

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 7th June, 2016

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

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

PRAYERS

PETITIONS

CORRUPTION AND BREACH OF PFM LAWS IN THE COUNTY GOVERNMENT OF BUNGOMA

The Speaker (Hon. Ethuro): Order, hon. Senators. Two petitions are listed but in the interest of time, I will just read one. The other one will be deferred to tomorrow.

ESTABLISHMENT OF JOINT PARLIAMENTARY SELECT COMMITTEE TO INQUIRY INTO AND INVESTIGATE RISING OCCURRENCES OF POLICE BRUTALITY AND MOB VIOLENCE

The Speaker (Hon. Ethuro): This is a Petition to the Senate by Mr. David O. Gesicho for the establishment of a Joint Parliamentary Select Committee to inquire into and investigate the rising occurrences of police brutality and mob violence in Kenya.

Hon. Senators, pursuant to Standing Order No.220 (1)(a) and 225(2)(b), I hereby report to the Senate that the Petition has been submitted through the Clerk by Mr. David O. Gesicho, a resident of Kakamega County proposing the establishment of a Joint Parliamentary Select Committee to inquire into and investigate the rising occurrences of police brutality and mob violence in Kenya.

In summary the Petitioner states as follows:-

(a) That, incidences of mob justice in Kenya have been rising at an alarming rate with few or no reports of apprehension and trial of the perpetrators of the so called mob justice.

(b) That, equally incidences of police brutality and extrajudicial killings have been frequently reported yet no action seems to have been taken to bring to account the officers involved. The petitioner therefore, prays that Parliament establishes a Joint

Parliamentary Select Committee to investigate the matter and make appropriate recommendations thereon to address the same.

Hon. Senators, before I allow comments on the Petition, it is noted that the Petitioner's prayer in this case is for the establishment of a Joint Parliamentary Select Committee to inquire into the subject matter of the Petition; that is the rising occurrences of police brutality and mob violence in Kenya. It is also noted that the Petition has been addressed to both the Senate and the National Assembly.

The Petition to Parliament Procedure Act, No.22 of 2012 as well as the Standing Orders of both the Senate and the National Assembly do not seem to contemplate a scenario where a Petition is considered by a Joint Committee comprising Members from both the Senate and the National Assembly. Rather, the law provides for each House to consider Petitions presented before it, and where a petition is addressed to a House that has no authority to deal with the matter, for the petition to be referred to the other House for consideration.

While the provisions of the respective Standing Orders for the Senate and the National Assembly provide for the establishment of Joint Committees by way of a resolution in each House, the procedures for setting up, running and making decisions in such a Joint Committee render it unsuitable for consideration of a Petition such as the one before us today. This is also noting that the timelines within which that process must be concluded and put on the Table before this House.

Accordingly, pursuant to Standing Order No. 227(1), the Petition shall be committed to the relevant Standing Committee, in this case, the Standing Committee on National Security and Foreign Relations.

Hon. Senators, pursuant to Standing Order No.226, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

What is it, Sen. Murkomen?

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. Considering the urgency of the voting business on the Anti-Doping (Amendment) Bill (National Assembly Bill No.17 of 2016), with your permission, we can vote on it then we can go back to commenting on that. I have confirmed that we have the numbers.

The Speaker (Hon. Ethuro): Order, hon. Senators. This Petition is very simple. Just give the indication that you do not wish to comment on it and we proceed.

Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I share your concerns about the Joint Committee of the two Houses. I do not know whether it would have been tidier for you at the onset to advise the Petitioner so that we can then channel it after he has decided which House he wants to refer it to.

That notwithstanding, I encourage that you do everything possible to make sure that this Petition is heard, reason being that the issue of extra-judicial killings and brutality by the police is a real nightmare in this country.

Mr. Speaker, Sir, Mr. Gesicho comes from Kakamega and he is making these applications just a few weeks after the brutal killing of businessman Jacob Juma by the police. It is important that this matter be dealt with. In fact, there are many people who

think that we should set up a parliamentary committee to probe the assassination of Jacob Juma.

Secondly, I had an opportunity just a few days ago to experience the brutality of the police while participating in a peaceful demonstration of which the police in Kakamega had been notified. Instead they came, brutally and violently assaulted me, arrested me and arraigned me in court after 5.00 p.m. They then charged me under Section 83 of the Penal Code that provides that, if convicted, I would be jailed for life. What is critical is that this particular---

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

Sen. (Dr.) Khalwale: Relax, what is burning you?

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. I did not mean to interrupt my colleague. I thought he was responding to my earlier request for you to rule that we vote before we proceed.

(Loud Consultations)

The Speaker (Hon. Ethuro): Order Senators. Do not make any noise whatsoever and neither should Senators on either side assume the role of the Speaker. This is because the point of order is addressed to the Speaker and nobody else. We have business which is critical. We will allow Sen. (Dr.) Khalwale to finish and then we will come back to this particular Petition. We will later deal with the Bills for voting because we have the numbers. You may proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Most obliged, Mr. Speaker, Sir. The irony of it is that I had been charged under this Section which was used for the first time and the last time in 1952 against the Mau Mau.

(Laughter)

Indeed, I am not Mau Mau and the police ought to know this. I would wish to take solace from the fact that people like President Kenyatta who faced the same fate like me, ended up ruling this republic.

However, I do not want to rule this country through that path. I want to rule it through the Constitution of Kenya. This matter is very serious to the extent that only yesterday, Mr. David Asali, from Bushiangala in Ikolomani, a boy that I educated at Bushiangala Technical Training Institute, was brutally hit in Kisumu yesterday by the police while going about his business just because he was saying that the Independent Electoral and Boundaries Commission (IEBC) must go.

Why are the police killing Kenyans just because they want to protect an incompetent IEBC, which is made up of people like Issack Hassan; a thief, who has been confirmed because his contemporaries with whom they shared money in the United Kingdom (UK) are actually in jail? Why would a government protect those kinds of people? Has Kenya ceased being part of the community---

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

Sen. Haji: On a point of order, Mr. Speaker, Sir. Is it fair for Sen. (Dr.) Khalwale to call Issack Hassan a thief when he cannot substantiate or prove it? He knows that this person is not in the House to defend himself. Is it fair? He should withdraw.

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

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. The little I know about the Chairman of IEBC as my colleague in the profession is that, he is a very committed Muslim, very faithful and very hardworking. In the absence of evidence of what they are trying to link him to, is it in order for any Member of this House, considering the status of this House and the age of the hon. Member, to try to link someone who cannot defend himself to things that have not happened or is it because this man comes from a minority community and may not have his tribe behind him, thus it is easy to make him a target of political attack?

The Speaker (Hon. Ethuro): Order, Sen. Murkomen. A point of order is to determine what is out of order and not to make submissions. Sen. Muthama, what is your point of order?

Sen. Muthama: On a point of order, Mr. Speaker, Sir. It is funny to see Sen. Murkomen denying what is so obvious.

The Speaker (Hon. Ethuro): Order, Sen. Muthama. What is your point of order?

Sen. Muthama: Mr. Speaker, Sir, is he in order to deny what is really obvious? The information came all the way from the UK stating that Isaack Hassan is involved in the highest degree of corruption and he is defending him. Is he in order?

The Speaker (Hon. Ethuro): Order Members. I will have the last person to talk and that is Sen. Leshore.

Sen. Leshore: On a point of order, Mr. Speaker, Sir. Is it in order for these CORD Members to malign Issack Hassan who was nominated by them in the last Parliament? We know him as a very clean person who cannot be intimidated because he comes from a small tribe.

The Speaker (Hon. Ethuro): Order Members. I am not allowing more points of order because if there is anything to be said it must have been said. The only issue now on the Floor is what Sen. Haji raised, challenging Sen. (Dr.) Khalwale to substantiate.

Sen. (Dr.) Khalwale: Thank you Mr. Speaker, Sir. Indeed, it is my pleasure to be given this humble opportunity to substantiate. The distinguished Senator from Garissa knows very well that none other than the Ethics and Anti Corruption Commission (EACC) ---

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

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. I am sorry to interject at this moment. Is it in order for the distinguished Senator for Samburu to make unhelpful tribal utterances by shouting at Sen. Sijeny that *Wajaluo ndio walikula*. Why would we want to bring tribe on the Floor of this House? A person who transgresses the law does it as an individual and there is nobody who breaks the law on behalf of a community or because he is a member of any community. Is he in order to bring that kind of language to the Floor of the House? He directed it at Sen. Sijeny. She heard it and those around her including me heard it.

The Speaker (Hon. Ethuro): Order Members. That is a very serious allegation. Did you say so, Sen. Leshore?

Sen. Leshore: Mr. Speaker, Sir, I want to challenge my friend here. He should stop showing us that hatred in his face. We used to be in KANU together and he is now demonstrating against Kenyans. He will have to answer one day.

The Speaker (Hon. Ethuro): Order Senators. Order Sen. Leshore. This is not a laughing matter Sen. Leshore. I challenge---

(Sen. Elachi consulted loudly)

The Speaker (Hon. Ethuro): Order, Sen. Elachi. By all stature of imagination, you are nowhere near acquiring the name Sen. Leshore.

Sen. Leshore, Sen. Wetangula stated that you said some words. I challenged you whether you said those words or not.

Sen. Leshore: Mr. Speaker, Sir, I seek your guidance; there is no Member here who is a Luo. All these people here are Senators.

The Speaker (Hon. Ethuro): Order, Senator. This has nothing to do with which side you are in.

Sen. Leshore: Mr. Speaker, Sir, if I have aggrieved the precious lady, I will say sorry but not to those thieves who you are trying to protect.

The Speaker (Hon. Ethuro): Order Sen. Leshore. Sen. Leshore, this is a straight forward matter. If you said those words, withdraw and apologise. Do not make it worse. The argument is about who called the other a thief.

Sen. Leshore: Mr. Speaker, Sir, I apologise to the gracious lady.

The Speaker (Hon. Ethuro): Order Senators. Sen. Leshore, you do not select what goes on record and what does not. Your apology must be on record in its entirety.

Sen. Leshore: Mr. Speaker, Sir, what shall I say again? I said that I apologise to the gracious lady. Sen. Wetangula said I directed those harsh words to her, so on my own behalf, I apologise to the House and withdraw.

The Speaker (Hon. Ethuro): Order Members. Let us stop there and move to the vote.

(Loud Consultations)

The Speaker (Hon. Ethuro): Order. We are going to proceed on this matter after the voting.

(Sen. Hassan stood his feet)

Order Sen. Hassan. Nobody has asked you to rise. It helps when you run a bit late not to tell everybody you have come late by your conduct.

Let us go to Orders Nos. 10, 11 and 12. Members just look at your Order Paper. We are only voting and not contributing to the Bills. I think it is better to dispose them off. We will ring the Bell once and then we take the three votes.

Hon. Senators, because of restructuring the Order Paper, I will allow the Chairperson to the Committee on Finance, Commerce and Budget to table some Papers.

PAPER LAID

REPORT ON THE COUNTY ALLOCATION OF REVENUE BILL, 2016

Sen. Billow: Mr. Speaker, Sir, I beg to lay the following Paper on the Floor of the House:-

The Report of the Standing Committee on Finance, Commerce and Budget on the consideration of the County Allocation of Revenue Bill, 2016 on the County government budget ceilings on recurrent expenditure for the new structures for financial year 2016/2017.

(Sen. Billow laid the document on the Table)

BILLS

Second Readings

THE ANTI-DOPING (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 17 OF 2016)

(Sen. (Prof.) Kindiki on 31.5.2016)

(Resumption of Debate interrupted on 31.5.2016)

The Speaker (Hon. Ethuro): Order, Members. We will ring the Division Bell for thirty seconds.

(The Division Bell was rung)

The Speaker (Hon. Ethuro): Order, Members. We should now commence the voting. I now wish to put the question.
You may now vote.

