not just in some regions.

That is also the reason why the Universal Fund was created, so that in those regions where it is not economically viable to build base stations, the Government can assist through the Communication Authority of Kenya (CAK) or through subsidizing

some of the providers to make sure that service is equal across the country. The CAK has been given notice that we are not satisfied with what we are getting from Safaricom.

On the issue of the model who is on the Safaricom sim card, that, as you rightly pointed out is a different question altogether. If Sen. Mositet wants me to tackle the question in terms of the model who is there, I know, it is a picture of a nice looking Maasai gentleman. However, at this juncture, I am not able to comment on that issue. However, if he wishes, I will pursue that matter.

On the issue that Sen. (Dr.) Machage raised on the charges, I do not profess right now to be aware of what you have asked. However, in the subsequent statement that I will bring because of the data that you have asked for, I will ensure that, that is there. Indeed, on the issue of exorbitant rates as raised by Sen. Khaniri, again, the only way that consumers benefit from charges of any sort are when there is serious competition in the market. Unfortunately, what has happened in the mobile service provision is that Safaricom is a monopolist. I would not put it as their fault. There are other players in the market who have been unable to rise up to the occasion and become as important or grab the market share from Safaricom. However, we are happy that Equity Bank is launching similar services. Hopefully, they will provide the kind of competition that Safaricom should get to bring down the telecommunication rates.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kagwe, thank you but I thought you to say that the answer you have given is not satisfactory, it does not satisfy your committee? So, since the issue of county by county was not answered and Sen. Mositet needed a clarification on it, would it be fair to ask you to go back, as you have said, to the relevant department and come back with that comprehensive answer, also to do with Sen. (Dr.) Machage and Sen. Khaniri's clarifications? Again, you said you are not aware but you will look into it. This will be good for everybody because this is a matter of public interest. Give us a comprehensive answer that suits you and your Committee on this issue.

Sen. Kagwe: Mr. Deputy Speaker, Sir, I will do likewise. I am aware that, indeed, almost every Senator here has asked a question regarding their counties and their performance. In fact, when I drive from here to Nyeri, I cannot communicate on a mobile phone because the call drops are many and it is so frustrating that one begins to wonder whether we are dealing with a company that is operating on third world standards or globally accepted best standards.

Sen. Hassan: Mr. Deputy Speaker, Sir, maybe on the same light, it would be good to get directions from the Chair. If a committee is not satisfied with an answer that has been given by a Cabinet Secretary, should that committee present the answer that is unsatisfactory or the committee can seek leave of the Chair for postponement of that answer? It is important to have that direction from you.

The Deputy Speaker (Sen. Kembi-Gitura): Going forward or for this specific case?

Sen. Hassan: On the generality, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Well, sometimes it is good to have the answer. You could even call them holding answers because if the person who sought the statement was satisfied, that would have been the end of the story. But as it would

appear when Sen. (Dr.) Machage raised the issue, although it was quite relevant, Sen. Kagwe said he could not deal with those issues at the moment because they were not directly in the statement sought.

Of course if a chairperson of committee is in the first instance satisfied that the answer he has got is not satisfactory, then he should not give it at that point. I have seen it several times where a chairperson says he or she is not satisfied with an answer.

Sen. Kagwe: On a point of order, Mr. Deputy Speaker, Sir. I wanted to raise a matter---

The Deputy Speaker (Sen. Kembi-Gitura): Before you do that, Sen. Kagwe, when are you going to give us the further Statement?

Sen. Kagwe: Mr. Deputy Speaker, Sir, if I am given two weeks, I can bring the Statement to the House.

The Deputy Speaker (Sen. Kembi-Gitura): It is so ordered.

DECLARATION OF 7TH JULY, 2014 AS A PUBLIC
HOLIDAY BY SOME GOVERNORS

Sen. Kagwe: Thank you very much, Mr. Deputy Speaker, Sir.

I rise on a point of order to seek guidance because sometime back, if you recall, I asked the Chairperson of the Committee on National Security and Foreign Relations to issue a statement regarding the matter of governors deciding to issue public holiday pronouncements within their counties. I wanted to know under what rule, law or pretended position a governor can declare a public holiday.

Sen. Haji: Mr. Deputy Speaker, Sir, I do not know whether my humble statement will suffice, because I do not think any governor has any legal basis to declare any public holiday other than the central Government. Therefore, they should be ignored totally.

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): The only problem with your answer, Sen. Haji, is that I am aware that there is a written answer from the Office of the President. When it was to be answered; Sen. Kagwe was not here to take it because it had been sought on his behalf by Sen. Mositet. So, the answer is somewhere because I have seen it. May I request that you seek it from the Clerk's Office and deliver it tomorrow, because there is a written answer? I am quite happy that you have given your off-the-cuff answer, but I know that there is a written answer.

Sen. Haji: Thank you, Mr. Deputy Speaker, Sir, for guiding and helping me.

The Deputy Speaker (Sen. Kembi-Gitura): So you will issue the Statement tomorrow. Thank you very much.

Proceed, Sen. (Prof.) Kindiki.

CONCURRENCE ON THE MINING BILL BY
THE SENATE BEFORE ASSENT

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Deputy Speaker, Sir. On Thursday, 30th October, 2014, Sen. Billow requested for a statement regarding the status of the Mining Bill, National Assembly Bill No.9 of 2014. The Senator wanted to know the status of this Bill. By then, it was understood the Bill had been presented to the President for assent.

Mr. Deputy Speaker, Sir, I have contacted His Excellency the President orally and in writing requesting him not to sign this Bill until it is brought to the Senate for consideration as this is a Bill concerning counties.

(Applause)

A copy of my letter Ref.SML/JANE/CORR/VOL.197 dated 30th October, 2014 to His Excellency the President, copied to the Speaker of the Senate and the Attorney-General of the Republic of Kenya is hereby attached to this Statement.

In addition, Mr. Deputy Speaker, Sir, I have spoken to the Attorney-General, Prof. Githu Muigai, to whom I understand this matter has been committed to advise His Excellency the President and that he has promised to review this issue and revert as soon as possible.

Mr. Deputy Speaker, Sir, that is all for now. This is work in progress and I want to assure Senators that we will do whatever it takes to make sure that the law is complied with in this matter and in other similarly situated matters that may emerge.

Thank you, Mr. Deputy Speaker, Sir.

I now lay my Statement on the Table of the Senate.

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

(Applause)

(Several Senators stood up in their places)

The Deputy Speaker (Sen. Kembi-Gitura): Order! Order, Senators! This is a very important issue and that is the only reason I allowed the Senate Majority Leader to give it in the absence of Sen. Billow, who had actually sought it; which is the norm. It is a very important issue because it concerns all of us, as a Senate.

I can see that there are people who have expressed interest on points of order.

Sen. Sen. Abdirahman, is it on this point of order or is yours about the statement?

Okay, proceed.

Sen. Abdirahman: Thank you, Mr. Deputy Speaker, Sir. I want to thank the Senate Majority Leader for the very good response and the very prompt action with regard to the Mining Bill. I want to point out that, time and again, this Senate has bitterly

complained about the number of Bills that went through the National Assembly that were headed either for assent or, at times, had reached the final stage. I would want to find out from the Senate Majority Leader whether he is taking stock of the number of similar Bills--- It would be very important for us to get a glimpse of how many they were and whether you were able to take the same kind of action on these Bills so that we are not taken for granted.

Thank you very much, Mr. Deputy Speaker, Sir.

Sen. Murungi: Thank you, Mr. Deputy Speaker, Sir. I want to congratulate the Senate Majority Leader for a job well done. The role that he plays is a fairly complex one because apart from being one of the political leaders of this House, he is also a bridge with the other Houses and the Executive. I think what he has done now is what he should be doing – having audience with His Excellency the President; having audience with the Attorney-General; writing letters where necessary and having cups of tea with the Senate Majority Leader in the National Assembly and other leaderships – so that we can get the business of this House done.

So, Mr. Deputy Speaker, Sir, we want to encourage the Senate Majority Leader to continue on that path and to be more proactive. While on it, I would also like him to follow up on a Bill which was passed by this House – the Political Parties Bill which was introduced by Sen. (Dr.) Khalwale – and referred by Message to the National Assembly. Several weeks have passed and we have not heard any more information about what happened to that Bill. So, maybe, the Senate Majority Leader could similarly follow up on that Bill and report in a similar manner to this House about what is happening to those Bills.

Thank you, Mr. Deputy Speaker, Sir.

Sen. Haji: Mr. Deputy Speaker, Sir, I join my colleagues in congratulating the Senate Majority Leader for the letter he has written and also the discussion he had with the Attorney-General. I do not know whether I got him right; he said that he also discussed with His Excellency the President. Maybe he could tell us the reaction of His Excellency the President or his body language reaction, because it is very important.

The Deputy Speaker (Sen. Kembi-Gitura): Let us hear Sen. Hassan, then the Senate Majority Leader can give one comprehensive response to all these questions.

Sen. Hassan: Mr. Deputy Speaker, Sir, I also want to join hands with those Senators – the “Lion King” of Meru, Sen. Murungi –in congratulating the “Lion Cab” of Tharaka Nithi on this particular bold step.

But, Mr. Deputy Speaker, Sir, I also want to ask for the indulgence of your office. I think it is a comprehensive opinion of the Supreme Court which actually states that all Bills must first seek the concurrence or the input of the Speakers. This will help this process so that these matters are not first concluded only for the Senate Majority Leader or any other leader of this House to protest about the unprocedural assent of these Bills. It would be important that the Speaker periodically advises us on the Bills of the National Assembly where his input has not been sought so that, then, we can track that Bill in its

progressive steps. This would help the Senate Majority Leader greatly in asserting himself in the realm of law making in this Senate.

Sen. Kagwe: Mr. Deputy Speaker, Sir, I appreciate what the Senate Majority Leader has done. However, there are two things here. There is the soft power and the hard power. If we push soft power to the extent that this Senate is doing, then we will end up being toothless bulldogs.

There is a point that reaches where caution ends and cowardice begins to operate. I think we are slowly creeping into that point where cowardice has set in. In addition to the letter that the Senate Majority Leader has written, it is necessary for us to discuss a plan “B” because this is not the first time that this has happened. It continues to happen. The question I want to pose to the Senate Majority Leader is; what happens in the event that this continues and, in fact, this Bill is signed into law as it has happened in the past?

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, there are definite timelines set on how Bills are to be handled by the President and the time limits regarding his assent or refusal. In your own language, as lawyers say, silence means yes. However, would it not be true that since the President has not commented on the Khalwale Bill, then as it stands in law, it is assented to?

Sen. Sang: Mr. Deputy Speaker, Sir, I want to join my colleagues in appreciating what the Senate Majority Leader did. In his response, he said that he talked to the President orally and in writing. Could you confirm to us that, indeed, when he spoke to the President orally, he got the commitment that the President would not sign the Bill into law?

The Deputy Speaker (Sen. Kembi-Gitura): How else do you speak to somebody rather than orally, Sen. Sang?

(Laughter)

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I also want to join my colleague Senators in thanking Sen. (Prof.) Kindiki for rising to the occasion. Since he did not read the letter that he wrote to the President, my view is that from the constitutional perspective, the person we should defend, as the Senate, is our Speaker. It is our Speaker who is slighted by the Speaker of the National Assembly under the Constitution. It is that person we should seek an appointment for, if necessary, to speak to the Head of the Executive. We should say that this Senate has a Speaker whose name is Hon. Ekwere Ekwere and that Speaker should be consulted. Therefore, the advice that the Senate Majority Leader should give the President is that if he uses his left hand to append his signature on that Bill, he will have committed an illegality.

Senate Majority Leader, please, confirm that.

Sen. Mositet: Mr. Deputy Speaker, Sir, let me also join my colleagues in congratulating our Senate Majority Leader for gaining courage to do exactly what he told us he would do. I know that the Head of State is normally a very busy person. I believe that there is an office which advises him on each and every Bill and whether to sign or not. In this case, I expect that issue to be addressed by the Office of the Attorney-

General. As much as we may say that the Head of State has been appending his signature to Bills which should also have come through this House, I believe that the Office of the Attorney-General should squarely take the blame.

