

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 18th November, 2015

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

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

STATEMENTS

DOPING MENACE AMONGST KENYAN ATHLETES

Sen. Okong'o: Mr. Speaker, Sir, I rise pursuant to Standing Order No.(45)(2)(b) to seek a statement from the Chairperson of the Standing Committee on Labour and Social Welfare regarding the doping menace amongst Kenyan athletes. In the statement, the Chairperson should:-

(a) Explain the steps that the Government has taken to implement the recommendations on anti-doping that were made to governments by the World Anti-Doping Agency (WADA) in South Africa.

(b) Explain whether the Anti-Doping Agency of Kenya is operational, its composition, roles and the programmes that it has put in place in the campaign on anti-doping.

(c) Explain the steps that the Government has taken to facilitate the Anti-Doping Agency of Kenya to carry out its mandate.

(d) Explain the actions that the Government has taken against institutions and individual that aid and abet doping amongst Kenyan athletes.

The Speaker (Hon. Ethuro): Chairperson, Vice Chairperson, or any Member of the Standing Committee on Labour and Social Welfare.

Sen. Wangari, what is your position?

Sen. Wangari: Mr. Speaker, Sir, I am sorry. I was consulting Sen. Melly. Please, give me two minutes to check the HASARD. I will respond in a few minutes.

The Speaker (Hon. Ethuro): Order! You can do that later. Could you respond in one week?

Sen. Wangari: Two weeks, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): In one week's time. You must learn to listen.

Sen. Wangari: Most obliged, Mr. Speaker, Sir.

CIRCUMSTANCES LEADING TO THE DEATH OF ALEX MADAGA

Sen. Khaniri: Mr. Speaker, Sir, I am not requesting for a new statement. Just like yesterday, I rise to make a follow up to a statement that I sought sometimes back. At first, the statement was directed to the Committee on Health. However, the Chair ruled that the Senate Deputy Majority Leader to answer the statement. He gave a commitment to answer it in a week's time. It has now been three weeks and we have not received it.

This statement was with regard to the circumstances leading to the death of one, Alex Madaga of Vihiga County, who was buried about four weeks ago.

Thank you.

The Speaker (Hon. Ethuro): I remember the first time the matter came up, the Deputy Majority Leader said he had a statement.

Sen. Khaniri: Mr. Speaker, Sir, indeed, he came up with a statement, but it did not address all the issues that I had raised. I had a discussion with him and that is why he asked for a week.

The Speaker (Hon. Ethuro): Who is holding brief for the Deputy Majority Leader?

Sen. Billow, you might be the senior most on that side.

Sen. Billow: Mr. Speaker, Sir, my apologies on that. That is a very important matter and it has been raised several times in this House. It is a pity that it has not been addressed up to now. Therefore, I appeal that you seek the indulgence of the Senator for Vihiga to give us more time, so that I can get the message to the Deputy Majority Leader and demand that he addresses it with the urgency and importance that it deserves. We will appreciate if you give us until next week.

(Statement deferred)

The Speaker (Hon. Ethuro): Today is Wednesday. We will give you up to Tuesday, next week. I direct that if for some reasons, they will not make an appearance as they have done today, you assume the responsibility of responding.

DISAPPEARANCE OF MR. ALEX LELIONGA SANKALE

Sen. Mositet: Mr. Speaker, Sir, pursuant to Standing Order No. 45 (2) (b), I rise to request for a statement from the Chairperson of the Standing Committee on National Security and Foreign Relations with regards to the disappearance of Mr. Alex Lelionga Sankale, a business management student at the Kenya Institute of Management (KIM) on 13th November, 2015 at 6.30 p.m, at Ngara in Nairobi, after he was picked up at his residence at Ngara Hostels by three persons claiming to be officers from the Anti-Terrorism Police Unit for questioning. Efforts to trace his whereabouts since then have proved futile and his phone has since been off.

In the statement, the Chairperson should explain the following:

(1) Whether the individuals that picked up Alex Sangale were officers of the Anti-Terrorism Police Unit.

(2) If they were, why has he not been released or charged in a court of law?

(3) If they were not, what is the status of the investigation into the disappearance of Alex Sankale and what efforts have the police taken to trace his whereabouts?

The Speaker (Hon. Ethuro): Chairperson or the Vice Chairperson of the Committee on National Security and Foreign Relations?

Sen. Adan: Mr. Speaker, Sir, I request Sen. Mositet to give us two weeks because this matter might require some investigation.

The Speaker (Hon. Ethuro): Two weeks' time it is.

APPEARANCE BY PUBLIC OFFICERS BEFORE THE CPAIC

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I rise on a point of order regarding appearance by public officers before the County Public Accounts and Investments Committee (CPAIC) to respond to issues raised in audit reports of the Auditor-General. Could you clarify whether a Committee Chairperson or any other Senator can instruct the Committee not to invite a governor of a county allegedly because he is doing a good job on the ground? I seek this clarification because on Monday, 16th November, 2015, a Senator, who is the Chairperson of the Committee on Devolved Government, told a *baraza* where I was in attendance that the Governor of West Pokot County had done so a good job that he would instruct the Chairperson of the CPAIC not to require the said governor to appear before the Committee and ensure that all audit queries are shelved.

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo! While I appreciate that you must be an aggrieved party, that is no excuse for breaking all rules of civility. Who approved that statement?

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, it was a point of order.

(Laughter)

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. While procedurally, the distinguished Senator may not have come through the right door, the point he has raised is very fundamental. It is not once, twice or thrice that some Members of this House have arrogated themselves the responsibility, authority and power of this Senate - powers that even you, as the Speaker, does not exercise - to roam around the country and issue cozy and populist statements, to make themselves look good and portray themselves as if they exercise authority they have never had, and probably, they will never have.

This is a matter that does not need a casual answer. The Speaker should call a *Kamukunji* so that we can name, shame and undress these errant, young and excited Senators who have been going all over the country assuring governors. It is not just the Governor of West Pokot County; we have even read on newspapers and seen them on television making very bizarre assurances to governors; that nothing will touch them because they are doing a very good job. They tell them that they will ensure they have a

ticket and all manner of things. We need a *Kamukunji* on this. For any Member to purport to give instructions to a Chairperson of an accountability Committee is the height of sacrilege for this House.

The Speaker (Hon. Ethuro): Order, Members! I do not know what you are talking about. One Member makes an allegation in a public *baraza* and now you want to sanitize it and give it some credibility by raising the matter here. I will not entertain this. The Senate Minority Leader has given us what we all know; that such matters are better discussed in a *Kamukunji*. It is not for us to discuss other Members.

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

The Speaker (Hon. Ethuro): It better be different, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I am not pursuing the fact that Sen. (Prof.) Lonyangapuo has referred to the Chairperson of my Committee, which I happen to Chair. It is only yesterday that Sen. Melly, in the presence of Sen. Wangari, reported to me that during a presidential function, the Governor of Uasin Gishu assured the President that Sen. (Dr.) Khalwale has cleared him off all the audit queries. It is this kind of thing that will eventually erode the credibility, not only of my Committee, but also of the Senate, to the extent that when I will face the public and say that we found nothing with somebody, the public will think I have been influenced.

Mr. Speaker, Sir, you will have to think of ways beyond what Sen. Wetangula has suggested to protect our Committee. Our Committee is right at the heart of this matter. The day one governor will succeed in influencing our Committee, that will be the end of accountability as far as I am concerned.

The Speaker (Hon. Ethuro): Order, Senators! The Chair has a responsibility to know when to entertain certain points of order. That is why I said that the Chair should not be ambushed. We are now dealing with statements yet you want to introduce points of order. Sen. (Prof.) Lonyangapuo came through the window although I am not sure of his capacity to go through one and the Senate Minority Leader has said that procedure notwithstanding.

I encourage hon. Senators that we will discuss this matter substantively in the normal way. However, there are procedures in which you can bring up the issue if you feel that it has not been addressed properly. However, let it rest for now. I am sure that Sen. (Prof.) Lonyangapuo has put his case because he not only raised the issue, but also described the context in which it happened.

Let us proceed to the next statement.

DISAPPEARANCE OF MR. ALEX LELIONGA SANKALE

Sen. Mositet: Mr. Speaker, Sir, I know that you have already directed the Chairperson of the Committee on National Security and Foreign Relations to respond to my statement in two weeks' time. However, the family and the people of that area are really concerned. I would appreciate if the Chairperson took the initiative to assure the family that the people who arrested the boy were police officers so that they do not think that he was kidnapped.

The Speaker (Hon. Ethuro): I agree with you, Senator. I request the Vice Chairperson to conclude the issue within one week because Sen. Mositet has legitimate concerns.

ALLOCATION OF UWEZO YOUTH FUND TO MARSABIT
AND THE NEIGHBOURING COUNTIES

Sen. Hargura: Mr. Speaker, Sir, I rise to request for a statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget regarding the allocation of *Uwezo* Youth Fund to Marsabit and the neighbouring counties of Samburu and Turkana. In the statement, the Chairperson should give:-

- (a) a list of *Uwezo* Youth Fund Committee members for every constituency;
- (b) the allocation of the *Uwezo* and Youth Funds to Marsabit and other counties from 2013/2014 financial year to date;
- (c) the uptake; utilization of the funds from the 2013/2014 financial year to date;
- (d) a list of the applicants for each of the funds for the financial year 2013/2014 to date; and,
- (e) a list of the beneficiaries of the fund per constituency from 2013/2014 financial year to date.

The Speaker (Hon. Ethuro): Please, proceed, Sen. Dullo.

An. Hon. Senator: That question is directed to the Committee on Finance, Commerce and Budget.

The Speaker (Hon. Ethuro): Order! I am aware that the question is directed to the Committee on Finance, Commerce and Budget. I saw a request from Sen. Dullo, and I thought she wanted to ride on the statement.

Please, proceed, the Chairperson of the Committee on Finance, Commerce and Budget.

Sen. Billow: Mr. Speaker, Sir, hon. Senator for Marsabit County wants details regarding *Uwezo* Fund which are very specific. We will need a little bit of time to get all those details. I, therefore, request that you give us at least two weeks to get all the details. However, the basic information on the amount of money allocated can be accessed online on the website of *Uwezo* Fund.