DIVISION

ELECTRONIC VOTING

*(Question, that the Anti-Doping (Amendment) Bill
(National Assembly Bill No.17 of 2016) be read a Second Time,
put and the Senate proceeded to vote by County Delegations)*

AYES: Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Cheruiyot, Kericho County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mohamud, Wajir County; Sen. Moi, Baringo County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Sang, Nandi County; and, Sen. Wetangula, Bungoma County.

NOES: Nil

The Speaker (Hon. Ethuro): Hon. Senators, the results of the Division are as follows:-

AYES: 30

NOES: 0

ABSTENTIONS: 0

(Question carried by 30 votes to nil)

(The Bill was read a Second Time and committed to a Committee of the Whole today by leave of the House)

Second Reading

THE FOREST CONSERVATION AND MANAGEMENT BILL
(NATIONAL ASSEMBLY BILL NO.49 OF 2015)

(Sen. (Prof.) Kindiki on 31.5.2016)

(Resumption of Debate interrupted on 31.5.2016)

DIVISION

ELECTRONIC VOTING

(Question, that the Forest Conservation and Management Bill (National Assembly Bill No.49 of 2015) be read a Second Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Cheruiyot, Kericho County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Karaba, Kirinyaga County; Sen. Kembu-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mohamud, Wajir County; Sen. Moi, Baringo County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Sang, Nandi County; and, Sen. Wetangula, Bungoma County.

NOES: Sen. Ndiema, Trans Nzoia County.

The Speaker (Hon. Ethuro): Hon. Senators, the results of the Division are as follows:-

AYES: 29

NOES: 1

ABSTENTIONS: 0

(Question carried by 29 votes to 1)

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

Second Reading

THE PROTECTION OF TRADITIONAL KNOWLEDGE AND CULTURAL
EXPRESSIONS BILL (NATIONAL ASSEMBLY BILL NO.48 OF 2015)

(Sen. (Prof.) Kindiki on 2.6.2016)

(Resumption of Debate interrupted on 2.6.2016)

DIVISION

ELECTRONIC VOTING

*(Question, that the Protection of Traditional Knowledge and Cultural
Expressions Bill (National Assembly Bill No.48 of 2015)
be read a Second Time, put and the Senate
proceeded to vote by County Delegations)*

AYES: Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Cheruiyot, Kericho County;

Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Karaba, Kirinyaga County; Sen. Kembu-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mohamud, Wajir County; Sen. Moi, Baringo County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Sang, Nandi County; and, Sen. Wetangula, Bungoma County.

NOES: Nil

The Speaker (Hon. Ethuro): Hon. Senators, the results of the Division are as follows:-

AYES: 30

NOES: 0

ABSTENTIONS: 0

(Question carried by 30 votes to nil)

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

The Speaker (Hon. Ethuro): Order, Members! Before we go to the Committee and complete the good job that we have started, I want to encourage every Member to remain in the Chamber, at least, to dispose of the Anti-Doping (Amendment) Bill.

Before we do so, let me introduce the visitors that we have in the Speaker's Gallery.

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION OF STAFF FROM THE PARLIAMENT OF UGANDA

Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting staff from the Parliament of Uganda. I request each member of staff to stand, when called out, so that they may be acknowledged in the usual Senate tradition.

They are:-

Ms. Irene W. Timugiibwa;

Ms. Grace Rushota; and,

Ms. Margaret Kimono.

On behalf of the Senate and my own behalf, I welcome them to the Senate. I wish them a fruitful stay at the Senate.

I thank you.

(Applause)

VISITING DELEGATION FROM THE SMITH
COLLEGE, MASSACHUSETTS, USA

Hon. Senators, I am pleased to also acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting teachers and students from the Smith College, Massachusetts, USA. I request each student and teacher to stand, when called out, so that we may acknowledge them in the usual Senate tradition.

They are:-

Sarah Muhoya	-	Leader of delegation;
Prof. Lucy Mule	-	Lecturer;
Prof. Katwiwa Mule	-	Lecturer;
Kandice Jones;		
Kinyaa Luka;		
Kathryn Maurer;		
April Monelal;		
Joanna Okondo;		
Sara Ramasastry;		
Nichole Rondon;		
Laura Sheedy;		
Anita Too;		
Isabelle Fitzpatrick;		
Lisa Guido; and		
Meseret Haile.		

On behalf of the Senate and my own behalf, I welcome them to the Senate. I wish them a fruitful stay in the Senate.

I thank you.

(Applause)

Next Order!

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE ANTI-DOPING (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.17 OF 2016)

The Temporary Chairperson (Sen. Machage): Order, Senators. We are now in the Committee of the Whole to consider the Anti-Doping (Amendment) Bill (National Assembly Bill No.17 of 2016).

Clauses 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14

*(Question, that clauses 3, 4, 5, 6, 7, 8, 9, 10, 11,
12, 13 and 14 be part of the Bill proposed)*

The Temporary Chairperson (Sen. (Dr.) Machage): Division will be at the end.

The Title, Clause 2 and Clause 1

*(Question, that the Title, Clause 2 and
Clause 1 be part of the Bill, proposed)*

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Division will be at the end.

Members, I will put the two questions at the same time and then we will vote. Could the Division Bell be rung for two seconds?

(The Division Bell was rung)

Let us have the Bars drawn and the Door closed.

(The Bars were drawn and the Door closed)

The Whips, do we have the numbers?

You have 30 seconds to log in. Do not vote. Log in so that we get the numbers.

DIVISION

ELECTRONIC VOTING

*(Question, that Clauses 3, 4, 5, 6, 7, 8, 9, 10, 11,
12, 13, 14, the Title, Clause 2 and Clause 1 be part of the Bill,
put and the Senate proceeded to vote by County Delegations)*

The Temporary Chairperson (Sen. (Dr.) Machage): You can now start voting.

AYES: Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Cheruiyot, Kericho County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mohamud, Wajir County; Sen. Moi, Baringo County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; and, Sen. Wetangula, Bungoma County.

NOES: Nil.

The Temporary Chairperson (Sen. (Dr.) Machage): Order Members. The results of the Division are as follows:-

AYES: 31

NOES: 0

ABSTENTIONS: 0

The "Ayes" have it.

(Question carried by 31 votes to 0)

(Clauses 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 agreed to)

(Title, Clause 2 and Clause 1 agreed to)

The Temporary Chairperson (Sen. (Dr.) Machage): Mover!

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Chairman, Sir, I beg to move that the Committee do report to the Senate its consideration of The Anti-Doping (Amendment) Bill (National Assembly Bill No.17 of 2016) and its approval thereof, without amendments.

(Question put and agreed to)

(The House resumed)

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

The Deputy Speaker (Sen. Kembi-Gitura): Hon.senators, this is going to be very short. I, therefore, request you to stay in, so that we can vote and finish this Bill once and for all. Open the bars and the door.

Proceed, Chairperson.

REPORT AND THIRD READING

THE ANTI-DOPING (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.17 OF 2016)

Sen. (Dr.) Machage: Mr. Speaker, Sir, I beg to report that a Committee of the Whole has considered the Anti-Doping (Amendment) Bill (National Assembly Bill No.17 of 2016) and its approval thereof without amendments.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Kindiki, kindly proceed.

Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to move that the House do agree with the Committee in the said report. I request the Senate Leader of Minority to second.

The Senate Minority Leader (Sen. Wetangula) seconded.

(Question proposed)

(Question put and agreed to)

The Deputy Speaker (Sen. Kembi-Gitura): Senate Majority Leader. Sen.(Prof.) Sen. (Prof.) Kindiki, proceed.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to move that the Anti-Doping (Amendment) Bill (National Assembly Bill No. 17 of 2016) be now read a Third Time. I request the Senate Minority Leader to second.

The Senate Minority Leader (Sen. Wetangula) seconded.

(Question proposed)

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, seeing that no Senator is interested in debating the issue, I will now put the question which is that the Anti-Doping (Amendment) Bill, The National Assembly Bill No.17 of 2016 be now read a third time.

Let the Division Bell be rung for 30 seconds.

(The Division Bell was rung)

Hon. Senators, are you ready to vote?

DIVISION

ELECTRONIC VOTING

(Question, that the Anti-Doping (Amendment) Bill (National Assembly Bill No.17 of 2016) be read a Third Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Cheruiyot, Kericho County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mohamud, Wajir County; Sen. Moi, Baringo County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Sang, Nandi County; and, Sen. Wetangula, Bungoma County.

NOES: Nil

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, the results of the Division are as follows:-

AYES: 32

NOES: Nil

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 32 votes to 0)

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

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, as you are aware, we had reorganized the Order Paper so that we could deal with the urgent issues. I am proposing that we now reorganize it once more so that we go back to Order No.4. There are still Petitions, notices of Motions to be given and Statements to be issued. We have finished the most important issue which was Division. We have finished with the Anti-Doping Bill. I thank you for a well done job.

Next Order!

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

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

Sen. Haji: Mr. Deputy Speaker, Sir, before we went to the Division on the Anti-Doping Bill, I had an issue with the utterances made by Sen. (Dr.) Khalwale to the effect that that Mr. Isaack Hassan is a thief.

I rose on a point of order and asked if it was fair for him to refer to Mr. Isaack Hassan as a thief when he is not here to defend himself. The Speaker directed that we

first deal with the Anti-Doping Bill in the Committee of the Whole and then resume the issue. So, I seek your direction on this. I demand that---

The Deputy Speaker (Sen. Kembi-Gitura): Order! Sen. Haji, what is your request?

Sen. Haji: Mr. Deputy Speaker, Sir, before you assumed the Chair, the Speaker gave direction that ---

(Loud consultations)

The Deputy Speaker (Sen. Kembi-Gitura): Order! Hon. Senators, we are still going to do the County Allocation of Revenue Bill, which I think is one of the most urgent things for us to do. I am requesting you, please, do not go immediately. I will give direction just now. Let us first hear what Sen. Haji has to say.

Sen. Haji: Mr. Deputy Speaker, Sir, before you came in, I rose on a point of order with regard to the utterances made by Sen. (Dr.) Khalwale that Mr. Isaack Hassan is a thief. I said it was not fair for Sen. (Dr.) Khalwale to refer to him as a thief because he is not here to defend himself and I demanded that he substantiate. At that juncture, the Chair directed that we first deal with the Anti-Doping Bill and when we resume we pursue the matter.

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

Sen. (Dr.) Khalwale, I was in the House and that was the direction by the Speaker. What do you have to say about that?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, indeed, I agree with you that that was the directive from the Chair. My mind remains very clear. The seriousness of the case that has been concluded in the United Kingdom (UK) is such that the Ethics and Anti-Corruption Commission (EACC) ---

The Deputy Speaker (Sen. Kembi-Gitura): Have you now started to substantiate?

Sen. (Dr.) Khalwale: Yes, Mr. Deputy Speaker, Sir. What I meant by that is---

The Deputy Speaker (Sen. Kembi-Gitura): No, you uttered a word that Sen. Haji demanded that you substantiate your allegation. You referred to Mr. Isaack Hassan as a thief. Sen. Haji rose on a point of order to the effect that it was unfair for you to refer to him as a thief because he is not in the House to defend himself. Of course, if you can substantiate your allegation, then that is what the House rules require. Do you want to substantiate or withdraw and apologise?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I would like to substantiate very briefly and clarify that there is no malice on my part---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, I would just like to caution you as a fellow Senator. You referred to him as a thief. You know exactly what that means.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, yes.

The Deputy Speaker (Sen. Kembi-Gitura): So, if you want to substantiate that, then it will not be just a matter of clarification of what you meant. However, you must

substantiate that the Chairman of the Independent Electoral and Boundaries Commission (IEBC) is a thief.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, yes. I want to do so. With due respect, ---

The Deputy Speaker (Sen. Kembi-Gitura): Do you want time or you want to do it now?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I would like to do it now because I will do it in three minutes.