I request our Senate Majority Leader, as much as he says he has spoken with the Attorney-General, that this time round, he could do a letter to advise him not to mislead the Head of State.

Sen. Ndiema: Thank you, Mr. Deputy Speaker, Sir. I want to thank the Senate Majority Leader. In doing what he did, he saved a situation. When you look at what is happening, it appears as if we are not respecting the President because we are sending Bills to him which he should not be signing. It is embarrassing that things have to reach the President and even be returned without being signed. Those who are supposed to advise the President should do so. In this case, I suggest that the two Speakers and the Attorney-General agree on a standard format of how Bills should be sent to the President. There should be a statement clearly saying that a particular Bill does not deal with counties. That statement should be signed by both Speakers so that it is clear. The President should not be put in an embarrassing situation where he has to decide on whether or not to sign a Bill.

Sen. G.G. Kariuki: Mr. Deputy Speaker, Sir, mine is just a question to the Senate Majority Leader. While we engage in talking about the problem we are experiencing and why our Bills are not being signed, the question I asked myself is whether we are acting within the law or whether we are begging. If we are begging, then we should leave the situation the way it is. However, I would like to know from the Senate Majority Leader whether we are within the law and if there are people refusing to follow the law. Are we incapable of enforcing what is being refused either legally or politically? Instead of us wasting the time of the Senate in discussing what is real and what should be done, could you tell us whether we are within the law?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kajwang, are you rising on this point of order?

Sen. Kajwang: Yes, I was. However, senior Senator G.G. Kariuki has spoken in the language I wanted to speak in. I think we are turning parliamentary matters into some kind of a personal relationship between the Speaker of a certain House and the President so that he achieves what he wants to achieve. We are seeing that probably the Speaker of the Senate does not have the same chemistry as the one of the National Assembly and, therefore, his matters do not proceed the way they should proceed.

However, that is not the way we should go. We should go the way the senior Senator has just said. Are we within the law? If we are within the law, then we should enforce it. We went to the Supreme Court and got a good statement from there. We could go back regarding all these Bills that have been signed, by-passing the Senate. We should make one finding in the court and that will bring some sense in all institutions.

The Attorney-General is to blame because he is the one to take the Bills to the President as it used to be. I do not know whether that has changed. He is the legal advisor to the Executive. I understand that Bills are now signed even when the Attorney-General is not there. Some of these things are vexing us. Probably, when the Senate

Majority Leader is responding, he could tell us whether this is beyond our capacity as a political institution so that we try the Supreme Court once more.

Sen. Nabwala: Thank you, Mr. Deputy Speaker, Sir. I also join my colleagues in commending the Senate Majority Leader in representing us in this particular Bill. He has told the House that he spoke to the President and has also written to him. I want to know whether he also expressed concerns about other Bills. Right from day one, this House has seen Bills being passed by the National Assembly but not passing through this House for concurrence. The first one was the Division of Revenue Bill. I expected him to list all the Bills so that when he meets the President in person, he can express our concern; the concern of the Senate. Besides that, our mandate is being encroached upon by the Judiciary and, therefore, we cannot proceed. This is a crisis for this House.

I would like you to take a further step and look into those two issues. I know that the President can sort this out and put the Judiciary and the National Assembly in their right places. Every institution has a defined mandate. I do not see why the Judiciary should encroach on our mandate or why the National Assembly should encroach on the mandate of the Senate and forward Bills to the President without the consent of this House.

The Deputy Speaker (Sen. Kembi-Gitura): You can give a brief reaction to all that.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Deputy Speaker, Sir. I have listened and heard the various issues and clarifications that have been sought by my colleagues. This problem is actually bigger than we think. It is very big and somebody somewhere, for the past one-and-a-half years, has consistently undermined and subverted the Constitution of Kenya which can be a ground for removal from office of a public officer.

Mr. Deputy Speaker, Sir, I am saying this just to demonstrate to this Senate how serious I am about this matter. We have a history of going to court in the matter of the Division of Revenue Bill. Today, I am convinced more than ever before, that had we not gone to the Supreme Court, this year the Division on Revenue Bill would not have come here. What that suggests is that if push comes to shove, we have to go back to the Supreme Court. I will be the first person to recommend and lead in that effort because this is not about Jubilee and CORD or the Speakers of which Houses. It is about the Constitution and the Senate of the Republic of Kenya.

Mr. Deputy Speaker, Sir, I say so because those who have watched the debates in the National Assembly will realise that when there is a Bill, for example, the Mining Bill, it should be open to everybody because minerals especially with regard to provisions on benefits sharing, have to do with how the Government and local community share benefits, and therefore, have to do with counties as the governments that represent communities at the local level. Not a single Member from the Government or Opposition Side opposed this Bill by saying that if they passed this Bill without it going to the Senate, it will be illegal.

In fact, some of the harshest critics of this House are Members of the Opposition. I am not saying this to say the Members of Parliament from the “Lower House” are any better. In other words, I assure Members that on this one, I stand on the side of Senate.

We will fight together and going forward, the Supreme Court option remains, to me, a very viable option. In the meantime, we are trying a lot of diplomatic work informally and, increasingly, formally.

Mr. Deputy Speaker, Sir, a question has been asked on whether we are aware that there are other Bills that have either been passed or are in the pipeline of being passed into law without recourse to the Senate. I have obtained, through the Clerk's Office – I am sure this information has also been provided to the Rules and Business Committee – an updated template, a table that tabulates all the Bills since the Senate came into operation on 28th March 2013 until now, all the Bills that have been passed illegally – without this Senate being involved – including the action that has been taken or not taken in each of those Bills. The purpose of that tabulation - which I am studying and it is right at my desk - is to take the route which has been recommended by some of my colleagues who spoke so that we look at this thing in a wholesale manner.

Mr. Deputy Speaker, Sir, there are three categories of Bills which have been passed in this illegal manner. The first is where concurrence was sought, let us say, from the Senate but has not been given. The law is not clear on what happens if the concurrence is not given unless you automatically invoke the provisions of the mediation process. In which case, refusal to give feedback should be construed to mean you have not concurred. We know there is inaction. For some of the Bills, no concurrence has come from one of the Speakers.

In others, the Speaker of the National Assembly has refused to concur that some of these Bills concern counties, in that case, a dispute arises in accordance with Article 112 of the Constitution and therefore, mediation should be happening. As to why no mediation has started in some of these Bills where an outright refusal to concur has taken place, I do not know. I have those categories and then also there are few Bills where the two Speakers have concurred.

Mr. Deputy Speaker, Sir, thirdly, as I wind up, I think we are placing the blame on the doorstep of the wrong person. Number one, this thing has nothing to do with the President. Legislation has nothing to do with the President. The President gets involved at the tail end of the process in assenting. Some of my colleagues have asked me about body language and stuff. I just want to say that the President remains committed to the rule of law and he respects the Constitution. Recently---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Abdirahman, do you have a point of order?

Sen. Abdirahman: Mr. Deputy Speaker, Sir, I am compelled to stand on a point of order because the Senate Majority Leader said that the President does not do legislation, while in fact, the Attorney-General is the legal advisor of the President. The Attorney-General is the number one advisor of the President on legal matters. I wonder whether he is really in order. It is true the President does not make laws but he appends his signature on these laws. Where do you separate the two? Is he in order to say that we can separate the President from making laws in this country when, in real sense, he is the one who endorses?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, let me repeat it for the avoidance of doubt. Article 110 of the Constitution says that the issue

concerning which House a Bill should go to is a question not to be determined by the President or the Attorney-General but by the Speakers of the two Houses of Parliament. That is all I meant. In terms of determining where legislation goes and the entire process of legislation, the President is not involved. It is the two Speakers. In fact, a legal question arises – I remember last Thursday I alluded to it – we will also have to interrogate the two Speakers as servants of these Houses of Parliament. This is because the responsibility to determine is given upon them jointly, not severally. So, they should tell us why they are unable to exercise joint discretion which has been given to them jointly.

Mr. Deputy Speaker, Sir, the President gets involved in legislation at the tail end of the exercise in terms of assent. In that function, he relies on the Attorney-General who is a civil servant and advises the President. Of course, the President has to take that advice and weigh it against whatever other factors he has. However, the determination of where a Bill should go is not a function of the Attorney-General or the President, but of the two Speakers of Parliament.

Mr. Deputy Speaker, Sir, the President respects the rule of law; he respects and supports the Senate as provided for in the Constitution. Recently, the Senate passed the County Governments (Amendment) Bill; the popular “Sang Bill”. I know there are people who had legal issues about it.

However, he looked at the mandate of the Senate, all factors and sought the advice from whoever he needed advice from. He came to a conclusion that the Senate had acted within the law and assented to that Bill. Of course, anybody who is unhappy with that Bill is free to go to court as normally happens and I believe that matter is already in court. So, let us not blame the wrong people. The solution to this problem is with us ourselves.

Finally, I want to say that I think that because of the severity of this matter, we will have to mix both diplomacy and a bit of practical and pragmatic action. That is why we have said that whenever we have consultations, we should also convert that into writing for the record. For the information of the Senators, the letter I wrote to the President is also copied to the Attorney-General and I have followed it up with the conversation.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, listening to the Senate Leader of Majority, would I be in order to think that he is saying that it is time for this House to reprimand our Speaker for not doing his job?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I think Sen. (Dr.) Machage is putting words into my mouth. I said very clearly that the responsibility on determination of which House should be possessed with a Bill is a joint responsibility of the two Speakers and not one of them. So, if we have to reprimand, we have to reprimand the Speakers as a collectivity for failing us, because they should agree.

These are very senior public servants and we do not expect petty rivalry at that level. The Constitution says that “the two Speakers shall determine”. In fact, I would have thought that in many of these cases that concurrence would even take place on the phone because there is nowhere in Article 110 where it says that there must be written concurrence. They have failed us, but I have not said that the Speaker of the Senate has

failed as the Speaker of Senate. The Speaker of the Senate and his colleague in their collective duty, under Article 110, have failed us and we need a remedy from that.

Finally, before I sit down, just for the comfort of---

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Deputy Speaker, Sir. I think the Senate Majority Leader should be a little clearer because in determining the question as to whether a Bill concerns counties in terms of the Constitution, I would think that when the law requires under Article 110 (5) that where a Bill has originated from a certain House, it is forwarded to the President, it would go with a certificate. He is almost suggesting that when that certificate is issued to the President, it is either misleading to show that that Bill does not involve counties, or alternatively, it does not say whether it involves counties or not. Perhaps even in his clarification, we should know whether the Speakers or the Speaker has misled the President without a certificate complying with Article 110.

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. While I appreciate the Senate Majority Leader for trying to absolve other entities apart from the two Speakers, one of the reasons why from the word go our Speaker has been unable even to participate on agreeing on this issue - it is because the Senate Majority Leader and the Government he represents have been unable to bring any Bill through the Speaker of the Senate so that we can say that the Speaker of the Senate has become obstinate in trying to consult the Speaker of the National Assembly.

The attitude and the precedence being created by Cabinet Secretaries and Government officers of delivering Bills only via the National Assembly is erroneous and that is where we must address it politically through the office of the Senate Majority Leader. I will absolve the Speaker of the Senate because all the time, he is the person who has to follow up and find out whether a Bill was received from the National Assembly which concerns counties. If our Speaker had received a Bill---

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

Sen. Murkomen: Mr. Deputy Speaker, Sir, is it in order for the Senate Majority Leader to try to assume that the two Speakers are jointly liable while the truth is that several letters have been written by the Speaker of the Senate trying to pursue Bills that have actually not been brought to his attention? Why is it not possible for the Senate Majority Leader to table Bills from Cabinet Secretaries in this House?