The Speaker (Hon. Ethuro): Two weeks' time is good.

Sen. Hargura, do you have another request for a statement?

Sen. Hargura: Mr. Speaker, Sir, I would like to raise a matter concerning my county, but I do not have your approval. I, therefore, do not know whether to proceed.

The Speaker (Hon. Ethuro): You may approach the Chair as we continue with the rest of the business.

Hon. Members, we have six more statements to be issued. However, before we proceed, I would like to allow Sen. (Dr.) Khalwale to lay a Paper on the Table that has a deadline.

(Interruption of Statements)

PAPER LAID**REPORT OF THE MEDIATION COMMITTEE ON THE COUNTY GOVERNMENTS
AMENDMENT BILL (SENATE BILL NO.1 OF 2014)**

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I beg to lay the following Paper on the Table:-

Report of the Mediation Committee on the County Governments Amendment Bill (Senate Bill No.1 of 2014)

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

The Speaker (Hon. Ethuro): Let us proceed with statements.
Please, proceed, Sen. Dullo.

(Resumption of Statements)

STATEMENTS**KILLING OF YOUTHS IN KAJIADO COUNTY BY KWS RANGERS**

Sen. Adan: Mr. Speaker, Sir, I do not have the response to this statement, but we have discussed with Sen. Mositet. I will give the response next week.

The Speaker (Hon. Ethuro): Next week on Tuesday.
Next statement.

CONSTRUCTION OF KAKAMEGA-KABURENGU-WEBUYE ROAD

Sen. Sijeny: Mr. Speaker, Sir, I need some clarification because the statement that was sought earlier on and I have a response to, was on the status of the construction of the Kakamega-Webuye Road and not as it appears on the Order Paper: "Status of the Construction of the Roads in Kakamega County." The statement was on a specific road.

The Speaker (Hon. Ethuro): How does your statement read?

Sen. Sijeny: Mr. Speaker, Sir, my statement reads, "Status of the construction of Kakamega-Webuye Road."

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

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, there is nothing absolutely wrong with what is on the Order Paper. It was a specific ward, but when Sen. Wetangula intervened to ride on the Statement, he then included a number of other roads. So, then it expanded to include not just that road, but the others that Sen. Wetangula had mentioned. We expect that answer.

The Speaker (Hon. Ethuro): In the same county?

Sen. (Dr.) Khalwale: Yes, Mr. Speaker, Sir.

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

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker Sir. Did you notice the distinguished Nominated Senator, Sen. Wangari, walked from where Sen. Melly is sitting through this aisle, across here to where she is standing, contrary to the Standing Orders without bowing to the Bar to acknowledge the presence of yourself in the Chair and then walk to the Clerks-at-the-Table?

The Speaker (Hon. Ethuro): Order, Sen. Wetangula! I did not notice.

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, that is why I am bringing this to your attention.

The Speaker (Hon. Ethuro): Then say so. You asked me whether I noticed, I did not.

The Senate Minority Leader (Sen. Wetangula): Is that in order?

(Laughter)

The Speaker (Hon. Ethuro): If that is what she did, she is obviously out of order. Sen. Wangari, you know what needs to be done.

(Sen. Wangari began walking back from where she sat)

Order, Sen. Wangari! Are you demonstrating what you did?

(Laughter)

Sen. Sijeny, when we post the statements here, we summarize because we do not want to put the entire statement. Without the additional benefit of what Sen. (Dr) Khalwale told us, it could still mean the same thing. Since it has been determined that there were actually additional roads, my directive is to deal with what you have, and then we can look for more information for the rest.

Sen. Sijeny: Most obliged.

The Speaker (Hon. Ethuro): Proceed

Sen. Sijeny: Mr. Speaker, Sir, the statement was sought by Sen. (Dr.) Khalwale on the status of the re-construction of Kakamega-Webuye Road. He requested to know:-

(1) When the construction works officially started and when the project was supposed to be completed;

(2) What percentage of the works has been completed to date, and how much money the contractor has been paid so far;

(3) What the original budgeted cost of the project was.

(4) The reason for the delay in the completion and to indicate when the project will be completed;

(5) Whether it was true that the contractor was contracted to construct this road has abandoned the road;

(6) Why the national Government has refused to take the offer by the contractor to leave the site amicably and allow the contractors to continue with the construction of the road;

(7) Whether the funds of the construction of the roads are still available;

(8) When roads that have been extravagantly promised under the annuity programme will take off;

(9) Whether the non-completion of the road due to financial constraints implies that the Government is bankrupt;

(10) Whether the payment of the Ksh265 million to the contractor is in consonance with the works done and if not, what action will be taken against persons who made the payment;

(11) How much the contractor was awarded to leave site;

(12) How much the Government paid in variations; and,

(13) How much it would cost if the road was to be constructed by another contractor, and in the mean time as an urgent intervention, Kshs5 million to be set aside to clear the diversions that were created, so that the road can be passable.

I beg to reply.

The construction works commenced on 1st April, 2013 and were supposed to be completed on 31st March 2015. The percentage of the works completed so far is 2.36. So far, the contractor has been paid Kshs265,616,083.17. The contract sum is Kshs2,505,924,536.66.

Mr. Speaker, Sir, the reasons for the delay in the completion occurred due to inadequate and late mobilization of equipment and personnel by the contractor, apparent cash flow problems by the said contractors and, finally, litigation entered into by the contractor after he was issued with a notice of termination. The completion of the project requires 24 months and in the likely event that the litigation is resolved by 25th December, the project will be completed in December 2018.

I wish to state that the Government noticed that the contractor had problems even though due diligence was done before he was given the job. Being an international contractor, they even sought for the intervention of the Indian High Commission. He was given 10 per cent as per the agreement, but could still not deliver. So, he was issued with a termination letter. It is not true to state that the contractor for the Kakamega-Webuye project has abandoned the road. It was stopped by the Government due to the issues stated above; he could not deliver.

The national Government has not refused to take the offer by the contractor to leave the site amicably. The contractor's offer was made on 16th September 2015 and discussions are ongoing. This was after the contractor moved to the courts in The Hague in accordance with the contract for arbitration for interventions. The court ordered that the matter be referred for arbitration in September this year. After that, the parties have sat down and agreed and negotiations will commence this Friday with the contractor and the Government to see how amicably the contractor can leave the site and what he can be paid.

The Speaker (Hon. Ethuro): Chair, you have two more minutes to go.

Sen. Sijeny: The funds for the construction are still available; it is a World Bank funded programme.

On the issue of the annuity programme, I wish to reply that the Government has given the commitment to increase the penetration of the paved road network through construction of an additional 10,000 kilometres within the five years during the Jubilee Government tenure. There is an ongoing process of covering 3,100 kilometres, which will be done targeting low volume roads predominantly in the rural areas. The Ministry, through the Kenya Rural Roads Development (KRRD), has already initiated the 3,700 kilometres in batches and that shall be done. We, as a Committee, have advised that it be done and the criteria be chosen properly in all the regions. The payments of Kshs265 million is in consonance with the contract. The contractor was given some deposit so that he can perform as per the agreement.

Finally, let me say that the construction of the road was initially awarded to three contractors to do separate areas. The entire project runs from Kisumu to Kitale through Kakamega and Webuye and was split into three contracts: Kisumu-Kakamega, Kakamega-Webuye and Webuye -Kitale.

Mr. Speaker, Sir, the negotiations are ongoing and the other contractors have been approached. They will complete this road from their end if this contractor agrees to move out immediately. It will be done since there is money. The other burning issue about the Kshs5 million to deal with the diversion, which was blocking the road, is being done. I have brought some photos which were taken this morning. It is in the process. I assure the Senator for Kakamega County that his people will access the road.

Sen. Khaniri: Mr. Speaker, Sir, the issue of Kakamega-Webuye Road is thorny in our region. The contractors have over-stalled. This is the only project that is ongoing in that part of the country, and it was started by the Kibaki Administration. There is no one project that has been started by the Jubilee Government in our area. Can the Chairperson confirm that this is part of their wider scheme by the Jubilee Government to frustrate the people of western Kenya for the reason that they do not have support from that part of the country?

Sen. Billow: On a point of order, Mr. Speaker, Sir. You have heard the Senator complain that the Jubilee Government is frustrating western Kenya, whereas they came in large numbers last week when the President launched a myriad of projects in Kakamega, Bungoma and other western counties. Last week, many multibillion projects were launched. Is he in order to disparage the Jubilee Government because of some road in Vihiga?

(Sen. Khaniri stood up in his place)

The Speaker (Hon. Ethuro): Order, Sen. Khaniri! Sen. Billow is trying to purport to respond to what he has no responsibility for.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, this road from Kakamega to Webuye is part of the A1 roads running from Dar-es-Salaam, Mwanza, Tarime, Sirare, Kisii, Kisumu, Kakamega, Kitale, and Kapenguria to Cairo. It is an

important road. Since the award of the contract, nothing has been done. As you have heard from the Vice Chairperson, 2 per cent of the road has been done. The contractor is no longer working. This is the same circle of conspiracy against western Kenya.

Could the Chairperson tell us what it entails to tarmac and construct roads, to award contracts and to launch roads? We were treated to a theatre of the absurd on Saturday when the President came to Bungoma County and purported to launch a road that has not been budgeted for nor the contract advertised and awarded, no contractor on site, no plaque to show that the President launched it at a certain date and place. There was totally nothing. They stood there smiling claiming they launched a road that will be tarmacked.

Mr. Speaker, Sir, we used to see the retired President Kibaki come to launch a road where there is a budget, a contractor, equipment on site, including the site office. May I inform the distinguished Senator for Mandera that the fate they have suffered for the last 50 years is what we are now facing.

Could the Chairperson tell us how much money the Government is putting on Kakamega-Webuye Road as counterpart funds to the World Bank loan that is supposed to fund the construction of that road?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, on 12th June, 2015, M/s Vill Ltd, the contractor, went to the Permanent Court of Arbitration at The Hague about this contract. The court directed that the matter be settled amicably. The contractor then applied to the Government of Kenya that he had no problem leaving the site. That was in June. This is November and the money being spent is from the World Bank.

The Jubilee Government has refused to send a representative to the Permanent Court of Arbitration at The Hague to respond to the appeal by the contractor that he wants to move so as to allow other contractors to move on site.