The Deputy Speaker (Sen. Kembi-Gitura): In that case, I am directing that you do it tomorrow at 2.30 p.m.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, that is okay.

Having relieved me of that, let me conclude my contribution on the Petition ---

The Deputy Speaker (Sen. Kembi-Gitura): No. Which Petition?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I said this while contributing to the Petition by Mr. Gesicho of Kakamega County about extra-judicial killings, mob justice and police brutality.

The Deputy Speaker (Sen. Kembi-Gitura): How long will that take?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I do not know how much time I was still remaining with.

(Loud consultations)

(Sen. Wetangula interjected)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, would you be so kind as to allow me to manage the House?

Sen. (Dr.) Khalwale, how long would it take to conclude?

(Sen. Wetangula spoke off record and pointed at Sen. Khaniri)

(Laughter)

Okay. Sen. Khaniri, if you are the one who uttered that word, let me manage the House the best way I can.

Sen. (Dr.) Khalwale, I would like to understand because I was not in at that time when you started contributing. Were you on Order No.4?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, yes. We were under Order No.4 on Mr. Gesicho's Petition.

The Senate Minority Leader (Sen. Wetangula): Yes, and I am queuing to speak to it and the Bungoma one which was deferred to tomorrow.

*(The Deputy Speaker (Sen. Kembi-Gitura) consulted with
Sen. (Prof.) Kindiki, Sen. Wetangula and the Clerk-at-the-Table)*

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I have done some consultation with the leadership of the House. I must apologise because I was not here when the Speaker was going through the Order Paper. We have Order No. 14 which is Committee of the Whole for the County Allocation of Revenue Bill, which is one of our core duties.

I propose and I have agreed with the leadership of the House, both The Senate Majority and Minority leaders that the Petition on which Sen. (Dr.) Khalwale was contributing - which is open for Senators to contribute on - together with the Petition from Bungoma County which is No.2 on the Appendix, will be dealt with first thing tomorrow at 2.30 p.m.

So, I will defer the Petition, but Sen. (Dr.) Khalwale will be on the Floor when it resumes tomorrow. So, let us now urgently deal with Order No.14.

Hon. Senators, I am advised again by the leadership of the House that the Committee of the Whole would take a very short time and I request you to remain in the House so that we can vote and finish the Second Reading of the County Allocation of Revenue Bill. We are now going to the Committee of the Whole.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILL NO.3 OF 2016)

(Resumption of Debate interrupted on 2.6.2016)

The Temporary Speaker (Sen. (Dr.) Machage): Order, hon. Senators. This is going to take a very short time. Let us execute this Order very fast. We are looking at Order No.14, Committee of the Whole, County Allocation of Revenue Bill (Senate Bill No.3 of 2016)

Clauses 3 - 11

*(Question, that Clauses 3, 4, 5, 6, 7, 8, 9, 10 and 11
be part of the Bill proposed)*

The putting of the Question will be done at the end.

New Clause 5A

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

THAT the Bill be amended by inserting a new clause immediately after clause 5-

Budget	5A. The budget ceilings for recurrent
ceilings for	expenditure for county governments for the
recurrent	financial year 2016/17 shall be
expenditure.	as set out in the Fourth Schedule.

Mr. Temporary Chairman, Sir, this is merely bringing in the Budget ceilings for the county government between the County Assembly and the County Executive. Everything, including the figures, is there. We are bringing in the amendment as New Clause 5A.

(Question of the New Clause 5A proposed)

(New Clause 5A read the First Time)

*(Question, that the New Clause 5A be read a
Second Time, proposed)*

Sen. Ndiema: On a point of order, Mr. Temporary Chairman, Sir.

Sen. Murkomen: *Wacha hiyo stori yako!*

The Temporary Chairman (Sen. (Dr.) Machage): Order! He has a right as a legislator.

Proceed.

Sen. Ndiema: Thank you, Mr. Temporary Chairman, Sir. I have seen the schedule and I have no problem with it other than, it would have been better if the previous years' figures were also indicated for the purpose of comparison. We cannot assess whether we are going up or down and yet these are colossal amounts of money.

The Temporary Chairperson (Sen. (Dr.) Machage): Order, Senator. When documents are tabled on the Floor of this House, it is assumed that whoever has an interest knows where to get those documents and the comparisons on his own.

Let us proceed. Division will be at the end.

First Schedule, Second Schedule and Third Schedule

*(Question, that First Schedule, Second Schedule and
Third Schedule be part of the Bill proposed)*

I see no interest. The Question will be put later.

New Fourth Schedule

Sen. Billow: Mr. Temporary Chairman, Sir, I propose that the New Fourth Schedule be part of the Bill.

The Temporary Chairperson (Sen. (Dr.) Machage): Can you read it properly? Move it. Do not propose, it is me who will do so. Do not take my place.

Sen. Billow: Mr. Temporary Chairman, Sir, I propose that the County Allocation of Revenue Bill be amended by replacing the current Fourth Schedule with the New Fourth Schedule as it appears in the Order Paper.

The Temporary Chairperson (Sen. (Dr.) Machage): I know Ramadhan has started, so there may be a bit of hypoglycemia. Let me guide you. Just say, "I move" instead of "I propose".

Sen. Billow: Mr. Temporary Chairman, Sir, if Members would allow me to speak, then I would speak properly but they keep interjecting.

I beg to move.

The Temporary Chairperson (Sen. (Dr.) Machage): For purposes of the HANSARD, can you read the whole thing. For purposes of recording, say "I move---"

Sen. Billow: Mr. Temporary Chairman, Sir, I beg that the New Fourth Schedule be moved as provided for in the Order Paper.

The Temporary Chairperson (Sen. (Dr.) Machage): Very well, that is another way of putting it.

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

THAT the Bill be amended by inserting the following new Schedule immediately after the Third Schedule-

NEW SCHEDULE

That the Bill be amended by inserting the following new Schedule immediately after the Third Schedule —

Fourth Schedule (S. 5A)

**COUNTY GOVERNMENTS BUDGET CEILINGS ON RECURRENT EXPENDITURE 2016/2017 (KSHS.
MILLIONS)**

No.	County	County Assembly	County Executive	Total
1	Baringo	593,775,560	445,615,976	1,039,391,536
2	Bomet	519,252,421	425,340,578	944,592,999
3	Bungoma	757,493,453	506,442,170	1,263,935,623
4	Busia	633,726,033	465,891,374	1,099,617,407
5	Elgeyo/Marakwet	467,089,372	405,065,180	872,154,552
6	Embu	489,549,517	405,065,180	894,614,697
7	Garissa	653,969,239	445,615,976	1,099,585,215
8	Homa Bay	742,060,265	486,166,772	1,228,227,037
9	Isiolo	377,924,581	317,997,003	695,921,584
10	Kajiado	569,310,891	394,328,991	963,639,882
11	Kakamega	899,913,088	567,268,364	1,467,181,452
12	Kericho	592,298,695	445,615,976	1,037,914,671
13	Kiambu	906,245,126	567,268,364	1,473,513,490
14	Kilifi	644,923,317	465,891,374	1,110,814,691
15	Kirinyaga	480,465,015	389,559,386	870,024,401
16	Kisii	795,788,862	506,442,170	1,302,231,032
17	Kisumu	654,621,594	465,891,374	1,120,512,968
18	Kitui	729,738,749	486,166,772	1,215,905,521
19	Kwale	495,317,266	405,065,180	900,382,446
20	Laikipia	391,467,065	353,778,195	745,245,260
21	Lamu	347,758,306	317,997,003	665,755,309
22	Machakos	717,783,256	486,166,772	1,203,950,028
23	Makueni	628,398,530	445,615,976	1,074,014,506
24	Mandera	700,168,112	456,425,252	1,156,593,364
25	Marsabit	561,636,493	405,065,180	966,701,673
26	Meru	839,515,604	506,442,170	1,345,957,774
27	Migori	748,308,634	486,166,772	1,234,475,406
28	Mombasa	618,543,360	445,615,976	1,064,159,336
29	Murang'a	620,552,243	465,891,374	1,086,443,617
30	Nairobi City	1,320,604,504	668,645,354	1,989,249,858
31	Nakuru	822,183,269	546,992,966	1,369,176,235
32	Nandi	600,288,748	445,615,976	1,045,904,724
33	Narok	608,647,196	445,615,976	1,054,263,172
34	Nyamira	488,710,625	405,065,180	893,775,805
35	Nyandarua	562,892,769	425,340,578	988,233,347
36	Nyeri	593,206,457	445,615,976	1,038,822,433
37	Samburu	407,808,782	338,272,401	746,081,183
38	Siaya	599,914,472	445,615,976	1,045,530,448
39	Taita/Taveta	524,763,967	405,065,180	929,829,147
40	Tana River	442,442,874	369,283,988	811,726,862
41	Tharaka -Nithi	373,749,361	353,778,195	727,527,556
42	Trans Nzoia	534,271,010	425,340,578	959,611,588
43	Turkana	764,331,379	445,615,976	1,209,947,355
44	UasinGishu	571,448,098	445,615,976	1,017,064,074
45	Vihiga	533,773,279	425,340,578	959,113,857
46	Wajir	645,131,099	434,806,700	1,079,937,799
47	West Pokot	488,707,104	405,065,180	893,772,284
	Total	29,060,469,640	20,842,555,564	49,903,025,204

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(Question of the New Fourth Schedule proposed)

(New Fourth Schedule read the First Time)

*(Question, that the New Fourth Schedule
be read a Second Time, proposed)*

Division will follow later.

Clause 2, the Title and Clause 1

*(Question that Clause 2, the Title and Clause 1
be part of the Bill proposed)*

I see no interest.

Sen. Billow: Mr. Temporary Chairman, Sir, I beg to move that the Committee do report to the Senate its consideration of the County Allocation of Revenue Bill (Senate Bill No.3 of 2016) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILL NO.3 OF 2016)

Sen. (Dr.) Machage: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered The County Allocation of Revenue Bill (Senate Bill No.3 of 2016) and its approval thereof with amendments.

Sen. Billow: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said Report.

Sen. Mutula Kilonzo Jnr. seconded.

(Question proposed)

(Question put and agreed to)

Sen. Billow: Mr. Temporary Speaker, Sir, I beg to move that The County Allocation of Revenue Bill (Senate Bill, No.3 of 2016) be now read the Third Time.

Sen. Mutula Kilonzo Jnr. seconded.

(Question proposed)

(Loud consultations)

The Temporary Speaker (Sen. Sang): Do we have the numbers? Could the Division Bell be rung for 30 seconds?

(The Division Bell was rung)

The Temporary Speaker (Sen. Sang): Hon. Senators, there is one Division that we did not take at the Committee of the Whole. I, therefore, direct that we go into the Committee of the Whole to take that Division before we proceed with the next Orders.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILL NO.3 OF 2016)

The Temporary Chairperson (Sen. (Dr.) Machage): I beg the indulgence of the House. We inadvertently missed to do two Divisions in the Committee of the Whole, because they were on another page, which I was not shown. We want to quickly do the Divisions for the Second Reading.

Ring the Division Bell for a second.

(The Division Bell was rung)

(The Bar was drawn and doors closed)

DIVISION

ELECTRONIC VOTING

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*(Question, that New Clause 5A and the New Fourth Schedule
be now read a Second Time, put and the Senate
proceeded to vote by County Delegations)*

AYES: Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Cheruiyot, Kericho County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. M. Kajwang, Homa Bay County; Sen. Kanainza, Kakamega County; Sen. Kembi-Gitura, Murang'a County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin-Gishu County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jr. : Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; and, Sen. Wetangula, Bungoma County.