The Deputy Speaker (Sen. Kembi-Gitura): There are several points of order which have been raised, but just to stick on the point taken by Sen. Murkomen and maybe to clarify and to let you know that the Office of the Speaker of the Senate has consistently sought concurrence from the Speaker of the National Assembly on the Bills that we have taken to them under Article 110 (3). In a case like this one, the Speaker of the Senate has taken issue invariably with the Speaker of the National Assembly on why Bills should be passed and then taken to the President for assent when it is common knowledge that the Senate was not involved right from the word go.

I would also maybe like to cap it by saying that although you say that the President has nothing to do with legislation, no Bill can become law unless and until he assents to it. I think we need to look at those positions so that the public is clear on this issue.

I notice that there are several Senators who would like to raise their points of order.

Sen. Hassan: On a point of order, Mr. Deputy Speaker, Sir. I wanted to make it clear to the Senate Majority Leader that you have demonstrated to this Senate again and again the efforts you have made to ensure that there is concurrence on every Bill. Therefore, I want to make it clear to the Senate Majority Leader that that allegation against the Speaker is misplaced and unfortunate.

The Deputy Speaker (Sen. Kembi-Gitura): I would like to make it very clear that I would not like the office of the Speaker of the Senate to be dragged into this because I know for certain that there has been a lot of consistence from the Office of the Speaker of the Senate in seeking concurrence.

Sen. (Dr.) Machage: On a point of order, Mr. Deputy Speaker, Sir. I would like to request that the Senate Majority Leader comments on the status of the Bills that the President has assented to, especially the Khalwale Bill. With reference to Article 115 (6) of the Constitution, do we take it that the Khalwale Bill has been automatically assented to by the President? He has not answered that question.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, with regard to the Khalwale Bill, as I have said, I have just obtained a status report which I am looking at and I will try and track where that Bill is at the moment. If the Bill was submitted to the President for assent, then the law requires that if he does not do so within seven days, it automatically becomes law.

If it was submitted to the “Lower House” for concurrence and it got lost there, then that is a different matter because neither the Constitution nor the Standing Orders say what happens when one House receives a Bill in the form of a message from one House and refuses to prioritize it in its business. So, one House can actually sit on a Bill from another House indefinitely through the House Business Committee. If it went to the President and he did not act within seven days, the law says that it becomes law.

In future when we review the Standing Orders, we must make sure that there is also discipline between the Houses so that when one House receives a proposed law from another House, there must be timelines for action and failure for that action must automatically mean concurrence. So, I hope that is something we can solve in the long term.

With regard to the Khalwale Bill, I seek the indulgence of Sen. (Dr.) Machage, I will go and track it and come back and inform the House.

Finally, I want to say that I did not want to impute any misconduct on the Speaker, but I stand by what I said; that the two gentlemen must discuss and agree somehow. We do not even need explanations. They are failing us! These are senior Kenyans and the law has said that somehow they must agree. So, anybody occupying that office must have the capacity, severally and jointly, to deliver.

Sen. Hassan: On a point of order Mr. Deputy Speaker, Sir, we have tried to insist to him of the initiative taken by the Speaker of the Senate, but he still apportion them equal responsibility to a point of calling it failure on the part of the Speaker yet a majority of the Senators here are of the view that it has not been for want of trying on the part of the Speaker of the Senate.

(Applause)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I have heard Sen. Hassan.

Finally, because one of the Senators who spoke wanted to know the content of that letter, it is just three paragraphs, so I can read it.

The Deputy Speaker (Sen. Kembi-Gitura): But you tabled it already!

The Senate Majority Leader (Sen. (Prof.) Kindiki): Yes, Mr. Deputy Speaker, Sir, but I still have a copy.

The Deputy Speaker (Sen. Kembi-Gitura): You do not have to read it. You tabled it; it is a document of the Senate now.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Very good. Then that settles it all.

The Deputy Speaker (Sen. Kembi-Gitura): However, if you want to read it for purposes of the HANSARD, go on and read it.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, the letter is dated Thursday 30th October 2014, which is the same day that the House required me to advise the President not to assent to the Bill. It is addressed to the President and the Commander in Chief of the Defence forces of the Republic of Kenya at State House, Nairobi, Ref: Mining Bill, National Assembly Bill No. 9 of 2014. It says:-

“I am required by the Senate to request you to consider not assenting to the Mining Bill, National Assembly Bill No.9 of 2014 passed by the National Assembly on 29th October, 2014. The Bill in question relates to the regulation of the mining industry, including benefits sharing between the National Government and local communities, pursuant to Article 69(1)(d) as read together with Article 66(2) of the Constitution. By all definition, this Bill is a Bill concerning counties and the National Assembly cannot unilaterally enact it without the input of the Senate as envisaged under Article 110(3) of the Constitution.

Thank you”

The Deputy Speaker (Sen. Kembi-Gitura): Is that it?

The Senate Majority Leader (Sen. (Prof.) Kindiki): That is it.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you very much.

Sen. G.G. Kariuki, do you have a point of order?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, the request is in the first sentence.

The Deputy Speaker (Sen. Kembi-Gitura): Order Sen. (Prof.) Kindiki! There is a point of order by Sen. G.G. Kariuki. That will be the last point of order.

Sen. G.G. Kariuki: On a point of order Mr. Deputy Speaker, Sir. Would I be in order to ask the Senate Majority Leader whether he would agree with me on or not, that they are giving the President a lot of headache? This is because the Senate Majority Leader, the Speaker of the National Assembly and the Speaker of this House are all Jubilee Members. They are elected by the majority to represent Jubilee as a party and as government and also to satisfy all the people who are involved; like the opposition. Am I

not in order to ask you whether the problem is not for you, as the Senate Majority Leader, the Leader of Majority in the “Lower House”, the Speaker of the “Lower House” and the Speaker of “upper House”? You are the headache!

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Abdirahman, do you have a point of order? I had said that Sen. G.G. Kariuki will have the last point of order because I want to bring this debate to a close.

Sen. Abdirahman: I agree with you, Mr. Deputy Speaker, Sir. I am just following in the footsteps of my senior, Sen. G.G. Kariuki, by the very honest admission that this problem is not that of only the two Speakers but quite a number of people including the Attorney-General. Like Ministries, there seems to be a structural problem, and I wonder why we have to go in circles. Is the Senate Majority Leader in order to squarely talk about the two Speakers only when in a sense this matter is a structural problem within Government? The best way to address it will be to---

Hon. Senators: Referendum!

Sen. Abdirahman: No. Not referendum.

(Laughter)

I will not say referendum. Is he in order to just take us in circles all day? We have spent half-an-hour. Writing a letter alone to the Head of State is insufficient. Can the Senate Majority Leader tell us because the House is on fire?

The Deputy Speaker (Sen. Kembi-Gitura): Senate Majority Leader, while you are at it, there was a point of order raised by Sen. G. G. Kariuki earlier which I do not think you addressed in your response because I was listening. I think it is imperative that you should address it. Sen. G.G. Kariuki had asked you to tell us –and Sen. Kajwang followed it up – whether we are within or outside the law in whatever we are saying. I think that is what was raised by Sen. G.G. Kariuki and fortified by Sen. Kajwang. I request that you be brief so that we can proceed to other business of the House.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Deputy Speaker, Sir. I refuse to accept that it is part of my job to make sure that Article 110 operates. Article 110 is not a requirement by a political party or the ruling party; it is a requirement of the Constitution and the responsibility is not on three people. It is on two people, period! So, let us get it clear because it is very easy to start to avoid the problem and start looking for people to blame. What we are doing here is that we are trying as Senators – as the Majority Leader, I am also part of this Senate – to find a solution. Remember I started by saying that I strongly believe that for the last 18 months, somebody somewhere is undermining the Constitution on such a scale that it makes the ground fertile for the removal of that person from public office. So, let us not imagine that the Majority Leader is an omnipresent person who---. I do not even care how – of course, I would care – but let us assume that Bills have sent to the President for assent illegally without some coming to the Senate for concurrence---

The Deputy Speaker (Sen. Kembi-Gitura): What is your point of order Sen. Mositet? You see, you are courting more points of order---

Sen. Mositet: On a point of order Mr. Deputy Speaker, Sir. I heard my leader say that there is somebody who is in a public office who is making what we are discussing to take our time. Will I be in order to say that this public officer needs to be exposed? Maybe that is why the opposition has been accusing the Jubilee side all the time of not being committed to devolution.

(Applause)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I have explained this matter five times now; it is the responsibility of the two Speakers of Parliament according to Article 110(3); period. Any other way of shifting blame and putting blame on the wrong people is erroneous.

However, I do not agree with my senior colleague, Sen. G.G Kariuki, when he says that some of us are the headache; in fact, we are the panadol; we are the pain killer of this grave migraine. It is not even a headache; it is a migraine. The cause or the culprits of this migraine are named in Article 110(3). I do not need to name them; they are named in the Constitution. So, I cannot be the headache. First of all, there is no headache, this is a migraine. Those who have caused it are named in the Constitution.

Finally, I want to say, on a very serious note; as the Senate Majority Leader I take it very gravely that nearly two years down the line, we are still struggling with very fundamental and basic issues about the role of this House. I want to assure Members of my total and unequivocal support. We will fight this together. The earlier we stopped putting divisions amongst ourselves, the better for all of us.

In the other agencies especially the National Assembly, I have said it again and I want to repeat it before I sit down, that not a single Member, not in the Government side or the Opposition side is supporting the Senate. So, we are on our own. The earlier we work together in unison and unity, the better for this House and posterity.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Senate Majority Leader, for that comprehensive statement. It has taken a lot of time but it was important that it takes so much time so that we can get clear on it. But I think we have all agreed, have we not? Even as you have given such a comprehensive statement, it is work in progress. You will keep updating us on that position because all of us are looking up to you to see that the right thing is done when it is supposed to be done.

That closes that chapter for now. The issue of the Mining Bill is closed, we are not going back to it.

An hon. Senator: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Is it on the issue of the Mining Bill.

An hon. Senator: On the Senate Majority Leader---

The Deputy Speaker (Sen. Kembi-Gitura): No. We have been on that for too long.

RECRUITMENT OF THE VICE CHANCELLOR OF
THE UNIVERSITY OF NAIROBI

Sen. Mositet: Mr. Deputy Speaker, Sir, at the rise of the House last week, I sought a Statement from the Chairperson of the Committee on Education concerning the interviews which were conducted by the Senate of the University of Nairobi. I have not seen him rise to give out the answer.

Sen. Karaba: Mr. Deputy Speaker, Sir, I received the request yesterday after Thursday's rise of the House. We have already communicated with the Cabinet Secretary and the relevant office. I am sure that the answer will come by the end of this week. As soon as we get it, I will be able to issue it in this House.

The Deputy Speaker (Sen. Kembi-Gitura): I thank Sen. Mositet because he sought that statement on behalf of the Senator for Murang'a County who was on the Chair at that time and who is on the Chair now. It was indicated that there was urgency as the statement shows. Which is the earliest time that, that statement can be given? You have not given a specific date. There are certain specific things sought in that statement, one of them being the fear that the appointment could be made. I am surprised that you got the request only yesterday because Sen. (Prof.) Lesan took the statement and said he was going to give it to you.

Sen. Karaba: Mr. Deputy Speaker, Sir, yesterday was a Monday.

The Deputy Speaker (Sen. Kembi-Gitura): And that was on Thursday. There was Friday.

Sen. Karaba: That is when we had to communicate with the Cabinet Secretary. The Cabinet Secretary has so far not written to us saying anything about it.

The Deputy Speaker (Sen. Kembi-Gitura): When do you hope you can realistically give an answer?

Sen. Karaba: If the answer will not be there by the end of the day, tomorrow, I will walk to his office. If he is not there, then I will report that he is not there. Otherwise we are doing everything possible to make sure that we get the answer by Thursday this week.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Karaba.