The Government has time to take Government officials to The Hague to deal with the International Criminal Court (ICC) issues and not development issues. Could the Chairperson tell us what it is that the people of this region want to pay to the Government so that representatives are sent to respond to the appeal so that the contractor can build the road for us?

Finally, I have received photographs of a grader at Lubao Market. This is a grader being driven on the road. In fact, it has met a *matatu* on the road and there is a boy walking towards Kakamega Forest. Is this evidence that there are works going on, on the road? The photographs have been tabled. This joke is so appalling that when we cry here in Nairobi, we hope our people at home see the nexus between this joke this afternoon and what the President did at Lwakhakha purporting to open a border post which was opened by the late Sen. Otieno Kajwang in the name of rolling developments projects in our region.

Bure kabisa!

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

Sen. Kagwe: On a point of order, Speaker, Sir. Is Sen. (Dr.) Khalwale in order to literally abuse Sen. Sijeny sitting right in front of him and call her *bure sana* or *bure kabisa*? *Yote yawezekanavyo.*

Is he in order to shout to her in such derogatory terms?

Sen. Billow: Mr. Speaker, Sir, it is the dignity of this House that is important. We are elected representatives. The language used ‘*bure kabisa*’ is not a dignified language to use in this House to a Chair of a Committee who belongs to a party as his. He must withdraw and apologise.

The Speaker (Hon. Ethuro): Order, Members! You all know that some words are not helpful. Sen. (Dr.) Khalwale, this is your own statement. Do you really want it to get lost in all these?

What is it, Senate Minority Leader?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I see an attempt by the two distinguished Senators to divert the attention from the question. I was listening very carefully.

The Senator for Kakamega, Sen. (Dr.) Khalwale, made reference to a purported opening of an international border at Lwakhakha in Bungoma by the President on Saturday. This is a border post that was already developed and opened during the Kibaki Regime. President Kibaki sent the late Sen. Otieno Kajwang when he was Minister of State for Immigration and Registration of Persons to open it officially. That is the issue that he referred to as “*bure kabisa*.”

The words “*bure kabisa*” are not unparliamentary. That is how I understood it. It is unlikely that Sen. (Dr.) Khalwale would have referred to Sen. Sijeny as “*bure kabisa*.” It is not possible.

The Speaker (Hon. Ethuro): Order, Members! I followed the contribution and want to make it very clear. I may not know whom Sen. (Dr.) Khalwale was addressing when he uttered the words “*bure kabisa*”, but whoever he was addressing would feel offended. Whether it was Sen. Sijeny or people outside this House, it is not dignified of Sen. (Dr.) Khalwale who in normal circumstances is a very dignified man.

Secondly, even our own Standing Orders do not allow us to mix languages. His assertions were in English and then he summarized in Kiswahili Language. The Senate Minority Leader cannot purport to explain everything for other Senators. I am not sure whether he was listening attentively.

Sen. (Dr.) Khalwale, withdraw those words and proceed.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, it is important that the House understands what carried me. That was the echo of the words of President Kibaki, who launched that project in Lwakhakha. He could have seen us in Lwakhakha opening a project that he launched and said in his mind: “*Bure kabisa*.” That echoed in my mind.

Mr. Speaker, Sir, I withdraw. I never meant Sen. Sijeny, but the Jubilee Government. *Wameshindwa. Wanafanya vitu ambavyo watu wengine walifanya*. I withdraw and apologize.

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Members! On this particular one, I am inclined to rest it. What is important is what the Senator has finally said. He has withdrawn and apologized. Whatever you are going to ask require him to do the same.

Sen. (Dr.) Khalwale, I am sure that given your tendency to keep echoing things which you had echoed earlier without attributing them, you will be caught up again soon, and the punishment will be harsher.

Proceed, Sen. Sijeny.

Sen. Sijeny: Mr. Speaker, Sir, I want to assure Sen. (Dr.) Khalwale that, indeed, the Government is very serious with this road. It had set aside Kshs2.5 billion and the project is well funded by the World Bank. Therefore, the money is available. We have interrogated this project together with the Committee.

The construction of roads in the entire country is done in good faith. To the best of our knowledge, there is no conspiracy to do shoddy works in Western Kenya or any other part of the country. Some sections of this road-Kisumu-Kakamega and Webuye-Kitale - have been done and are on course. It is only the stretch between Kakamega-Webuye which has a problem, which I have explained extensively. It is not anything to do with the Government or the donors, that is, the World Bank. It is a problem with the contractor. Since this particular contractor could not deliver - he had only done 1 per cent of the work - the Government terminated the contract and he went to the Permanent Court at The Hague, in accordance with the agreement that they had.

If I was their lawyer, I would have advised them to go to the Kenyan courts. Even though the court issued an order on 20th June, 2015 for parties to go for arbitration, it is only until 16th September that the contractor wrote to the Government stating his desire to settle this matter amicably. The Government has taken it up and they are going to meet from Friday. There are many things which need to be prepared before they sit on the table to discuss.

I rest my case.

The Speaker (Hon. Ethuro): Order, Members! We must also appreciate when the Vice Chairperson handles supplementary questions in the most satisfactory manner.

Statement “c” by Sen. Mutula Kilonzo Jnr.

STATUS OF PREPAREDNESS OF IEBC FOR THE NEXT GENERAL ELECTION

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I have the response, whose copy I have just forwarded to Sen. Obure. He has confirmed that I can proceed. It is just about two pages. If you allow me, I can read it.

The Speaker (Hon. Ethuro): Order, Senator! Just to confirm that we do not operate here on the basis of the consent of Sen. Obure; it is the Chair.

Sen. Mutula Kilonzo Jnr.: That is why I sought your leave. May I proceed?

The Speaker (Hon. Ethuro): Proceed.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. This is a request by Sen. Obure on the status of IEBC preparations for the next general elections, including the issue of voter registration. The response is as follows.

The IEBC has a long-term perspective that goes beyond looking at the election as an event, but considers the cyclical nature of the process. The IEBC has already

embarked on the process of preparing for the 2017 elections, which will be implemented in three phases; the review phase, planning phase and implementation review phase.

Following the 2013 General Election, a post-election valuation process was undertaken to audit the electoral process. This process highlighted key activities, challenges and remedial actions recommended for implementation by the IEBC, including various recommendations on ICT and voters register. The evaluation informed the legal reform agenda by the IEBC, which has since culminated in the draft Election Amendment Bill, 2015, which is due for publication, consultation with the Committee on Justice and Legal Affairs of the National Assembly in early October, 2015. The IEBC has also embarked on assessment and audit of the existing technology and will be rolling out mapping of polling stations to improve on accessibility by the electorate.

With regard to the planning phase, on 9th July, 2015, the IEBC launched its 2015-2020 Strategic Plan. The plan outlines the roadmap to 2017. The plan which is built on three pillars - managing the election, institutional transformation and trust and participation - was developed with the input of stakeholders.

The IEBC is currently developing an Electoral Operation Plan (EOP) for 2017 which is guided by this plan. Informed by the EOP the Commission will undertake – and this is important for the Senators – a massive voter registration from November to December, 2015. It has since commenced the process towards developing a strategy to realise this exercise.

The preparation for mass voter registration is structured on contextual issues around the current status. The planning process will entail the following:-

1. Legal, institutional and administrative framework.
2. Logistics and infrastructure.
3. Distribution of voter registration kits.
4. Status of ICT to support the process.
5. Related risks.
6. Data management and registered persons.
7. Recruitment and deployment.
8. Budgetary and resource allocation.

These are appreciated as critical process functions that will support the voter registration drive. The allocated budget will be rationalized to inform the outreach either at constituency or ward level.

Lastly, with regard to the implementation phase, for effective management of electoral process, the IEBC's EOP will be aligned to budgetary projections. The IEBC's EOP identifies key activities that will be implemented in order of priority.

The EOP will be the critical roadmap in guiding the preparation for the 2017 General Elections. The EOP has salient features which will guide the IEBC Commission in:-

- (i) Establishing the necessary linkages in the implementation of the identified election priorities.
- (ii) Developing integrated timeframes for the completion of the priorities.
- (iii) Identifying the resource needs; and,

- (iv) providing for monitoring and evaluation in implementation of the priorities.

Thank you, Mr. Speaker, Sir.

Sen. (Prof.) Lesan: On a point of order, Mr. Speaker, Sir. Whereas I thank the Vice Chairperson of the Committee for the answer he has given, I would like to know the status of preparedness of the IEBC as regards to Bomet County. As far as I am concerned, the register of voters in Bomet has been closed since June, 2013 as a result of an ongoing petition, which up to date---

The Speaker (Hon. Ethuro): Order, Senator!

Sen. (Prof.) Lesan: Mr. Speaker, Sir, it is a related question.

The Speaker (Hon. Ethuro): That is correct, but you should not have stood on a point of order. This is the time for those related questions. The tradition of the House is that we give the Member who sought the statement the first opportunity.

Sen. (Prof.) Lesan: I am sorry, Mr. Speaker, Sir. I will ask for an opportunity to ask again.

Sen. Obure: Mr. Speaker, Sir, I am quite satisfied with the level of preparation as enumerated in the answer by the Vice Chairperson. However, I asked for the number of people who have been registered so far, compared with the projected figures by the IEBC. He has not covered that. In addition, I asked why election materials are sourced abroad, when they could actually be ably supplied locally. That has not been touched.

I would request that the Vice Chairperson responds to parts (2), (3) and (4) of my statement.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I wish to also seek clarification regarding the status of registration of voters in Bomet County.

As I said earlier, the register of voters in Bomet has been closed since 2013, as a result of an ongoing by-election petition. To date, the register is closed and there is no preparation going on for registration of voters in Bomet. I would like to know from the Vice Chairperson what preparations are being done and what is being done to ensure that despite the petition that is still ongoing, registration of voters will take place in Bomet County.

The Speaker (Hon. Ethuro): Hon. Senators, the interest is great. Just make sure that you make an intervention within a minute.

Sen. (Dr.) Machage: Mr. Speaker, Sir, the Vice Chairperson has alluded to the fact that the IEBC is in the process of purchasing new voter registration kits, which he referred to as EOP. What has the IEBC done with the other kits which cost the taxpayers so much money?