NOES: Nil

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

AYES: 34

NOES: 0

ABSTENTIONS: 0

(Question carried by 34 votes to 0)

(New Clause 5A was read a Second Time)

(New Fourth Schedule was read a Second Time)

DIVISION

ELECTRONIC VOTING

(Question, that Clauses 3,4,5,6,7,8,9,10 and 11, New Clause 5A, the First Schedule, Second Schedule, Third schedule, New Fourth Schedule, Clause 2, the Title and Clause 1 be part of the Bill put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Cheruiyot, Kericho County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri

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County; Sen. M. Kajwang, Homa Bay County; Sen. Kanainza, Kakamega County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. Khaniri, Vihiga County; Sen.(Prof.) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin-Gishu County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jr. : Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; and Sen. Sang, Nandi County

NOES: Nil

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

AYES: 33

NOES: 0

ABSTENTIONS: 0

(Question carried by 33 votes to nil)

(Clauses 3, 4, 5, 6, 7, 8, 9, 10 and 11 agreed to)
(New Clause 5A agreed to)

(The First Schedule, the Second Schedule and the Third schedule agreed to)

(New Fourth Schedule agreed to)

(Clause 2, the Title and Clause 1 agreed to)

Sen. Billow: Mr. Chairman, Sir, I beg to move that the Committee do report to the House its consideration of The County Allocation of Revenue Bill (Senate Bill No.3 of 2016) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

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

THE COUNTY ALLOCATION OF REVENUE BILL
(SENATE BILL NO.3 OF 2016)

Sen. (Dr.) Machage: Mr. Temporary Speaker, Sir, I beg to report that a Committee of the Whole has considered The County Allocation of Revenue Bill (Senate Bill No.3 of 2016) and approved the same with amendments.

Sen. Billow: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee in the said Report.

Sen. Mutula Kilonzo Jnr. seconded

(Question proposed)

(Question put and agreed to)

Sen. Billow: Mr. Temporary Speaker, Sir, I beg to move that The County Allocation of Revenue Bill (Senate Bill No.3 of 2016) be now read the Third Time.

Sen. Mutula Kilonzo Jnr. seconded

(Question proposed)

DIVISION

ELECTRONIC VOTING

(Question, that the County Allocation of Revenue Bill (Senate Bill No.3 of 2016) be now read a Third Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Cheruiyot, Kericho County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. M. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. Kembigitura, Murang'a County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County and Sen. Sang, Nandi County.

NOES: Nil

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The Temporary Speaker (Sen. Sang): Order, Senators. Order, Sen. Cheruiyot! Freeze. Order, Sen. Muthama!

(Sen. Cheruiyot stood in his place)

Hon. Senators, the results of the Division are as follows:-

AYES: 31

NOES: Nil

ABSTENTIONS: Nil

The “Ayes” have it.

(Question carried by 31 votes to 0)

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

Withdraw the Bar and open the door.

(The Bar was withdrawn and doors opened)

The Temporary Speaker (Sen. Sang): Hon. Senators, we are back to where we were before we went to the Division. We are on Order No.6; Notices of Motion. Proceed, Senate Majority Leader.

NOTICE OF MOTION

ADOPTION OF REPORT OF THE RBC ON REVIEW OF THE STANDING ORDERS

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to give notice of the following Motion:-

THAT, the Senate adopts the Report of the Rules and Business Committee (RBC) on the review of the Standing Orders laid on the Table of the House today, Tuesday, 7th June, 2016.

There is a small procedural issue here. It is assumed that the Paper had been laid. However, that Order had been skipped. So, allow me to lay the Paper in reverse order with your indulgence under Standing Order No.39.

The Temporary Speaker (Sen. Sang): I so direct that you lay the Paper.

PAPER LAID

REPORT OF THE RBC ON REVIEW OF THE STANDING ORDERS

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Temporary Speaker, Sir. I beg to lay the following Paper on the Table of the Senate today, Tuesday, 7th June, 2016:-

The Report of the Rules and Business Committee on Review of the Standing Orders.

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

The Temporary Speaker (Sen. Sang): Is there any other Paper or Notice of Motion?

Next Order!

STATEMENTS

The Temporary Speaker (Sen. Sang): Hon. Senators, let us proceed with statements. Is there any statement that has been approved to be sought?

Let us start with statement (a). Where is the Chairperson of the Standing Committee on Education to issue a statement on the funds for primary and secondary school infrastructural development?

INVESTMENTS MADE BY THE NATIONAL GOVERNMENT IN DEVELOPMENT OF SCHOOL INFRASTRUCTURE

The Temporary Speaker (Sen. Sang): Sen. Khaniri is not in. We will defer that.

(Statement deferred)

Where is the Chairperson on the Committee on Education to issue a statement on the delay in payment of teachers who marked KCPE and KCSE exams last year?

Proceed, Chairman. Are you ready with the first statement?

DELAYED PAYMENT OF TEACHERS WHO MARKED THE 2015 KCPE AND KCSE EXAMINATIONS

Sen. Karaba: Mr. Temporary Speaker, Sir, I have all of them. I have the first one and the second one.

(Sen. Karaba spoke off record)

The Temporary Speaker (Sen. Sang): Did you share your response with Sen. Khaniri?

Sen. Karaba: Mr. Temporary Speaker, Sir, I did so. I even gave him the statement.

The Temporary Speaker (Sen. Sang): Okay, so we defer that to appear in the Order Paper tomorrow. I so direct that Sen. Khaniri appear tomorrow for the issuance of those two statements tomorrow.

(Statement deferred)

Let us move to statement (c) to be issued by the Chairperson of the Committee on National Security and Foreign Relations.

INCLUSION OF RELEVANT OFFICES IN POLICE
RECRUITMENT EXERCISE

The Chairperson, Committee on Defence and Foreign Relations to issue a statement regarding the just concluded police recruitment. Both the Chairperson and Sen. Njoroge who sought the statement are not here. So, we defer that.

(Statement deferred)

It is now the turn of the Chairperson of the Standing Committee on Education to issue a statement on the funding of low-cost, public primary boarding schools. This statement was sought by Sen. (Prof.) Lonyangapuo.

FUNDING OF LOW COST PUBLIC BOARDING
PRIMARY SCHOOLS

Sen. Karaba: Mr. Temporary Speaker, Sir, the Senator who sought the Statement is not in the House.

The Temporary Speaker (Sen. Sang): Give him the microphone. What is happening with the microphone?

Sen. Karaba: Mr. Temporary Speaker, Sir, I have the statements with me but the questioner is not in the House.

The Temporary Speaker (Sen. Sang): I must commend the Chairperson of the Standing Committee on Education. On today's Order Paper, you are supposed to be responding to three statements so far...

Sen. Karaba: Mr. Temporary Speaker, Sir, I am ready.

The Temporary Speaker (Sen. Sang): You are ready with them but those who sought them, the Senators responsible, are not in. Congratulations, Chairman. We will get back to it if the Senator will be around. If not, I will give further directions on the same.

Sen. Karaba: Thank you.

The Temporary Speaker (Sen. Sang): Sen. Elachi.

MANAGEMENT OF MASINDE MULIRO UNIVERSITY
OF SCIENCE AND TECHNOLOGY

Sen. Elachi: On a point of order, Mr. Temporary Speaker, Sir. I request the Chairperson of the Standing Committee on Education to issue a statement I “sought” way back...

Sen. (Prof.) Anyang’- Nyong’o: It should be “I sought”.

(Laughter)

The Temporary Speaker (Sen. Sang): Sen. (Prof.) Anyang’- Nyong’o, you are out of order.

Sen. Elachi: This is with regard to a statement I sought, Mr. Temporary Speaker, Sir. I just want to tell the Professor that I am an African and I am proud. I come from Western Kenya. I am not a *mzungu*, and I appreciate that you know you are a Professor.

The Temporary Speaker (Sen. Sang): Order, Sen. Elachi. There is nothing about being African or Western about grammar, as pointed out by Professor. In fact, you should just be appreciating him and move on.

Sen. Elachi: Mr. Temporary Speaker, Sir, I agree but there is a sense of being an African. That is why my brothers in Tanzania believe their Kiswahili should be Kiswahili. This statement was for Masinde Muliro University, and I remember Members raised many issues regarding this matter. From that time to date, the Chairman has not answered me.

Secondly, I want to thank the Senate because due to whatever we had requested, the Vice-Chancellor has started repaying the money. However, it will be important for us to get the real answer, not just to be told that now somebody has agreed he was stealing money from the university and he is repaying. Am I in order to ask the Chairman to ensure that the Statement is delivered so that we close that chapter?

The Temporary Speaker (Sen. Sang): Sen. Elachi, we will come to your issue once we are done with the Statements listed on the Order Paper. So, you can raise your point of order at that point. Let us have Statement (e) from the Chairperson to the County Public Accounts and Investments Committee which was sought by Sen. Ntutu. Give Sen. (Prof.) Anyang’- Nyong’o the microphone.

UNREMITTED REVENUE BY MARA CONSERVANCY

Sen. (Prof.) Anyang’- Nyong’o: Mr. Temporary Speaker, Sir, Sen. Stephen Ole Ntutu and I have consulted and agreed that we will respond to this Statement next week on Tuesday because I had not received any answer yet.

The Temporary Speaker (Sen. Sang): Sen. Ntutu.

Sen. Ntutu. : Mr. Temporary Speaker, Sir, I have no objection.

(Statement deferred)

The Temporary Speaker (Sen. Sang): It is so directed.

Let us have the Chairperson to the Standing Committee on Roads and Transportation issue a Statement regarding delayed public works at Jaramogi Oginga Odinga Teaching and Referral Hospital as sought by Sen. (Prof.) Anyang'-Nyong'o.

Sen. Obure.

DELAYED PUBLIC WORKS AT JARAMOGI OGINGA ODINGA
TEACHING AND REFERRAL HOSPITAL

The Temporary Speaker (Sen. Sang): Are you responding as the Chairperson?

Sen. Obure: Mr. Temporary Speaker, Sir, I am responding on behalf of the Chairperson.

Temporary Speaker Sen. Sang: When you rise at this point, you could be mistaken as the Minister for Public Works.

(Laughter)

Sen. Obure: Mr. Temporary Speaker, Sir, the specific questions which Sen. (Prof.) Anyang'-Nyong'o raised were:-

One, to explain why there has been delay of over two years in implementing public works projects at Jaramogi Oginga Odinga Teaching and Referral Hospital in Kisumu.

Secondly, to state why the public works department in Kisumu has failed to supervise projects at the institution to ensure timely completion.

I wish to clarify from the outset that the projects at the hospital are being funded and implemented by the Ministry of Health and the Kenya Medical Research Institute (KEMRI). The public works staff only provide supervision services on those projects.

There are three projects in all. One of them is installation of an incinerator at the Jaramogi Oginga Odinga Teaching and Referral Hospital, which is 100 per cent complete and is in use. The second project is the Children Clinical Center of Excellence at the same hospital, which is at 99 per cent completion level. The third project is the proposed refurbishment works for Multi-Drug Resistant Tuberculosis (MDRTB) block, which is at 40 per cent completion.

On the incinerator project, I want to state that it was completed on 7th January, 2015 which was the scheduled completion date. The project was commissioned and handed over on the same date, and is currently in use by the clients. The second project; the proposed Children Clinical Center of Excellence commenced on 14th June, 2012. The completion date was 30th May, 2013. Unfortunately, because of the various issues relating to funding, the project was not completed on the scheduled date. This project is ongoing and as I said earlier, it is at 99 per cent completion level. The project is expected to be completed at the end of this month.