RIISING INSECURITY IN THE COUNTRY FOLLOWING
AMBUSH OF APS AT KAPEDO BY BANDITS AND
ATTACK ON NYALI ARMY BARRACKS

Sen. Ong'era: Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.45(2)(b) of the Senate Standing Orders to seek a statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding the devastating state of security in the nation. In particular, I want to refer to the two incidents that occurred over the weekend where 21 police officers were massacred and incidents that occurred in Nyali Barracks and Malindi.

In the statement, the Chairperson should:-

(1) Explain why there was no prior intelligence of an attack of the magnitude that was experienced in Kapedo. If there was, what action was taken?

(2) Explain, as enshrined in Chapter 14 of our Constitution, the state of preparedness of our security forces to deal with both internal and external threats such as terrorism, banditry, armed robbery and other criminal acts.

(3) Explain the state of preparedness of our military barracks to deal with intrusion as was witnessed in Nyali Barracks and further explain how people wielding crude weapons such as bows, arrows and machetes could invade a military barrack.

(4) State the steps that the Government is taking to stop incidents of insecurity that are being witnessed in several parts of the country, including situations where police are being massacred.

(5) State the steps that the Government has taken to professionalize the police service as per Article 244 of the Constitution.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Haji.

Sen. Haji: Mr. Deputy Speaker, Sir, I thank the gracious lady for asking for this statement. The statement is really loaded. I will ask to be given a week from today to answer all the issues that have been raised.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kajwang, is it on that point?

Sen. Kajwang: Yes.

The Deputy Speaker (Sen. Kembi-Gitura): Before you make your point, Sen. Janet Ong'era, are you satisfied with getting the response in a week?

Sen. Ong'era: Mr. Deputy Speaker, Sir, this is a very serious matter. I want to plead with my senior Senator who I have a lot of respect for, if this Statement could be issued in three days' time. Kenyans out there are crying and grieving. You saw quite a number of families that were distraught as a result of what happened.

The Deputy Speaker (Sen. Kembi-Gitura): Three days will make it Tuesday, next week. Sen. Haji, you need to try to see whether you can give the answer by Tuesday next week. Before you commit, Sen. Kajwang has a point of order.

Sen. Kajwang: Mr. Deputy Speaker, Sir, the point of order I had was to supplement what the Senator has raised on a very serious issue. When Sen. Haji is responding, he will respond to both. What has worried me more is the response to the incident. Yesterday, am not sure whether I saw this in the newspapers or in the news, I saw the Head of State when he was going to Kapedo accompanied by the head of the police but also closely by was the head of the Army. Kapedo is within Kenya and I think the culprits should be some Kenyans. I was worried why the head of the Army was present when the President is visiting the scene of this crime. But today in the papers, I saw that the Army is rolling in. That shocked me; that the Army can roll in to deal with a civilian issue however grave it may be. The people whom---

The Deputy Speaker (Sen. Kembi-Gitura): So, Sen. Kajwang, you want to ride on Sen. Janet Ong'era's statement? What do you want Sen. Haji to do?

Sen. Kajwang: As Sen. Haji responds, he should respond to the issue of why it is necessary to unleash the Army on the population of Kapedo or Turkana in general, on an issue like this one.

The Deputy Speaker (Sen. Kembi-Gitura): Fortunately Sen. Haji is right in the House. Senator, you have already said you will give the Statement on Tuesday. Do you want to add something?

Sen. Haji: No, Mr. Deputy Speaker Sir. I asked for a week but you ruled that I should give it on Tuesday. We will do everything possible to give it on Tuesday but I would like to answer my colleague, Sen. Kajwang, he has been with me in the national security meetings. The reason why the Chief of General Staff accompanied the President was that if anything would have happened to the President, and he was sitting here at his office, that would have been a very disastrous thing. From common sense it, was quite in order for him to go and assure us that he was by the side of the President in case of any eventuality.

The Deputy Speaker (Sen. Kembi-Gitura): Give it on Tuesday. There are three points of order here. Yes, Sen. Mositet?

Sen. Mositet: Thank you Mr. Deputy Speaker Sir. I want to ride on what Sen. Ong'era has requested. Unless the genesis of the problem is really looked into, acting out of emotions will not solve the problem. This is because from the time that we read that, at least, three policemen were killed by the people there, thereafter there was destruction which went on after some police officers were sent there. There is also the issue of the Army coming in. The real issue to be looked into is; what caused all these problems?" What caused the problem such that people were angered to the extent of using guns to kill four policemen? What happened such that the police or the security officers decided to send a contingent of GSU which went on burning schools and beating up people? After that, the people revenged by killing 21 innocent police officers. We now have almost a whole barrack there. We need to know the genesis of all these problems.

Sen. Kagwe: Thank you, Mr. Deputy Speaker, Sir. Mine is on the same issue and to ask a simple question. Who is going to take responsibility for this tragedy? This is because in civilized nations, when something like this happens, somebody takes responsibility. The question is; who will take responsibility? Could the Chairman seek from those responsible the answer as to who was responsible for the shortfall in security apparatus and who is going to take responsibility?

(Applause)

Sen. Ndiema: Thank you, Mr. Deputy Speaker, Sir. I want to add that on the same statement, he should state whether our police service is prepared and has been assisted to deal with incidences of this nature.

Sen. Mutula Kilonzo Jnr.: Thank you Mr. Deputy Speaker Sir. There is a very fundamental question that was raised in the print and electronic media which I think should be answered by this Committee. There were reasons given that, in fact, the persons who shot at these policemen intended to shoot at other people. The reason given was that the shooting of 21 policemen in Kapedo was a case of mistaken identity. This presents a serious issue. Who did they intend to kill? What excuse is there to kill other people? Who is this they pretend that they were going to kill? And is that a reason? What action should be taken? I saw people pleading for mercy when they have committed

murder. The Committee in answering the question and in furtherance to what the Senator for Nyeri has said; the responsibility taken is murder. There was murder of 21 people wearing coat of arms and that should be taken seriously.

Sen. Sang: Mr. Deputy Speaker Sir, the Chairman, in responding to that request for statement, I seek that he also give an indication on whether the attacks were politically motivated or not. If yes who are the political leaders involved?

Sen. Hassan: Mr. Deputy Speaker Sir, I also have a similar request to make. Since Sen. Ong'era's Statement was well captured, I request for a Statement of state of security in the nation. Therefore, I will open up the issue of Lamu to the nation so that we deal with it. I would like to ask why there is selective application on the policy of security with respect to certain areas. Why is there no curfew as yet in some of these affected areas and yet there is a persistent curfew in Lamu? What are the reasons for the continued curfew in Lamu?

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senator. The question asked by Sen. Ong'era is clear, specific and to the point. If you notice, I have allowed many Senators to ride on it but they have ridden specifically on the issue of Kapedo, Nyali and insecurity generally. If you wish to raise any other specific issues, I propose that you seek a statement on it. If the Committee wants to consolidate the two for the purposes of Senate, they will do that but I will not allow you to bring a completely new and fresh issue on what is already very specific.

Sen. Hassan: I will do the same.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Haji, obviously, you need the HANSARD. You need to be supplied with the copy of the HANSARD so that you deal with all those several issues because they are quite many. You need to give one comprehensive answer. Give us an answer on Tuesday. If it is not quite comprehensive you can always seek an extension thereafter.

(Sen. Haji stood at his place)

Proceed, Sen. Haji.

(Sen. Haji spoke off record)

The Deputy Speaker (Sen. Kembi-Gitura): Could the Clerks-at-the-Table facilitate the use of the microphone?

Sen. Haji: Thank you, Mr. Deputy Speaker, Sir. I request the Clerk's Office to make available the HANSARD to the Cabinet Secretary for Interior and Coordination of National Government. I will also have my copy. You should emphasis how urgent and important it is.

The Deputy Speaker (Sen. Kembi-Gitura): That is satisfactory now. That brings us to the end of statements. The statements session has taken a very long time indeed. So I think we should now move to the next order.

COMMITTEE OF THE WHOLE

*(Order for Committee read)**[The Deputy Speaker (Sen. Kembi-Gitura) left the Chair]*

IN THE COMMITTEE

*[The Temporary Chairperson (Sen. Murkomen) took the Chair]*THE PUBLIC FINANCE MANAGEMENT (AMENDMENT)
BILL (SENATE BILL NO. 10 OF 2014)

Sen. Kajwang: On a point of order, Mr. Temporary Chairman, Sir. I noticed that on the Order Paper, the Chairperson was also one of the sponsors of this Bill. Is it in order that you should be chairing the Committee of the Whole, which is dealing with a Bill that was sponsored by yourself?

The Temporary Chairperson (Sen. Murkomen): Order, Sen. Kajwang! Under what Standing Order did you raise your Point of Order?

(Laughter)

Sen. Kajwang: Mr. Temporary Chairman, Sir, I thought---

(Sen. Kajwang spoke off record)

You cannot be a goalkeeper and the referee at the same time.

(Laughter)

The Temporary Chairperson (Sen. Murkomen): There is no problem. On this one, you do not have to worry because we have three other sponsors.

Let us proceed.

Hon. Senators, we are now in the Committee of the Whole. We have two Bills to deal with. We will start with the Public Finance Management (Amendment) Bill, Senate Bill No.10 of 2014.

Senators, just as a reminder, you know that we need the numbers to pass the necessary amendments. So, I am putting the two Whips on notice. They must ensure that everybody is in the House now so that we can transact the business that is before us.

Sen. Sang, Sen. (Prof.) Kindiki and Sen. Elachi, I hope that you are alive to that requirement.

(Sen. G.G. Kariuki consulted loudly)

Order, Sen. G.G. Kariuki! You know how to conduct yourself when we are in session.

Sen. G.G. Kariuki and other Senators who were not attentive when I was talking, I said that we are now in the Committee of the Whole. However, we need the numbers to proceed. So, Sen. Elachi, Sen. (Prof.) Kindiki and Sen. Sang plus the Whips, you know what to do to ensure that, the Bill progresses. A division of both the two Bills will be done at once at the end.

The Temporary Chairperson (Sen. Murkomen): Title?

(The Temporary Chairperson consulted the Clerk-at-the-Table)

Hon. Senators, before we move on to title, there is an amendment to Clause 3. Therefore, I call upon the Chairperson of the Committee to move the amendment.

Clause 3

Sen. Mositet: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 3 of the Bill be amended by deleting the words “sixty per cent” appearing immediately after the words “therefor the words” and substituting therefor the words “forty per cent”.

Mr. Temporary Chairman, Sir, initially, the proposers of the Bill had said 60 per cent should be committed to development expenditure. However, after the Committee sat down and deliberated a lot on this Bill and after getting the public opinion, we came up with an amendment that the 40 per cent is much more workable than the 60 per cent. This is considering that the counties are also taking a lot of money which is used in the recurrent expenditure. That is how the Committee arrived at the 40 per cent. We found it wise to amend the 60 per cent and replace it with 40 per cent.

Thank you, Mr. Temporary Chairman, Sir.

Sen. Kajwang: Mr. Temporary Chairman, Sir, I have listened to the Chairperson of the Committee on Finance, Commerce and Budget speaking about the reasons for the amendment. However, I am not satisfied that the figure of 40 per cent is suitable---

(Sen. Kajwang spoke off record)

The Temporary Chairperson (Sen. Murkomen): Order, Sen. Kajwang! Your microphone is off.

Sen. Kajwang: I am sorry, Mr. Temporary Chairman, Sir. Why am I not satisfied? I thought that the Chairperson or the Committee’s position is fortified by some research---

The Temporary Chairperson (Sen. Murkomen): Order! I am sorry, Sen. Kajwang. I thought you were raising a point of order. First of all, I need to propose the question before I give you the Floor.

Sen. Kajwang: I am sorry, Mr. Temporary Chairman, Sir.

(Question proposed)

The Chairperson (Sen. Murkomen): Proceed, Sen. Kajwang.