Sen. Kagwe: Mr. Speaker, Sir, it is a great day to see how well the CORD is defending the Government.

(Laughter)

Mr. Speaker, Sir, I want to seek clarification on the matter of voter registration because---

The Speaker (Hon. Ethuro): Order, Sen. Kagwe. I thought you protested just a few minutes ago?

Sen. Kagwe: Indeed, I was, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Proceed.

Sen. Kagwe: Mr. Speaker, Sir, Sen. Mutula Kilonzo Jnr. has done very well and I was just praising him.

Mr. Speaker, Sir, I want to seek clarification and disagree with the statement that Sen. Mutula Kilonzo Jnr. has made concerning the preparedness of the IEBC. In Nyeri County, for example, virtually no registration is taking place because the IEBC officials do not even have petrol for the vehicles that they use. In fact, for the past two years, the entire team in Nyeri County that is supposed to be carrying out voter registration has never had any support of any kind. They are basically loitering around doing absolutely nothing. It would be wrong for us to sit in this House and assume that voter registration is going on when there is actually nothing happening.

Mr. Speaker, Sir, I am aware---

The Speaker (Hon. Ethuro): Order, Senator! Please, conclude.

(Sen. Kagwe's microphone went off)

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, further to what my colleagues have asked, I expected to hear about the relationship between the issuance of identification cards and voter registration, because you cannot be registered as a voter unless you have an identification card.

Mr. Speaker, Sir, in my county of West Pokot and the neighbouring Turkana and Samburu counties that had issues of cattle rustling for a long time, most people do not have identification cards. My county has over 150,000 people without identification cards.

Now that we are almost two years to the next general election, I would like to know about the procedure for voter registration. The statement did not capture people who do not have identification cards. Such people will not exercise their right to vote and choose their leaders in the next elections.

Sen. Musila: Mr. Speaker, Sir, I rise to seek clarification on the statement. You heard the Vice Chairperson of the Committee say that: "The IEBC will do massive registration during the months of November and December, 2015." We are already in November and everyone will testify that there is nothing going on. Did he mean November, 2015 or November, 2016? If there was any massive registration, it would be preceded by civic education. Could the Vice Chairperson tell us when civic education was done for the massive registration?

(Laughter)

Sen. Hassan: Mr. Speaker, Sir, I have heard the IEBC officials talk about being underfunded in the process of voter registration. In their report, they say that the critical processes functions are budgetary and resource allocation. Could the Vice Chairperson

specify how much funding has been allocated for voter registration and the deficit therein? Owing to the deficit, what will be their capability to achieve their objectives?

Secondly, the IEBC officials, in the last elections projection, said that they would register 1.8 million voters from the coast region. However, they only registered 1.2 million people, and only 800,000 voted on account of what they termed as insecurity. Therefore, over half, that is 50 per cent of the coast region, did not vote. The IEBC voter projection for this year is 2.4 million voters. It, therefore, means that the IEBC has to register afresh almost 50 per cent of the voters in the coast region and give them the opportunity lost in the last election. I would like to know the kind of asymmetrical advantage that is being given to the coast region in order to cover the prejudice suffered during the last election, where over one million voters in the coast region did not vote, yet others claim the tyranny of numbers.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I would like the Vice Chairperson to clarify if it is true that in the last financial year, the IEBC was given Kshs18 million to carry out voter registration in the whole country. I would also like him to confirm that six months ago, the IEBC announced that it would carry out what he has described as “massive voter registration” from 15th November this year, for one full month. Some of us even prepared to take leave to go to the villages and help people to go and register. Today is 18th November, 2015. Is the programme of 15th November for one full month for massive registration still on? If it is, when will it start because we have already lost a few days?

Sen. Keter: Mr. Speaker, Sir, I would like the Vice Chairperson to clarify the preparedness of the IEBC, basing the facts on the 2013 Elections. This is because the IEBC officials said that some of the constituencies would be digitized in terms of the gadgets to be used, such as the Biometric Voter Registration (BVR) kits and so on.

Could he tell us what has been done since the last elections? In all the by-elections that have taken place, manual systems have been used. We need to be guided so that we avoid new systems being introduced at the eleventh hour when elections are near. What have the IEBC officials done so far? We should experiment systems which they claimed to be in place, to ensure that we have free and fair elections across the country, because that is very vital.

Sen. Hassan: On a point of order, Mr. Speaker, Sir. It would be important for you to clarify our constitutional architecture regarding whether the Executive can control Parliament when it comes to the presidential system. The architecture of the old Constitution allowed you to say “he is a Member of the Government” in the Senate and National Assembly. However, the new architecture makes Parliament, in its totality, an oversight over the Executive. For somebody to say that the CORD is really defending the Government, in my assessment, that person does not understand the architecture of the new Constitution.

The Speaker (Hon. Ethuro): Sen. Billow, when I called out your name, you did not rise to speak.

Sen. Billow: Mr. Speaker, Sir, you then called him and then I lost the chance.

The Speaker (Hon. Ethuro): It is because I called you and you looked at a loss.

Sen. Billow: Mr. Speaker, Sir, my apologies. I am seeking a clarification from the Vice Chairperson on whether it is agreeable to the IEBC to amend the law to allow other documents other than identity cards for registration of voters. This is essential, especially for those of us who come from areas where the Government literally does not issue ID cards any more. Is the IEBC agreeable to other alternative documents to be used, so that we are like Tanzania which registered 22 million voters and they do not have the kind of money that we have in this country?

Sen. G. G. Kariuki: On a point of order, Mr. Speaker, Sir. This is very involving and delicate matter. The source of a good election and its results starts from registration and ends with the IEBC. Is there any way that we can bring the IEBC Chairperson before the entire House and ask him whether he is capable of doing what is not being done? We heard that some chickens were eaten somewhere!

(Laughter)

The Speaker (Hon. Ethuro): Vice Chairperson, while I allow you, I would like you to respond to the point of order raised by Sen. Hassan. It is true the responses that we receive are provided by the Committees of this House. It is also true that most of the sources of the responses, of course, are from Government for obvious reasons because they are dealing with the issue. It is, therefore, unfair to characterize one section of the House as this or the other when it comes to dealing with Committees. Do not forget that committees are passed by this House. Committee elections are conducted and the membership of the committees which includes both sides will always agree on who should be the Chairperson and the Vice Chairperson.

I am also encouraged by the fact that literally, in most cases, we have always appointed both the Chairperson and the Vice Chairperson in a most consensus and amicable manner. So, there should not be a basis of doubting their competence when it comes to discharging that mandate that you gave them so willingly and readily.

Proceed, Vice Chairperson.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I will try my level best to answer the questions. Sen. (Dr.) Machage has asked why new kits are being purchased while the rest are still there. I actually never said that they were going to be purchased. The statement was clear that in the planning process, they were going to redistribute the voter registration kits. That is what they have said. They have not included purchasing other kits. They have also stated that, in fact, this is the process that they intend to undertake in order to audit the status of Information Communication Technology (ICT) and support of the process. I, therefore, assume that after the contemplated registration in November or December 2015, then, they will make a decision as to whether new kits need to be purchased.

Regarding Sen. (Prof.) Lesan's question, I am actually surprised that in his petition, they ordered the close of the register. I am also aware that his petition was completed, but I am not sure why his petition is related to close of the register and why no order was issued by the Supreme Court to lift the said closure. However, I undertake

to check why this illegality occurred in the petition by Nick Salat against the Bomet Senator.

Mr. Speaker, Sir, on Sen. Obure's question, I must admit that the statement did not give the statistics that he has requested for. I undertake that we will have those statistics in terms of numbers of people registered since they started last week.

Sen. Kagwe is a Member of the Committee on Finance, Commerce and Budget like Sen. Billow and myself. So, they knew what happened during the budgeting. It is unfortunate that when we, as a Senate, recommended that the IEBC should be given the money they requested for, which was about Kshs5 billion, the National Assembly reduced their budget. Sen. Kagwe and Sen. Billow are aware that this is a problem that, we, as the Senate, must address. That is the reason why registration officers all over the country are sitting and twiddling their fingers because they have no money to even leave their offices. So, this is a problem that we should now ask the Chairperson of the Committee of Finance, Commerce and Budget to interrogate the National Treasury as to why they have, in fact, starved this Commission of its funding like they have requested in the past. The Budget Policy Statement (BPS) that was before this House explains why we have those constraints, but we will go into the details.

Sen. (Prof.) Lonyangapuo, I can tell you that the registration of IDs has very little to do with the registration of voters. There are two different offices. If necessary, we can summon the Registrar of Persons and the director to explain to us what is happening on the ground. However, I am aware the National Registration Office got a quarter of its budget. We are asking for a cow to be milked when it has no milk. The Chairperson of the Committee on Finance, Commerce and Budget is here and he knows that without a budget, even the IDs will not be issued.

Mr. Speaker, Sir, for a greater debate on finance, please, allow us to see the Committee of Finance, Commerce and Budget to interrogate this matter a little further because that is our docket and not even the docket of the Committee on Legal affairs and Human rights.

On the issue raised by Sen. Musila, we received this communication in October. We could not at that time interrogate why it did not start in November. Just like everything that has happened in the Jubilee Government, everything has delayed. May be it is because of the Euro bond saga.

(Laughter)

Sen. Hassan asked about the voter registration deficit. Similarly, the IEBC has been starved of resources. I can only assume that this has been done deliberately to ensure that people do not get registered. I do not understand why our colleagues in the National Assembly would award other departments a lot of money and then deny voters their registration. Once again, this is a matter that the good Senator for Mandera ought to interrogate in great detail.

Sen. Wetangula has requested to find out why they got Kshs18 million to do voter registration in the last financial year. Let me confess that I do not have the correct figure, but I can get that in a response that I can submit next week to confirm why they got those

resources. Suffice to say that the registration officers in every constituency do not have funds. Let us agree that there is a crisis in this country which has been caused by the fact that the National Assembly has thought it fit not to give the IEBC the money to do the work that they are supposed to do.