Mr. Temporary Speaker, Sir, regarding the third project which is the Refurbishment Works for the Multi Drugs-Resistant TB Block, there have been problems on the project and the challenges are related to funding. The project is currently stalled

due to internal challenges between the Kenya Medical Research Institute (KEMRI) and the donor agency, a factor which is way beyond the control of the public works department. As I said, the role of the public works staff is merely to supervise the project and they have nothing to do with funding. This project will continue after resumption of funding by the donors once the negotiations for funding are completed amicably.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Speaker, Sir, I would like to thank the Chairman for the response. However, I have three questions to ask him. First, is he aware that the Public Works Department in Kisumu is very inadequately human resourced? In other words, in terms of supervision of works, there is only one person serving the four counties in the Nyanza Region. That office still relies on the provincial framework for supervision. Therefore, the failure to give certificates of completion at every stage has been one of the causes of the delay of these projects. In that regard, the project that is funded by KEMRI and other donors has suffered because of that.

The funds are not delayed because the funders do not want to fund but because the Public Works Department does not provide certificates of completion on time for KEMRI and other funders to continue funding the projects. Therefore, the medical superintendent and the Jaramogi Oginga Odinga Teaching and Referral Hospital is very frustrated with the Public Works Department because she has to intercede between the Public Works and the donors regarding the proposed refurbishment works for multi drug-resistant TB block at the hospital.

The delay is not just because donors do not give money. They cannot give money if there are no certificates of completion at every stage. I am sure that Sen. (Eng.) Muriuki, who is an engineer, will support me on that. This is something that the Chairman should look at very carefully. It is not just an explanation that the people in Kisumu are giving.

Secondly, regarding the proposed Children's Clinical Centre of Excellence at the Jaramogi Oginga Odinga Teaching and Referral Hospital, that project was started when I was the Minister for Medical Services and it was supposed to be completed on 30th May, 2013. As you know, due to the elections, most Government Ministries, more or less, closed functioning around that time. Since then, although the Chairman said that it is 99 per cent complete, I would like him to ascertain without any doubt that this is the truth because I have been following this particular project carefully. The reason it was not completed on 30th May, 2013 was precisely because the Public Works has not since then been up to date in giving certificates of completion.

Mr. Temporary Speaker, Sir, finally, I would like to draw the attention of the Chairman to the first project which is certified as complete. There is a part of the response which says that:-

“However, currently, the County Public Works Office is working with the client on request by the contractor on exploring proposal for installation of water heaters to be connected to heat generated by the incinerator.”

This question is not an additional part of the project. This was part and parcel of the project because if the description of the project talks about construction and completion of shades and delivery incinerator and that delivery incinerator was connected. They use the incinerator for heating at the same time.

Therefore, Mr. Temporary Speaker, Sir, I would like the Chairman to respond to these three issues. If it is possible, I would also like him to summon the Public Works officers in Kisumu together with the officials in the Ministry to appear before the Committee, so that we sort out the difficulties that Government departments, including Kisumu County, are suffering from as a result of inadequate supervision because of lack of human resources in the Public Works Department in Kisumu.

The Temporary Speaker (Sen. Sang): Mr. Chairman.

Sen. Obure: Mr. Temporary Speaker, Sir, I have listened very carefully to what Sen. (Prof.) Anyang'-Nyong'o has said. I believe there have been challenges related to the organisation at the headquarters of the former Ministry of Public Works. In fact, if you recall, for a long time, the Directorate of Public Works as it is now referred to was attached to the Ministry of Lands and it has only been transferred to the Ministry of Transport and Infrastructure following recent reorganisation. I am also aware that what Sen. (Prof.) Anyang'-Nyong'o has said could be right, that Kisumu Public Works Department could be inadequately staffed. We will raise these concerns with the people in charge at the Directorate of Public Works. If, indeed, the delays experienced on these projects could be attributed to inadequate staffing, then we will come back and report to this House. However, we will investigate this matter and hold discussions with the people responsible to make sure that the matter is rectified, if, indeed, this is the reason there have been delays.

Mr. Temporary Speaker, Sir, concerning the second issue regarding the proposed Children's Clinical Centre of Excellence, we have been assured that the handing over will take place before the end of this month. Therefore, I hope Sen. (Prof.) Anyang'-Nyong'o's concern will be addressed fully. I am told that there is some discussion between the contractor and officers from the Public Works Office relating to installation of water heaters to be connected to heat generated by incinerators. I am not quite sure what this is all about but we will make further inquiries because I believe that will help address the concerns raised by Sen. (Prof.) Anyang'-Nyong'o.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Speaker, Sir, I just have one more request. I made a request to the Chairman regarding whether it will be possible to get officials from the Ministry to appear before his committee. When officials appear before a committee and the Senator concerned is also there, we can iron a lot of issues. I do not know whether the Chairman can commit himself to request the officials from the Ministry, particularly the Public Works Department in Kisumu, to come so that we discuss issues of inadequate personnel and the punctuality in issuing certificates of completion when jobs are done because it is not just Jaramogi Oginga Odinga Teaching and Referral Hospital that complains about this. There are a lot of general complaints about the punctuality and promptness with which supervision is done and certificates of completion issued.

Sen. Obure: Mr. Temporary Speaker, Sir, I have heard what Sen. (Prof.) Anyang'-Nyong'o has said. I want to assure this House that we will be able to convene a meeting of the senior officials of the Public Works Directorate, in particular, reference to Kisumu Office to ensure that the challenges which Sen. (Prof.) Anyang'-Nyong'o has

highlighted are properly addressed. We will convene that meeting and invite Sen. (Prof.) Anyang'-Nyong'o to join us as well.

The Temporary Speaker (Sen. Sang): I direct you to proceed with organizing that meeting and involve Sen. (Prof.) Anyang'-Nyong'o in good time. That is with regard to that particular Statement.

COMPENSATION OF LAND OWNERS ALONG
THE STANDARD GAUGE RAILWAY

The next Statement is for the Chairperson of the Senate Standing Committee on Lands and Natural Resources. This is with regard to statement on the compensation of land owners along the Standard Gauge Railway (SGR) line. The Senate Leader of Majority, the Committee Chairperson is not in the House. Can you comment?

The Senate Leader of Majority (Sen. (Prof.) Kindiki.): Mr. Temporary Speaker, Sir, the Chairperson is not here. I undertake to pass the information to him.

CREDIBILITY OF WEATHER FORECASTS ISSUED BY KENYA
METEOROLOGICAL DEPARTMENT

The Temporary Speaker (Sen. Sang): The Chairperson of the Standing Committee on Lands and Natural Resources to issue a statement on weather forecast made by the Metrological Department. The Statement was sought by Sen. Okong'o. I am made to understand, Sen. Okong'o, that you had some agreement, kindly let us know.

Sen. Okong'o: Mr. Temporary Speaker, Sir. We agreed that the Statement be placed tomorrow because the Chairperson told me that the document is bulky, and he has not internalized the whole of it and I agreed with him.

The Temporary Speaker (Sen. Sang): Very well. It is so directed to tomorrow.

(Statement deferred)

COLLECTION OF LEVIES FROM BUSINESSES FOR PLAYING MUSIC

The Chairperson of the Standing Committee on Labour and Social Welfare to issue Statement on collection of levies by the Music Copyright Society of Kenya (MCSK) and the Performers Rights Society of Kenya (KAMP-PRISK) for business premises and public transport vehicles on playing music as requested by Sen. Kanainza. The Chairperson is not here. The Senate Leader of Majority Sen. (Prof.) Kindiki, can you respond?

The Senate Leader of Majority (Sen. (Prof.) Kindiki.): I do see the Chairperson but I undertake to pass that information at the rise of the House.

The Temporary Speaker (Sen. Sang): Since the Chairperson of the Standing Committee on Labour and Social Welfare is Sen. Madzayo, a Member of the Minority side, are you the right person to respond to that?

The Senate Leader of Majority (Sen. (Prof.) Kindiki.): Mr. Temporary Speaker, Sir, to the best of my knowledge, the Statements are sought from the Chairpersons of the Committees irrespective of the political side they belong to. They also answer those statements on behalf of the committees and the residual responsibility, to the best of my knowledge, is to the Senate Majority Leader unless there are changes. I stand guided.

The Temporary Speaker (Sen. Sang): As you indicated, you should remind the Chairperson of the Standing Committee on Labour and Social Welfare. Sen. Elachi had sought a Statement from the Chairperson of the Senate Committee on Education. The Chairperson is not here and so we defer the Statement sought by Sen. Elachi to tomorrow.

(Statement deferred)

Sen. Kajwang, proceed.

STATUS OF THE NATIONAL SECURITY
COMMUNICATION SYSTEM

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, in March this year, I requested for a Statement from the Chairperson of the Senate Committee on National Security and Foreign Relations on the national security project that is being undertaken by Safaricom and the Chairperson requested that we should give the Committee one month.

(Sen. Cheruiyot crossed the Floor without bowing to the Chair)

The Temporary Speaker (Sen. Sang): Order Sen. Cheruiyot. You might be the newest Senator in the House. You have, however, had fairly enough time to learn some bits of the rules of the House. If you are crossing from one side to the other, you go to where there is a mark and then you bow there before you cross. You do not just bow in between.

Proceed Sen. M. Kajwang.

Sen. M. Kajwang: Thank you, Mr. Temporary Speaker, Sir. You might want to forgive him because I am aware that his induction will be held in Manda Island at the end of this month and shall be graced by the Speaker himself.

The Temporary Speaker (Sen. Sang): You might also want to share with whoever else will be inducted.

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, I will also be present so, you need to go slow on me because I have not been inducted until after Manda Island. I just wanted to request your ruling that this Statement---

The Temporary Speaker (Sen. Sang): Sen. Okong'o, what is your point of order?

Sen. Okong'o: Mr. Temporary Speaker, Sir, I have heard about an induction and about an island called Manda. What is this all about? I am wondering what Sen. Kajwang is talking about. Is he in order to talk about Manda Island and induction courses?

The Temporary Speaker (Sen. Sang): Do you want to be informed by Sen. Cheruiyot?

Sen. Cheruiyot: Mr. Temporary Speaker, Sir, I just want to inform Sen. Mong'are that Manda Island is one of the most beautiful beaches this country has. It is in Kilifi County and from 23rd to 26th June, a few select young Senators will have the privilege of hiding there to be inducted on the practices and cultures of this House. If you want to join the club, you are invited, though I am not sure who will bear the cost.

The Temporary Speaker (Sen. Sang): Sen. Cheruiyot, I do not think that there is a club of Senators in this House, though I guess it suffices.

Sen. M. Kajwang, proceed.

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, I was requesting for your direction because I sought a Statement in March and to date, that Statement has not been issued. It does not appear on the Order Paper yet I was gracious enough to give the Committee one month to compile the answers and now we are talking of several months down the line.

The Temporary Speaker (Sen. Sang): Which Committee is that?

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, this was the Senate Committee on National Security and Foreign Relations with respect to the national security project being undertaken by Safaricom.

The Temporary Speaker (Sen. Sang): The Senate Majority Leader, what do you have to say about the Statement sought from the Senate Standing Committee on National Security and Foreign Relations with regard to Safaricom?

The Senate Majority Leader (Sen. (Prof.) Kindiki.): Thank, Mr. Temporary Speaker, Sir. I will raise that matter with the Chairperson of that Committee at the raise of the House.

The Temporary Speaker (Sen. Sang): I direct that the Statement sought by Sen. M. Kajwang and another Statement sought by the Nandi Senator with regard to the health crisis appears on tomorrow's Order Paper.

(Statement deferred)

THE DECLINING STATE OF HEALTH SERVICES IN NANDI COUNTY

(Statement deferred)

We are done with Order No.7. Let us move on to Order No.8.

BILLS

First Readings

THE COUNTY GOVERNMENT (AMENDMENT) BILL, SENATE BILL NO. 4 OF 2016

(Order for First Reading read – Read the First Time and ordered to be referred to the Committee on Devolved Government)

The Temporary Speaker (Sen. Sang): Next Order.