Sen. Kajwang: Thank you, Mr. Temporary Chairman, Sir. I am a bit uncomfortable with the amendment because it is not based on a foundation that we can touch and feel. I know for a fact that only recently, I was talking to the Governor of Mombasa. He told me that he actually uses all the money given to him paying salaries, a little bit on allowances and collection of garbage. In his view, he is actually getting very little.

When we say 40 per cent, I wish we were supporting it with some statistics and data. For example, we could say if this is what they really pay as salaries and allowances, both for the executive and the assembly, then 40 per cent is a suitable figure. However, I only heard of public participation and they concluded 40 per cent is suitable. How did they arrive at this figure? I am not satisfied that the foundation has been properly laid for the 40 per cent proposal.

Sen. Kagwe: Mr. Temporary Chairman, Sir, I also support what Sen. Kajwang has just said because we are aware within the Committee on Finance, Commerce and Budget, that most of the counties are currently using about 19 per cent on development expenditure. This is because they are unable to meet the huge gap. I, therefore, propose that this clause cannot stand as it is. However, if we move a further amendment to Clause 3 by inserting the words “after covering operational expenses,” after the word “40 per cent,” then we would be making sense. If we do not do that, then we are just making law for the purposes of making law.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, the reports that we have received as the Committee on Finance, Commerce and Budget from the Controller of Budget suggest that the 60 per cent that had been proposed earlier would be exorbitant. It would cripple the counties because of their increasing wage bill. However, they have also suggested that if there is going to be any change as proposed here to 40 per cent; it ought to be gradual and there are reasons for that. The reason is that the Senate has passed the Public Finance Management Amendment to cap on recurrent expenses both at county level and county assembly. Therefore, it is my view, although Sen. Kagwe has mentioned the county that is having problems with its budget, which is Nyeri County, we must confess that it does not apply to every other county.

The only way we are going to speak with one voice so that the bulk of the funds that we, as a Senate, are working so hard for, goes to development is to increase this budget. This is because even the amendment suggests that at least 40 per cent. This is not the maximum, but it is the desirable figure. This is in line with what the Controller of Budget and Commission of Revenue Allocation (CRA) stated; that once there is rationalization of the wage bill which is an ongoing process, it would be prudent that we increase the development expenditure to 40 per cent.

Mr. Temporary Chairman, Sir, we have evidence here that governors in counties are wasting funds doing things that they should not do. Therefore, we should not give an excuse on their behalf as to why we should not increase the development budget.

Mr. Temporary Chairman, Sir, we, the Members of the Committee on Finance, Commerce and Budget, are aware that in the next financial year, the counties that have problems with wage budgets would be cushioned by the formula proposed by CRA. So, it is not an excuse to use wages, like in the counties that Sen. Kagwe has suggested, as an excuse not to increase the figure. The CRA has proposed a cushioning that would allow counties like Mombasa County and others that are having problems with their wage bill, up to the point where they have rationalized their wage bill, to be cushioned. For purposes of ensuring that we have prudence, so that then we reduce the work of Sen. (Dr.) Khalwale's Committee, being busy looking for why money has been wasted, I suggest that we, as a Senate, strongly move this development expense to 40 per cent because we have intrinsic and scientific information from the people responsible.

Constitutional office holders like the Controller of Budget have advised that we can increase this gradually so that we can reach the target that we want to do. In my view, 40 per cent is not increasing it unreasonably because it says "at least." It means that we can get to 40 per cent. Currently, out of the 30 per cent that is there, we have records at the Committee on Finance, Commerce and Budget showing that several counties have attained that objective. Therefore, out of the principle of majority, the report we have is that over 80 per cent of counties have done over 20 per cent of development expense as proposed in the current legislation.

Mr. Temporary Chairman, Sir, I support the amendment as it is so that then we can put these counties working and reduce the waste because we, as a Senate, have put mechanisms by amending the law to ensure that there is available resource for this amendment.

Thank you, Mr. Temporary Chairman, Sir.

Sen. Ndiema: Thank you, Mr. Temporary Chairman, Sir. I stand to support this amendment because the 60 per cent that was initially there was, in my view, over-ambitious. It would create a situation where we do projects like building of hospitals and roads, but we would fail to maintain or run them. Therefore, services would not be there. We would build dispensaries, but we would not be able to man them or to provide the drugs.

Mr. Temporary Chairman, Sir, it is also important that at this early stage we set some ceilings.

This is because allowing counties to use their discretion and spend would create a temptation where, perhaps, they would over-recruit and spend more money on recurrent expenditure. Later on, we shall not manage because it would not be easy to lay off people.

Mr. Temporary Chairman, Sir, perhaps, the problem will be this year and next year. However, as we go along and get the current audited accounts, the counties will get more money. The 60 per cent which will remain will be enough to meet all the recurrent expenditure. I think the 40 per cent is a good beginning. Maybe, in the next two or three years, we can be in a position to amend and increase the amount.

Therefore, I support the amendment.

Sen. Sang: Mr. Temporary Chairman, Sir, I support the amendment by the Committee on Finance, Commerce and Budget. Being one of the sponsors of this Bill, I

appreciate the fact that 60 per cent towards development was an ambition. However, you will realize that if you look at Section 107 (2) (b) which we are now amending, you get a clearer picture. It reads:-

“In managing the county government’s public finances, the County Treasury shall enforce the following fiscal responsibility principles-

(b) over the medium term a minimum of 30 per cent of the county government’s budget shall be allocated to the development expenditure;”

Mr. Temporary Chairman, Sir, that means that the 30 per cent we are talking about is in the medium term. Over the years and progressively, we hope that we can achieve 60 per cent. Therefore, as one of the sponsors of the Bill, I accept the recommendation of the Committee to amend and reduce that from 60 per cent to 40 per cent. However, the amendment being proposed by the Sen. Kagwe would actually defeat the entire purpose of the Bill. It would defeat the purpose because even if you look at the wordings of the Bill as it is right now, Section 107(2)(b) talks of, the medium term and a minimum of 30 per cent of the of the county government’s budget which shall be allocated to the development expenditure.

Mr. Temporary Chairman, Sir, the amendment that Sen. Kagwe wants to bring, therefore, is not even an amendment to this amendment itself. Entirely, this is a new amendment that defeats, not only the amendment that is before us, but also the concept of allocating 30 per cent.

The Temporary Chairperson (Sen. Murkomen): Order, Sen. Sang! Sen. Kagwe gave his intention to bring an amendment. We have not reached there yet.

Sen. Kagwe: Mr. Temporary Chairman, Sir, I concur with Sen. Sang in what he has explained to me. The operative term here is; “medium term.” In other words, provided those words are there, then my amendment will not be necessary.

The Temporary Chairperson (Sen. Murkomen): Sen. Kagwe, you have to approach the Chair in the usual manner.

Sen. Sang: Mr. Temporary Chairman, Sir, just to finalise, as captured, the spirit is to push our counties to start from the right footing. We know that currently the national Government is struggling with a lot of recurrent expenditure.

We need to help our counties to start on the right footing, manage their recurrent expenditure and to allocate more resources to development. The objective of devolution is development at the grassroots level. If increasingly our counties will continue to have more resources being voted to recurrent expenditure, then the fruits of devolution will never be realised.

We also need to appreciate that progressively, every year, through the Division of Revenue Bill and County Allocation Revenue Bill, we, as a Senate, need to continuously increase resources to counties. This means that the level of increased resources going to the counties may not be of the same magnitude that as the recurrent expenditure in the counties.

I beg to support the amendment by the Committee.

Sen. (Dr.) Zani: Thank you, Mr. Temporary Chairman, Sir. I also stand to support the amendment. I will start by talking about the realities of what happens in counties. Right from the beginning, the expectations of devolution were that the real

socio-economic development would take place. That would be in the development budget. However, I think the recurrent budget is also real. People work in counties and have different expectations. People have different provisions that they must meet. Therefore, if you cut down too much on the recurrent budget, you will get to a point where county governments will not survive all together.

Having said that; moving forward, counties need to find ways of making money and methodologies to cut down on their recurrent budgets. At the end of the day, devolution must be felt. I support the slight increment, so that the balance can remain at 40 per cent for development and 60 per cent for recurrent. I also agree that progressive increments should be done over time. It is important to emphasise that the 40 per cent should be accounted for and to go specifically into the development agenda that can be shared. Counties should know exactly what has happened with the money that has been allocated.

I beg support.

The Temporary Chairperson (Sen. Murkomen): Sen. Kajwang, had you spoken?

Sen. Kajwang: Mr. Temporary Chairman, Sir, I had raised some kind of point of order earlier, but I now want to debate on this issue. I have been talking to hon. Sang who has been advising me that this Bill is progressive although the word “progressive” does not appear here. However, he has shown me the principle law that we are trying to amend says at 107(b);

“over the medium term, a minimum of thirty per cent of the county government’s budget shall be allocated to development expenditure.”

Mr. Temporary Chairman, Sir, as I had said earlier, immediately we raise this to 40 per cent any county assembly that will not allocate a minimum of 40 per cent to development will have gone against the law. That is what we are saying. Some city counties are in serious problem. I do not know how we will cushion them so that this law does not penalize them for paying salaries. Their own salaries alone take almost the entire budget that they have. We did not see these salaries when we were coming up with the original law.

This original law was made when we were thinking that members of the Public Service would be paid by the national Government. We did not know that out the 15 per cent, that is what we would use to pay doctors, nurses, fund the Early Childhood Development Education (ECDE) and pay all other workers in the city like the Members of County Assemblies (MCAs), among others. This is becoming very tricky. We may design the law to read 40 per cent, but at the same time, penalise county governments for spending less than what they are supposed to spend on development when they do not even have it. That is my fear.

(Question, that Clause 3 be amended proposed)

The Temporary Chairperson (Sen. Murkomen): As I had informed you, we will go into voting at the end.

Title

Sen. Mositet: Mr. Temporary Chairman, Sir, I beg to move that the title be the title of the Bill:-

(Question, that the title be part of the Bill proposed)

Clause 1

Sen. Mositet: Mr. Temporary Chairman, Sir, I beg to move that Clause 1, be part of the Bill:-

(Question, that Clause 1 be part of the Bill proposed)

The Temporary Chairperson (Sen. Murkomen): We will now move on to Division. The Division Bell should be rung.

(The Division Bell was rung)

The Temporary Chairperson (Sen. Murkomen): Order, hon. Senators! Do we have the numbers? Senate Majority Whip do we have the threshold? What about the Senate Minority Whip?

Sen. Ong'era: Mr. Temporary Chairman, Sir, looking at the numbers in the House, we do not have the quorum.

An hon. Senator: We do!

The Temporary Chairperson (Sen. Murkomen): Sen. Haji?

(Loud consultations)

The Temporary Chairperson (Sen. Murkomen): Order, Members. Let us hear Sen. Haji.

Sen. Haji: I know Senator---

(A Senator said something off the record)

Sen. Haji: *Wewe ngoja; ala!* I am on the Floor.

(Laughter)

The Temporary Chairperson (Sen. Murkomen): Order, Sen. Elachi! I will get back to you.

Proceed, Sen. Haji.

Sen. Haji: Mr. Temporary Chairman, Sir, the Majority Whip has really tried. Since yesterday she has been sending us messages. We have been complaining in this

House that Bills are being passed in the National Assembly and we are being ignored yet we cannot pass our own Bills. Is that proper? The Senate has to pull up its socks!

The Temporary Chairperson (Sen. Murkomen): We have not reached the stage of whether we will pass or not, Sen. Haji. I am waiting for a progress report. However, you have a point. If we ultimately say there is no quorum, then you have a very valid point. I am still waiting for the Majority Whip to give us directions.

Senate Majority Whip, do we have the threshold? We can do a physical headcount.

Sen. Elachi: Mr. Temporary Chairman, Sir, we need one more Senator.

(The Temporary Chairperson (Sen. Murkomen) consulted the Clerks-at-the-Table)

The Temporary Chairperson (Sen. Murkomen): Sen. Elachi, I have been properly advised by the Clerks that we do not have the requisite numbers. That being the case, the point by Sen. Haji is valid.

