

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 18th March, 2015

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

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

PRAYERS

PAPERS LAID

REPORTS OF THE LEGAL AFFAIRS COMMITTEE ON BILLS

Sen. Sang: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Wednesday 18th March, 2015:-

(1) A Report of the Standing Committee on Legal Affairs and Human Rights on the Parliamentary Service (Amendment) Bill, 2014, and,

(2) A Report of the Standing Committee on Legal Affairs and Human Rights on the Petition to Counties (Procedure Bill, 2014).

Thank you.

(Sen. Sang laid the documents on the Table)

Sen. Wangari: On a point of order, Mr. Speaker, Sir. Did you see the way Sen. Murkomen crossed the Floor of the House to the other side? Can he do it the right way?

The Speaker (Hon. Ethuro): How did he do it?

Sen. Wangari: He crossed behind you.

The Speaker (Hon. Ethuro): Sen. Wangari, I encourage you to keep following what Sen. Murkomen does; he did the right thing.

(Laughter)

Next order!

Sen. (Dr.) Khalwale: On a point of order Mr. Speaker, Sir. Sen. Haji has been encouraged; he has come round you and he has completely refused to bow when he reached you. Is he in order?

(Laughter)

The Speaker (Hon. Ethuro): Sen. Haji, what do you have to say to what Sen. (Dr.) Khalwale has said?

An hon. Senator: Go and bow!

(Sen. Haji went to the Bar and bowed to the Chair)

(Applause)

An hon. Senator: Good; well done!

(Sen. Haji spoke off record)

The Speaker (Hon. Ethuro): I was convinced that if you had not, you will accept. So, that is okay; except that how you went to the wrong side. You need to do it from where you came from but I will spare you that for now.

Proceed, Sen. Kivuti.

REPORT OF THE LANDS COMMITTEE ON THE NATIONAL
DROUGHT MANAGEMENT AUTHORITY BILL, 2014

Sen. Kivuti: Thank you, Mr. Speaker, Sir. I beg to lay the following Paper on the Table of the Senate, today Wednesday 18th March, 2015:-

A Report of the Standing Committee on Lands and Natural Resources on the National Drought Management Authority Bill, 2014.

(Sen. Kivuti laid the document on the Table)

The Speaker (Hon. Ethuro): Next Order.

STATEMENTS

The Speaker (Hon. Ethuro): Order, Members. Let us take the requests for Statements.

Proceed, Senator for Nyeri.

FINANCING AND MAINTENANCE OF FOREIGN MISSIONS
IN KENYA GOVERNMENT OWNED PREMISES ABROAD

Sen. Kagwe: Mr. Speaker, Sir, I rise to seek a Statement from the Chairman of the Committee on National Security and Foreign Relations. In the Statement, I request that the Chairman answers the following questions:-

(1) what foreign missions are located in Kenya Government owned premises overseas;

(2) how much are we paying annually and monthly, possibly in a table form, for overseas missions;

(3) why have we not considered purchasing offices in areas where we have long-term interests; and,

(4) why most missions are complaining of underfunding to the extent that they cannot perform their functions properly.

Sen. Haji: Mr. Speaker, Sir, the statement will be given tomorrow afternoon.

The Speaker (Sen. Ethuro): Did I hear you, Mr. Chairman?

Sen. Haji: Mr. Speaker, the Statement will be given tomorrow afternoon.

Sen. Leshore: Mr. Speaker, Sir, I would like him to include honorary consulars abroad. Are there any incentives given to the consulars to enable them perform duties on behalf of the Ministry?

Sen. Haji: Mr. Speaker, Sir, that is a new question altogether.

Hon. Senators: No, no.

Sen. Haji: No, let me explain. I have said I will issue the Statement tomorrow because I have been having the response for some time now. It was not possible to issue it since we were searching for more information.

The Speaker (Sen. Ethuro): Order, Sen. Haji. The supplementary question that was added to the statement, in my view, is still part and parcel of the statement. So, just try your best. If you do not have information by tomorrow, you will ask for more time. However, it should not be difficult for you to find that information if you already have a response for most of the issues being canvassed by Sen. Mutahi Kagwe.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, with your permission, I would like to emphasise that the issue raised by Sen. Kagwe interrogates the value for money that the national Treasury spends in our foreign missions. Could he, in view of that, also come with a response as to how much money is raised in those respective missions as Appropriations-In-Aid?

Sen. Haji: Mr. Speaker, Sir, I will try but if it is not possible for me to have all the information, I will bring it another day.

The Speaker (Sen. Ethuro): Where is the Chairman of the Committee on Education? We will follow the appendix.

PREVAILING CHAOS AT THE UNIVERSITY OF ELDORET

Sen. Karaba: Mr. Speaker, Sir, the Statement which was to be issued following a request by Dr. Khalwale was dealt with today by the Cabinet Secretary and his team who happened to be here for a very long time. I presume that the matter was settled unless Dr. Khalwale has something more to add. That matter sorted itself out.

Arising from the Statement sought by Dr. Khalwale regarding University of Eldoret and resulting from various Reports that have been laid on the Table since last week and the coming of the Cabinet Secretary here in the Senate, a lot has been discussed

regarding the University of Eldoret. According to me, this issue is done. We have already settled it.

Sen. Melly: Thank you, Mr. Speaker, Sir. I appreciate the Report from the Cabinet Secretary in charge of Education, Science and Technology. My name has been adversely mentioned in the Report. However, I still believe that I have information. The Committee did not interview me. My Governor has not also been interviewed. We still believe that we have information if a solution to this matter is to be found. There are very many issues to be discussed. As we are talking now, we have over 100 police officers in the University of Eldoret.

The Speaker (Sen. Ethuro): Senator, the Chairman has said that those issues were discussed in the morning.

Mr. Melly: Yes, Mr. Speaker, Sir, they were discussed but I still believe that there is information that was left out.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. I was in the meeting and so were most of us who are here today. I appreciate what the Chairperson has said. However, is it in order for the Chairman to say that the *kamukunji* can sort out issues that have been raised in this House? I thought the procedure was that once such a Committee collects information, the information should be formally brought to the House. The Report is not a document for the House until the answer is tabled.

You, and even one of the Temporary Speakers, ruled last week that the answer would be delivered today in this House. The nation and this House are waiting for an answer and not the *kamukunji* results.

Sen. Sang: On a point of order, Mr. Speaker, Sir. Is Sen. Murkomen in order to refer to a meeting of the Committee on Education Committee as a *kamukunji*?

Sen. Murkomen: Sorry.

The Speaker (Sen. Ethuro): Sen. Murkomen, you cannot put a request and just say sorry. What is it?

Sen. Murkomen: Mr. Speaker, Sir, I stand corrected. When the Chairperson invited me today, he said that we had a *kamukunji*. However, when I arrived there, I found out that it was a formal committee meeting.

Therefore, I apologise for using the word “*kamukunji*” because it was a formal meeting of the Committee on Education. In attendance were the rest of us who are not members of the Committee. Therefore, I stand corrected.

The Speaker (Sen. Ethuro): Your attendance does not also dilute the meeting but makes it better. Your attendance makes the meeting closer to a whole House.

Sen. Murkomen: Mr. Speaker, Sir, the only thing I want to emphasise is that once a committee makes an inquiry, the results have to be tabled in the House so that they are formally discussed.

The Speaker (Sen. Ethuro): You were to deal with either this as a *kamukunji* or a committee. You had already canvassed the rest of the issues.

The Senate Majority Leader (Sen. Wetangula): Mr. Speaker, Sir, indeed, there was a Committee meeting this morning that was well attended by among others, myself who is not a Member of that Committee, the distinguished Senator for Samburu and the

two young Senators in front of me; the distinguished Senators from Elgeyo-Marakwet and Nandi counties.

The Cabinet Secretary, in my estimation, handled the matter pretty well. He brought a Report which we went through. He even assured us that the Government is seized of the matter and is handling it. What we expect from the Chairman, since the House conducts its business either through the plenary or committees, we need not flog the matter any further. If anybody is aggrieved and wishes that the matter be further debated on the Floor, we are ready for it. If the distinguished Senator for Uasin Gishu feels aggrieved by the contents of the Report, I encourage him, for free, and advise him that his continuous flogging of the matter is hurting him more than anybody else. It would be better if he let the matter rest where it is. However, we are fully armed to deal with it.

The Speaker (Hon. Ethuro): Order, Sen. Wetangula! It is the expectation of the Chair that all Senators are fully armed to deliberate on any matter before the House. There is something that the Senate Minority Leader has said which I think we can pursue in terms of this matter. Since you deliberated it quite extensively at the Committee Stage, we may as well just wait for the Committee to do its report and then we debate it. For any Senator who feels aggrieved, you can still make presentations to the Committee and give the kind of information that you would wish so that the report is complete when it comes to the House.

Chairman, when do we expect the report?

Sen. Karaba: Mr. Speaker, Sir, expect the report on Wednesday, next week.

Sen. Melly: Thank you, Mr. Speaker, Sir. I am in agreement with the Chairman of the Committee on Education that in a week's time, the report will be ready. Before that, the recommendation of the team from the Commission for Higher Education that went to Eldoret to investigate this matter recommended two avenues; the first is to take the lead to seek a political solution that involves all the stakeholders – leaders and university staff – to bring them together and agree on the way forward. Second is to engage the National Cohesion and Integration Commission. Part (c) says that the University will be reopened only after the two processes above have been initiated. Until this day, none of the above issues has been done and the University is opened. That is the position.

The Speaker (Hon. Ethuro): Wait for the report.

Next issue on the Order Paper is (b).

(Loud consultations)

Order, Sen. (Dr.) Khalwale! Let us just leave it there. You can still see the Chairman. I know that is what we have directed.

Chairman of the Committee on Labour and Social Welfare, what is your response on Item (d),

STATUS OF CASH TRANSFER PROGRAMME

Sen. Madzayo: Thank you, Mr. Speaker, Sir. The response to this Statement is not ready. The reason is that the list of the beneficiaries is a bit bulky and the Ministry has been working on it. My information so far is that we will be in a position to come up with the list next Tuesday.

Sen. Musila: Mr. Speaker, Sir, I would like to draw your attention and that of the House to the fact that this is the third time that this matter is coming before this House. On 19th February, 2015, the Chairman actually read us an answer to this matter and was asked to bring a further answer the following week, which was last week. He came and asked the House to give him until today. It is apparent that the Ministry is engaging in a cover up. It is covering up something and is reluctant to release the information which is in the national interest.

The issues I canvassed were very specific; to get the names of persons currently receiving cash transfers within the Republic of Kenya, to give the breakdown of the 47 counties and to provide a list showing the names of recipients of cash transfers from each of the eight constituencies in Kitui County. This is no rocket science and if the Ministry is sincere, I see no reason why this information, which is available, cannot be released. They are releasing money every month to recipients and the Chairman should come clean and tell us if we are ever going to receive this information. It is an answer that is awaited by all Senators.

Sen. Kagwe: Thank you, Mr. Speaker, Sir. I totally sympathise with Sen. Musila on this matter. The Cabinet Secretary (CS) involved should be subjected to the same practice that was subjected to the CS for Education. This matter is of interest to every Senator. Would I be in order to request that the CS for Labour, Social Security and Services comes to this House and explains the matter to each and every Senator who wishes to do so as requested by Sen. Musila?

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. I want to make it slightly better than what my good friend from Nyeri has said. It is not for every Senator who wishes. In fact, each and every Senator here who represents a county has tremendous interest in knowing how many elderly people are within this safety net, how much, how regularly and where they are paid; who pays them and how they are protected against any intruders that can take away that little money that they get. We want the CS to come here and face a Committee of the Whole and not just the Committee on Labour and Social Welfare, so that he can give us a county by county breakdown on how the elderly safety net funds are being disbursed.

Sen. Madzayo: Thank you, Mr. Speaker, Sir. The distinguished Senator for Kitui says there is a cover up but I do not think there is any cover up at all. It is only that there has been a delay in getting this response from the Ministry. I have no objection at all to the CS concerned appearing before a Committee of the Whole. That can be facilitated.

Sen. Ndiema: Thank you, Mr. Speaker, Sir. On the same, I would wish that when he comes, he also comes with the ages of each one of them because there are those who are younger and are receiving money, while those who are “almost being called” are not receiving any money.