On Sen. Keter's question, it is not true that all by-elections have been done manually. In my own by-election, it was done electronically to prove, in fact, that these kits should not have failed, in the first place. So, in terms of preparedness, I am not sure whether this equipment is not working because I have said it worked extremely well in my by-election. It did so during Memusi's and Sen. Wetangula's by-election. So, the only thing that we want to find out is whether or not there will be another failure which is not human.

Sen. Billow, this is something that, Mr. Speaker, Sir, you ought to intervene on our behalf. There is an Elections (Amendment) Bill which is before the National Assembly and it will affect Senators in terms of qualifications and so on.

Therefore, in terms of the amendments proposed by Sen. Billow, unless you can stamp authority under Article 110, that Bill will not come to this House. I have seen the draft and they have said, like they have before in their normal broken record that, that Bill does not concern counties. Therefore, it will not come here until you exercise the authority of the robes you are wearing.

Sen. G.G. Kariuki has suggested that we call the IEBC, I would suggest that we collect this information and then we can interrogate them when all the information is here, so that we do not have a back and forth like we have done in the case of Sen. Musila where he asked about the cash transfer and it has taken more than three months to get the statement.

Sen. Obure: Mr. Speaker, I thank Sen. Mutula Kilonzo Jnr. for the tremendous effort in responding to this question. However, even in his own admission, he has skipped certain parts of the information requested. For example, on the crisis relating to financing of the IEBC activities, we had specifically requested the IEBC to tell us what challenges they may be having. I would have expected him to take this opportunity to explain to us the starving of funds and all these questions, so that this Senate can try and find a way of helping them. They have not even done so.

Mr. Speaker, Sir, I would like to find out from you if it is in order for Sen. Mutula Kilonzo Jnr. to be allowed to come back and provide the rest of the information, which he has not been able to today.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I gave that undertaking. However, I have also mentioned that one of the challenges that the IEBC has and they have mentioned here is that they have been starved of cash. You are aware that in the budget policy statement we recommended that the IEBC should be granted Kshs5 billion they had requested. The amount they were given this financial year is just close to Kshs1.3 billion. That information is already available.

On the question of why the National Assembly Budget and Appropriations Committee thinks that it is not necessary to give them the funding that they have requested for, that is why I have said that it is possible through the Committee on Finance, Commerce and Budget, chaired by the able Senator for Mandera County, to

interrogate this in a little more detail in terms of the funding. We cannot ask IEBC why they do not have funds yet we are aware and have judicial notice that they have not been given funds.

The Speaker (Hon. Ethuro): Order, Members. Although the Vice Chairperson had made an undertaking that he can always come back; but he has put a compelling case why he should not come back next week because there are many other issues that will make his response more comprehensive. He has raised the issue of finance. I would encourage him that, belonging to both parties, a Committee on its own motion can always pursue the matter.

There is also the issue of registration of persons which is related to Statement (f), you need to reconcile all those. I will invite you to indicate to the Chair when you will be ready as a Committee to furnish the House with the required information.

I have allowed more interventions and a bit of time because I believe this is a very important matter. Interventions made by hon. Members are extremely illuminating. I would also encourage the acting Chairperson and his Committee to continue pursuing the matter. The matter should not end by the time you make a statement to the House; you should pursue the issue. I was wondering when Sen. Musila was trying to understand the word “massive” whether he was putting it also in the same context of the *El Nino*.

Hon. Members, we are ready to vote; we have quite good number. We are just missing one or two Members. The whipping is going on. As soon as that is achieved, we will move on to the rest of the orders because we will have the numbers to dispose of them.

Let us proceed with Statement (d). We must also do this one because that is the statement of the Vice Chairperson; he has done a good job for the House and we owe it to him.

Proceed, Sen. Mutula Kilonzo Jnr.

CAUSES OF OIL SPILLAGE INTO RIVER THANGE IN MAKUENI COUNTY

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I thank your office and that of the Clerk. They have allowed the Committee on Energy to fly to Makueni tomorrow and interrogate this matter in detail. Therefore, we possibly should allow them to, first of all, do the investigation and then we will have a comprehensive report.

(Statement deferred)

The Speaker (Hon. Ethuro): Let us proceed, with Statement (e).

Proceed, Sen. Billow, Chairperson of the Committee on Finance, Commerce and Budget.

RISING INTEREST RATES AND STABILITY OF
SMALL BANKS IN THE COUNTRY

Sen. Billow: Mr. Speaker, Sir, I am ready to issue the statement. I am sure that the hon. Senator is ready to listen because he is a good listener.

The statement that was sought by the Senator for Nyeri, Sen. Kagwe, is on the stability of small banks and the alarming interest rates.

First, he wanted to know specifically the reason for placing Imperial and Dubai Banks under receivership. He also wanted to know what is causing the alarming rising interest rates and what mitigation action the National Treasury is taking to avoid a financial run in the two banks and the action the Ministry is taking to confirm that small banks in the country are stable.

Mr. Speaker, Sir, I have a very brief statement, it is two pages. I would like to very quickly highlight the key areas because the hon. Senator has a copy of the response. We had invited the Governor of the Central Bank of Kenya (CBK) to discuss this matter. There is a very compressive statement that any Member, who is interested, can get.

However, very briefly, on 14th August, 2015, the CBK appointed Kenya Deposit Insurance Corporation (KDIC) as the receiver of Dubai Bank because of capital and liquidity deficiencies of the Bank.

Mr. Speaker, Sir, the recommendation of the KDIC, with regard to Dubai Bank, is that they recommended liquidation as the most viable option given the magnitude of weaknesses at the Bank. On 13th October, 2015, again, the CBK appointed the KDIC as receivers of Imperial Bank Limited following a submission by the board of the Bank regarding fraudulent activities at the Bank that had come to light after the sudden death of the immediate former Chief Executive Officer (CEO).

Mr. Speaker, Sir, the decision by the CBK to appoint the KDIC as receiver of Imperial Bank was taken to protect the interests of depositors, creditors and members of the public. Before receivership, that bank was medium sized. In fact, it was placed at number 16 out of 41 banks. It had a market share of 1.8 per cent. Therefore, the CBK is working with the corporation towards a quick resolution of the bank and the preference or recommendation is to, if possible, revive the bank.

The two banks were placed under receivership due to factors that were unique to each of the two institutions. It is not a problem; that is systemic within the financial sector. Therefore, there is no risk of affecting all the banks.

Mr. Speaker, Sir, secondly, I should answer the next item which is related to the banks. What mitigation action is the National Treasury taking to avoid a financial run on those banks? Following the announcement of the receivership of Imperial Bank, small and medium sized banks reported panic by their customers who were rushing to withdraw their deposits.

This panic was accelerated by social media rumours and circulation of lists targeting mainly small and medium sized banks. The Central Bank of Kenya (CBK) scaled up communication efforts in the following week and they gave announcements to stem this panic and assure the public that the receivership is due to unique factors at Imperial Bank and they are not systemic across the sector.

Mr. Speaker, Sir, CBK also provided liquidity support to banks experiencing liquidity runs due to customer deposit withdrawals. So, CBK continues to closely monitor the entire banking sector and has in various press releases and press briefings advised the public that the issues at Dubai and Imperial Bank are not systemic and the banking sector on the whole remains sound and resilient.

Mr. Speaker, Sir, the last item is on the interest rates. There has been a general increase in interest rates since the tightening of monetary policy in June, 2015. The CBK rate was raised from 8.5 percent to 10 per cent in June, and further to 11 per cent in July, 2015 by the monetary policy of CBK. This was backed by open market operations which resulted in tight liquidity conditions raising short term interest rates. These rising interest rate conditions in the market are short-term measures to ensure CBK achieves its primary mandate of price stability. Normal interest rate conditions are expected when threats to inflation and exchange rate dissipate.

Mr. Speaker, Sir, shortly after this statement that was sent on 29th October, 2015, that situation is changing and what the Governor is saying here is happening and the rates are generally on a decline. The Treasury Bill rates have gone down significantly from 21 per cent. Last week, it went down to almost 13 per cent and the interest rates are also going down in the same way.

Thank you.

The Speaker (Hon. Ethuro): Hon. Members, I want to plead with the Chair and Sen. Kagwe that we have gone past 4.00 p.m., and we suspect we can get the numbers for voting if we can defer your interrogation to tomorrow. I direct that statement be the first one to be responded to tomorrow so that the Members can interrogate it further. We will now go to the next Order.

(Statement deferred)

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. I want to seek clarification on the content of the Order Paper. Yesterday, we were dealing with the Presidential Memorandum on two Bills; the Audit Bill and the Procurement Bill. We disposed off the Audit Bill, and Wednesday is a day for voting and we expected that the Memorandum of the President would be given priority to appear on the Order Paper today so that we continue dealing with it.

Mr. Speaker, Sir, yesterday, there were several Division Bills that have been reproduced on the Order Paper. We dealt with Order Nos. 8 and 9 and they ought to be the first in terms of prioritization even from Rules and Business Committee (RBC) where you Chair. I wonder why it is not there today.

Sen. Hassan: On a point of order, Mr. Speaker, Sir. It is almost a tradition we have created in this Senate that whenever we have not dispensed of any Order the previous day, we literally pull them almost similarly, because if we are trying to put off this Order, particularly on the Presidential Memorandum, it might look like the RBC, - which Senator Wetangula sits in - might be trying to organize business here by giving certain sides of this House the ability to go and regroup and reorganize.

I remember when the Senate Majority Leader spoke yesterday, he promised us that they would bring back both the Bills and pass them. That bravado having been raised by the Senate Majority Leader, then one starts to see that there is a scheme in the reorganization of the Order Paper to give certain groups the ability to regroup themselves.

Sen. Keter: On a point of order, Mr. Speaker, Sir. I thought we were ready yesterday to complete the Presidential Memorandum. However, arising from the issues whereby it needed guidance and directions from the Chair, that is why they are not on the Order Paper because we are waiting for the ruling before we can embark on it.

How do you expect us to continue with Order Nos.8 and 9 of yesterday yet you are the ones who said the Chair deferred it until a ruling is made by the Speaker? So, nobody is being favoured. We were ready to go to the end and I want to assure this House that we are set for those Orders.

The Speaker (Hon. Ethuro): Order, Members; the Senate Minority Leader, in particular. This is a fairly straightforward matter. You will appreciate that yesterday there were so many interventions that we could not proceed on a lot of business. Many issues were raised which I think required the intervention of the substantive Chair and they have been brought to my attention. Under those circumstances, whatever was supposed to be determined under Order No.8 would still affect Order No.9. So, there is no point of going through another Motion.