I can see Sen. Sang on the Floor. What do you want to say?

Sen. Sang: Mr. Temporary Chairman, Sir, pursuant to Standing Order No.139, I beg to move that the Committee of the Whole on the Public Finance Management (Amendment) Bill, Senate Bill No.10 of 2014 reports progress and seeks leave to sit again tomorrow.

(Question proposed)

Sen. Hassan: Mr. Temporary Chairman, Sir, valid as my elder's point is - Sen. Haji - in terms of the fact that we have not met the threshold, but we have to realise that the threshold for voting here constitutes 50 per cent plus one of the Senate whereas on the other side there are no such thresholds that are set.

Therefore, it is important for us to support the Whips because Sen. Ong'era and Sen. Elachi can send messages to us, which they did, but they cannot pull us into this place. They cannot compel us. What beats me most is the leadership particularly. I want to commend those who are here. But in terms of public policy message even for this Senate, whenever there is a vote, we want to see those chairs that are traditionally sat on by leaders. That is the incentive for others to be here.

When others are within the precincts of the Senate and I want to part with that point, then you willfully walk away and delegate to your nominated Senator, there are certain times when you need to sit here put. When you are in the chambers, it is a different business all together. I seek to cautiously present the point by Sen. Haji.

The Temporary Chairperson (Sen. Murkomen): Hon. Senators, before I put the question, I want to commend Sen. Haji and Sen. Hassan Omar Hassan. Considering the question that I will put forward, we have to take this exercise seriously when tomorrow comes. We can discuss the rest of the issues in our usual manner in the Senate forum that we usually have.

We do not erroneously say that there was no quorum, there is quorum. Under the law, there is quorum. We have a right to vote, but there is an agreement we had which is for the well good of the Senate that before we start voting it is good if we exceed half of the Senate, but it does not mean that legally or constitutionally, we could not have voted. We could have done so under the Constitution. We have enough Senators to vote. But we know the consequences of voting when we do not have more than half of the Senators here present. So, it is just for our good that, that decision was made and for progress in terms of serious decisions to be made by the House.

I will, therefore, proceed to put the question as follows:-

THAT, pursuant to Standing Order No.139 the Committee of the Whole on the Public Finance Management (Amendment) Bill, Senate Bill No.10 of 2014 reports progress and seeks leave to sit again tomorrow.

(Question put and agreed to)

[The House resumed]

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

REPORT

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL (SENATE BILL NO. 10 OF 2014)

The Deputy Speaker (Sen. Kembi-Gitura): Order! Order!
Proceed, Sen. Murkomen.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I beg to report that a Committee of the Whole is considering The Public Finance Management (Amendment) Bill, Senate Bill No.10 of 2014 and has instructed me to report progress and seek leave to sit again tomorrow.

Sen. Sang: Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said report and request Sen. (Prof.) Kindiki to second.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to second.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I now wish to propose the question, which is that the House do agree with the Committee in the said report.

(Question proposed)

Who is holding temporary card No.3, because somebody was seeking the Floor?

Hon. Senators, seeing that nobody is interested in debating the proposal. I now wish to put the Question.

(Question put and agreed to)

(Applause)

Order, Senators! We have finished with Order No.8. We have adjourned debate, like it has been done.

Again, Order No.9 is Division. Of course, we do not have the threshold. We could go to division, but like Sen. Murkomen has so correctly said when he was chairing the Committee of the Whole, even if we go to Committee of the Whole, it will be futile because then the vote will be lost. So, I am ordering that Order No.9 is stayed to a future date to be agreed by the Rules and Business Committee (RBC).

BILLS

Second Reading

THE GOVERNMENT PROCEEDINGS (AMENDMENT) BILL
(SENATE BILL NO. 10 OF 2014)

(Bill deferred)

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, we are now going to move to Order No.10 on the Order Paper.

Second Reading

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL
(SENATE BILL NO. 24 OF 2014)

(Sen. Njoroge on 30.10.2014)

(Resumption of Debate interrupted on 30.11.2014)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators! Sen. Hassan, you had two minutes left to debate.

Sen. Hassan: Mr. Deputy Speaker, Sir, by the time the debate was adjourned on that particular day, I had literally exhausted the areas of intervention that I wanted to make. I was simply seconding the Motion by Sen. Njoroge to ensure that we can provide the kind of facilities and opportunities that the Constitution envisages so that persons living with disabilities in this country can realize their full potential.

I commended Sen. Njoroge for having brought this very timely Motion. I further indicated that it will be important that we, as Senators here, particularly the House of the Senate moves progressively within Government institutions to ensure that we accord persons living with disabilities the rights envisaged in the Constitution.

Mr. Deputy Speaker, Sir, I also stated that disability rights are not matters of discretion. They are no longer matters that are simply an expression of sympathy or pragmatism on the part of any leadership. It is a question of rights. Over the years, I think the disability constituency has been located this discourse about disability within the realm of the Constitution. It is, therefore, incumbent upon us now to actualize the Constitution both in letter and spirit. This Senate has the various sectors and interests represented. Therefore, it would be important for it to assert itself to ensure that we strengthen every sector and every special interest, so that this Constitution can be realized. Persons who live with disabilities should not be condemned by virtue of the disability, but they should be given the opportunity to realize their full potential.

Mr. Deputy Speaker, Sir, in the realm of employment, it would be important to ensure that persons who live with disabilities are accorded the necessary employment opportunities, so that they realize their full potential to enable them to support their families and undertake transactions in life that many of us who enjoy in life. This will, therefore, enable them to live fully and deal with the stereotypes; stereotypes that we direct to certain persons who are disadvantaged within the realm of the law.

Mr. Deputy Speaker, Sir, I want to commend Sen. Njoroge because since he came into this Senate, he has been true to the constituency he represents; that is, the constituency of the persons living with disabilities.

In that spirit, I beg to support this Motion on account of the enormous work that the human rights sector has put in to ensure that we realize the full potential and embody the regime of rights that this Constitution provides.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Deputy Speaker, Sir. I noticed that Sen. G.G. Kariuki has been on his feet throughout as the Senator for Mombasa was addressing the House. Is he in order?

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Mutula Kilonzo Jnr.! Sen. G.G. Kariuki was walking to his seat as far as I am concerned. Therefore, you are out of order.

(Sen. Mutula Kilonzo Jnr. spoke off record)

Was he?

Sen. Mutula Kilonzo Jnr.: Yes.

The Deputy Speaker (Sen. Kembi-Gitura): I got the impression that he was walking back to his seat.

Sen. Mutula Kilonzo Jnr.: No, he was not.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. G.G. Kariuki, were you on your feet throughout?

Sen. G.G. Kariuki: No, I was not.

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

Proceed, Sen. Hassan.

Sen. Hassan: Mr. Deputy Speaker, Sir, I think the point of order by Sen. Mutula Kilonzo Jnr. has actually settled the Senate now. This is because, at that point when I was

speaking, people were moving up and down, in and out. It was an extremely disruptive process.

But, Mr. Deputy Speaker, Sir, as I said earlier, I support Sen. Njoroge's amendment to ensure that we insert a clause that guarantees persons living with disabilities opportunities within counties.

It is also incumbent upon the 47 county governors to ensure that we enforce the policy and legislative frameworks. Even if these policies and legislative frameworks might be in the process of being developed, nothing impedes any governor or the President from ensuring that they effect, enact or put into place the kind of policies that will ensure that persons who live with disabilities are accorded the right to work and to enjoy the benefits. Therefore, this amendment will guarantee that we can take care of the persons living with disabilities from the point of education to the point of employment.

Mr. Deputy Speaker, Sir, I beg to support.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Senators. Since there are no further requests, I call upon the Mover to reply now. I see that the Mover is not here to reply.

(Sen. Elachi stood up in her place)

Sen. Elachi, do you have a point of order?

Sen. Elachi: Mr. Deputy Speaker, Sir, I stand to request that we defer this stage under Standing Order No.54(3).

The Deputy Speaker (Sen. Kembi-Gitura): Shall we deal with the issue of reply and the fact that there is nobody to reply?

Sen. Elachi: Mr. Deputy Speaker, Sir, I believe, based on your guidance, that it is not really a must to reply.

The Deputy Speaker (Sen. Kembi-Gitura): No, it is not. So, we would have to---

Sen. Elachi: Mr. Deputy Speaker, Sir, we should defer putting the Question.

The Deputy Speaker (Sen. Kembi-Gitura): Are you making an application under Standing Order No.54?

Sen. Elachi: Yes, I am, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, that is the end of the debate on this issue.

(Loud consultations)

Order, Senators!

We will defer the putting of the Question to a date to be set by RBC because the Business for the whole week is already finalized. So, we shall defer it, to a date to be set by the RBC under our own Standing Order No.54.

(Putting of the Question on the Bill deferred)

Next Order.

Second Reading

THE STATUTES LAW MISCELLANEOUS (AMENDMENT)
BILL, BILL NO.2 OF 2013 NATIONAL ASSEMBLY
BILL NO.33 OF 2013

The Deputy Speaker (Sen. Kembi-Gitura): Is it coming for the very first time for its second reading?

Sen. Elachi: Yes.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I will order that we alter the Order Paper so that we do not deal with Order No.11, but move to Order No.12; the National Youth Service Amendment Bill, (Senate Bill No.26 of 2014).

(Bill deferred)

Sen. Elachi: Mr. Deputy Speaker, Sir, I would like to thank this Senate for the process it has undertaken since last year. We started with a Motion and through that Motion we have transformed the National Youth Service (NYS). This amendment Bill, therefore, comes to strengthen what has been happening.

When you look at the Memorandum of Objects and Reasons for the Amendment, you will see that the Bill seeks to amend Section 13 of the Act to provide for the establishment of branches within the counties. I know that we already have branches in some counties. The most important thing is to ensure that we have equity in all counties and at the national Government. We should see every county benefiting.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Elachi, you need to move the Bill first so that it is read a Second Time.

THE NATIONAL YOUTH SERVICE (AMENDMENT) BILL,
(SENATE BILL NO.26 OF 2014)

Sen. Elachi: Mr. Deputy Speaker, Sir, I beg to move that The National Youth Service Amendment Bill be read a Second Time.

This is an Act of Parliament which was, indeed, established way back in September, 1964 as an Act under Chapter 208 of Laws of Kenya. It was charged with the function of training of youth citizens to serve the nation and the employment of its members in tasks of national importance and in the service of the nation. When you look at the Act as it were, you will see that the key agenda was to ensure that young people can join and move on to join universities. If you remember, many people who sat the “A Levels” benefited at that time. However, today, we are talking about the 21st Century. We want to ensure, now that we have county governments, every county benefits from this institution. The institution is broad and has branches all over the country. It can take care of every county even without it being established in every county, but by ensuring that those who are recruited come from every county.

The amendment of Section 13 comes in to ensure equity and to guide the institution. Therefore, we will be inserting the following new section immediately after sub section 1; “the service shall have a branch in each county.”

It will be important for us to number the existing sub section 1 as sub section 1(a).

It is also important to note that I will bring in a new amendment that will ensure that the young people who join the NYS are also given a chance to join the disciplined forces. The reason for this is that when you look at our situation in terms of cohesion and the challenges we are facing, you will see that since 2005, we have had divisions in the way we view ourselves. We have polarized this country. However, we believe that the young people do not think about their ethnicity. This is a new group that can bring about cohesion in our country. We should ensure that if, indeed, I come from Western and I am given an opportunity to go and live in central province with my brothers, so that I learn and understand their culture. This will also give an opportunity to others to move to Nyanza and, therefore, to bring the cohesion that we have been crying about.

Today, we face a dilemma in the recruitment of the police. If we can amend and bring in the new clause, the first priority would be the young people who have completed their studies at the NYS and who are willing to be engaged in the disciplined forces. The discipline forces should use the NYS as a basis for recruitment as they look for others. This should not limit those who are genuine. It is important to know that while we do all this, we should have a crop that is joining the disciplined forces that can appreciate patriotism.