The Speaker (Hon. Ethuro): Order, Senators. I think the issue of inviting the CS has to do with the frustration of the Chairman. In this case, he seems not so frustrated, although the Members are frustrated. I will give the Chairman the opportunity and if he still thinks that by Tuesday he will give the House a complete report, so be it.

If we are dissatisfied, then we can go for the other recourse of getting the CS to come for a Committee of the Whole. When I saw the Chairman of the Committee on Information and Technology on his feet, I thought he was going to raise a fundamental issue which I thought the Chairman and Sen. Musila should also raise. This is supposed to be a digital Government or an E-Government. How do you come to the House to claim that you do not have a record? Then you are paying ghosts. Chairman, as you deal with the CS, you may wish to remind him that the expectation of the House and the country and the pledges of the Government would not be consistent with delayed responses on the basis of databases.

IMPLEMENTATION OF THE MALKA DAKA
IRRIGATION PROJECT IN GARBATULLA

Sen. Ndiema: Mr. Speaker, Sir, I seek your indulgence because the answer to this Statement is not ready. It will be ready on Wednesday next week.

Sen. Adan: Mr. Speaker, Sir, I had discussed with Sen. Ndiema and I am in agreement with him.

The Speaker (Hon. Ethuro): Hon. Senators, I thought I had recommended before that once you have some agreement, you approach the Chair so that we dispense with the issue, instead of getting the two of you confirming on the Floor because we have a lot of business before us.

Wednesday next week! Next Statement!

INSECURITY IN VILLAGES ALONG THE
WEST POKOT-TURKANA COUNTY BORDERS

Chairperson, I do not see Sen. (Prof.) Lonyangapuo and so you can leave it pending. You can agree with him when he is available next.

The same applies to the next Statement.

LONG TERM MEASURES TO STAMP OUT CATTLE
RUSTLING IN WEST POKOT COUNTY

Sen. Haji: On a point of order, Mr. Speaker, Sir. I want to make an appeal; I had an appointment with a doctor and I postponed it because I wanted to issue these Statements. If I do not issue them in the next one month, I should not bear responsibility.

The Speaker (Hon. Ethuro): Order, Sen. Haji! Are you implying that your problem will keep you engaged for one month with the doctor hereafter? Why do you not give your colleague the benefit of doubt that he could be having a similar problem with a doctor and maybe his situation might be worse than yours?

Next Statement!

FAILURE BY GOVERNMENT TO MAKE
REGULATIONS ON BASIC EDUCATION

Sen. Karaba: Mr. Speaker, Sir, I had agreed with Sen. (Prof.) Lesan that I will give the answer to him as soon as I get it. This Statement was only dealt with by the CS this morning.

The Speaker (Hon. Ethuro): Any indication as to when it will be answered?

Sen. Karaba: Wednesday next week.

COLLAPSE OF MUMIAS SUGAR COMPANY
IN KAKAMEGA COUNTY

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. For the record, on 25th last month, I requested for a Statement from the Committee on Legal Affairs and Human Rights in respect to the state of affairs at Mumias Sugar Company. They indicated that they would respond in two weeks. It is now over three weeks and I would like the record to be clear when the Statement is coming.

The Speaker (Hon. Ethuro): The Chairperson of the Committee is officially at the Busia Investment Conference. Where is the Vice-Chairperson? Sen. Adan, are you a Member of that Committee?

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

The Speaker (Hon. Ethuro): Proceed, Vice-Chairperson!

Sen. Sang: Mr. Speaker, Sir, Sen. (Dr.) Khalwale showed me that particular request for a Statement for the first time yesterday. It appears that something somewhere did not work out that the Committee has not been able to obtain that Statement. I undertake that we will respond to that particular issue in the next one-and-a-half weeks.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I would not mind giving him that time, but as we allow him, let it be on record that had this Statement been responded to in time, it would have pre-empted the tension that has build in Mumias. For your information, there was a serious public demonstration that led to several casualties including the Member of Parliament for Mumias East who sustained injuries. I will be happy if in one-and-a-half week's time, you give us the answer.

The Speaker (Hon. Ethuro): Sen. Sang, my record here indicates that the Statement on the collapse of Mumias Company and injection of bail out capital was sought by Sen. (Dr.) Khalwale on 25th February and it was promised to be due on 11th March. Now if you saw it yesterday, obviously you do not belong to the Committee.

Sen. Sang: Mr. Speaker, Sir, as the practice has been, Statements are sought from Chairs of Committees and you know my Chairperson is the Senator for Busia and Attorney-General *emeritus*. He has had serious engagements internationally and it is possible that when the Statement was sought, he may have responded to it but he did not come to the Committee. I took over the Statement yesterday and we should be able to respond, possibly, on Wednesday next week.

The Speaker (Hon. Ethuro): Let me make it absolutely clear that the Statements are sought from Chairs on behalf of the Committee. It is not private personal property for the Chair to be hoarding and carrying it wherever he goes. A Chairperson may travel but the Committee can continue interrogating the matter. That is why we have a Vice-Chairperson with certain responsibilities and with privileges.

IMMINENT BORDER CONFLICT BETWEEN ISIOLO
AND MERU COUNTIES

Sen. (Dr.) Kuti: Thank you, Mr. Speaker, Sir, I stand to inquire about a Statement that I sought from the Chairperson of the Committee on National Security and Foreign Relations about the border dispute between Meru and Isiolo counties which was an urgent matter. It was actually on the Order Paper yesterday but I do not see it today. It was indicated as urgent because the matter is still simmering and the relationship between the two counties and the communities is getting worse. I would like to know when this Statement will be given.

Sen. Haji: Mr. Speaker, Sir, I agree with the sentiments of Sen. (Dr.) Kuti. I am very sorry to say that yesterday, I called the Principal Secretary and she did not respond to my call. I sent her a message and told her that courtesy demands for her to answer a call. Up to this moment, she has not responded. This is not the first time.

I understand that there is a lady at the Office of the President who has no respect whatsoever for Members of both Houses. When there was a retreat for the Jubilee Coalition in Naivasha, that issue was raised. I do not know what protection she has. I even called my friend and brother, Gen. Nkaissery, who was my deputy and he told me that he was in Kajiado. I asked him to ask her to sign that letter because it has been with her for the last four days. It is unfortunate that I will not be here the day after tomorrow otherwise, I would have summoned her. I will summon her here when I come back. She will not get away with it. So, my brother, bear with me because I have made all efforts. Even this afternoon, I called Hon. Nkaissery twice. He called me later but I was in prayer and so, we missed each other. I have not given up. I will deal with that woman.

(Laughter)

Sen. (Dr.) Machage: Mr. Speaker, Sir, I hope that you have appreciated the stress which our fellow Senator and Chairman of the Committee on National Security and Foreign Relations has expressed to this House on his encounter with this fictitious lady. Would I be in order to demand that we are told the name of the stubborn lady?

The Speaker (Hon. Ethuro): Order, Senator! That is really immaterial. It is not going to help our case. We want the Statement to be signed. Let the Chairperson deal with it. I am sure when he comes back to us, you will know what he will do.

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

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir, Article 35 of the Constitution provides that every citizen has the right to access the information held by the state. We are not just “every person.” We are approaching the Jubilee Administration as

the Senate. Can it be clear from the Chair who the contact persons are that our Chairpersons of the committees are supposed to go to when they want to access information for purposes of informing this House? Could the Speaker make it clear?

Sen. (Dr.) Zani: Thank you, Mr. Speaker, Sir. It was very effective today when we had the Cabinet Secretary for Education, Science and Technology. Apart from the Statements that had been sought, more were also put across on the Floor of the House. I think the issue of responses is becoming a real problem in this House. It is putting our chairpersons in situations where they have to do other many things but they cannot do them effectively. As Sen. Haji said, if you have to follow up on somebody twice or thrice, it takes a lot of time. I have seen in other parliaments like Tanzania, they have a schedule of how they call different Cabinet Secretaries to the House and the Members put together questions and direct them at that time. We can still have Statements, but have very concerted efforts at having Cabinet Secretaries in a rotational format come to the House in the Committee of the Whole, as it happened this morning. Then we can actually spend a lot of time and good engagement.

What we saw this morning is that when you interrogate, apart from the formal Statement that is given initially to this House by the Cabinet Secretary of Education, Science and Technology, we were able to probe and get into more meaningful discourse. I think that is something that we are missing, for as long as we will rely on Statements that are being given by people who are not even keen on giving them to us, if I go by the example that has been given by Sen. Haji. So, we might just be doing an exercise in futility. We read Statements that we do not really understand where they come from. We do not really get the meat and the issues that are coming out. There is value in having more Cabinet Secretaries coming to meet us. We can think about it and have a rotational way of having them come. It would add value to this House.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order, Senators. This debate has been around for a while. I plead that we should allow the Chairman to deal with the matter for now. When it is ripe, the CS will come to the House and we will guide him accordingly. As per the suggestion by Sen. (Dr.) Zani, I think that the Joint Liaison Committee could consider it in terms of what kind of issues to deal with. Maybe we should have a schedule of the mega issues that can be taken on board.

In addition to what Sen. (Dr.) Khalwale cited, and the emphasis that we are not just any person, as a House, our primary source of information is usually the Cabinet Secretary responsible. That is why we summon them as we did in the morning. If you also look at the values and principles of Public Service in Article 232 of the Constitution, they include transparency and provision to the public of timely and accurate information.

(Loud consultations)

Order, Members! I am addressing Sen. (Dr.) Khalwale and the Standing Orders are very clear that you should not come in between the Chair and a Member. The Ombudsman usually reminds me of Article 47(1) of the Constitution on fair administrative action. It says:-

“Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”

So, all these constitutional provisions are applicable to the Cabinet Secretary and the agent called the Principal Secretary. I am sure in your usual manner, you will be digging for more arsenal but let us wait for the matter to be ripe and then we will deal with it.

Please proceed, Sen. (Eng.) Muriuki.

KENYA DEFENCE FORCES RECRUITMENT IN NYANDARUA

Sen. (Eng.) Muriuki: Mr. Speaker, Sir, I stand to seek for direction. Last year, I sought a Statement from the Chair of the Committee on National Security and Foreign Relations with regard to the Kenya Defence Forces (KDF) recruitment in Nyandarua. That answer did not come. I kept on waiting but instead of the answer coming to the House, it was taken to the pigeon hole. It was signed by the Cabinet Secretary and a few days later, I received another response regarding the status of the Internally Displaced Persons (IDPs) in Nyandarua County. In both cases, the answers have been given but there are issues that should be responded to. Essentially, the Cabinet Secretary for Security is agreeing with me but I have no room to question further. How do we get it to the House so that I can interrogate it?

The Speaker (Hon. Ethuro): Senator, that room was exhausted last year. You are even fortunate that they at least sent the responses directly to you. The position we have taken in this House is that those Statements lapse with the session. If you are still interested, you make a fresh application.

Sen. (Eng.) Muriuki: So, the direction is that I ask afresh?

The Speaker (Hon. Ethuro): Yes.

STATUS OF THE COUNTY GOVERNMENT STAFF PENSION SCHEME

Sen. Sang: Mr. Speaker, Sir, I sought a Statement from the Chairperson of the Committee on Labour and Social Welfare on the issue relating to the county staff and their pensions. That Statement was supposed to be issued on 19th February, 2015 but that has not been done until now.

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

Sen. Wangari: Mr. Speaker, Sir, I want to apologize on behalf of my Committee for not tabling that response on time but we have also been having various engagements with various stakeholders on the same issue. The Ministry was not able to give us a satisfactory answer but we are still going on with the negotiations. In fact, we had a meeting up to yesterday with stakeholders. Therefore, we seek the indulgence of the House so that we can bring the response next week on Thursday.

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

That is the end of Statement Time. I have a Communication to make.

COMMUNICATION FROM THE CHAIR**VISITING DELEGATION FROM KISII COUNTY ASSEMBLY**

The Speaker (Hon. Ethuro): Hon. Senators, I am pleased to acknowledge and to welcome to the Senate this afternoon a delegation from the County Assembly of Kisii seated at the Speaker's Gallery. I request that the members of the delegation stand when their names are called out so that they may be acknowledged in our usual manner by the Senate.