So, we are considering a response. When it will be ready, we will make it and we will proceed. I want the Senator for Mombasa to be assured that even on the Floor of this House, individual Senators have requested for statements or Bills to come on a particular time. So, it is not that if you do not see it appear, it should automatically be on the Order Paper the following day. You have witnessed it and Standing Order No.39 allows the Speaker to rearrange the Order Paper for the convenience of the House. All those avenues are available. However, on this one, it is just because it raised a lot of issues. It is only fair for good order that they are disposed of first before we proceed.

I appreciate the enthusiasm of the leadership, in particular, the Senate Minority Leader in ensuring that the Presidential Memorandum is dispensed with quickly. I am told that that Motion is ably seconded by the Secretary-General of the other coalition.

BILLS

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE CLIMATE CHANGE BILL (NATIONAL ASSEMBLY BILL NO. 1 OF 2014)

The Chairperson (Sen. (Dr.) Machage): Hon. Senators, we are now in the Committee of the Whole to consider The Climate Change Bill (National Assembly Bill No.1 of 2014)

Clause 3

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

THAT, Clause 3 of the Bill be amended in subclause (2) by inserting the word “and” immediately after the word “intergenerational” appearing in paragraph (e).

The Committee proposes to amend subclause (2)(3) of the Bill to correct a grammatical error by inserting the word “and” between the words “intergenerational” and “gender”. This would, therefore, clarify the fact that it is both intergenerational and gender equity, which is to be maintained in all aspects of climate change.

(Question of the amendment proposed)

Sen Mutula Kilonzo Jnr: Mr. Temporary Chairman, Sir, the Mover referred to the amendment as subclause (2)(3). However, the amendment is actually subclause (3)(2). The record must be correct.

The Chairperson (Sen. (Dr.) Machage): Very well, the record now is correct. We will put the question at the end.

Clause 4

(Question, that Clause 4 be part of the Bill, proposed)

Clause 5

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

THAT, Clause 5 of the Bill be amended in subclause (2) by inserting the following new paragraph after introductory clause-

- (a) the Deputy President who shall be the vice-chairperson to the Council;

Mr. Temporary Chairman, Sir, in our Constitution we have always put it that where the President is chairing, then the Deputy President becomes the vice chair. This was a small amendment, but it is necessary in order to keep in line with the Constitution.

The Chairperson (Sen. (Dr.) Machage): Very well. I remind you that if you read carefully your Standing Orders, in the Committee of the Whole, there is no need to second.

(Question of the amendment proposed)

(Question, that Clause 6 be part of the Bill, proposed)

Clause 7

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

THAT, Clause 7 of the Bill be amended –

- a. in subclause (2) by –
 - i. deleting paragraph (g);
 - ii. inserting the words “nominated by the body representing the largest number of institutions in the private sector” immediately after the words “private sector” appearing in paragraph(f);
 - iii. inserting the words “who has knowledge and experience in matters relating to indigenous knowledge immediately after the words “of the Constitution” appearing in paragraph (h);
- b. in subclause (3) by deleting the words “(2)(f), (g) and (h)” appearing immediately after the words “under subsection” and substituting therefor the words “(2)(f), (g),(h) and (i)”;
- c. in subclause (4) by inserting the words “and the Senate” immediately after the words “the National Assembly.”

The import of these amendments is mainly to make the law intendat, firstly, with the professionalism required in the people who are being appointed. Secondly, where there is any adjudication to be done by the National Assembly, the Senate must also be involved.

(Question of the amendment proposed)

*(Question, that Clauses 8, 9, 10, 11
and 12 be part of the Bill, proposed)*

Clause 13

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

THAT, Clause 13 of the Bill be amended in subclau (4) by inserting the words “of the Action Plan” immediately after the words “for mainstreaming.”

This amendment would make it clear that it is the action plan that is to be mainstreamed into all sectors of the economy and not *vice versa*.

(Question of the amendment proposed)

(Question, that Clause 13 be part of the Bill, proposed)

Clause 14

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

THAT, Clause 14 of the Bill be amended in subclause (1) by inserting the words “and mitigation against” immediately after the words “adaptation to” appearing in paragraph (a).

The Committee proposes this amendment because the climate change may bring along negative consequences which require early planning in order to mitigate against outcomes, like what is happening with *El Nino* today. In this regard, mitigation would be an important component of the policy formulation and implementation. The Committee, therefore, proposes to include mitigation as an aspect of the programme that is to be prepared and tabled before Parliament by the Committee.

(Question of the amendment proposed)

Clauses 15 and 16

(Question, that Clauses 15 and 16 be part of the Bill, proposed)

Clause 17

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

THAT, Clause 17 of the Bill be amended in subclause (1) by deleting the word “give” appearing immediately after the words “with instructions” in paragraph (b) and substituting therefor the word “prescribed.”

This is to align it with Clause 16, which provides for the prescription by the Cabinet Secretary of the regulations governing the manner in which the private entities are to report their performance in the implementation of their climate change obligations. This is a small change to enable Clause 17 to concur with Clause 16.

(Question of the amendment proposed)

(Question, that Clauses 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 be part of the Bill, proposed)

Clause 32

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

THAT, Clause 32 of the Bill be amended in subclause (1) by deleting the word “one” appearing immediately after the words “fine not exceeding” at the end of the subclause and substituting therefor the word “ten”.

It was felt that, particularly big companies, will not feel any pinch for degrading environmental issues if you tell them to pay a fine of Kshs1 million. The Committee felt that this needs to be increased from Kshs1 million to Kshs10 million.

(Question of the amendment proposed)

(Question, that Clauses 33 and 34 be part of the Bill, proposed)

Clause 35

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

THAT, Clause 35 of the Bill be amended in subclause (1) by deleting the word “may” appearing immediately after the words “Cabinet Secretary” and substituting therefor the word “shall”.

Allowing the word “will” or “may” does not give the strength of the law; that this must happen. As currently worded, the provision makes it optional for the Cabinet Secretary to make regulations and hence, there is a possibility that the Cabinet Secretary may take time or fail to make these regulations. By deleting the word “may” and substituting therefor the word “shall,” it makes it mandatory for the Cabinet Secretary to make the regulations.

(Question of the amendment proposed)

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, I am concerned. Where there were clauses suggesting that the Cabinet Secretary would draw regulations, our practice has been that there is a timeline for those regulations and they will not come into effect until they are approved by Parliament, which includes the Senate. For clarity, could the Chairperson confirm that Clause 35 includes a deadline and approval of the Parliament before they are published?

Sen. Kivuti: Mr. Temporary Chairman, Sir, I do not know if my brother, the Senator for Makueni, would like to make an amendment to this amendment. In practice, we have done this kind of thing in almost all the other laws where clauses suggested that the Cabinet Secretary shall make regulations. Since I had not anticipated this question – and we have been debating about timelines in our Committee - I need to interrogate this document further with regard the timelines for making regulations and coming to effect of the law. This is something we can interrogate together with my learned Senator, *Kanyanya*.

The Temporary Chairperson (Sen. (Dr.) Machage): Are you a lawyer? I thought that just like the term “doctor” is preserved for only those people who have at least an MBChB and registered medical practitioners. That term is only reserved for lawyers. Likewise, the word “doctor” is abused by many people. That was on a light note.

What you have said is neither here nor there. It is okay and acceptable for you to interrogate, but for the purposes of this Committee, no amendment has been moved by Sen. Mutula Kilonzo Jnr. and there is no attempt by the Vice Chairperson to move any amendment.

(Question of the amendment proposed)

New Clause 25A

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

THAT, the Bill be amended by inserting the following new clause immediately after clause 25 –

Incentives for the promotion of

Climate change initiatives

25A. (1) The Cabinet Secretary shall, in accordance with the appropriate law, and in consultation with the Cabinet Secretary responsible for finance, grant to persons who –

(a) encourage and put in place measures for the elimination of climate change including reduction of green house emissions and use of renewable energy;

(b) put in place measures to mitigate against the adverse effects of climate change;

(c) are involved in the conduct of accredited training in programmes that are aimed at eliminating climate change; such incentives as may be necessary for the advancement of the elimination of and mitigation against climate change and the effects of climate change.

(2) The Cabinet Secretary shall, for the purpose of subsection (1), in regulations set out the nature of the incentives, the conditions for the grant or withdrawal of such incentives and such other matter as may be necessary for the exercise of the power conferred under subsection (1).

(3) In granting incentives under subsection (1), the Cabinet Secretary shall take into account international standards and best practice.

(4) The Cabinet Secretary shall make the regulations specified under subsection (2) within a period of twelve months from the commencement of this Act.

This new clause gives incentives and promotion for climate change initiatives. The draft did not have an item to promote not only Government, but also private sector initiatives that can bring positive climate.

(Question of the New Clause 25A proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): Sen. Kivuti, once I have proposed the question, you can say something.

Sen. Kivuti: Mr. Temporary Chairman, Sir, I have nothing to add.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, I am a little concerned on a procedural issue. In terms of format, ideally, New Clause 25(a) should have come before Clause 32.

Temporary Chairperson (Sen. (Dr.) Machage): Sen. Mutula Kilonzo Jnr., you had all the time to make your amendments. However, when you make such juicy suggestions, I cannot help you.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, the juicy suggestion has gone on record as my concern. It is a question of procedure. I can see the Clerk-at-the-Table is nodding her head to indicate that I am out of order.

Sen. Kivuti: Mr. Temporary Chairman, Sir, in the interest of the procedure of this House, whereas I agree with Sen. Mutula Kilonzo Jnr. that we can put Clause 25(a) after Clause 17---

Temporary Chairperson (Sen. (Dr.) Machage): Order! That does not really matter Mr. Chairman. Sen. Mutula Kilonzo Jnr. whenever we have new clauses, they always come after everything else.

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

Clause 2

Temporary Chairperson (Sen. (Dr.) Machage): I propose that Clause 2 be part of the Bill.

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

THAT, Clause 2 of the Bill be amended in the definition of the word "Cabinet Secretary" by deleting the words "Cabinet affairs" appearing immediately after the words "responsible for" and substituting therefor the words "matters relating to climate change".