Secondly, we have those who are committed and willing to serve their country regardless of the challenges they are facing. That does not mean that those who have joined do not feel the same. They do. In that training, they will become better and stronger. They will also go through challenges that will sharpen them. This Bill brings in the background information of the NYS that was established in September, 1964. This was done through an Act of Parliament and falls in our laws, Chapter 208, of the Laws of Kenya. This was charged as a function of training young citizens.

The institution has also achieved a lot in developing skills, manpower, creating self sustaining independent youth and creating an informed society. When you look at those who went through the NYS in those early days, you will see a big difference in them. They went through challenges that they appreciate. This was something that parents did not like. They felt that their children were being taken to suffer. However, to date, I believe that wherever the parents are, they would wish that all children go through the same.

There are many case studies of this. Israel has the same institutions that it uses to take young people to volunteer to serve as they wait to join the defence forces or to join the universities. The Israel equivalent of the NYS takes youth who are between the ages of 18 to 22. So far, they train 7,000 volunteers a year. When you look at the patriotism of Israelis, you will see that, indeed, they believe in their country.

Today, we face many challenges. As we say that we are opening these institutions, we are looking at a time bomb of young people and wondering how we can create jobs for them. In this Bill, we are looking beyond those jobs. We want to create a society that believes in human values which are our national values. These national

values should be respected and owned by the same human beings. We get saddened by the way our institutions are moving on. We get saddened by the way the universities are and we, as a country, are thinking how we can come back together to ensure that we build one united Kenya. I believe that by the time we have those institutions which have started recruitment - I hope that they will do the best recruitment so that other disciplined forces can also borrow from them – that it will be on merit. Even as we ensure that the policies are there, we should ensure that the framework of doing things is also there. That is why these two amendments are very critical in opening up the framework of the NYS.

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

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

Mr. Temporary Speaker, Sir, today, the NYS has got the best equipment for any infrastructure development that we would want. If we are able to open up the institutions, these are the same young people who will help the county governments develop their infrastructure. I hope the senior management team at the NYS will ensure that they start bidding for Government tenders. We might find that they are cheaper for the counties. This will also curb the issue of cartels because we shall be creating jobs for our youth and ensure that as they train and work within the NYS, they are able to build an infrastructure that will appreciate for a long time.

When you look at the United States of America (USA), which is a good model that we are borrowing from, their NYS is a job creation programme for the youth. The USA Government has ensured that it facilitates that institution so that the young people are able to work within that programme. In the end, they work towards the betterment of their country. While we fight ethnicity, these young people will help to remind us that Kenya is one, this is our country and we should appreciate it. Today when you look at the cattle rustling regions, you will find out that in Baringo, Pokot, Turkana, Samburu and many other regions, the young people are wondering how to assist their communities.

Mr. Temporary Speaker, Sir, if we have young people joining the NYS from those areas, these are the same young people who will inspire those who still believe that they have to engage in cattle rustling in order for their families to survive. They will bring in a positive way of thinking. This changes their lifestyles. When a young person is engaged in a positive manner, it changes his or her attitude. When I look at the Bill, it concerns counties, but at the same time, this Senate must ensure that this institution that will be formed remains under the national Government for financial support.

When we voted for the Motion last year, 38 counties supported it. We are hoping that as we do the amendment, we will have the whole Senate supporting them so that when we send it to the National Assembly. Hon. Members there will agree that we are, indeed, doing something noble by moving the young people – as we promised when we were doing the campaigns - to a better environment where we can create for them employment and ensure that they feel proud of their country.

Mr. Temporary Speaker, Sir, I would like to remind the Senate of the former President Moi's time. You remember every one would want to employ any young person

who had come from the NYS. They were the best mechanics that we had. I remember they were the ones who used to drive the Kenya Bus Service vehicles.

I remember in the 1980s, the Dutch Government gave donations to the institution because they realized that it is an institution which believed in discipline. To date, we have even lost respect for our security officers. That is why we can kill our policemen because we have lost our values. This Senate should get more worried when such events occur.

I was keen on the way the US citizens were voting. I could see the critical issues that they are raising for the Senate. When I look at our Senate, I see people who have toiled for this country. I do not think any of them is about to put this country into trouble. I know their joy would be to see this country move to greater heights.

The courses that are being taken at the NYS include plumbing, mechanical engineering, agro-business, construction, plant mechanics, hospitality, fashion, dress making, enterprise and technology. These are serious courses which call for us to embrace the institution and even enroll our children there. We used to get the VIP drivers, personal assistants and security guards from the NYS. Now that we have few police officers, we could hire some of these youth. We can only appreciate this country if we have peace and stability. Young men and women should volunteer to protect their country.

Mr. Temporary Speaker, Sir, the Constitution defines youth as all individuals in the Republic who have attained 18 years, but have not attained 35 years. It is estimated that the youth form 70 per cent of our population. Even in 2015, the youth will still be many. In the 1980s, there was one challenge we faced. While the population was increasing, we did not look at the mechanisms to ensure that we are able to take care of them as they move to the next level. That is why today we are facing a lot of challenges from the youth. I hope that we are building an institution that will thrive, not just within the Jubilee Government, but beyond the Jubilee Government. That is his wish as the President, that whatever he is doing today will move beyond to 2050.

Mr. Temporary Speaker, Sir, the Government is also bringing in the free secondary education. This is a very noble idea. However, this will result in a high number of young people leaving primary schools to join secondary schools. Therefore, we must start preparing this institution to take that responsibility long before we start having challenges of what to do with the young people who have finished Form Four.

Mr. Temporary Speaker, Sir, the issue of insecurity is one of the biggest challenges that we have. I appreciate that it is not just a challenge of the Jubilee Government, but one that the country is currently facing. Security issues are not about policing. This is a sensitive matter because we must deal with every sector to ensure security issues are well taken care of. If it is within the health sector, for example, when we hear the word Ebola, we should know this is a security threat. When you get to the education sector, when we have strikes, this is also a security threat. If we have an institution that can bring in people and train them to have discipline as they move to the sectors they want to be in, we will have a better way of dealing with the same threats in future because people will always be alert to understand: "I was at this point and, indeed, this is happening to my country. I need to stand in and protect the country."

We have counties that have resources. We know that the young people have not been engaged. I believe that the NYS should offer training for young people to understand the different natural resources that we have. We must offer them courses that will help them to manage those resources, so that the future generation can benefit from the same resources.

Mr. Temporary Speaker, Sir, the most important thing for our country is peace and cohesion. We can do all these things, but if there is no peace, we will not achieve much. This Bill proposes that we should be able to have cross border and cross county movement; young people moving from one county to the other. The Senate would wish to see young people, not just being in an institution, but doing some noble work. For example, the youth in Kibera who are engaged in cleaning up the area; they may be asking themselves: How did we end up having Kibera? Why are our people living like this? This may be a health and environmental challenge. However, to them, it is also an opportunity to learn that if you do not take care of your own space, where you live, you will find yourself in the same pathetic situation. To me, it is a learning process for our young people.

I wish the NYS was an institution where both the rich and the poor can live together. That child from a poor background will understand that there is need to get educated. A child from an advantaged background will understand that, indeed, in my country, I need to work hard to remove some of my fellow young people from poverty. From the very beginning, that has always been the intention of education. It is meant to bring us together regardless of whether we sleep on a mattress or not. When we are in class, we are the same. The NYS should provide such a forum.

Mr. Temporary Speaker, Sir, it should be the mandate of the Government to ensure that both the rich and the poor appreciate each other. They must begin to understand that Kibera is not just there for the poor, that it is a place where we need to learn a lot of lessons from; not just lessons of tourism of poverty, but beyond that. It gives us an opportunity to start understanding our country. This is the same way that if, for example, I live in an area where people practice agriculture, I should visit Pokot to learn and understand how pastoralists live and what they go through. When I go back home, when I hear somebody talking about that community, I will tell them it is not their wish that this or that happens. We need to have alternatives.

I want to thank the Cabinet Secretary for Devolution and Planning, Ann Waiguru, for doing her best. I also want to thank those who are under the team of Mr. Githinji. We are hearing of the NYS all over, they are doing something. It is not like the old days when we could not understand whether the institution was still there. We want to see the critical equipment that they have. They have the best equipment that everyone needs for water drilling and so on. The equipment is now being used, it is not just kept somewhere in a warehouse.

Mr. Temporary Speaker, Sir, as I conclude, I want to thank the legal advisors and the Committee on Labour and Social Welfare because they went through the Bill, ensured there was public participation. They have incorporated every word that came from the public. I know there are different challenges, but as we amend the Bill, we must ensure we also look at it in a way that can help. This is just the beginning. If there are other

amendments, they may be brought at the National Assembly. We will see if they are good amendments so that we can incorporate them.

I know the NYS has sent out letters to orphans, the disabled and our brothers and sisters and the albinos for them to apply to be included in the recruitment. That is one thing that I hope that other institutions should borrow. Someone may be disabled, but he or she can still do something. Let us not just look for those who are on the wheel chairs and then dismiss them. We are saying there are different deformities that different people have. I really want to thank Ann Waiguru and Mr. Githinji for thinking that way; that they sat down and said: “For the sake of ensuring that we have everybody and we are the Ministry that deals with different target groups, we will ensure that everyone is appreciated.” They fill in the form, put in their picture and ensure that every county has at least two people who represent the disabled or the albinos. I feel that we need to ensure that everyone is included.

Our Constitution always reminds us of inclusiveness. To me, going forward, I wish that we, as Kenyans, should ensure that there is inclusivity. The balanced recruitment in the counties should factor in the different dynamics, including gender and the marginalized. Let us not have a community wondering why they have been left out. Let them not wonder: Is it because we are from the minority? Let us ensure that if it is the Kuria’s and they are competing in Migori, they are included. That way, we will ensure that across the board, even the Njemps in Baringo, who are one of the smallest minorities, are also included.

I hope that even for us, who are in the Committee on National Cohesion and Equal Opportunities can follow up and bring out a good report. The same goes for the police recruitment; now that the police recruitment has been returned to the drawing board. I know it will be very expensive for them. Let these disciplined forces - as much as they have their ego and way of doing things, when it comes to recruitment, they should sit down together and borrow from each other’s experience to ensure that, indeed, they are doing what is right for Kenyans.

We should not be going to the courts every time to ask for reprieve or to ask for justice. We, as legislators, can also ensure that these things work. It depends on what type of policy, especially in our recruitment, we bring out. Maybe we need to look at it and the lawyers can help us here when we look at the recruitment clauses; they can tell us “maybe these are the challenges and that is why they are faulted;” or “they are just used to manipulating the process”. Even the leaders within those institutions themselves should just read the Constitution, which is very clear.

Mr. Temporary Speaker, Sir, the other challenge we face in our country is drug abuse. I know you are one of those who brought a Bill to say that drug abuse is a disaster to our country. We are saying that if the President can keep his promise that come 2015, we can have 40,000 to 60,000 young people going through the NYS. Let us not only concentrate on that, but concentrate also on rehabilitating them from drug and alcohol abuse. Alcohol is not only abused by young people; it is a challenge to many of us in this country starting from the youth to the aged. The productive population is this young group; if we can help them to come out of this problem, it will really assist this country.

Mr. Temporary Speaker, Sir, this is a beginning for the Senate. If we can take care of our young people and if we can have them trained, they can even come to this Parliament to take care of some of the things. We can then release our bodyguards to go and do other better things. When you look at Parliament as an institution in Kenya and you are talking about small arms, you get very scared. Just the other day in Canada, you saw what happened; it is something we need to be thinking about very critically. We have too many police officers here. Some of them can be released to go and do other things and we remain with only a few. But we should release these other ones to go and take care of the security of other Kenyans because I know they need them also.