1. Hon. Haron Mutume Masase
2. Hon. Joyce J. Isaac
3. Hon. Shem Ondara
4. Hon. George M. Bibao
5. Hon. Jane Kananga
6. Hon. Peter Omar
7. Hon. Sabina Kennedy
8. Hon. Felista Metobo
9. Hon. Godfrey Ogembo
10. Hon. Timothy Nyarango
11. Hon. Kennedy Mainye

The hon. Members from the County Assembly of Kisii are accompanied by the following staff:-

1. Mr. Geoffrey O. Oseko
2. Mr. Dennis Ogendero

Hon. Senators, I take this opportunity on behalf of the Senate and on my own behalf, to wish the delegation a happy and fruitful visit in the Senate. As you know, the Senate is dedicated to the protection and promotion of county interests.

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

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

Sen. Murkomen: Mr. Speaker, Sir, thank you for that recognition. I just wanted to bring to your attention that the Committee on Devolution had a very fruitful engagement with the delegation from the County Assembly of Kisii. They came to engage us on matters of capacity building and formation of a committee so that they can deal with matters of further decentralization, urban areas, cities and towns. This will also include issues of county management, below county headquarters. I want to congratulate the committee from Kisii County. It is the only committee that is associated with my Committee and we will be ready. We have assured them that we will continue engaging them, including visiting Kisii County to see how we can continue building their capacity.

Sen. Karaba: Mr. Speaker, Sir, following your recognition of the delegation from Kisii, you can see that there are other students. I do not know where they are from but we need to recognise them.

The Speaker (Hon. Ethuro): Indeed, we seem to be forgetting people in the public gallery which is not correct. We will recognise them accordingly.

Hon. Senators, today is Wednesday afternoon, a day dedicated to voting. We expect Orders No.8, 9 and 10 to be disposed of today.

Next Order!

COMMITTEE OF THE WHOLE

(Order for the Committee read)

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

IN THE COMMITTEE

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

THE ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL (SENATE BILL NO.5 OF 2014)

Sen. (Dr.) Machage: Hon. Senators, we are now in the Committee of the Whole. Before we proceed, may I recognise the students at the public gallery from Tharaka-Nithi together with their teachers? You are welcomed and highly recognized in the Senate. I hope your stay will be of use to your education. I can see your Senator, Prof. Kindiki, is here and is delighted to see you.

I will now embark on the business of the House. I will start by calling out the clauses that have no amendments.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Chairman. I am amazed at the manner in which we are flying. We have amendments on the Order Paper unless they have been abandoned.

The Temporary Chairperson (Sen. (Dr.) Machage): Order, Sen. Wetangula. I am yet to call the clauses for amendment. What has been read are clauses with no amendments. I want us to dispose them off first.

The Senate Minority Leader (Sen. Wetangula): No, Mr. Temporary Chairman. As a matter of procedure, we cannot do that. The Committee of the Whole deals with the Bill clause by clause in a systematic and arithmetic manner. We cannot skip Clause 8 which has an amendment and go to Clause 29. We must deal with clauses in a systematic manner. That is the procedure.

The Temporary Chairperson (Sen. (Dr.) Machage): Order, Sen. Wetangula. This House is guided by traditions and our Standing Orders. You have been in Parliament for, I think, the last five terms and you know that we have had this before. I hope your memory has not failed you today because we have had this kind of procedure before. If you want me to consider your proposal, I might think about it. However, the Standing Order No. 1 gives me permission to do what I am just about to do.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Chairperson, the Standing Order No.1 only applies when there is a lacuna. That does not make it legal because we have acted unprocedurally.

The Temporary Chairperson (Sen. (Dr.) Machage): Which Standing Order are you on?

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Chairman, I can get it. That is not a problem. I will read it to you just now.

The Temporary Chairperson (Sen. (Dr.) Machage): Until you get that Standing Order, I will assume that you have none.

(Laughter)

Let us proceed.

I will put the question at the end of the exercise. Let us go back to the concern of the Senate Minority Leader (Sen. Wetangula). Continue, Sen. Wetangula.

Clause 5

Yes, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Temporary Chairman, I am sorry. I do not want to appear as if I am challenging you. However, the challenge by the Senate Minority Leader, (Sen. Wetangula), should be disposed off. I, also, am an experienced Member. I know that the Standing Order No. 1 which you referred to also goes ahead in 1(2) to state that such a decision, like the one you have made, should be done in accordance with the traditions and practices of the Parliament. You know for a fact that the traditions---

The Temporary Chairperson (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale. I have actually done it according to the traditions and practices of this House. History will judge me. However, I have also challenged Sen. Wetangula to show me the Standing Order he stands on but he has not yet shown me.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Chairman, it is Standing Order No. 1(2). I have been a Member of the Speaker's Panel long before you came to Parliament.

The Temporary Chairperson (Sen. (Dr.) Machage): It was only for one term.

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Chairman, Sir, I chaired committees in the same way you are chairing and I salute you for doing so because you are a very distinguished Senator. In all committee proceedings; when you are in the Committee of the Whole House, apart from Clause 1, and title, you move systematically from the number one to the last clause and then go back to the title. However, you jumped Clause 8 and another clause and went to Clause 29. The distinguished Senator for Isiolo County actually agrees with me that, that is the procedure. My authority is the Standing Order No. 1(2).

The Temporary Chairperson (Sen. (Dr.) Machage): Could you read it?

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Chairperson, Standing Order No. 1(2) states that:-

“The decision made in paragraph (1) shall be based on the Constitution of Kenya, statute law and usages, forms, precedents, customs, procedures and traditions of the Parliament of Kenya and other jurisdictions to the extent that these are applicable to Kenya.”

All these fortify what I am saying. You may have made a mistake but we are ready to---

The Temporary Chairperson (Sen. (Dr.) Machage): Order. The Chairperson never makes a mistake. Please have a seat.

Sen. Wetangula, I accept your prophecy that you have been longer in the House than me by one term. However, could you look at the Standing Order No. 136? I am not going to read it. You read it at your own free time. That is a little bit different from what you are trying to tell me. That is what we have done always. We are supported by the Standing Order No. 136 and we read the clauses as printed.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Chairperson, thank you for arguing my case. Standing Order No. 136 talks about sequence to be observed on a Bill in Committee of the Whole. It states the following:

“In considering a Bill in Committee of the whole, the various parts thereof shall be considered in the following sequence:-

- (a) clauses as printed, excluding the clauses providing for the citation of the Bill, the commencement, if any, and the interpretation;
- (b) new clauses;
- (c) schedules;
- (d) new schedules;
- (e) interpretation;
- (f) preamble, if any;
- (g) title; and,
- (h) the clause providing for the citation of the Bill.”

The Temporary Chairperson (Sen. (Dr.) Machage): Order, could you freeze!

At one time, Justice Ringera said something that I may not quote in full. He said that everything had a beginning at one time. Even the tradition started at one time. If you doubt that, I will start now.

(Laughter)

Order, could we continue? I have so ordered.

(Sen. Wetangula stood up in his place)

You know you are my boss, therefore, I cannot keep on arguing with you.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Chairman, I am not trying to validate anything. However, we are paying fidelity to the law and the Standing Orders. We agree that you are starting a tradition that is veering away from the beaten track. The correct thing to do is what the Standing Orders say. As a House, we

want to make progress. The Chairman can also make a mistake and own up to that mistake.

The Temporary Chairperson (Sen. (Dr.) Machage): Sen. Wetangula, the Chairman, as I told you and I repeat, never makes mistakes. What I have done is to appreciate that we have a lot of work to be covered today. I am just being sensible, wise, straightforward and efficient. If you want me to break that thought, then say it. We can drag ourselves and do nothing. I appreciate the sense of reading and understanding that Sen. Wetangula and Sen. (Dr.) Khalwale have portrayed in this House.

After appreciating, please, let us try and cover some work in the House. Your “small” points of order are always very “big.”

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Chairperson, Sir. Indeed, it is in the interest of the House that we move expeditiously. But can you guide me on how we are going to capture on HANSARD a precedent that attempts to set aside a Standing Order? In this case, we are now setting aside Standing Order No.136. How shall we do it, so that it is procedural?

Sen. Kagwe: On a point of order, Mr. Temporary Chairperson, Sir. There is also the issue of English here. My reading of what you have done is absolutely correct. We are reading the clauses as printed. All that you have done is to say that we will read everything as printed, except for those which have got amendments, so that we can move those amendments. There is nowhere in the Standing Orders that says that you cannot read as listed; even the ones with amendments. We are just being bullied here by Sen. Wetangula.

Let us proceed.

The Temporary Chairperson (Sen. (Dr.) Machage): Order! This is now academic. I appreciate your concern, but I have told you the reasons I am doing this. They make a lot of sense. Let us leave it at that, please,

Chairman, Committee on National Security and Foreign Relations, can you move your amendments to Clause 5 because it has already been called out? Look at the amendments to Clause 5 as indicated on page 068 of the Order Paper. Were those amendments suggested by you?

Please, approach the Table.

*(Sen. Haji approached the Table and
consulted with the Clerk-at-the-Table)*

Sen. Haji: Mr. Temporary Chairperson, Sir, I wish to withdraw the amendments.

The Temporary Chairperson (Sen. (Dr.) Machage): All of them?

Sen. Haji: Yes, Mr. Temporary Chairperson, Sir.

The Temporary Chairperson (Sen. (Dr.) Machage): They are so withdrawn.

*(Proposed amendments by Sen. Haji to Clause 5
were withdrawn)*

Clause 8

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Chairperson, Sir, I beg to move:- THAT Clause 8 of the Bill be amended by –

(a) deleting sub-section 4(b) of the proposed new section 6A and inserting therefor the following new sub-section-

(b) research and promotion of the use of local raw materials for the manufacture of alcohol.

(b) deleting sub-section 4(c) of the proposed new section 6A.

Mr. Temporary Chairperson, Sir, this Bill is very important because it regulates the alcohol industry, which in the recent past has caused death due to illegal alcohol. Further, in order to ensure that the quality of alcohol content meets the health standards, it is always important to invest in research and the use of local materials for the manufacture of alcohol. Those local materials so used must conform to the scientific standards that will help produce alcohol that is fit for human consumption, without adverse effects. That is the significance of the amendment that I am proposing.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): Since I see no intervention, I will put the question later.

Next clause.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Chairperson, Sir. Allow me to speak on behalf of the Chairman of the Committee on National Security and Foreign Relations to which I belong. The Chairman inadvertently indicated to the Chair that he was withdrawing all the amendments that came from the Committee. Upon consultations with the Senate Majority Leader, we believe that these amendments are merited. Some are aligning the Bill with devolution. Clauses in the Bill that are referring to districts which are no longer in existence are to be amended to talk about counties.

I would request that after dealing with the amendment by the distinguished Senator for Kisumu, we report progress and allow the Chairman to acquaint himself clearly with the amendments - because this Bill is more than a year old on the Floor the House - so that we can deal with them maybe tomorrow. This is because wholesomely withdrawing them is injurious to, in fact, the spirit and letter of the Bill.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Chairperson, Sir, I want to support what the Senate Minority Leader has said and just add one other thing. I am saying this now with the benefit of refreshed memory. This Bill has been with us since last year and I do understand when the Chairman of the Committee on National Security and Foreign Relations is not able to reconnect with the proposed amendments. But I do recall some of these amendments, other than what Sen. Wetangula has said about aligning them with devolution. I saw them when the Committee was deliberating them. Part of the objective for the amendments is to ensure that there is a difference between the licensing of alcoholic drinks, which is a function of county

governments and the control of alcoholic drinks, which is a function of the national Government.

The national government is involved with control of alcohol and the county governments are left with issues of licensing of alcoholic drinks.

Mr. Temporary Chairman, Sir, I beg that you give the Chairman and his Committee a leeway to stand down the amendments and perhaps, these amendments can be debated tomorrow or at the earliest time possible, subject to directions by the Rules and Business Committee (RBC)

The Temporary Chairperson (Sen. (Dr.)Machage): I have listened. I am rather disturbed by the lack of communication between the secretariat and the membership of the Committee. This is a grievous error that should not be a tradition of this House. I accept with a lot of difficulties but due to respect and being the first of its kind that I have heard, and having heard that request which appears to be so sincere from the Senate Minority Leader, with concurrence of the Chair of the Committee, I accept the prayer. I will now have to put it procedurally and I am afraid that will affect the amendment sought by the Professor because we do not have the numbers. I will ask the Mover to prosecute this request carefully under Standing Order No. 139

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Temporary Chairman, Sir. Would it be in order for me to request you not to stand down my amendment because I have already proposed it and the House by silence approved it? I think silence means consent, rather than do double work when these other amendments come, I think each amendment is a stand alone amendment and once approved by the House, there should be no other problem except voting on it. We have had occasions when we had no numbers and in that case, we deal with a Bill and postpone the vote. All we can say is on this one, we shall postpone the vote but on the other one, it will come before the House again.