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

(Order for First Reading read – Read the First Time and ordered to be referred to the Committee on National Security and Foreign Relations)

The Temporary Speaker (Sen. Sang): Hon. Senators, the next Orders Nos.10 and 11, have been dispensed with. We have also dispensed with Order Nos.11, 12, 13 and 14. So, let us proceed to Order No.15.

Second Reading

THE HEALTH BILL (NATIONAL ASSEMBLY BILL NO.14 OF 2015)

(Sen. (Prof.) Kindiki on 2.06.2015)

(Resumption of Debate interrupted on 2.06.2016)

Hon. Senators, the Senate Majority Leader is the sponsor of the Bill. When we interrupted the debate last time, it was Sen. Karaba who was on the Floor contributing. He had 12 minutes to conclude his contribution, but he is not in the House. The Floor is now open to anybody who is interested to contribute. It seems there is no more interest. Therefore, I call upon the Mover to reply.

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

Given that we do not have adequate numbers to take a vote, I request that you direct the voting be deferred to tomorrow, pursuant to Standing Order No.54(3).

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

(Putting of the Question on the Bill deferred)

Let us move on to Order No.16, Committee of the Whole. The Mover is not in.

COMMITTEE OF THE WHOLE

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

(Committee of the Whole deferred)

Let us proceed to Order No.17.

Second Reading

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

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move that The Political Parties (Amendment) Bill (National Assembly Bill No.2 of 2016) be read a Second Time.

This Bill is a collection of a number of amendments that are important with regard to improving the Political Parties Act of 2011 which is now five years old. Allow me to just highlight the key areas of amendment so that Senators can have a general view of what the proposed law is about.

This Bill amends Section 9 of the Political Parties Act by entrenching the two-thirds gender rule in the organs of political parties. In particular, the amended version of the Political Parties Act will provide that constitutions or rules of every political party shall ensure not more than two-thirds of the memberships of all political organs, bodies and committees in aggregate, have the same gender. In other words, this Bill proposes that going forward, political parties must ensure that all their committees and political organs such as the national executive councils even at the county, sub-national level and electoral boards adhere to the two-thirds gender rule.

This is a very progressive provision. I hope the Senate will pass this Bill as recommended from the National Assembly and I hope it will not be acrimonious. We are still smarting from the spectacular failure of the amendment of the Constitution to give effect to the gender rule in Parliament. We hope we can pay back the women of Kenya by at least passing this Bill as we wait for consensus on the issue of the two-thirds gender rule in Parliament, which I fully support for the record.

Mr. Temporary Speaker, Sir, the second area of amendment is on the merger of political parties. It says that if a party merges with another, in which case it loses identity, the members of that party are deemed to have joined the new party. It goes on to say that a person who does not wish to become a member of that party may choose to join another party or even remain as an independent for the remainder of the term without losing their seat.

This Bill also provides for the protection of the President, Deputy President, governors and deputy governors from such eventuality. Let me explain. The current Political Parties Act is providing for the Members of County Assemblies (MCAs) and Members of Parliament (MPs) who may not be affected if their political party loses identity by deregistration or a merger. So, this Bill includes other officers like governors, deputy governors, the President and the Deputy President.

The third area which I would want to highlight is on the amendment to Section 19 of the Political Parties Act. It compels political parties to hold meetings of party organs at national and county levels in accordance with a party's constitution. This has been canvassed by stakeholders of various political parties.

The other amendment is to do with the party intending to hold public meetings to comply with any law relating to public meetings. Another amendment is with regard to deregistration of political parties. The Bill proposes that a fully registered political party may be deregistered if it has not presented a candidate in any elective position for two consecutive general elections. The idea here is to avoid briefcase parties where parties are registered and they are inactive. So, if you have a party and it has not presented a candidate for any elective office for 10 years, then it has no business remaining registered. They can always come again for fresh registration when they are ready. The purpose of political parties is to make sure that Kenyans participate in the elections at various levels and the democratic process of our country.

Mr. Temporary Speaker, Sir, the other area of amendment is with regard to the process of appointment of the Registrar of Political Parties. Hon. Senators are aware that there are provisions already. However, there are provisions now to enhance what is provided for in the Sixth Schedule to provide for the forwarding of names of the Registrar of Political Parties and the Assistant Registrar of Political Parties to the President. The President may nominate the three names per office and Parliament will have to approve the nominations. Let me emphasize that this is an office which I think is very critical for our democracy and the holder of that office has remained active for a very long time. I think time has come to have a substantive holder of that political office and delink it from the Independent Electoral and Boundaries Commission (IEBC), as envisaged under the new political parties order. I believe those are the key amendments.

I want to emphasise that those are the key amendments, especially the two-thirds gender rule which has been critical. I think it will help our country to be more democratic and inclusive. I hope we can pass the law and allow our women to participate in all party committees and bodies.

There is also another important provision that I did not mention, which requires political parties to hold party meetings, not just at the national level, but also at the county level. I cannot find the provision, but I have read it in the proposed amendments. It is good to entrench democracy at all levels, so that decisions of political parties are not done in Nairobi only.

Mr. Temporary Speaker, Sir, I do not want to say much. The Senate Minority Leader has come, but I do not know if he wants to second or supports the Bill. I had already talked to another Senator to second. If he supports the Bill, he takes precedence, in accordance with the traditions of this House.

I beg to move and request Sen. Okong'o to second.

Sen. Okong'o: Mr. Temporary Speaker, Sir, the amendments are very clear and straightforward. The indefinite acting capacity of the Registrar of Political Parties has been an issue. Most of us did not understand why the issue has been left in abeyance, but now these amendments will cure that anomaly. I, therefore, agree and support the Bill.

On the two-thirds gender rule, there has been some sort of tokenism to the women of Kenya. However, the National Assembly needs to move and comply with the Constitution in terms of the two-thirds gender rule. But be it as it may, I support the amendment on this clause so that the younger and older women of Kenya can be involved in parties and be part of all the Government structures.

I do not agree with the merger of political parties. As much as this Bill has come for political expediency, I look at the bigger picture, especially the issue of the Registrar of Political Parties that I have just mentioned. It will also dissuade briefcase political parties, especially the clause which amends and gives import to a decision that a political party must fill candidates within a stipulated time. That is a reasonable and logical thing.

Lastly, the issue of political parties holding meetings at lower units is crucial. More often than not, most political parties hold meetings in Nairobi and most headquarters. These amendments will give the grassroots supporters a reason to compel a political party to hold meetings in ward, sub-county and county levels.

With those few remarks, I beg to second.

(Question proposed)

The Temporary Speaker (Sen. Sang): The Senate Minority Leader and Senator for Bungoma County, Sen. Moses Masika Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, go further.

The Temporary Speaker (Sen. Sang): Presidential aspirant and CORD co-principal, senior counsel and many more.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Temporary Speaker, Sir, for giving me an opportunity to contribute to this Bill. This is a self serving Bill for the Jubilee Government, as you, probably, know. It is brought singularly for purposes of giving way to the merger of the Jubilee parties and allaying fears of Members that they will lose their seats because of the merger. I have no problem with that; it is entirely up to you to do what you want to do.

This Bill has gone through the National Assembly and it has an obligation to come here. The Bill makes amendments to existing provisions by making things a little neater for registration of political parties. In this country, we have political parties that only pop out at election time when the likes of Hon. Kalembe Ndile hang out to harvest money from people who have been blocked from being candidates in their respective political parties. We need to go further and reduce the number of political parties in the country. Even in countries as huge as the United Kingdom (UK) and the United States of America (USA) in terms of population, you cannot count more than five political parties. In India, including the regions, there are not more than ten political parties. I fail to understand why we have the extravagance of 64 registered political parties, in a country with barely 42 million people. In Tanzania, they only talk of Chama cha Demokrasia na Maendeleo, Chama Cha Mapinduzi (CCM), Ukawa, which is a union of parties and Zanzibar's Afro-Shirazi Party. The same thing applies for our neighbour, Uganda. Where

do we get the luxury of having too many political parties? I guess that is the freedom given in the Constitution.

Mr. Temporary Speaker, Sir, more important is the management of parties by the structures of the State. Clause 8(a) of this Bill states that:-

“A political party may merge with another political party by-

- (a) forming a new political party; or
- (b) by merging into an already registered political party.”

As I said, this is collapsing small parties and others into the fold of The National Alliance (TNA) Party and United Republican Party (URP). It is alright and up to them to do what they want.

Clause 7 states that:-

“Section 9 of the Principal Act is amended by inserting the following new sub-section immediately after sub-section 1-

“(1A) The Constitution or rules of every political party shall ensure that not more than two-thirds of the membership of all party organs, bodies and Committees is in aggregate are of the same gender”

Sometimes we overstretch the gender issue. I agree that we need our womenfolk into our mainstream activities. I would have absolutely no difficulty with the women of Kenya forming a party that champions exclusively women issues. But to condition people, sometimes, by just having some cosmetic membership in order to meet these kinds of rules--- For example, you will find a man nominating his daughter or his wife to the party so as to meet the gender rule. As I have said before, it is just like the issue of degrees. I know that we need educated people in Parliament and leadership. However, we have people who are educated, but barely look and behave so. They do things that make one wonder whether they went to school.

Mr. Temporary Speaker, Sir, I have always said that if a pastoralist group in El Molo or Turkana want to elect one of their own to represent them in this House, so be it. Parliament is a House of Representatives. It is not an alumni of universities. Even as we are looking for a more enlightened and educated leadership – we have said that the President as well as his deputy must have a university degree, although we sometimes find that the conduct is inconsistent with those qualifications. We want to have a situation where freedom of association should not be too limiting by the law. If young people of 30 years and below formed a political party and said that the membership is dependent on being 30 years and below and when you exceed that age, you have to exit, I have no problem with that. We need to give people an opportunity to grow.

The Jubilee Government is playing games with the Political Parties' Fund. We just passed a law stating that if a party has a governor, two Senators, two Members of Parliament and 25 MCAs, it is eligible for funding. That fund has a percentage in the Constitution. What we are getting are discretions at the National Treasury other than adhering to the law and that is not fair. We want the efforts of those in politics to benefit from the fund provided by the State. I want my brother, the leader of the *Mbus* to also get the just dues of his sweat for having a governor who is now rebelling against him.

(Laughter)

The governor has mounted a serious rebellion against the *Mbus*. The *Mbus* runs a very high risk of landing a ditch because the driver has no peace any more. We want parties like those to benefit.

Mr. Temporary Speaker, Sir, although I have friends who will benefit from this Bill, there are details that is being given to members of parties that Sen. Murungi and hon. Noah Wekesa are about to consume into one monolith. We are running away from monoliths yet Sen. Murungi and hon. Noah Wekesa are busy creating another KANU, *baba na mama* by coercing people to leave their parties and join them. I saw in the newspaper today that the distinguished Senator for Meru saying that he will singularly determine who will get a ticket on the new party.

The Temporary Speaker (Sen. Sang): What is your point of order, Sen. Murungi?

Sen. Murungi: On a point of order, Mr. Temporary Speaker, Sir. Is it in order for the Senate Minority Leader to continue misleading this House and Kenyans in general that I and somebody called Wekesa are coercing Kenyans into joining a monolith of a party while the Constitution gives every Kenyan the right to form a political party and to belong to one? We have always said that this is for the willing. We are not coercing anybody. Could the Senate Minority Leader at least withdraw the word “coerce”?

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I withdraw the use of the word “coerce” and replace with “:cajole”.

(Laughter)

It is with a light touch, but I know that the distinguished Senator for Meru County and the other man from Western Kenya, called hon. Noah Wekesa, have been crisscrossing the country going to Western to pay a few idlers to go attend their meetings to show that there is presence of Jubilee Coalition in Western Kenya. I assure them that there is no presence of Jubilee and there will none in the foreseeable future.