During the drafting of this Bill, I think that they erroneously put "Cabinet Secretary" in charge of "Cabinet affairs" which, of course, does not apply in this Bill. We corrected that to "Cabinet Secretary in charge of matters relating to Climate Change" because we do not know how the Ministries will be referred to in the future.

(Question of the amendment proposed)

Temporary Chairperson (Sen. (Dr.) Machage): I propose that the Title and Clause 1 be part of the Bill.

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

I order that the Division Bell be rung for five minutes

(The Division Bell was rung)

Hon. Senators, do we have the numbers?

Sen. Keter: I can get more Senators.

Temporary Chairperson (Sen. (Dr.) Machage): Please, go and call more Senators.

Ring the Division Bell for another minute.

(The Division Bell was rung)

The Chairperson (Sen. (Dr.) Machage): Whips, do we have the numbers? We need two more Senators to get the numbers.

Stop the Bell. Can I have the House in order? I now call the Mover. Mover, you should always be at the Dispatch Box. That is the tradition.

PROGRESS REPORTED

THE CLIMATE CHANGE BILL, (NATIONAL ASSEMBLY BILL NO.1 OF 2014)

Sen. Kivuti: Hon. Chairman, Sir, I beg to move that the Committee do report progress to the Senate on its consideration of the Climate Change Bill, (National Assembly Bill No.1 of 2014) and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House Resumed)

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

The Senate Minority Leader (Sen. Wetangula): On a point of order. Mr. Deputy Speaker, Sir. The tradition and practice of the House is that when Mr. Speaker comes back to the Chair after the Committee, the orderly is supposed to announce to the House that Mr. Speaker is back. We did not hear that announcement.

The Deputy Speaker (Sen. Kembi-Gitura): Well, I could not make that announcement myself, could I?

The Senate Minority Leader (Sen. Wetangula): No, Mr. Speaker, Sir. Direct that to the clerks-at-the-Table, they are the ones who run the House.

The Deputy Speaker (Sen. Kembi-Gitura): They should know the procedure. What Sen. Wetangula is saying is the correct position.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, when you go to House of Commons, a hooded person comes and says: "Mr. Speaker, hats off Strangers". Then they give way for Mr. Speaker.

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): You are now being disorderly. Shall we proceed?

REPORT

Sen.(Dr.) Machage: Mr. Speaker, Sir, I beg to report progress that the Committee of the Whole has considered The Climate Change Bill, (National Assembly Bill No.1 of 2014) and seeks leave to sit again another time.

Sen. Kivuti: Mr. Deputy Speaker, Sir, I beg to move that the House do agree with the Committee on the said reports.

Sen. Obure seconded.

(Question proposed)

The Senate Minority Leader (Sen. Wetangula): This is a very important Bill which was moved by the Senate Majority Leader. At the time we went to the Committee, the House had enough delegations. Now, as we report progress, it is a clear indication of our lack of collective commitment to what we should be doing in this House.

I want to put it on record that we have lobbied even up to the Members lobby. The Majority Leader was also there. We requested him to make sure we have enough delegations. He is not even here. These are Bills that are so critical to move our country forward that we should not be procrastinating on this.

I want to urge the Deputy Majority Leader to try and style up his side of the House. You can see our side is adequately constituted for the business of the day. You look across the Floor, there are three heads of delegations and one proxy Member, which is not right at all.

Sen. Chelule: On a point of order, Mr. Deputy Speaker, Sir. I stand on a point of order to seek some clarification from you as the Chair. I do not know who Sen. Wetangula refers to when he says “proxy.” Every time he is on his feet, he speaks about having Members who are proxy. Please, I need some clarification from you.

The Deputy Speaker (Sen. Kembi-Gitura): Order. Sen. Chelule, which word did you use? Proxy? Sen. Wetangula, what do you have to say?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, what I said, and if it offends my distinguished colleague, it is unfortunate, “proxy” in English means a representative of another. Under the Constitution, the head of delegation of Nakuru is Sen. Mungai. When he is here, he votes, and when he is not here, you vote on behalf of the delegation and, therefore, you become a proxy vote.

A proxy is a representative; it is not an offensive term at all. The distinguished Senator for Kajiado is a head of delegation, so is Kirinyaga, Embu and Kericho. You walk in the shadow of the head of delegation.

The Deputy Speaker (Sen. Kembi-Gitura): Order! Sen. Wetangula. You know you are the Leader of the Minority, you hold a very senior position in this House.

I have said this in the past that the Chair is not asking too much in asking you to respect your colleagues. If you refer to Article 123 of the Constitution and the Standing Orders, it talks about the nominee designated by the head of delegation. If a Member takes offence by being called a proxy, why is it difficult to use the correct term which is nominee? The Constitution talks of the nominee. That settles the issue.

Sen. Obure: Mr. Deputy Speaker, Sir, I support what the Senate Minority Leader talked about. The manner in which we conduct the proceedings of this House is disappointing. Bills which have been initiated by the Senate Majority Leader have stalled because he is not here to ensure completion of the passage of those Bills. We are setting a bad precedence for the Senate.

I urge my colleagues that we should take the business of the Senate seriously. It is frustrating when we have a list of Bills which have been on the Order Paper for long awaiting voting. It is shameful to us. Each of us has a duty to examine his or her conscience about the business of this House.

Thank you.

Sen. Keter: Thank you, Mr. Deputy Speaker, Sir. May I go on record that we need to take the business of the Senate seriously. It is our duty to take responsibility. A while ago, we had at least 25 delegations. While taking a cup of tea, we also asked Members not to leave. These are not personal Bills and we need to echo the sentiments advanced by the Senate Minority Leader.

If you look at our side, most of the delegations are not here because they travelled to The Netherlands. The Senate Majority Leader is preparing to leave this evening. May I go on record that I called him while I was with Sen. Khaniri but he told me he was busy because he is flying tonight.

Thank you.

The Deputy Speaker (Sen. Kembi-Gitura): This is not an issue I wish to protract. The point has been made and I do not think by entertaining more points of order, we will help the situation. The Senate Minority Leader, the Senate Deputy Majority Leader and Sen. Obure have all put it clearly the need to take the business of the House seriously. By the time we went to the Committee of the Whole, there were enough delegations but when we came back, we had inadequate numbers.

We would have finished with this issue but it appears that progress has been reported and that will have to remain at that. You are here and I cannot tell you how badly you have done because it will be castigating the wrong persons.

We must take the business of the House seriously. Otherwise, as you noticed, the next four or five orders on the Order Paper will have to be deferred because they are divisions and it will be futile to vote when there is no threshold to vote. The point is well taken.

Mr. Deputy Speaker, Sir, I hear you well on the issue and I appreciate what you have said but that is the situation we have found ourselves in and there is nothing the Chair can do. It is an issue of whipping. I saw Sen. Keter doing everything he could to get the numbers in the House. He did well and I must commend that. I saw other Members from the minority side making every effort to whip. When it is done, we appreciate but unfortunately, we have not reached the threshold and we have to leave it at that for now.

(Sen. (Dr.) Khalwale stood on his place)

Sen. (Dr.) Khalwale, do you want to contribute or is it a point of order? If it is a point of order, I regret I will not allow because I have already ruled. There is no point whipping at the end of it. We have dealt with that point and if you want to say the same thing, I will disallow.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, since we record everything we say here, you heard Sen. Keter mislead the House that there can be other important business. Is he in order because flying to The Hague cannot be more important than the business of the House?

The Deputy Speaker (Sen. Kembi-Gitura): I have stressed like you have stressed, the importance of taking the Business of the House seriously. I cannot say anything more than that because I cannot possibly tell where the other Members are. It will be pursuing a futile route.

(Question put and agreed to)

(The Deputy Speaker consulted with the Clerks-at-the-Table)

Sen. Wako: Mr. Deputy Speaker, Sir, I can see Order Nos. 8, 9, 10, 11 and 12 may have to be postponed because it relates to division. I have noticed that the Whips from both sides are not here. Therefore, I appeal to the leadership of the House represented by the Senate Deputy Majority Leader and the Senate Minority Leader to ensure that they do their work and that we turn out to vote for these five Bills. It will be a pity if tomorrow we cannot vote on these Bills because of lack of quorum.

The Deputy Speaker (Sen. Kembi-Gitura): That is an important point Sen. Wako is making. The Deputy Majority Leader and the Senate Minority Leader are here and they have heard that they need to whip the Members to be here tomorrow. If the Order Paper is such that Order No. 8 will be as it is now, then we can finish the business if there is quorum tomorrow. The appeal is to have Order No. 8 tomorrow as it is and that the Whips do their work to have sufficient numbers to vote.

Hon. Senators, for the same reasons that I have stated, we have to organise the Order Paper so that we skip Order Nos. 9, 10, 11, 12 and 13.

COMMITTEE OF THE WHOLE

THE CLIMATE CHANGE BILL (NATIONAL ASSEMBLY BILL NO.1 OF 2014)

(Bill deferred)

Second Readings

THE OFFICE OF THE COUNTY ATTORNEY BILL, (SENATE BILL NO.37 OF 2014)

THE COUNTY GOVERNMENTS DISASTER MANAGEMENT BILL
(SENATE BILL NO. 40 OF 2014)

THE KENYA NATIONAL EXAMINATIONS COUNCIL (AMENDMENT)
BILL (SENATE BILL NO. 7 OF 2015)

(Bills deferred)

COMMITTEE OF THE WHOLE

THE COUNTY EARLY CHILDHOOD EDUCATION BILL,
(SENATE BILL NO. 32 OF 2014)

THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLY
APPROVAL) BILL (SENATE BILL NO. 20 OF 2014)

(Bills deferred)

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Is it on something else, Sen. Wetangula?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, so that we make our tomorrow's load lighter and vote on all the Bills that are ready, could we deal with Order No. 13, since the Chairman of the Committee is here? We could go through the Committee of the Whole process and postpone voting to tomorrow, so that when we vote on the rest, as proposed by Sen. Wako, Order No. 13 will be part of those.

Otherwise, tomorrow, we may vote on the rest---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, I have done consultations on the issue. Therefore, I made the ruling with my eyes open. Therefore, we shall move to Order No. 14.