The Temporary Chairperson (Sen. (Dr.) Machage: I have actually considered that, Sen.(Prof.) Anyang'- Nyong'o. I thought it was going to be of use to your amendment when I looked at the numbers. If you so wish that we take the risk because this is an amendment to a Bill, we need to have the prerequisite numbers in the House. If you so wish that we take the risk, we will then order for the Division Bell to be rang.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Chairman, Sir. What the distinguished professor is saying is that even as we seek leave to report progress at the next sitting, he should not be called upon to prosecute this amendment, we simply vote on it because he has already prosecuted it, which I think is a fair request. You just postpone the vote on Clause 8 which the distinguished Professor has already moved and the House has concurred by conduct except for the vote.

The Senate Majority Leader (Sen. (Prof) Kindiki): On a point of order, Mr. Temporary Chairman, Sir. I support what the Senate Minority Leader has said and also the request by the Senator for Kisumu is legitimate but I am wondering whether it is in order to just accept that request either expressly or by conduct without the maker of that request, that is, Sen. (Prof.) Anyang'- Nyong'o, standing to request under Standing Order No.53, so that we postpone the voting the way we do it normally under Standing Order No.53, rather than just take consensus customarily without following procedure.

The Temporary Chairperson (Sen. (Dr.) Machage): Sen. (Prof.) Anyang'-Nyong'o moved and that is enough. I do not need Standing Order No.53 to demand for a report, it is within the limits of the law to leave the prayer as such unless somebody has a different opinion, that is my ruling. Therefore, I demand that the Mover make the necessary prayer to the House.

PROGRESS REPORTED

THE ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL,
(SENATE BILL NO. 5 OF 2014)

The Senate Majority Leader (Sen. (Prof) Kindiki): Mr. Temporary Chairperson, Sir, pursuant to Standing Order No.139, I beg to move that the Committee of the Whole do report progress on its consideration of the Alcoholic Drinks Control (Amendment) Bill, (Senate Bill No. 5 of 2014) and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT

THE ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL,
(SENATE BILL NO. 5 OF 2014)

(Loud consultations)

The Temporary Speaker (Sen. Mositet): Order, Members. I can see the leader is really in his moods.

Proceed, Chairman.

Sen. (Dr.) Machage: Mr. Temporary Speaker, Sir, I beg to report progress that the Committee of the Whole has considered the Alcoholic Drinks Control (Amendment) Bill, (Senate Bill No. 5 of 2014) and seeks leave to sit again tomorrow.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Mositet): I ask the Mover to move.

The Senate Majority Leader (Sen. (Prof) Kindiki): Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said Report. I request the Senate Minority Leader, Sen. Wetangula, to second.

The Senate Minority Leader (Sen. Wetangula) seconded.

(Question proposed)

Question put and agreed to)

BILL

Second Reading

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

(Sen. (Prof.) Anyang'-Nyong'o on 05.03.2015)

(Resumption of Debate interrupted on 12.03.2015)

The Temporary Speaker (Sen. Mositet): I understand we are now supposed to be on the Division; do we have the numbers?

Okay; ring the Division Bell for five minutes!

(The Division Bell was rung)

Order, Senators! Order, Sen. Orengo! Order! Order! Senators, log in, please? Could we have the doors closed and the bar drawn?

(The doors were closed and the bar drawn)

I will now put the question---

(Sen. Orengo stood up in his place)

What is your point of order, Sen. Orengo?

Sen. Orengo: Mr. Temporary Speaker, Sir, if we vote, the vote will be highly irregular and it will be a nullity in law. When you are putting the Question, you should be standing up; you are out of order!

(Laughter)

(The Temporary Speaker (Sen. Mositet) stood up)

Order, Sen. Orengo!

(Laughter)

I will now put the Question so that you can vote.

DIVISION

ELETRONIC VOTING

*(Question, that the Public Fundraising Bill
(Senate Bill No. 5 of 2014) be now read a Second
Time, put and the Senate proceeded to vote by
County Delegations)*

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Muthama, Machakos County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. M. Kajwang, Homa Bay County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County and Sen. Wetangula, Bungoma County.

NOES: Nil

The Temporary Speaker (Sen. Mositet): Order, Senators! The results of the Division are as follows:-

AYES: 27

NOES: Nil.

ABSTENTIONS: Nil.

The "Ayes" have it.

Draw the Bar and open the door.

(Question carried by 27 votes to nil)

(Applause)

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

The Temporary Speaker (Sen. Mositet): Next order.

BILL

Second Reading

THE NATURAL RESOURCES (BENEFIT SHARING) BILL,

(SENATE BILL NO.34 OF 2014)

(*Sen. (Dr.) Zani on 4.12.2014*)

(*Resumption of Debate interrupted on 12.3.2015*)

The Temporary Speaker (Sen. Mositet): Proceed, Sen. (Prof.) Anyang'-Nyong'o, you had eight minutes.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Speaker, Sir, I was on the Floor contributing to this very important Bill when the Senate rose to adjourn on the 12th March, 2015. The point I was making was, first of all, to thank my Chairperson, Sen. (Dr.) Zani, for chairing this *ad hoc* Committee, to which I belonged, very ably. The second point I was making then, just to refresh our memories, is the issue of legislation of royalties accruing from natural resources. It is an issue whose time has come because of the recent bonanza in the discovery of various minerals in this nation. While that is going on, we should not forget that this nation is endowed with other natural resources which have been major contributors to the Gross Domestic Product (GDP) and which should be factored in as we talk about royalties.

Except for the Mara and Narok areas, other game reserves have been run from the centre and the interests of the communities which live in those areas have not been taken into account. Along with that is the issue of conservancies. There are many conservancies in this nation, all across the Rift Valley but also in northern Kenya. While indeed, those who have initiated and owned these conservancies have done a job to be appreciated, one should not forget that there were and there are still communities living in or out of these conservancies whose interest in terms of the benefits accruing from these conservancies should be taken into account.

These interests should not just be addressed in terms of Corporate Social Responsibility (CSR). That kind of serving of interest is quite often dependent upon the conservancy itself or may not be done regularly, but it is important that the benefits be rooted in law. Our Constitution points out that public and community interest is extremely important in drawing benefit from natural resources. Our most important natural resource is our environment as a whole and part of it is to do with our flora and fauna and, indeed, the natural features in this environment; the hills, valleys and so on, and so forth.

Quite often, tourists come to this nation to enjoy natural resources wherever they are; even in areas which are not demarcated as official tourist areas. However, as we move on to establish devolution, many counties are becoming aware that there are potential tourist sites. I know that there is no county in Kenya in whose policy document you will not find an element of tourism. If, indeed, the element of tourism is not there, there are policies waiting to be implemented or waiting to be recognized as important.

Mr. Temporary Speaker, Sir, let me refer you to Article 69 of our Constitution. This article falls under Part 2 on Environment and Natural Resources. Article 69 comes under the subheading; Obligations in respect of the environment and reads in part:-

“69. (1) The State shall-

(a) ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources and ensure the equitable sharing of the accruing benefits;”

That is the first important sub-article in this article on obligations of the state with respect to environment and natural resources. In this Constitution, natural resources are recognised to go beyond what we traditionally think of as natural resources; for instance, the resources being exploited by the state, individuals or by companies. The natural resources include what is potential either above or below the earth.

Let me also refer the House to Article 71 on Agreements Relating to Natural Resources.

Article 71(1) (a), (b) and (2) states:-

A transaction is subject to ratification by Parliament if it-

(a) Involves the grant of a right or concession by or on behalf of any person, including the national government, to another person for the exploitation of any natural resource of Kenya; and,

(b) Is entered on or after the effective date.

2. Parliament shall enact legislation providing for the classes of transactions subject to ratification under clause (1).”

One of the things that this Bill is seeking is to enable the Senate to fulfill its responsibility as laid out in that part of our Constitution that obliges us to ensure that the general principles laid out in the Constitution are finally reduced and implemented in law. Therefore, instead of somebody going to court to assert or appeal for his rights under this Constitution, it would be more useful if, indeed, this House and the lower House reduced these principles into law.

When we were in Sen. Zani’s subcommittee, we looked at all these aspects of the Constitution and found out that the issue of sharing outcomes equitably cannot be done unless the equitability begins from the lowest level of our governance. You know that under the devolved governments the lowest level of our---

I beg to support.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Temporary Speaker, Sir. I want to support this Bill because it is one of the reasons that this country has fought for very long to have devolution. The communities of this country have not benefited, whatsoever, from the resources they have had. Possibly, this Bill is a cure to the infamous Sessional Paper No.10 of 1965, where some parts of this country were developed at the expense of the others.

I visited the Republic of Tanzania recently for local tourism. What surprised me is that the animal parks in Tanzania are not fenced. I bothered to inquire why the parks do not have fences and I was told that the reason they do not have fences is because communities around the parks are the ones who take care of the parks. The other reason is that the Maasais have been allowed to graze their animals on the reserves outside the parks. The reason is that 60 per cent of the revenue from the parks goes to the communities. Therefore, they have a reason to protect the wildlife and the income from the parks.

In December, 2014, the Republic of Tanzania faced a crisis. The crisis was caused by the fact that one elephant had been killed in a national park by some poachers. The country was so irked by the action that it sent the military to find out who would dare hunt down their elephants. The military were so vicious in looking for the poachers that two people lost their lives in the process. As a result, four Ministers had to resign because of one elephant. That is the kind of importance they attach to their national parks.

The tourism sector in Tanzania is doing three times much better than the one in Kenya and yet their entry fee to their parks is more expensive than what is charged in Kenya. The reason, as I have said, is obvious. What are the benefits of this? The benefits are that now in Parliament, in the Republic of Tanzania, we have 30 year olds who have studied using income generated from the parks. The income has enabled them to have universities. Whenever we think that we have many people graduating in Kenya, Tanzania has three times the number that graduates from universities. This is as a direct result of ploughing back to the resources to the communities.

Mr. Temporary Speaker, Sir, I was reading the statistics regarding our national parks. The largest national park, Tsavo, lies in Makueni County. However, the amount of poaching and the losses to the community are enormous. The residents of Makueni do not feel the need to protect the animals because they do not benefit at all from the park.

In the Wildlife, Conservation and Management Act, 2013, there was an attempt by Parliament to try and put some resources back to the community. They set a figure of 5 per cent. However, there was a caveat to this. The caveat was that the Minister in charge would set up regulations on how the communities would receive the 5 per cent of the benefits. It is now two years down the line and the Cabinet Secretary has not seen it fit to draw the regulations on why communities around national parks should benefit from the income derived from national parks.

The fact that the Petition has come to this Senate reveals why this Bill is important. One side of Narok raises US\$5 million as gate collection and the other side of Trans Mara raises Kshs1.9 billion, respectively. Just imagine if 20 per cent was to go to the communities. Forget about what Sen. (Dr.) Zani is proposing here. If 20 per cent as proposed in this Bill was to go to a sovereign fund which will benefit the community, people would not be fighting the way they are fighting in Narok today if this Bill was in place. If those regulations that are contemplated in the Wildlife Act were in place, people would not be fighting and the story goes on and on.

Mr. Temporary Speaker, Sir, Mombasa has been a tourist destination. Every time we do our computations we say that tourism is our second largest earner to our Gross Domestic Product (GDP), but do the people of Mombasa benefit in any form? No, they do not. Therefore, this is one of those things that are absolutely critical.

When Sen. Mwakulegwa invited me to Taita Taveta County to address his people, although I had gone to talk about a boundary dispute between the counties, but as we sat there, there was an argument about what produces all the red and green nice looking stones in Taita Taveta County. Some are even worn by Sen. Muthama here. He knows very well what I am talking about. Those stones are very nice looking. When they are produced, you can sell them for a lot of money. The question is: does the community in Taita Taveta County benefit?

Sen. Orendo: Mr. Temporary Speaker, Sir, Sen. Mbuvi wears the same thing.

Sen. Mutula Kilonzo Jnr.: No, Mr. Temporary Speaker, Sir, Sen. Mbuvi wears something else.