One of the amendments in this Bill is to obligate political parties to hold meetings. That is unreasonable. While we encourage political parties to be active, the most critical event in the calendar of a political party is election time. You cannot force political parties that throughout the five years, before election, they must be everywhere in the country. There are some political parties that will have representation, but will not qualify for funding. We cannot say that if they do not go to all these places to hold political party meetings and other activities, they will suffer some penalties. That is draconian and should not be accepted.

Mr. Temporary Speaker, Sir, equally important is the manner in which the Office of the Registrar of Political Parties runs. You may recall that when we conceived that office, it was an office within the Independent Electoral and Boundaries Commission (IEBC). However, the Jubilee regime has wickedly, so to speak, maneuvered and transferred the Office of the Registrar of Political Parties to the Office of the Attorney-General where even as required by law to appoint an impartial person to be the Registrar of Political Parties, Ms. Lucy Ndung’u continues being a Jubilee agent working for Jubilee working in an office where the Attorney-General is a confessed Jubilee Coalition person. How can she be fair to other political parties?

I remember when they were seeking re-registration of political parties, one party called New FORD(K), should never have been registered because it is causing confusion. There is a party called FORD(K). There was no point of having New FORD(K). The FORD(K) party symbol is a lion. You cannot give a leopard that looks like a lion as a symbol of another party. However, more importantly, that party was given a certificate of registration when the conditions were that you have to have a minimum of 1,000 members in 24 counties yet they did not even have 1,000 members in five counties. However, because the then Minister for Justice and Constitutional Affairs was the promoter of that party, they were awarded a certificate. That is water under the bridge, but if we have a Registrar of Political Parties like that one and give her authority to deregister parties and distribute funds due to parties, then you can understand the concerns that we have.

Mr. Temporary Speaker, Sir, we need to see the Tribunal of Political Parties strengthened so that it can assist political parties in their disputes to avoid unnecessary recourse to High Courts and other courts. We still have cases going to the High Court yet the law is very clear that the court of first instance is the Political Parties Tribunal. I hope that this will be done so that political parties can adjudicate their disputes in a proper forum.

Mr. Temporary Speaker, Sir, as I come to an end, political parties must have ideologies. If you go to the United Kingdom, the Labour Party has its manifestation and orientation which is very clear; pro-trade unionism left of centre, social activities and economic empowerment of people. The Conservatives are on the other end; very right wing, pro-state, each man to himself, each woman to herself and God for us all. When you come to Kenya, and pick the manifesto and constitution of the *Mbus*, Wiper, Tip Tip or whichever party, they are word for word identical. That means that the Registrar of Political Parties does not work.

Mr. Temporary Speaker, Sir, when you file manifestos, look at manifestos of Jubilee and CORD. There is no difference. All is just about the name. If we want political parties to have meaning; if you are a communist party, you must be truly a communist party. If you are a free market economy party like the Republicans in the United States of America (USA) with Mr. Donald Trump, you must look truly different from the other. However, here political parties are for elections and once they are over, who cares what your manifesto was. That is why every time we tell Jubilee that they are fraudsters who visited every fraud on Kenyans by promising nothing they can deliver. They have delivered nothing on their promise to provide 10,000 kilometres of road, laptops, electricity and water to every home. On reduction of corruption, it has increased. The growth of the economy is shrinking. They have engaged a reverse gear on everything they promised. Every day you see them on national television giving a catalogue of imaginary successes that they have brought to the country since they came to power.

The other day, at the funeral of the late hon. Soita Shitanda, I saw somebody tabulating that they have provided electricity to 70 per cent of homes in this country.

Mr. Temporary Speaker, Sir, you represent a rural constituency. Do even 30 per cent of homes in your constituency in Kericho County have electricity? It is not true. It is all false and fraudulent. You can say they have. Your people are watching you. It is live

now. So, the people of Kericho watch your Senator saying that 70 per cent of you have electricity. This fraudulent behaviour that has to be checked. A party that visits a deception on a population is transgressing the law and the Registrar must also deal with them.

Mr. Temporary Speaker, Sir, we must hold ourselves to account. I wish those who want to collapse - We are waiting for them at the elections. I would like to tell my brother, Sen. Murungi, "*Chukua chako mapema, tunakungojea.*"

Mr. Temporary Speaker, Sir, with those remarks, I beg to support.

Sen. Sijeny: Mr. Temporary Speaker, Sir, I thank you for giving me this opportunity to contribute to this Bill. I beg to support it because it brings some clarity. It assists in the implementation of the Constitution in the two-thirds gender rule. That is why I am excited about it. It cannot be institutionalized as an institution as Parliament, but it should be nationalized. This is the song that everybody must sing everywhere; the two-thirds gender rule. In addition, it favours women. This is still a patriarchal society. Women are yet to fully participate in politics as men. Any time the gender rule is mentioned, many people think that women are being smuggled in through the back door. We are just saying; give everybody a chance. You never know. We are going to the elections; it may go the other way round. God willing, it is the men who will be fighting for the gender rule to be observed.

We cannot ask God to adhere to that gender rule in families because He does as he pleases. However, it is a mile stone. In the United Kingdom, the Labour Party has this rule. It is observed in the elections. That is why there are more women of the Labour Party in Parliament. Uganda and Tanzania adhere to it. Our friends in Rwanda are lucky. If they continue with the same trend, it is men who will be fighting for their space so that the gender rule is observed.

Mr. Temporary Speaker, Sir, the other amendment which pleases me is the amendment to Section 5 which seeks to harmonize the time frames on the provision relating to provisional registration of a political party. This will enable Kenyans to know which political parties exist, their ideologies, values and principles so that by the time they subscribe to them, they fully understand what they are doing. This will help so that you do not just pick a political party as a rebound when you have lost the nomination in your political party. At the end of the day, you realise that you cannot associate yourself with that same political party because you do not believe in that ideology.

The other good amendment which I fully support is on Section 11 on the principle of setting out different procedures by which political parties can merge. These mergers are important. It brings clarity and honesty so that the politicians can honour the MOUs, come out with clear-cut contracts that if you breach, you know what your next step is instead of some people being shortchanged.

We have seen a lot of party indiscipline, especially in this Parliament. There are people who tend to resign, go publicly declaring that they are no longer in a political party that took them to Parliament yet they still enjoy the fruits of the members of that political party. When clarity is brought to the amendment in Section 14, then we shall know the way forward. There will be less indiscipline. In fact, there will be proper clear-cut ways of disciplining politicians who are not decided where they are; one leg is on this

side while the other one is on the other side. This will be done not only by the individual political party, but the Registrar of Political Parties should discipline them directly and save individual political parties the agony of being devoured or harassed by others.

Mr. Temporary Speaker, Sir, I shall move an amendment at the right time. It will empower particularly women. Now they are struggling to reach the threshold. Political parties should set aside a certain fund to support women aspirants. The playground is not even for everybody. The political parties will have the leeway of preparing the criteria upon which these women aspirants can be funded so as to enable many of them to be elected in the national elections and not necessarily wait for party nominations. If all this is done, then politics in Kenya will be more interesting. It will not just be an issue of men. Women can bring sanity in the political arena. They are good leaders. They should be given a chance.

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

Sen. Cheruiyot: Mr. Temporary Speaker, Sir, thank you for giving me this chance. I rise to support this Bill for the following reasons. First, this is something that the Senate Minority Leader alluded to in his long speech, though he contradicted himself by appearing to push the case for what I will refer to as “smaller” political parties. Probably, he thinks that the sponsors of the Bill have been sponsored. He was quite clear in his opening remarks that this Bill has been sponsored by the Jubilee Government so as to put through the eminent merger between the parties that are therein.

For whatever reason, in all our engagements as political leaders, it should be our desire to see that we move this country forward and navigate through the many challenges that we face during our time. We know that political parties are the foundation upon which governments are founded. This is an extremely noble attempt to collapse what I will refer to as “smaller” parties into one distinct and unique conglomeration of ideas, philosophies and people, so that you get something that is distinct and beyond individuals as it is the case right now. It is my hope that with the passage of this Bill, the long dream that we have had for a long time will come true. Therefore, we will begin to build political parties that can transcend sudden leaderships of particular individuals and that this is a step in the right direction.

When you look at the situation as it is in the country right now, you will realise that conflicts that we face are as a result of the stands that have been taken by majority of Kenyans. You will understand that there is very little independence of thought, but very much of borrowing of ideas from what the leaders of political parties are stating. That is not the case in mature democracies. A political party has a blueprint and ideals that they live by and party leaders try to lead by those ideals. In Kenya, the reverse is true. This is one of the things that I believe this Bill will cure very well. For that reason, I want to lend all my support in all ways possible.

Mr. Temporary Speaker, Sir, secondly, we have been through the cycle about the two-thirds gender rule and the inclusion of women in the leadership of political parties. This is something that any progressive leader should support. All Members that are in this House, or at least the majority of us, have been through political party nominations and we know how difficult it can be even for us men. We will be deceiving ourselves to front our women and expect that they will come out strongly. We know the rules of

engagement are largely skewed to favour men because it is about violence and who can get people to shout the most and pull down your opponent's posters and such like things.

These are not things that women particularly excel in yet we know that the determinant of who finally gets elected is substance of the quality of the human being that they are and what they promise to offer to the electorate. However, that does not determine who gets a particular party's ticket at the point. Therefore, such kind of an honest attempt will include our women in the party organs and ensure that they are involved at the level where rules are set at the party decision making organs. They will be able to determine cases where, for example, women feel they have been strongly infringed upon in a nomination exercise and that is a plus and a step in the right direction. I really want to laud the drafters of this Bill for such a brilliant consideration.

Mr. Temporary Speaker, Sir, something has also been mentioned about the Office of the Registrar of Political Parties. I agree that it is an important Office. If you were to apply the law to the letter, this is something which we all know that there are certain things that we have not set right. A good example is the so-called big political party players that are in the country right now. I would like this attempt to reform or rather give strength to the Office of the Registrar of Political Parties. I look forward to a time where political parties will be challenged by the Registrar of Political Parties regarding a particular practice in a political party that is not in accordance with the law. Such scenarios would trigger political parties to conform failure to which they could run the risk of being deregistered. This can only happen if we give strength to such independent offices. I hope once this law is enacted, the Office of the Registrar of Political Parties will move with speed so that, in future, we may look back---

We all know this. Somebody one time said that a life that has not left a mark was not worth living. We live our lives in phases. We happen to be in the Eleventh Parliament as Members of the Senate. This is one of the best gifts that we can give to this country because we know what politics means to us, as a nation. We are a politically active nation. We are a country that is best known the world over that immediately after a campaign season, people who want to run for offices in the next election begin campaigning after a short while after assuming office. We should set a few ground rules that will give good direction and guidance to political parties. If we do that, probably in another 10 of 15 years, we will be talking about two or three major political parties that have been there for a long period of time and have espoused certain values. For that matter, I will be proud to say that I was a Member of the House that enacted the law that finally dealt with the challenge that Members of the political class used to face for a long time. We will all be happy that we were part of the team that gave direction and leadership and showed people how to run good and mature political parties in this country.

Mr. Temporary Speaker, Sir, for those reasons, I beg to support.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, I rise to make my contribution to this Bill. I would like to repeat my previous statements with regard to the work that we are doing as the Senate *vis-à-vis* what is happening at the National Assembly. This Bill was developed recently yet a similar Bill by Sen. (Dr.) Khalwale that we started debating on in 2014 still remains on the back burner. I want to repeat what I

said that this House continues to prioritise the work of the National Assembly to our detriment.