We should bring some of our young NYS-trained youth here the way students of Starehe Boys Centre used to go even to hospitals to assist. Today, if you take the NYS students and say “today we want to transform Kenyatta National Hospital (KNH); I think they will do a very fantastic job that we will always remember. This is because they are young people. They are willing and they feel that they want to do something useful for our country. It is only that we have not given them that opportunity, yet we are crying, saying: “these hospitals are filthy; dirty and so on.” These youth will help to clear these issues. So, let us not just use them in our hospitals, let us use them across the board. Let them understand every sector. I know they are the best in agriculture and you can even see it within their lands in Tala and wherever they are in Matuu and Naivasha. If you look at the NYS land, they have done a fantastic job. Why can we not use them to even go to these schools where we are saying that we have challenges of food security and yet we are not even starting that training within the school so that young people can get engaged in agriculture?

They can go once in a while go to a school, start a pilot project for them and show them that this is how we do things. This will really help. For us in this Senate from the word go, we felt that this is an institution that can work for the young people. It can engage young people, it can remove them from being used by us, politicians, and paying them some small money to do dirty jobs. They can now do better so that when you see him or her, you feel proud that this is a young person who is also willing to assist you.

Mr. Temporary Speaker, Sir, the other challenge we face today in our country is that whenever anyone does anything for you, the next thing is that they will look at you to give a token. Nobody is willing to do anything just from their heart, especially when they see *mheshimiwa*. It is a sad state. For us who are new in the game, we feel a bit sad. I look at our youth and I get the feeling that there is a symptom of dependence. How do I ensure that I give him or her something to move on without depending on me? So, for the last 10 years, the culture that our leaders cultivated in our people has really chained them. It is for us, again, to transform that in a better way. If you engage every young person, I do not think they will even need to know exactly what are you doing. They will do it with a clean heart and they will move on.

It is not just us, as leaders; the civil society also played a very critical role in transforming this culture. They make sure that whenever you come for any meeting, even if it is information that is going to assist a community, they have to give tokens for bus fare and food, thinking it was good, but it has changed our country. This is something we have to work hard to change. I am just hoping that as these young people are trained, they

will transform this country. I hope that in 10 years' time, when we look back, we will see a society that is transformed.

Changing a culture cannot just happen in one day. We know it will be a process of changing what people are used to do. It is just the same way we cry about corruption. Indeed, it has been engraved in us all over. It does not matter whether it is corruption of money. It does not matter whether it is corruption of manipulation using our own tongues, as the Bible says. But more importantly, we must cry for our country. The Senate must cry for this country. This is because all the Senators I see in this House were part and parcel of building this country in the last 50 years. So, let us not again be the Senate that young people will blame by telling us "you are the ones who God gave the privilege and the positions, but look at where you took our country. Now, it is for us to transform the country."

Mr. Temporary Speaker, Sir, as I conclude, I hope and believe that we shall debate the Bill, pass the amendments and the President will assent to it.

Mr. Temporary Speaker, Sir, I beg to move and I call upon Sen. Mutula Kilonzo Jnr. to second.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Temporary Speaker, Sir. I rise to second the amendments to the National Youth Service (Amendment) Bill, 2014. I want to thank Sen. Elachi for contemplating this amendment for various reasons which I want to highlight.

Just by looking at the NYS Act closely, you will notice that there are functions that are stated under Section 16, I will read it for purposes of the HANSARD. It says:-

"The functions of the service shall be the training of young citizens to serve the nation and employment of its members in tasks of national importance and otherwise in the service of the nation."

Section 16 lays this amendment squarely on matters involving counties. Why is this? This is because there is nothing more pronounced than the statement that these young citizens are in employment for purposes of the nation on matters of national importance.

I want to say, quite sadly, now that Sen. Elachi has spoken about the Jubilee Government that they should change the culture of using the NYS when there are Presidential functions, when they are guarding traffic or stopping people from getting into the road because we have emergencies in counties.

Sen. Elachi, Section 13 of the amendment proposes that there should be a branch in each county. I second that because for the longest time possible, all Governments have misused these young men and women for purposes of doing donkey work and not for what I call matters of national importance.

The drafters of our Constitution, in Article 189 contemplated relationships between two Governments. Therefore, the notion that there exist two separate Governments, both at the national and county level should be removed; first of all, by using the amendments as proposed by Sen. Elachi.

Article 189(2) of the Constitution says:-

“Government at each level, and different governments at the county level, shall co-operate in the performance of functions and exercise of powers and, for that purpose, may set up joint committees and joint authorities.”

We want to see the NYS building bridges, giving out food, helping hospitals, clearing roads where there are roadblocks and removing any impediments you see at counties. We have been seeing them at Presidential functions or passing out parades where they carry very good looking spades. However, those spades should be put to work at counties. Therefore, in amending Section 13, Sen. Elachi is proposing that the word “branches” be amended to read “counties.”

I propose that in the subsidiary legislation where the units and sub units are contained, we should not just have units in Nairobi, Mombasa, Gilgil, Yatta and sub units in Tumaini Water Falls Harambee Yatta, Ol Donyo Sabuk, Yatta; Shimba Hills, Tsavo; North Kinangop, Karura; Gatundu and in Yala, because that does not represent this country.

In amending Section 13, I propose that we delete the section and say there should be units set up by the national Government at every county level. This Senate has already passed legislation as to which towns county governments should be sitting. Therefore, the seven units where we are training people in this country is one of those amendments that we should go for so that we have clear policies to show that the NYS is for this nation.

We have contemplated in the Constitution that the national Government and county governments shall co-operate for purposes of matters of national importance. There cannot be anything of more national importance than matters of security, health, helping the communities and helping in very mundane things.

After reading the NYS Act, under the regulations, there are no other persons or other disciplined forces better trained than these people. Our predecessors at the universities were all trained under the NYS. That has not continued and you can see the result of not having our university students at the NYS. This discipline, going into our youth, is one of those things that we should enforce in order to create what I call discipline in the manner proposed in this Bill and in this Act which has been in existence for some time now.

In the amendment to Section 16, although I support the fact that these people be integrated into security organs, I will be proposing some amendment. It is easy to say that these people will be trained. But once they are trained, they will be poached into security organs. This is discriminatory. This means that the people who qualify and who can enter directly into security organs for employment will be denied a chance because under the NYS, people will have been trained and will, obviously, will have better precedence as far as qualifications are concerned.

In addition, it is my view that we should not limit this to security organs. It is common knowledge and a matter of common notoriety that the NYS recruits are trained in all fields. In fact, in order to put this Bill squarely in matters county, we should insist that some of our citizens, trained under Section 16 of the principal Act be absorbed into counties. This will reduce the money that counties are spending in training people. This will also reduce the amount of work that counties are expending in looking for people who are trained in the fields that they have been trained. Why do I say so? The NYS

recruits have been trained using taxes. There is no reason counties should duplicate this. My proposal would be that once these people are trained in the manner they are trained, they should be given priorities in the fields they have been trained out there in the counties. I say so because in the functions that we have set under the Constitution, we have given the role of youth polytechnics to counties. When these graduates march out with the nice looking spades at the passing out parade with the President, they come out with much more training; more than we have contemplated under Schedule Four.

I will propose that Sen. Elachi or somebody else proposes an amendment to Section 16 further to state that the persons trained under the NYS other than having them situated at counties for purposes of national functions, should also be absorbed in the functions of counties, so that we spread our wings to counties and increase the capacity at the county level. There is nothing that would be better than the national Government using the taxes that we are all paying to assist counties by ensuring that people who are trained at that level can be seconded or taken back to counties. Just the same way we have the police and army recruitments done at the county level, these people do not go back to counties. They are trained, recruited and run as if life depends on it. Afterwards, there is not benefit that the counties get other than depletion of young capable people, strong as they are to be recruited at the NYS.

Mr. Speaker, Sir, I rise to second the amendments to the extent that we will also amend or delete the units so that we can then be in conformity with the word “branches” to “counties”. We can then compel, in a nice way, the national Government to set up these units everywhere in the country. We can ensure that these young men and women are properly trained, disciplined and in the manner suggested, proposed, stated in the NYS regulations. This is the way to go in terms of discipline in counties. These are the people we should be placing to man our towns.

I want to tell Sen. Elachi, because I have heard her praise the Cabinet Secretary in charge Planning and Devolution that let us have our young people not manning traffic in Nairobi or waiting out there to manage crowds, but let us see pictures of them building bridges, helping old women cross roads, helping the disabled persons cross the roads or go to places where they cannot access. That way, the NYS would be truly a national youth service and would not be what it is now; a national Government service.

Thank you, Mr. Speaker, Sir.

(Question proposed)

Sen. Omondi: Thank you, Mr. Speaker, Sir, for allowing me to contribute to this Bill as amended. First, I want to thank---

The Temporary Speaker (Sen. (Dr.) Machage): Order! The Bill is not yet amended. She has actually moved a Bill to amend. So, let us understand the language of Senate. It is not yet amended, but we are discussing the amendments.

Proceed, Senator.

Sen. Omondi: Thank you, Mr. Speaker, Sir. I want to contribute to the amendment. First, I want to thank Sen. Elachi and Madam Ann Waiguru, for having the passion, especially for people with disabilities. I remember that when she was launching

this programme, I raised the issues and she promised to act. Indeed she has kept the promise because persons living with disabilities are featuring somewhere and I appreciate that.

The amendment will allow us, as Kenyans, to engage our youth positively by having them occupied, reducing idleness and also bringing on board the issue of cohesion and coexistence amongst them. The issue of insecurity that we are experiencing - if I am not wrong - we can guess that it is because of a lot of idleness amongst young Kenyans. The Bible says: "An idle mind is the devil's workshop." This can lead to a lot of insecurity in this country.

Mr. Temporary Speaker, Sir, I would like to say that for us to remain relevant as Kenyans, we need to implement the campaign agenda which was to offer jobs. If we decentralized the NYS to have branches and units all over the country, it will give the young Kenyans something tangible. They will have hope that, indeed, there is a bright future for them.

Mr. Temporary Speaker Sir, this amendment will help the youths with disabilities to also benefit from devolution. If I use an example of the youth polytechnics, we have been lobbying to have programmes or trainings that are disability-friendly, but we have failed. Indeed, it shows that the youth with disabilities are not beneficiaries of the youth polytechnics because there are no programmes, trainings and trainers who understand different types of disabilities.

With the NYS being decentralized, it will allow all youths whether disabled or not, whether from poor families or from rich families to have an equal opportunity and to be engaged on an equal basis. This will allow young Kenyans to have a bridge of crossing from the young mind to adult mind. For example, after our youth complete the Kenya Certificate of Secondary Education (KCSE), they remain idle waiting for the release of the examination.

It has become a routine where parents who think positively about their young ones take them for courses in computer packages in preparation for them to join either university or pursue any other course. Any time the results are released, these young ones will be able to use computer applications because they took courses in Information Communication Technology (ICT). Engaging the youths in NYS is like a bridge to cross for young Kenyans as they wait to be engaged fully in the development of the country. They will be able to think positively and behave like mature Kenyans and not like young Kenyans who have lost hope in their own country. These young Kenyans will think positively and engage in activities that will influence them positively. Indeed, they will be seeing themselves as having roles to play in the development of this country.

Mr. Temporary Speaker, Sir, it is a pity that after most youths have completed their secondary education, it is only a few who join universities. The large number is left out without proper consideration of where to be absorbed. This causes a lot of problems in the country. For example, the poverty levels and insecurity go high. This becomes a threat even to the parents. That is why most of the times you find that parents have been killed by their own children simply because there are little resources. These young ones have lost hope in life. They do not even think of waking up at one time and holding on to something that will change their lives. So, because of that pressure-----

ADJOURNMENT

The Temporary Speaker (Sen. (Dr) Machage): Order! Senator, you still have some seven minutes for tomorrow.

It is now 6.30 p.m. and that marks the end of today's business. Therefore, the House stands adjourned until tomorrow, Wednesday 5th November, 2014 at 2.30 p.m.

The Senate rose at 6.30 p.m.