With the benefit of this law, the people of Taita Taveta County will benefit because the income derived from this natural stone would make it one of the richest counties in this Republic. These people have been confined to the periphery and living on top of hills because of marginalization by landlords who own acres and acres of land. This is a very important Bill because counties will benefit.

I have told Sen. (Dr.) Zani that the part where there is a provision for a sharing agreement where natural resources are concerned should be re-looked at. For example, if coal in Kitui County crosses into Makueni County, the agreement as to how they will share the benefits should be looked at so that if there is a dispute between the two counties, there must be a good dispute resolution mechanism. The issue that you saw people quarreling about of whether or not a certain national project is in one county or the other will be removed. The question of boundaries will no longer be an issue because we will then have a mechanism for both counties to benefit from this Bill.

Mr. Temporary Speaker, Sir, I am concerned and I want Sen. (Dr.) Zani to consider the question of the Natural Resource Benefit Sharing Authority (NRBSA). We have proposed in this Bill that the persons who will sit in this NRBSA, part of them, will be persons who have 10 years' experience in any of the fields. People who are 35 years old and are considered youth will most likely not have 10 years' experience that is contemplated under the law. I would propose that we make an amendment because Section 9(b) will exclude the youth. Sen. Kanainza would not qualify under 9(b) because she will not have reached the thresholds that are contemplated here. I propose that we make that amendment so that we give an opportunity to the youth of this country to sit on this Board.

Similarly, on Section 7, I am not sure whether we will have a system of vetting the three persons that appear as representing communities. I propose that we consider that the person who will sit as Chairperson be vetted in some form, even if the matter has to come to the Senate in the same way the other Chairpersons who are sitting in any of these Committees are vetted.

Under Section 41, it is proposed that:-

“The Cabinet Secretary responsible for matters relating to natural resources may make regulations for the carrying out of the provisions of this Act.

Mr. Temporary Speaker, Sir, unless you put a clause that this will be submitted to the Senate like we have done in all the Bills affecting counties, the idea of them having this Bill coming from us will be defeated. This is because the CS will then transmit it to the National Assembly. We want to tie this to the Inter-governmental Relations Act, the Urban and Cities Act, the County Governments Act and the Regulations Act. The Act is clear that those regulations must come to the Senate for approval. I propose an amendment to that extent so that we have some role to play.

Similarly, with regard to the proposed Section 36 tied with Section 37, I suggest that the reports that are going to be submitted by the NRBSA contemplated and the

accounts should also come to the Senate so that we can vet whether this NRBSA is complying with the law as it is supposed to be.

Mr. Temporary Speaker, Sir, I have spoken to Section 30. If it was an Act of Parliament today, Narok County would not be quarrelling because this is exactly the issue they are having. I am happy that in Section 29 we have complied with the Constitution by having public participation. I thank Sen. (Dr.) Zani because she has gone further in stating what “public participation” means even beyond what the County Governments Act provides for. This means that we have gone a step further although the Committee on Legal Affairs and Human Rights in which Sen. Hassan and I proudly sit, is drafting the Public Participation Bill so that we will tie the loose ends where public participation is not well covered under the law.

Mr. Temporary Speaker, Sir, I suggest that under Clause 1, the NRBSA that Sen. (Dr.) Zani has proposed must be insulated. This is because one of the things that will happen immediately this Bill becomes law is that this NRBSA will be fought left right and centre by everybody so that it does not work. Politics will start coming into play. I suggest that you insulate this NRBSA in the same way the Kenya Revenue Authority Act, the Teachers Service Commission or any other Authority that is a Government functionary is insulated. That way, if a person will sue this NRBSA, they must give a notice and they cannot attach them. This NRBSA will be carrying out such a mandate that if you do not insulate it legally, there is a possibility that politicians are going to interfere.

In Clause 7, they have proposed that we have the Kenya Association of Manufacturers (KAM). I propose that we have the Kenya Private Sector Alliance (KEPSA) because it is a much bigger body. The KAM is a member of the KEPSA which is a bigger umbrella of professional business bodies. The Senate Committee on Finance, Budget and Commerce met these people. We need to loop them into this so that we have the benefit of their expansive network all over, including microfinance sectors and other fields of business which is important.

Sen. Murungi: Thank you, Mr. Temporary Speaker, Sir. I also rise to support this timely and important Bill. As the Bill itself states in its Memorandum of Objects and Reasons, this is a Bill whose principal purpose is to provide a legislative framework for establishment and enforcement of a system of benefit sharing in resource exploitation between resource exploiters, the national Government, the county governments and local communities and to establish the NRBSA which is established in Clauses 5 and 6 of the Bill.

This Bill seeks to address a very fundamental question. Indeed, the stories about Africa’s resource curse have been discussed all over in academic circles, in the media and even private forums. This curse, simply defined, is a curse whereby Africa is blessed with abundant natural resources. However, it is also cursed in the same area where these resources are found with the poorest people. This is what Franz Fanon called “the wretched of the earth”.

Mr. Temporary Speaker, Sir, if you look at what has happened in the Middle East; those desert economies have been transformed by oil and gas. They are now the financial capitals of the world because they have been transformed by their natural resources. If

you look at Congo in Africa, despite the massive gold and diamond deposits, we still have the poorest people in this continent. Time has come for us, not to merely condemn multinationals and foreign governments, but to work decisively in the interest of our people.

I do not think we can wish away the economic giants of the world like China and say that they are coming to colonize Africa, bringing Chinese Imperialism and what have you. We cannot wish away those economies because they are impacting every country in the world. What we need to do is to find our own space and negotiate so that we get proper benefits for our people even as we accommodate those external interests in our country.

Mr. Temporary Speaker, Sir, I have had experience with multinationals, especially in the oil sector and even in the coal mining in Kituyi. When they talk about benefits to the community, they talk about what they call Corporate Social Responsibilities (CSR). They tell you that they have built a primary school, dug a borehole, supported women or youth groups, *et cetera*. These are not the kind of benefits we are talking about because that tokenism will never transform the lives of Africans. We are talking about more meaningful sharing of our natural resources and that is what this Bill is all about.

We, as the Committee on Energy, recently travelled to Brazil to look at their local content policies. What is happening there is very impressive because they are pulling all communities from poverty through local content policies. What is happening is that before you reach the minerals under the ground, there is a lot of activity to be carried out, for example, infrastructure, food to be supplied, housing to be done and a host of other services which have nothing to do with the natural resource itself. What we are asking for is also a share of those services as well.

There is no reason we should get foreign doctors coming to Turkana when we have our own local doctors. There is no reason we should have foreign lawyers coming to negotiate agreements here when we have local lawyers in this country. There is no reason Tullow Oil Company, for instance, should be listing their shares in the London Stock Exchange and not in the Nairobi Stock Exchange. I am sure if they do so, more Africans will buy shares, even if the price is Kshs200,000 or Kshs100,000, so that when oil is struck, even that average Kenyan can also benefit from it. There is no reason they should use multinational insurance companies when we have insurance companies in Kenya which can insure those insurable risks.

Mr. Temporary Speaker, Sir, in addition to sharing the mineral resource itself, we should also develop ways of sharing the services which are necessary for us to extract that resource. The genius in this Bill is in creation of this NRBSA in Clauses 5 and 6. When you look at the functions, they include; coordinating preparation of benefit sharing between local communities and affected organizations to review and, where appropriate, determine the royalties payable by affected organizations engaged in natural resource exploitation; to identify counties that require to enter into benefit sharing agreements for commercial administration; oversee administration of the funds set aside for community projects; monitor implementation of benefit sharing agreements, *et cetera*.

This is a very radical approach and it is going to bring a radical transformation of this society. God blesses people in various ways because you find that the natural resources are found in areas which are traditionally considered marginal. For example, there is oil in Turkana, manganese in Kwale, coal in Kitui, *et cetera*. God is trying to balance resources. It is not for us to deprive those people of the benefits which God has bestowed on them. This NRBSA will bring equity into our society and that is why we are supporting it.

Mr. Temporary Speaker, Sir, my only little concern is the various approaches; we seem to have to these efforts which are not properly coordinated. I know that last weekend the Committee on Energy held a workshop in Mombasa because they are developing what they are calling “The Kenyan Local Content Bill”, along the lines of the Nigerian Local Content Bill which is supposed to deal with issues of benefit sharing or transfer of more resources in the sector to the local populations. I know there are certain aspects of that Bill which will have a bearing on this Bill. Maybe when we come to the Committee Stage, instead of us introducing new Bills, we could look at amendments to see how we can accommodate the ideas that are being generated from the Committee on Energy.

We are not only talking about justice between regions, but we are also talking about justice between generations. I was one of the few Kenyans who visited Libya during the days of Muamar Gaddafi. We might accuse him of many things, including dictatorship, but when it came to benefit sharing for the natural resources, I think Libya was very advanced. From the oil revenue, they distributed their revenue to their villages and every village had its own chairman. Because the indigenous Libyans live in manyattas like the Maasais, their manyattas were built of stone; very modern housing. Any of their children who went to university, when they came back home after university, they were given keys to a two bedroomed apartment. So, their housing is looked after by the government.

Mr. Temporary Speaker, Sir, education and healthcare were free, courtesy of the oil resources in Libya. Muammar Gaddafi will go into history as one man who created a river, because he found an underground water reservoir somewhere in the Sahara Desert and did a 70 kilometer river across Libya. There was no river before. On the banks of that river, the agricultural activities are enormous. They were self sufficient in green vegetables, tomatoes, watermelons and many others. So, when we talk about our natural resources benefitting our people, we are talking about what transformation they can do.

When we talk about railways in this country, lack of infrastructure and all the noise we are making about high school fees, we hope that there will be a fund so that instead of this money going into people’s pockets, it goes back directly to the community. So, we can support even university education using the fund created through these mineral resources. We can support development of infrastructure, improve our healthcare and education.

Mr. Temporary Speaker, Sir, I rose to support this great idea and I want to thank Sen. (Dr.) Zani. I know how passionate she is. The people of Kwale will always remember her for this Bill because I know that it has been such a big issue there. By the way, coal is not only available in Kitui, but also in Kwale. If you look at the Karoo

system, the geology of South Africa where they produce such high quality coal, it has the same geology that one finds in Kwale.

When Hon. Chirau Makwere headed the Ministry of Environment and Natural Resources, we had a discussion about coal deposits in Kwale. We were in the process of gazetting coal blocks, including those in Kwale. It is strategically placed because whereas it will be very difficult to export coal from Kitui, the coal in Kwale could be used to fire the coal-fired electricity plants in India. This is because we will just take it across the Indian Ocean. So, it is a major resource which is not exploited and which I would urge, in addition to manganese and other resources which are found there, for us and people of Kwale to facilitate exploitation of those resources.

Mr. Temporary Speaker, Sir, I do not have much more to say. I thank you for the opportunity and our colleague, Sen. (Dr.) Zani, for this brilliant idea.

Sen. Muthama: Thank you, Mr. Temporary Speaker, Sir. I rise to support this Bill that was brought by Sen. (Dr.) Zani. The reason I am supporting it is because it addresses all the issues about natural resources in our country. I am a player in this field. I know what it takes to establish a mine; what you have to go through, the prospecting issues, the exercise itself and embarking on the prospecting to be able to find minerals. In most cases, minerals that we find are those that are of lower standard compared to other minerals which are produced in other countries. All the same, it is business.

This Bill is about the distribution of the wealth in this country to reach the common *mwanaanchi*. From the outset, the feeling of Kenyans is that there is a lot of exploitation. That is the gap that we need to bridge. While we are looking at that issue from that perspective, at the same time, we are trying to establish a management authority that will constitute representatives of the county and also committee members from the national Government. However, what is the issue here and why are we discussing this Bill on forming this management authority, when we have the national Government that has been collecting fees, licensing and having Kenyans pay taxes while these resources are not reaching Kenyans?

I served in the Tenth Parliament and I was a senior Member of the Public Investments Committee (PIC). I went through books from different ministries, commissions, authorities, including National Hospital Insurance Fund (NHIF) and the National Social Security Fund (NSSF). To our surprise, we found none, including Kenyatta National Hospital (KNH), whose funds had not been squandered. That is the exercise that we have been doing in this country; day in, day out, week after week, month after month and year in, year out. Administrations come and go and we keep forming different bodies to control public funds. However, is there any that has succeeded? The answer is none.