Mr. Temporary Speaker, Sir, when I read this Bill, the question in my mind is whether we are making any progress as a country on what the drafters of the Constitution wanted, in terms of how political parties should operate under Article 92. I have no doubt in my mind that the purpose of this Bill is primarily to cause a merger of political parties in the Jubilee Coalition and nothing more. I will still ask a question regarding Clause 5(7) which states that where a party merges with another political party, a member of a political party that has merged shall be deemed to be a member of the new political party. How does this clause go back to Article 1 in terms of the persons who elected us determining which political vehicle we should be in? What happened to the proposals in the Constitution that where a member is unhappy with their political party, they go back to the people who elected them to seek for a mandate? Whether this Senate agrees with this clause, as far as I am concerned, it is in violation of the spirit of the Constitution for a political party to merge and its members to vacate their political party seats without seeking the permission and consent of the people who elected them. We are violating the Constitution for purposes of political expediency.

Mr. Temporary Speaker, Sir, we have similarly, in an attempt to---

Sen. Murungi: On a point of order, Mr. Temporary Speaker, Sir. I really do not wish to interrupt Sen. Mutula Kilonzo Jnr. because he always makes a lot of sense. However, would he point out which specific constitutional clause is being violated as he alleges?

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, the late Hon. Seroney was famous for saying that “you do not need to substantiate the obvious.” The obvious thing under this Constitution under Article 1 in terms of representation and the spirit under Articles 91 and 92 and the chapter on Elections, is that the persons that put us in political parties are the voters. So, we cannot ourselves, as leaders, determine that we can change political parties without their consent. If I need to elaborate something so obvious, then we are doing the wrong things even as lawyers.

Mr. Temporary Speaker, Sir, the contract between us and the people who elected us is the contract that you are in a certain political party. The clause that suggests that you can change that political outfit into another one – I am entitled to an opinion legally – violates the Constitution.

I was going to yet another clause. The amendment in Clause 15---

The Temporary Speaker (Sen. Sang): Sen. Mutula Kilonzo Jnr., is it your point of argument and that you are not reading a specific clause?

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, no. I am not reading a specific clause. However, I have just said that the spirit under Articles 91 and 92 of the political parties is the consent that we have been given by the voters. When we change that consent, just like a normal client-advocate relationship, or any other relationship of that nature, you must seek consent.

Clause 15 of this amendment suggests that Section 21 of the principal Act is amended. They have now brought in a new Section (J) which speaks of Article 81(b) of the Constitution. Sen. Sijeny alluded to this. As from my reading of this amendment, I am

persuaded that the person who drafted this section did not read Article 81 because Article 81(b) of the Constitution is very clear. It reads:-

“The electoral system shall comply with the following principles:

(b) not more than two-thirds of the members of elective public bodies shall be of the same gender.”

What business do political parties have with Article 81(b)? I dare suggest again this is a mistake.

The next mistake that we are making is on Clause 19. I have participated in nomination disputes out of party primaries. The jurisdiction of those disputes is firmly in the IEBC under Section 88(4)(e). At what point did the author of this Bill seek a concurrent jurisdiction of disputes on party primaries to the political parties tribunal and that of the IEBC? This amendment is in itself unconstitutional. This jurisdiction is absolutely given to one body; that is the IEBC. We are, in this Bill, giving it to the Political Parties Tribunal. In effect, we are expanding the jurisdiction of the Political Parties Tribunal through an amendment of the Political Parties Act, without a corresponding amendment of a specific enabling legislation of Clause in the Constitution.

Mr. Temporary Speaker, Sir, if this Senate passes this Bill and then we have party primaries and a person files a complaint with the IEBC and another files a similar complaint with the Political Parties Tribunal, how will we resolve that dispute? These are fundamental issues because the spirit of the Political Parties Tribunal was to determine matters political and not election. I have reason to believe so because the Political Parties Tribunal is one of our impediments to party discipline because it does not understand the Political Parties Act. How, then, do we give them this mandate and expect that when somebody challenges your nomination, you can go to the political parties tribunal which in the recent past has shown that it has no teeth or backbone and does not understand the political Parties Act? Where would you rather be; a body that has been given jurisdiction which is conferred by legislation; that has been given that mandate under this omnibus amendment or the Constitution? I urge my good friends and Senators to look at this very carefully because it will cause us problems in future.

I am convinced the reason this amendment is being done is primarily because Sen. Murungi is championing a cause, which must come through the law. This is the reason we have this amendment. I would have preferred if this Parliament spent more time enforcing party discipline under Article 92 and strengthening the office of the Registrar. There is this obsession – it is in this amendment – with the Public Service Commission (PSC), which is now hiring the Ethics and Anti-Corruption Commission (EACC) commissioners and staff of the Office of the Auditor-General. Now the PSC will hire the Registrar and Deputy Registrar of Political Parties. How truly then are we trying to strengthen the Office of the Registrar of Political Parties? By subjecting them to another Commission and body? In my view and reading of the Constitution, it does not have a mandate to interfere with political parties.

Mr. Temporary Speaker, Sir, will we subject the Registrar of Political Parties to such a method? We have fallen into the same trap of making the Public Service Commission (PSC) look like more equal than others, as in *The Animal Farm*. The current Registrar of Political Parties has been serving in an acting capacity for reasons we do not

know. Instead of giving this office more teeth and enforcing the mechanisms of ensuring people in a political party do not dance around after election, we are busy trying to gerrymander the law, so that people can merge and after elections, form another political party; call it another name, for example, party X and then continue with business as usual. Therefore, on 10th August, 2017, after members of my political party, Wiper, are elected, they will be at liberty to merge with political party “X” and form another political party. There is no recourse whatsoever to the voters. How can we pass such legislation without the consent of the voters? This law---

Sen. Murkomen: On a point of order, Mr. Temporary Speaker, Sir. Sen. Mutula Kilonzo Jnr. should have cared to read the Political Parties Act as it is. Does he have a quarrel with the amendments or the Act as it is? The issues he is raising are in the Act as it is.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, I am quarreling with the amendment that suggests that upon the merger of the political parties, the member who has defected shall be deemed to be a member of that new political party.

(Sen. Murkomen spoke off-record)

Sen. Mutula Kilonzo Jnr.: I have no objection with Clause 8, which states that members have an option of not going. I am not speaking of us; this is the political class deciding the bed they want to jump in. I am talking about the people who elected the Members and the benefit that they have. That is my quarrel with the amendment. I was speaking about the Public Service Commission where we are subjecting the Registrar of Political Parties. This is supposed to be a prefect of political parties yet we are subjecting him to yet another process and making him or her just another civil servant or another servant who is hired by the PSC and removing the process that is in the Fifth Schedule and Sixth Schedule. These Schedules exist to ensure that we have a Registrar of Political parties who is firmly anchored in the Constitution. If Sen. Murkomen, for example, disobeys the Political Parties Act and the constitution of his party, irrespective of the position he holds, he can be disciplined if I raise a complaint as a member of that political party.

I know that Sen. Murungi likes some of these amendments, but looking prospectively as opposed to what we want to do tomorrow and the day after before 2017, it is just clawing back on the principles of Articles 91 and 92. To that extent, I will not support those amendments that I have mentioned.

Thank you, Mr. Temporary Speaker, Sir.

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, thank you, for giving me an opportunity to contribute to this amendment. It is not long when we passed certain amendments to this Act. At that time, we were redefining the threshold for funding of political parties. What surprises me is that when you look at the bulk of legislative business that we have in this country, this is one Act that has attracted a lot of amendments. This is an indication that we seem to be obsessed with politics and party business rather than legislation on other sectoral issues that affect this nation.

When I look at the amendment, I see in it a response to a real life experience. In the political field, we know that our brothers within the Jubilee Coalition wish to merge. A merger of political parties is envisaged in the existing Act and it is something proper. The existing Act only provides security for Members of Parliament and Members of County Assemblies (MCAs). To me, this is like tidying up legislation, so that when there is a merger, it is not only the MP or the MCA who is protected, but also the President, his Deputy and the governor as well. To that extent, it is okay. It is just that the timing and the speed with which it has been processed shows that it is a Bill that has got some high level backing. That is why it is moving that fast.

Mr. Temporary Speaker, Sir, there are other provisions and amendments that have already been articulated eloquently by my colleague, Sen. Mutula Kilonzo Jnr. I have one contention – and I concur with him - on the issue of transferring the role of dispute resolution or election primaries disputes resolution to the Registrar of Political Parties. That is the job of the Independent Electoral and Boundaries Commission (IEBC). If you go down history, you will realise that issues of disputes arising out of election primaries have been of concern and contention in this country.

On my way to this House, I attempted to go through a political party primary process. Despite my best attempt to ensure that I went through it smoothly, I came across ‘men-in-black’ along the way and the ballot boxes had to be dispersed in all directions. There was a dispute within the nominations. If we bring these disputes to the Registrar of Political Parties, we will be missing the point. We need to leave this responsibility in the hands of the IEBC, but make sure that we have a credible IEBC in place that is well facilitated and structured. This should be an IEBC which enjoys the confidence and trust of the public and that exists within a platform or a landscape with electoral laws, systems and procedures that are acceptable across the political divide.

Mr. Temporary Speaker, Sir, I want to talk about the issue of fidelity to the existing Political Parties Act. This Act has a section that talks about resignation. It goes ahead to say that if someone who is elected under a party ticket engages in certain utterances, actions and commissions, it might mean that, that person has resigned from that political party. My Chairman of the Committee on Agriculture, Livestock and Fisheries, who is also the one leading the merger of the Jubilee Parties, has just walked out. He has had some exchanges with a member of his party, who is strictly opposed to the position that the party has taken and is on public record as having opposed, to the extent of saying that he will form another political party.

Some of those utterances might amount to canvassing or promoting the existence of another political party. The Registrar of Political Parties has a responsibility to take action against such people. In my own political party, if we have a situation where the party has taken a position, for example, on Madaraka Day; saying that we are all Kenyans who appreciate that we got Madaraka, but as a party this is what we will do. Members of the party could decide to do something else and cite the issue of conscience. You can have conscience, but the law is also clear that when you go beyond what the political party has agreed on, then you are deemed to have resigned. Even as we amend this Act every other day, we need to make sure that we exercise some fidelity to the existing Act.

This is the second amendment that we have processed in the one year that I have been in this House.

Mr. Temporary Speaker, Sir, my final comment - so that I can allow the Mover to comment on this - is on the process of consultation before merger. The Act is fairly docile on that. It says that parties can merge in accordance with their constitutions. Do we confirm that the constitutions represent the aspirations of the people? Do the constitutions have provisions that will take care of the concern that Sen. Mutula Kilonzo Jnr. has raised; that it is important that under Article 1, where sovereignty belongs to the people - when the people have elected their members on the platform or a ticket of a political party - the constitution of that political party still takes it back to them so that there is another way for them to affirm and agree that indeed the merger can proceed?

Mr. Temporary Speaker, Sir, we will have to converse and have some amendments to this particular Act. However, in general, looking at the principles, I support and I am happy that once this merger is undertaken, there will be a reorganization of minority and majority sides not just in the National Assembly and the Senate but also in the county assemblies throughout the country. I pray and believe that a lot of the people who are being cajoled to enter into these super parties shall opt to remain independent and that will tilt the balance of favour in many county assemblies. I also hope that it will tilt the balance in the Senate so that the Majority Leader can now become the Minority Leader because not everyone will follow him to the new party.

I beg to support.

The Temporary Speaker (Sen. Sang): There being no other interest to contribute to this matter, may the Mover reply.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move and request under Standing Orders No. 54(3) that you direct that the putting of the Question be deferred to tomorrow.

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

(Putting of the Question on the Bill deferred)

Hon. Senators, we have to defer Order Nos. 18, 19, 20, 21, 22, 23, 24, and 25 because the Movers are not in the House.

Second Readings

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

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

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

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

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

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

(Bills deferred)

MOTIONS

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

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

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

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

(Motions deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Sang): Hon. Senators, having concluded today's business on the Order Paper, the House stands adjourned until tomorrow, Wednesday, 8th June, 2016, at 2.30p.m.

The Senate rose at 6.20 p.m.