What I want to say to my sister as I support this Bill is, that we are going to have ole so-and-so, Mutiso, Kamau or Atieno here, but we are just bringing the same faces of Kenyans who are sisters and brothers of those who have failed in the NSSF, NHIF, Kenya Wildlife Services (KWS) and so forth. I am not opposing, but I just want to declare my position about this; that we are bringing in other institutions that will start eating again from the public funds. Once this money is set aside as I have seen here, diverted and given to the counties, is it not going to the same governors that we have

now? Is it not going to be used by the same people? Where is the guarantee that those who were there before and failed to display transparency will start doing justice to Kenyans with this one here?

Mr. Temporary Speaker, Sir, there is a dam in my county that generates electricity. We all know the cost of electricity in this country. My county does not benefit in any manner from the electricity generated. If that money is given to a sub-location with leaders who cannot even manage a nursery school, it will not benefit the people. Sometimes it is amazing to see how the local administrators like the chiefs and the assistant chiefs behave. They intimidate people so that they can be given money through sale of *chang'aa* or *karubu*. This goes on up to the level of the county. Look at what is happening now in the whole country. If we start talking about corruption, you will find that it goes up to the church level.

Mr. Temporary Speaker, Sir, the problem in this country is not authorities, but Kenyans themselves. When I look at this Committee which consists of a chairperson appointed by the President, but most of the time, it is about allowances. What are the expected resources to be generated? The committee might go there and allocate itself huge allowances at the expense of the common *mwanaanchi* who expects to be assisted. At the end of the day, I would be happy with amendment that whatever money is collected through revenue from water, it should be spent to construct schools. When the money is collected, it should be directed towards construction of primary, secondary school, a polytechnic, a dispensary or health centre, water borehole and so on. We should not leave it open to this authority so that it is open to misuse. In Kenya, people receive money and submit accounts which are not correct.

It says here that the commission will submit its accounts at the end of the year based on the funds received and spent. These are the same people when they spent Kshs10, they prepare an expenditure document of Kshs1000. When they spent Kshs1,000,000, the expenditure document will be camouflaged to show that they over-spent what they received. In fact, they will want the Government to come in and bail them out. The idea and the intention is good, but I want to say that for this to work, the Ethics and Anti-Corruption Commission (EACC) should change how it works. In the last one year, they have prosecuted only three people when there are over 10,000 cases presented to them. If people have stolen and then it goes on for five or ten years without them being prosecuted, what will bar others from stealing?

Mr. Temporary Speaker, Sir, the idea is perfect, but we need to lay down restrictions. For this NRBSA to receive money and not mismanage the same, action needs to be taken. That action starts with the President himself. He should make sure that his Government is performing. The President of the Republic of Kenya is in a state of confusion. He is issuing public statements saying that in his office there are people who want to enrich themselves or make money. The President says that, but tomorrow we do not hear anything about anybody being arrested. When we look at all this confusion, we ask ourselves, in all this, who are the thieves and who are not?

We are in the midst of people who might be thieves and others who might be innocent. So, if you walk through that office, you feel unsafe because you do not know who is a thief and who is not. When you present your issue, we do not know what you

will get at the end of the day. The President should take action and make sure that he starts with his own office. We want to see two or three people from the Office of the President in jail. If he does so, people at the lower level like the assistant chief or the chief will stop stealing.

Mr. Temporary Speaker, Sir, I am trying to protect public resources and I am proposing that restrictions should be put in place. This country is rich and can stand by itself. We, as the Senate, represent counties and we know the problems facing our people. As of now, we expect Kshs1.8 trillion. Look at what counties will get. Where is the rest of the money?

Mr. Temporary Speaker, Sir, this country has never been at war. It is a pity we do not have enough money to educate our children. Sen. Murungi has just talked about what used to happen and what is happening today when the Gross Domestic Product (GDP) in this country was at its lowest. We now have a city called Nairobi which generates a lot of revenue for this country. Other towns and centres generate a lot of money, but most Kenyans languish in poverty. Their lives are worsening instead of improving. When you consider that and look at Kenyans, you cannot stop shedding tears.

Sen. (Dr.) Zani here is looking into issues of poverty affecting her people and other Kenyans. She is wondering where money can be found.

The Temporary Speaker (Sen. Mositet): Order, Sen. Muthama. Your time is up.
Sen. (Prof.) Lesan.

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, I also rise to support this Bill very strongly. Before I do so, I thank Sen. (Dr.) Zani for her effort in this Bill. I also thank the Committee for many hours they spent in collecting all the data that led to formulation of this Bill.

This, indeed, is a very important Bill. It has a future in it and it is one of the Bills that we must address with brevity. The Senator for Machakos County, who has just spoken, talked in a manner to suggest that everybody here is going to freeze and stop working because whatever we do will be stolen by corruption. We do not want to go that way. Where I come from, there is a saying that once you have been chased by a black buffalo, next time, you see anything black behind you, you think it is the same buffalo chasing you. This is an attitude that we should not shy away from. We should not be afraid to exploit natural resources in our country for fear of the fact that whatever we get might be exploited by corruption.

Mr. Temporary Speaker, Sir, this Bill has got all the tenets of exploiting new territories in material and also the possibility of working out and putting in place people of integrity that will follow the law. In fact, this Bill will put a law in place that, perhaps, will take care of all the loopholes that have been exploited by corruption agents.

Mr. Temporary Speaker, Sir, one of the devastating things that happen when natural resources are exploited is destruction of the environment. I am sure that this Bill will address some of the things that might do disservice to the exploitation of natural resources. We should not just get attached to the value of our natural resources and lose the whole environmental aspect of the country that remains.

I will be happy if we put in place regulations that guide the restitution of the land that has been used to extract natural resources. This land should be reconstituted once

again back to useful land. Otherwise, examples abound everywhere; we know that states or countries which have not taken care of the environment as they exploit natural resources have had to spend much more than what they got from natural resources to reconstitute their environment. Some have even lost it altogether.

One example is the oil state in Nigeria. That state was once a very productive coastal state in Nigeria which used to produce a lot of yams and other things that were useful food products for the people of southern Nigeria. The exploration and exploitation of oil in Nigeria completely decimated entirely. In fact, 90 per cent of the state is no longer useful for the citizens of that state. You can get some of the biggest ruffians and the rise of insecurity and terrorism arising from the members who have been displaced by a spoiled environment in Nigeria.

Mr. Temporary Speaker, Sir, I hope that this Bill will address some of those issues so that we do not become victims as well, more so, now that we have been blessed with oil in the dry Turkana land. I do not know what sand and oil mixed together will be of any use to any of the people of Turkana. So, it is very important that this Bill addresses the environmental concerns that come with the exploitation of a natural resource.

Mr. Temporary Speaker, Sir, the natural resource that this country holds is in raw material when extracted. It has been shown that the biggest benefit of natural resources goes to those who refine natural resources which have been extracted. One of the things that have been extracted raw, in this country, is the documentary films that are being screened all over the world. The one that I know of is about the life of young labourers from conception until they are mature and die; it is one of the most popular *National Geographics* documents. The *National Geographics* document generates close to \$28 million annually. That film was generated in Maasai Mara in Kenya which I do not think even got \$1 million from the episode.

Mr. Temporary Speaker, Sir, we must not only be able to extract natural resources that we have in the country, but also be careful enough so that we get the maximum benefit out of it. The wildebeest migration which is one of the Seven Wonders of the World that we know is an event that happens within our borders. At the moment, it generates money worldwide in all television stations. The famous *National Geographics* is being used as one of the entertaining projects in the world over. I can say with complete assurance that money is made out of the product which is a natural resource of this country.

Mr. Temporary Speaker, Sir, I am so grateful that this Bill will address ways in which we can tap our natural resource when it is still in its raw form and when it has been refined so that we get some products out of it. So, the sharing should not only be on natural products, but also on refined products.

Mr. Temporary Speaker, Sir, I am also aware that this Bill seeks to share out resources coming from natural resources immediately after production. In other words, the resources must be shared at the point of source so that we do not end up with another problem again where we have to sit down and do another division of natural resources products. We are already doing division of revenue in this country. Natural resources are one of the things that we should not go a long circuitous way to attain these products. I hope that the authority here will formulate ways in which benefits accruing from natural

products are immediate to the communities lying within areas where natural products are found.

Mr. Temporary Speaker, Sir, we know that over the years and ages, the conflict over natural resources has brought about wars and conflicts all over the world. I do hope that in this country the exploitation of natural resources will not be a point of contention and source of conflict. I am sure that this Bill will address some of those things.

Mr. Temporary Speaker, Sir, one of the natural resources that are at the point of possible conflict in this area is our rivers. Most of our rivers in this country form boundaries within communities which seek to exploit resources. One of the resources, of course, is the waters in the rivers. We are moving into irrigation farming in this country and water will be more valuable than any other time before. Therefore, there is real possibility that even the sharing of water in this country is going to be one of the sources of conflict that we must contain in the regulations that we bring about as a way of sharing these natural resources.

I really want to compliment the Mover of this Bill. I do hope that over the years, as we work on exploiting more resources, we shall also continue to refine the rules and regulations that accompany these things. We should build on the experiences that we have now, especially on the very thorny issue of corruption within the institutions that are very productive in our country.

I support this Bill because it touches on a new territory. The exploitation of natural resources in this country has completely come at the right time. Therefore, we should support this Bill and allow this country to use the natural resources that it has to build national cohesion.

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

The Temporary Speaker (Sen. Mositet): Sen. Kanainza, you need to use a temporary card and not another Senator's card, so that you can be captured on the HANSARD.

Yes, Sen. Omondi.

Sen. Omondi: Thank you, Mr. Temporary Speaker, Sir, for the opportunity. I want to thank the Mover of this Bill because the Bill touches on Kenyans. Since ancient times, Kenyans have been benefiting from the blessings that God has given them in different regions of the country.

Mr. Temporary Speaker, Sir, when you visit most areas where natural resources are being exploiting, you will find that people living around there live in poverty. You wonder when their living standards will be improved and who will come to their rescue. The Mining Act of 1940 is very old and outdated. It is high time that we shared the available natural resources equally.

The Petroleum Act, Cap.308, offers a benefit of sharing. It provides a mechanism where the Government and investors can share the benefits accrued from the natural resources. However, the communities living there are left out. I hope that this Bill will enable Kenyans to have a say and change their living standards. If they are given a share of the benefits accruing from the natural resources, I am sure that the poverty levels in this country will go down and the living standards will improve. Everybody will appreciate one another and live in harmony. Since people fight mostly due to unequal

distribution of resources, there will be no reason to fight. Whenever there is unequal distribution of resources, cases of theft will increase. Even if we work so hard to reduce the level at which people go against the laws, some situations force Kenyans to break those laws.

Democracy and human rights call for effective involvement of citizens in managing resources. The Constitution of Kenya recognizes the utilization of natural resources like oil and gas. If this Bill is passed and assented to, Kenyans will benefit from their local natural resources. We will also promote, sustain and develop good governance, transparency and accountability in public participation which is missing in several areas in this country. The people who are supposed to be involved meaningfully are left out when it comes to public participation. They do not even understand what citizen participation is all about.

This Bill seeks to establish a board that will manage natural resources. If there is meaningful involvement, we will get the right people on board. This will ensure transparency and equity in terms of representation. I want to ask the Mover of this Bill to look at the people to be included in the board. I notice that there is no provision for people living with disabilities, yet they are marginalized. I heard a colleague saying that the youth also are missing. These people should be included so that there is harmony. If the youth and people living with disabilities will miss out, there will be conflict.

People living with disabilities usually turn violent whenever they ask to be given what belongs to them and they are denied. So, it should come out clearly who the board members are. Will the board members come from the particular areas where the natural resources are? The local people must appreciate that the board consists of their own people who understand the issues that they face. If we just pick anybody simply because they have knowledge on natural resources, then we will have problems in terms of ownership of the organ that will look into the issues of natural resources.

Mr. Temporary Speaker, Sir, there is a framework on the extractive sector to the spirit of the supreme law which guarantees and entitles local communities to benefit from revenue from natural resources. When we align this with the modern principle, then it will align with the Constitution. The implementation will also be so smooth and everybody will appreciate this Bill. We will not have problems where we face claims that we were not consulted; we are not seeing the benefit or we do not want to be part of this because some people are not benefiting. I want to emphasize that if it is in line with the existing laws and the Constitution, we will not have problems and everybody will appreciate.

With those few remarks, I support.

Sen. Kanainza: Mr. Temporary Speaker, Sir, thank you for giving me this opportunity to also add my voice to this Bill. I will start by appreciating what Sen. (Dr.) Zani and the team has done, to ensure that we have the Natural Resources (Benefit Sharing) Bill, (Senate Bill No. 34 of 2014). I am aware that they did a good job because they are my friends. Last year, they visited different sites. They also went to Australia so that they could have some knowledge on this.

Mr. Temporary Speaker, Sir, we have to appreciate that Kenya is endowed with very many types of riches, but the unfortunate bit is that we have left these riches, both

exploited and unexploited, to landlords who do not care about the local community. People come, get what they want and they leave the place hollow without putting in mind the benefit of the community. When we look at this NRBSA or the board that is part of this Bill, it is coming up with criteria for benefit sharing. What will be put in the sovereign wealth fund that is 20 per cent and the remaining per cent that will be shared between the county governments and the national Government? It outlines what the community will get in return. If we do not involve the community, none of them will care about what happens to the natural resource that we have in this country. No one will take care of it, because they are not part of it.

We have different types of resources in our country like petroleum, natural gases, forest resources, minerals, wildlife resources and fisheries resources; but what are we, as a country, doing to make sure that we tap into what we have as Kenyans? For example, in Kakamega County, we have the “crying stone” which nobody cares about. However, when you read the geography and history books, it is a stone that has been there for a long time and it is a tourist attraction. At the moment, nobody goes to Kakamega to look at it. In Kwale County, where Sen. (Dr.) Zani comes from, we have the Mrima Hills that has niobium minerals, but when you read the newspapers and listen to electronic news, this is the most affected county by poverty. They do not have classrooms for students. But with these types of resources, if we involve the community and they become part of it, at one point they will benefit.

I was looking at what some companies have done to ensure the surrounding communities have benefited. For example, we have companies like Nzoia Sugar Company; because if these resources are there and we have a good measure or a mechanism of working as the local community, the county government and the national Government, the community will benefit in a bigger way. Through this, the community is going to get a ration of 60-40 per cent, it means that the locals will be employed; the infrastructure will be improved and the security of those regions will be beefed up because the exploiters or the investors will play a role in it. At the same time, we will have bursaries that are brought in by such exploiters that will benefit the community. We have the youth and women initiatives and they can as well tap from this.

Mr. Temporary Speaker, Sir, going through part three of the Bill about the management of the authority, Clause 9 states that:-

“A person shall be qualified for appointment as the Chairperson or a member of the board under Section 7(1) and that you must be a holder of a university degree.”

I have no problem with it, but part (b) of it says that:-

“The person must have knowledge and at least 10 years experience in any of the following fields.”

Mr. Temporary Speaker, Sir, if we do this, that a person must have an experience of 10 years, we are locking out the young people of this country. These are the people I represent. I will appeal to the Committee during amendments to reduce these years of experience. As long as one has a university degree from a recognized university, he or she must be allowed to participate in this. We want to have a generation of young people leading in this authority boards. We are talking of a Natural Resources Bill that was there from the year 1940 and now we are in the year 2015. We need to include the young

people so that they can bring in the fresh knowledge from the universities that we can use to enhance this.

In summary, when we have this NRBSA, we will ensure that transparency and inclusivity has been considered and the revenues that will be collected from these places will be well maximized so that the community benefits. It should be equally distributed in all the types of engagement that they will be doing. At the same time, we must ensure that people play a role in making decisions in what they want done in their communities because the Constitution says that there must be public participation.

With those remarks, I support the Bill.

Sen. Mungai: Mr. Temporary Speaker, Sir, thank you for giving me this opportunity to contribute to this very important Bill by Sen. (Dr.) Zani. We know that Kenya is endowed with enormous resources. Over time, communities have been complaining about the benefits that have been accruing from the natural resources that are within their areas. The fact that devolution is with us, this particular Bill would not have come at a better time. The Senate is living to its expectations and that of the people. This is a House that will apparently address the challenges that are being faced by our various counties.

Mr. Temporary Speaker, Sir, when we look at the various natural resources that are based in different counties, we see a situation where we have the Masinga Dam, like what Sen. Muthama said; it is there. It was developed quite sometimes back and its impact to the people of Machakos is quite minimal. When you come to my county, Nakuru, we have national parks and masses of water like Lake Naivasha, Lake Elementaita and Lake Nakuru. Some of the things that are happening on the ground touching on some of these natural resources are shocking.

It is important that I state here that when we come to a water mass like Lake Naivasha, close to almost 60 per cent or 65 per cent of the local population have never been to the lake. Leave alone the fact that we are talking about money that is accruing from the natural resource itself, but access to the natural resource has not been easy. It has been prohibited by individuals who have blocked the corridors that are supposed to lead to that natural resource.

Mr. Temporary Speaker, Sir, it is important that even when we talk about a dam like Masinga and others which are supposed to have fish because the authority which is generating hydroelectric power from there is supposed to ensure that, that water does not just go to waste. They are supposed to introduce fish and anything else that is supposed to be put into that water. However, for the local community to access that dam – just like for the people of Naivasha to access their lake – is a problem. The people of Naivasha have tried very hard to have the corridors opened. It is a big problem.

Right now, cattle belonging to the Maasai Community, because of the dry spell, cannot access the fresh water that is in the lake because of blockage of those corridors. So, as we discuss Sen. (Dr.) Zani's Bill, it is important that we also go very deep into knowing the system that will be followed. If I am to give my county as an example, the royalties that will be coming from the various natural resources within the county do not go to the county and fail to help and assist the communities that are within those natural resources.

It is, therefore, important that we also note that one of the major reasons that this Bill is before this House is because the various authorities that have been generating whatever they are generating or running – that is the Kenya Wildlife Service (KWS), the Ministry of Mining and the various electricity generating companies – have failed in their CSRs, because this is the section within their budgets that was supposed to address what is being addressed by this Bill. So, it should be a wakeup call for them because when you talk about boreholes, development of schools, construction of hospitals and all that, they fall within the CSRs of these authorities.

Mr. Temporary Speaker, Sir, Sen. (Dr.) Zani will be remembered in this country for a long, long time. I remember the late Martha was remembered for the books that she was able to develop. So, the people of Nakuru County are strongly behind Sen. (Dr.) Zani's Bill. However, Sen. (Dr.) Zani, my people feel that when it comes to the definition of the various natural resources, an amendment should be moved to include geothermal power generation, because it has not been captured in Section 3(1) from (a) to (g). The Bill has also has not covered wind power generation that is being done in Kajiado, Kinangop and Turkana. It is, therefore, important that this be included because they fall within the bracket of natural resources.

Mr. Temporary Speaker, Sir, when we look at the issue of accountability to the various Governors who are likely to manage the funds that will be generated by this Bill, what I believe is that the fact that the likelihood of Governors misappropriating the funds accruing from this Bill should not be a reason of not supporting this Bill. This is because we have bodies in this country that are mandated to deal with corruption. We are saying that at this particular moment, even in our oversight role as Senators, we are having serious challenges because systems are not in place. We know very well that we are being ignored; our officers on the ground are being ignored by the Governors and any communication, even from our offices, is not even being acknowledged.

Mr. Temporary Speaker, Sir, the fact that the people in the counties expect the Senators to offer oversight strictly over the finances that are going down there. Year in, year out, money is going down there. In the County of Nakuru that I represent, people have nothing to be proud of. They have nothing to take home about devolution. This is despite the fact that Nakuru has maintained number five in the allocation of money from the central Government. It is, therefore, very important that Bills like these are formulated to assist Kenyans because the Senate is not in the Constitution and in Kenya for a short period. This Senate will be there as long as Kenya remains on this world map. We should not limit ourselves or put speed governors on what we can do because of the fact that we have non-performing county governors. I would, therefore, propose an amendment that will include geothermal and wind power as natural resources.

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

Sen. Nabwala: Thank you very much, Mr. Temporary Speaker, Sir, for giving me this chance to add my voice to this Bill which is very critical. It touches on the natural resources and benefit sharing. This Bill is very important because when you read Article 71(1)(a) and (b) of the Constitution, it touches on the agreements relating to natural resources and legislation. It is Parliament that needs to put legislation in place so that we protect our people in the counties which we represent. I want to appreciate the efforts of

Sen. (Dr.) Zani, the Chairperson of the *ad hoc* Committee on Legislation on Royalties accruing from Natural Resources.

In our visits to the counties, one of them being Machakos, we found that the county and the people have been exploited to the maximum. When we went round we found that stones have been extracted and the environment has actually been destroyed. We found very big pits which when it rains, I am sure, that water fills up to the brim and mosquitoes will breed there, thus affecting the health of the people living in Machakos. They suffer from malaria and many other water borne diseases.

We also found that the rivers have dried up. The sand which is excavated from them is no longer there. So, actually we found people standing by the dry rivers wondering what to do because the only means of survival is through sand harvesting and selling it to exploiters from Nairobi. Machakos County has built the sky scrapers in Nairobi, yet the people of Machakos County have been deprived of the royalties accruing from the natural resource. This Bill is very important because it will protect the lives of the people in the counties.

In our trip, we also went to other counties in Kenya for the purpose of public hearings. We interviewed Members of County Assemblies (MCAs) and members of the public. Most of the people raised concerns about the way their counties are being exploited. We also went as far as Australia, where we visited the Super Pit, which is one of the largest mines in Australia. The good thing we saw about the Australian legislation is the recognition of Australian Aborigines. These people are catered for by the exploiters. The good thing we saw about the Australian Legislation is that they save some on a monthly basis to sustain themselves. As we know from the history of the Australia, Aborigines come a long way. Most of them are not educated. Therefore, they cannot compete for white colour jobs the same way as the white people.

County governments as well as residents of areas with mineral deposits have been complaining about being left out in revenue sharing. The Bill seeks to ensure that communities which produce the resources benefit directly to reduce conflict and tackle poverty. In Narok, for example, we have had a scuffle between the local communities, the exploiters and the local government. This is because we do not have a piece of legislation to guide those who exploit the resources on how much money should go to the community, how much should go to the local government and how much they should retain.

Poverty is a crisis. Local communities directly benefiting from royalties will be a sure way of getting closer to Vision 2030 and meeting the Millennium Development Goal (MDG) of eradicating extreme poverty and hunger. Why do I say so? In Turkana, for example, oil has been discovered. We have Tullow Company which is carrying out the exploitation of the oil. The good thing about Tullow is that the company is giving out scholarships to our people. However, it is my view that they should do more by uplifting the standards of Turkana county. Turkana people have suffered for many years. Growing or even getting food in Turkana is a problem. I expect the Tullow company, if they are watching, to start something like food stores to cater for the people of Turkana. In Turkana, you cannot grow maize. The soil there is sandy and the terrain quite rocky.

Mr. Temporary Speaker, Sir, I support this Bill as it proposes a distribution formula where 20 per cent of the revenue collected shall be put in a sovereign fund. The sovereign fund will be used to take care of the community. The remaining 80 per cent will be shared between the national Government and the county governments in the ratio of 40:60 per cent, respectively. The 40 per cent of the county allocation shall go to the local community.

Mr. Temporary Speaker, Sir, what makes me happy about this Bill is that it proposes to establish an authority for the benefit sharing. The NRBSA will determine the royalties' amounts. In the Bill, Sen. (Dr.) Zani also talked about a Board. The NRBSA is the one that will manage that Board and, of course, ensure that they meet the qualifications so that they are given those jobs.

The beauty of this is that the money that will be put in the Fund will not be left in the hands of one person. At least, decisions will be done by that Board. If they do so, probably, corruption will reduce just as Sen. Muthama has said. He has fears regarding the corruption that has taken place in the past. This Bill, being the first legislation on royalties, is most welcome. We should have had it like yesterday. However, we had to put in a lot of work. We had experts who gave us their input. We also benchmarked with Australia. The Bill is good and it is better to have something than nothing.

I urge the House to support this Bill so that it goes through. I send my congratulations to Sen. (Dr.) Zani who is very aggressive. She made sure that everything was done on time. We also met the right people who helped us put the legislation together.

I support.

Sen. Melly: Thank you, Mr. Temporary, Speaker, Sir, for giving me this opportunity. I thank Sen. (Dr.) Zani for thinking at a time like this where we have a lot of issues in terms of the resources in our counties and how they should be shared. On behalf of my Committee, the Standing Committee on Lands and Natural Resources, I also wish to register my appreciation to Sen. (Dr.) Zani for the wonderful job she has done. We are the Committee that has been handling this issue since it started.

Clause 69(a) of the Constitution talks about ensuring sustainable exploitation, utilization, management and conservation of the environment and natural resources and the equitable sharing of accruing benefits. This is the Constitution of Kenya which a majority of us voted for. The Natural Resources (Benefits Sharing) Bill, 2014 that is before us is in line with the Constitution. It establishes avenues whereby there is sustainable exploitation and utilization of resources, conservation of the environment and natural resources which are the minerals and all the resources found in our counties. It has also given us the formula on how these resources will be shared between counties and the national Government.

Clause 69(d) of the Constitution talks about encouraging public participation in the management, protection and conservation of the environment. The Bill before us has created an avenue whereby the public can be appointed to sit in the proposed committees to make decisions that concern the resources within the counties.

Lastly, Clause 69(h) talks about utilizing the environment and natural resources for the benefit of the people of Kenya. If you study this Bill clearly, it has defined very

well how the communities, counties and the national Government will benefit from this Bill. For a very long time, this country has gone through painful experiences in terms of conflicts that arise from the resources that are found in our counties. This is the best solution. We have had cases where the Government is compelled to allocate huge amounts of money to our security to ensure that people live peacefully and coexist harmoniously with each other because of the resources. The communities feel that the national Government is denying them access to the natural resources within their counties. It is high time we tried to do our best in making sure that this Bill passes through. Once it becomes an Act, it will reduce the conflicts that we have been witnessing each and every day in our counties.

Mr. Temporary Speaker, Sir, under devolution, one of the things we will celebrate in this Senate is if we pass this Bill. This is because for the first time, our county governments will benefit from the resources within their counties unlike the previous regime before the enactment of the new Constitution when there were many challenges. At the moment, the Constitution has given us power. Through this Bill, our counties will record development accrued from the resources that are found in the specific counties.

Mr. Temporary Speaker, Sir, a number of companies that come to do mining in the specific counties have always declined to participate in CSRs whereas this is the only way that the county governments can benefit from them. Formerly, companies that were mining or doing oil exploration in the counties could not give back to society. Even if they do not give back to society through CSR, the community will get their share through the ratios that the resources will be shared as per the formula in this Bill.

Mr. Temporary Speaker, Sir, now that this Bill has its origin from the Senate and it has had its input by Senators, what will be the role of the Senate when this Bill becomes law? The Constitution is very clear in Article 96 (1). It states:-

“The Senate represents the counties and serves to protect the interests of the counties and their governments.”

Among the interests that are in the counties are the natural resources and how our counties will benefit from them. The Senate should play the oversight role once this law becomes operational to see to it that all these things as stipulated in the Bill take place. We do not want to originate a good Bill like this and then tomorrow, it does not serve the intended purpose then our people will think that we did not do our job.

As a Member of the Senate and a representative of Uashin Gishu County, we welcome this Bill and we want to thank Sen. (Dr.) Zani for coming up with it. We want to see the challenges that have been there being dealt it once this Bill becomes law. We should lobby all the Members to support it because this is one of our products as the Senate and we want to ensure that it succeeds.

With those few remarks, I support.

Sen. Hargura: Thank you, Mr. Temporary Speaker, Sir. I would like to, first of all, congratulate Sen. (Dr.) Zani and the Members of the *Ad hoc* Committee who took the trouble of going round the world to see how other communities handle benefitting from the natural resources and came up with these well thought out Bill.

For a long time, since the colonialists came, our resources have been up for grabs. Anybody who thought that they had an idea on how to exploit it would grab and sit on it.

For instance, we have a salt processing company in Magadi which has been there since the colonialists set eyes on it. The community has lost that kind of a resource because somebody grabbed it and allocated himself a lease of as many years as he wanted, and now the communities are not benefitting from it. Fortunately, with the promulgation of the new Constitution, we Kenyans realized that we need to put in our Constitution that natural resources have to be exploited in a sustainable manner and there should be equitable sharing of the benefits accrued among the communities, counties and even the national Government.

This Bill is well thought out and timely because it recognizes the fact that the communities on whose land these resources are found actually own those resources and, in case of any exploitation, then they have to benefit from it directly. The sharing has to take into account the local community.

Mr. Temporary Speaker, Sir, from the outset, I would like to say that the definition of the local community in the Bill needs to be widened. When the Bill will be at the Third Reading, then an amendment needs to be introduced because it talks of local community meaning a “a people living in a ward within which a natural resource is situated and are affected by the exploitation of that natural resource.” We have cases where pastoral communities own ancestral land communally which covers even more than a constituency. So, that has to be taken into account because we have cases where the communities use their lands for grazing and everybody in that community has equal right and access to that land. So, when a part of that land is exploited for a particular purpose, then all the community members lose or are affected by that as they all cannot access it. In that case, we have to widen that definition.

Before the promulgation of the Constitution, what used to happen is that an investor would see a useful resource somewhere, go back to collude with the Government and somebody would get a title deed for a community land as big as he or she wants. They would do all the paper work and get all the licenses. By the time they hit the ground, and the community realised that somebody had encroached their land, they had all the documents. The land was set aside, given to him and he had a lease or title deed. There is nothing the community could do.

Mr. Temporary Speaker, Sir, it ceases to be a community resource because it is on a private land. The community just loses its shares or benefits just like that through the stroke of a pen by an unscrupulous investor and Government officials. They are then disinherited of their land and they do not get anything out of it. That is why there are some prevailing situations now in this country. For example, the Kinangop Wind Power project is facing a lot of problems. People have even died because the community is resisting the way it is being done. Maybe, they are not adequately benefiting from it and that is why they are reacting to somebody benefitting from their resource while they are not in the picture.

Our Committee on Energy was at the Mui Coal Basin last year. The local communities are having a lot of issues. They have to benefit from that mineral that is found in their area. Even the way it is exploited, has to be to their benefit. For example, the communities said that since they have coal in Kitui, the power plant cannot be established in Lamu. They want to benefit fully from it even in terms of labour.

Exploitation had to be done from there, near the power plant, so that they can benefit fully from it. Those are communities which have realized their rights, but the existing laws do not give them that benefit. That is why they have to fight for it.

Mr. Temporary Speaker, Sir, there is a wind power firm in my area, but the community is agitating for their rights in the same way. This land was set aside without their knowledge and now the project is going on. The only thing the community is told that the thing will be of use to the whole nation. Therefore, this kind of a Bill answers all those questions and we have to support it. This should operationalize what we have expressed in Article 69 of the Constitution. When we go to the concerned Government officers and ask them how the community has been taken care of, they say that they are waiting for Article 69 of the Constitution to be operationalized, that is, the enabling legislation to be created.

I thank Sen. (Dr.) Zani and her team because this is one of the ways of creating the enabling legislation so that we have specific shares for specific interest groups. The structures which are created here include the NRBSA which is necessary in my case. We, as Kenyans, have started getting tired of many boards and authorities because the previous ones did not function well. What we should do is guard the NRBSA from the problems that the others faced in their formative stages. It is only at the national level where revenues are collected. We will need to have a body at the national level to deal with it, but also at the county level we need to have a county benefits sharing authority because these resources might be cutting across several communities.

The community benefits sharing forum gives the local community a say in what they are going to do with their share. Communities have to be involved from the beginning and should know what they are benefitting through the exploitation of a resource within their land. After that, they should have a say on how that resource is expended within the community. As a community, they know where their priority in terms of development is. They should know the areas where they need to develop and those are the areas where they will invest.

In the previous cases, the authorities used to make decisions on behalf of the community and there was no much impact. When this happens, the community does not identify with the project. However, if they participate in prioritization, then we will have sustainable projects that will move the community from one step to the other in terms of development. It is necessary to have the community involved right from the beginning.

Regarding the sharing of the royalties, the issue is how the royalties themselves are generated and at what amount or what percentage is charged depending on the income. After that, we are recognizing the way it is shared out. As much as it is in a certain area, it is a national resource and that is why we are also taking care of the future generations. That is why we are talking about a sovereign fund where you put something aside for the future generations so that we exploit a resource now but also keep something for the future generations.

If we go this way, it means that the sovereign fund will be 20 per cent, the national Government will end up with 48 per cent, the county and the community will be 32 per cent meaning the county will get 19.2 per cent and the community will get about 12.8 per cent. This is a substantial amount of money if we can access it as communities.

We will improve our livelihoods and establish infrastructure. In places where illiteracy rates are high, this could serve as a source of bursary or scholarships for communities, not only to increase their literacy levels, but making sure the children go to school.

This will also assist the community to train their own people in the harnessing or exploitation of that resource. For example, where there is oil like in Turkana, they should train their people in the relevant field such as petro-chemical industry so that they take over the running of the institutions at one time. They should not only just benefit from whatever is realised after selling the product, but also participate in it and improve their skills. In the case of resources like wind which is an inexhaustible resource, we intend to use it to generate power because wind will always be there.

Mr. Temporary Speaker, Sir, if we learn and then train our people in a particular field, then the project should be run by the community. For example, in Europe, you find that most of the wind firms are community run. They are not government projects, but community projects. Therefore, communities need to develop. I know there is one similar project coming up in Kipeto; Kajiado area. That is a community project. That is how a community benefits firsthand from its resources. Even if you have to first let in an investor, you should see the sense of what use the resource has. Then you have to train the people so that the next project is community run because power requirements will always increase. The project should be a community-run project so that the community gets maximum benefit out of that resource which is sustainable, but not exhaustible like others.

Mr. Temporary Speaker, Sir, Clause 3 of this Bill says that this Act applies with respect to the exploitation of petroleum, natural gas, minerals, forest resources, water resources, wildlife resources and fisheries. Since it takes time for Bills to go through and be implemented, when time comes, I would like us to add the existing natural resources which are being exploited like wind and solar so that they do not fall under Clause 2(ii) which says; “the authority may by notice of gazette, extend the application of this Act to any other natural resource.” Those are natural resources which would not have been discovered. However, let us capture right from the beginning all the resources which are being exploited under this Act. We shall add the ones which will be discovered later.

Mr. Temporary Speaker, Sir, I beg to support the Bill and hope that when the time for few amendments comes; we will amend the definition of local community and natural resources as it applies. Those areas should be amended so that they cover all the existing ones.

Sen. G.G. Karuiki: Mr. Temporary Speaker, Sir, its only five minutes remaining to adjournment or the interruption of the Business. Therefore, I will not have a lot to say, except to support this Bill very strongly because its intention and contents are very important. It is something we have been lacking in this country since Independence. That is why quite a large extent of exploitation of our natural resources has been going on without our knowledge. It is as if this country does not have law, or we do not understand the kind of resources that we lose or money taken out of this country by foreigners.

This Bill will contain, standardise and make rules for further natural resources exploitation which, to me, is very important. This Bill is well written and will be very difficult for anyone to start thinking of amending it. But the men and women who come

from those areas where the exploitation of the natural resources is taking place may have other factors that can be included in this Bill. But I support it very strongly because I have looked at the intention and purpose of this law. It is very clear that the Bill seeks to establish the NRBSA to ensure sharing in resource exploitation among the resource exploiters, the national Government, county governments and local communities. That is the main thing which does not exist in this country. That is the reason I fully support the Mover of this Bill.

There are many other important issues in the Bill. The way members of this NRBSA will be appointed is very well considered. I think that we are going in the right direction as a result of this Bill, in terms of the exploitation of minerals and natural resources. The Mover of the Bill is very clear in her mind about what it should do in future when it becomes law. After passing this Bill, I hope that the Government will issue rules and regulations to manage this sector. There will be a lot of consultations with the county governments and the local people, so that they can understand that whatever is in the Bill is for their benefit.

There are people who are already established in the mining industry. They have used all manner of ways to survive over the years. I think the time has come for the Government to pull up their socks, through initiatives such as this Bill. The Board shall have all the powers necessary to perform the functions of the NRBSA. My problem is not the qualifications of the persons to serve in the board. Unfortunately in this country when we appoint people to serve, they decide to benefit themselves.

ADJOURNMENT

The Temporary Speaker (Sen. Mositet): Order, Sen. G.G. Kariuki! When the Bill comes back for debate you will still have ten minutes.

Hon. Senators, it is now time for interruption of the business of the House. The Senate, therefore, stands adjourned until tomorrow, Thursday, 19th March, 2015, at 2.30 p.m.

The Senate rose at 6.30 p.m.