The Senate Minority Leader (Sen. Wetangula): But the Chairman is here.

The Deputy Speaker (Sen. Kembi-Gitura): He is here but we shall move to Order No. 14. I have already ruled on that.

Second Reading

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

Sen. Hassan: Mr. Deputy Speaker, Sir, I beg to move that The Prevention of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bill No. 8 of 2015) be now read a Second Time.

This Bill as stated on a memorandum enforces Article 43 of the Constitution of the Republic of Kenya. The Article provides for economic and social rights. Herein, these rights are stipulated in Article 43 of the Constitution which states that:-

“(1) Every person has the right—

- (a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;
- (b) to accessible and adequate housing, and to reasonable standards of sanitation;
- (c) to be free from hunger, and to have adequate food of acceptable quality;
- (d) to clean and safe water in adequate quantities;
- (e) to social security; and
- (f) to education.”

The Constitution further provides, in Article 43(2), that:-

“A person shall not be denied emergency medical treatment.”

Article 43(3) states that:-

“The State shall provide appropriate social security to persons who are unable to support themselves and their dependants.”

Therefore, when the Constitution of Kenya was promulgated in 2010, a lot of us in the human rights movement at that time said that it was one of the most progressive constitutions in Africa. One of the reasons we called it a progressive Constitution is essentially because of the provision on economic and social rights. These rights are what, in constitutional terms, are referred to as positive rights. They anticipate that governments shall do everything possible to ensure the attainment of the rights, so that their people or populations live with dignity.

Mr. Deputy Speaker, Sir, Article 19(1) of the Constitution states that:-

“The Bill of Rights is an integral part of Kenya’s democratic state and is the framework for social, economic and cultural policies.”

Therefore, as we integrate our social, economic and cultural policies, the Constitution binds us to ensure – integral to our economic, social and cultural policies – the adherence of these rights, as stipulated in Chapter 4 of our Constitution.

Mr. Deputy Speaker, Sir, before I speak to some of the specific areas of this Bill, let me talk about a few issues. First and foremost, we promulgated a fairly liberal Constitution as the people of Kenya. We have spoken to the issue of human dignity on a couple of areas. From the very start of the preamble of our Constitution, it talks about the need to have social justice and equality of all persons. Therefore, Kenya ushered in a new constitutional belief and doctrine which binds us, as policy makers and legislators, to ensure that the values integrated in our constitutional practice also become part of our legal framework.

Mr. Deputy Speaker, Sir, Kenya is one of the most unequal societies in the world. I think it is the third most unequal society in the world. The gap between the rich and the poor is growing by day, yet we have done very little compared to countries like Brazil to mitigate the fallout. If we, as a country, policy makers or legislators, do not bridge the gap of inequality, then we run the risk of creating a country that is fairly socially

unstable; where the majority of us will depend on a few of us and the majority of us will live a life that is fairly undignified.

Mr. Deputy Speaker, Sir, this is what the Constitution has given us as an obligation, particularly to policy makers and legislators, to put into law the operative clauses or Bills that will allow the Constitution to be realised in its entirety. Therefore, this Bill intends to enforce Article 43 by providing certain obligations, both at the national and county government levels, so that these rights are realised in a manner that dignifies or puts human dignity into every human being.

Article 28 of the Constitution states that:-

“Every person has inherent dignity and the right to have that dignity respected and protected.”

We are not only trying to protect or respect these rights, but also to legislate so that the rights are respected as a matter of cause and obligations at the various levels of government that are charged with providing for these rights.

Mr. Deputy Speaker, Sir, we have travelled to many places. All of us talk about having one of the most progressive constitutions, not only in Africa but the world over. However, our Constitution can only be progressive if we continue to realise the articles in it and provide meaning. That is why I have said time and again that this Senate needs to distinguish itself as the House that promotes the new constitutional framework.

The new constitutional framework, by simple reference to human dignity and issues around social justice, tends to bridge the gap of inequality. The Constitution came to rearrange society, so as to give meaning and dignity to those who society has neglected for a long time.

Mr. Deputy Speaker, Sir, one of the most controversial areas about enforcement of these rights is whether the State has the capacity to do so. In fact, in a lot of areas, people have argued that these rights are essentially realised in States that have economic endowment. However, as the rights evolve and the jurisprudence around economic and social rights continues to crystalise, the obligation is for States to demonstrate whether they are doing enough or committing resources to the realisation of these rights.

It is not about whether the State is wealthy or has the capacity to do so. It is for them to demonstrate progressively that they have done everything reasonably possible to ensure that these rights are realised as per the provisions of the Constitution. In coming up with the title of the Bill, we integrated two Articles of the Constitution; Article 19 which states that the Bill of Rights is an integral part of Kenya’s democracy. We also integrated Article 19(2) which says:-

“The purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings.”

We were greatly moved by Article 19(2), to ensure that we preserve the dignity of individuals and communities. In this particular case, Article 43 is about the preservation of the dignity of individuals. Therefore, the Constitution also requires the Government to demonstrate what progressive actions are being taken to ensure that they have realised the provisions of this Constitution.

Mr. Deputy Speaker, Sir, Article 21(1) of the Constitution and implementation of fundamental rights and freedoms says:-

“It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights.”

A State organ includes various agencies.

This Article further provides that:-

“The State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Article 43.”

Therefore, when you talk about the State taking legislative policy and other measures including the setting of standards to achieve the progressive realisation of the rights guaranteed under Article 43, then this is that legislative measure. It is because this is one of the measures that is envisaged. I know there are many other initiatives around the human rights plan that are being proposed by the office of the Attorney-General (AG) in terms of setting a strategy and a human rights policy in this country. So, these legislations feed into it.

Mr. Deputy Speaker, Sir, I know certain organizations or institutions under Article 59(1) which are equally trying to set standards that will advance the realisation of these rights. Therefore, nothing stops this Senate from equally contemplating and enacting a legislation that will progressively advance these rights as envisaged in the Constitution.

There are also other important landmark Bills that are coming up. It is what we call sectoral legislation in this realm. There is the Water Bill and the Food Security Bill all of which feed into the realisation of Article 43 of our Bill of Rights. Therefore, there is totally no contradiction in having what we call a framework law that provides a basic framework of how Article 43 of the Bill of Rights can be realised.

As I go bullet to bullet, we have set up the objects and purpose of this Bill which is to provide a framework for the preservation of human dignity as set out under Article 19 of the Constitution through the realisation of economic and social rights as set out under Article 41(1) of the Constitution.

Mr. Deputy Speaker, Sir, this Bill further seeks to provide a framework for the realisation of economic and social rights by national and county governments. In Article 43, one or two of these rights are still essentially functions of the national Government. However, the majority of these rights envisaged under Article 43 are functions of county governments.

This Bill also intends to provide a framework for standards that are to be adhered to by national and county governments in the realisation of economic and social rights. It further seeks to provide a framework for the establishment of mechanisms to monitor and promote the realisation of economic and social rights by county governments; application of the Equalisation Fund and promotion of economic and social rights among the marginalized and communities in accordance with Article 43 of the Constitution.

Equally, this Bill intends to establish a framework for the provision of conditional grants to governments for the purpose of funding activities aimed at ensuring the

realisation of economic and social rights set out under the Constitution and also to establish a framework for cooperation between national and county governments on the fulfillment of their respective obligations with regard to the realisation of economic and social rights.

The proposed Section 3(f) and (g) of the Bill intends to cure a certain vacuum. If you look at the issue of health, the Ministry of Health decided to buy equipment without necessarily referring to county governments. We intend to cure this defect by ensuring that we provide the framework for conditional grants and cooperation between the two levels of Government. That way, we will ensure that we resource some of the areas of social and economic rights through a framework that does not offend the various provisions of the Constitution.

Therefore, it allows the Minister and county governors to consult, create a framework and provide resources towards the fulfillment of some of these rights. So, whereas a function is devolved, there is an obligation for that function to be executed in line with the Constitution. Where there is a vacuum in the execution of those functions, I believe this Bill will cure it by providing a framework through regulation that will ensure that both national and county governments cooperate in the fulfillment of some of these obligations inherent in them.

Mr. Deputy Speaker, Sir, this Bill tries to attack the very architecture of our public finance. You cannot deliver on matters of economic and social rights until you alter the structure of your public finance management, not in terms of the actuals but the philosophy of public finance. Therefore, we sought to amend the Public Finance Management Act through this Bill as envisaged in Section 26.

This amendment intends to add a section that compels national and county governments at the very conceptualization of their budgets, which the National Treasury under the Constitution, shall be expected to formulate and advice on financial and economic measures generally, to facilitate the fulfillment of economic and social rights set out in Article 43 of the Constitution.

Mr. Deputy Speaker, Sir, in addition to the roles and the general responsibilities of the National Treasury which are stipulated in Section 12 of the Public Finance Management Act, the National Treasury will be under obligation to formulate and advise on the financial and economic measures generally, to facilitate the fulfillment of economic and social rights set out under Article 43 of the Constitution.

This Bill again, intends to amend Section 187 of the Public Finance Management Act in terms of establishment, purpose and composition of the Inter-Governmental Budget and Economic Council (IBEC). Under Article 187(2), to be amended to insert; "IBEC shall facilitate the achievement of Article 43 of this Constitution." We are infusing the whole idea of economic and social rights at the micro and macro levels of Government planning. Therefore, you are setting a new value system that the Constitution compels the realisation of these rights.

As the National Treasury conceptualises its budget, it must put into focus and its mind issues around economic and social rights. As the IBEC thinks about revenue allocation and other matters incidental to the responsibilities of IBEC, then it must also conceptualise how it can facilitate the achievement of Article 43 of the Constitution.

Mr. Deputy Speaker, Sir, we are trying to infuse matters to do with economic and social rights in the architecture of our public finance and financial structure. This is a flagship. No other country has tried to do a law of this nature. We have consulted far and wide, precedents and leaders in economic and social rights across the world, who we know have made massive contribution to the evolution of economic and social rights. They have all told us that this is a flagship. This is, therefore, an experimentation and I ask the Senate to take it extremely seriously because I believe this Bill was well conceptualised in terms of how to move this realm of economic and social rights forward.

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

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

We do not leave it at. Section 5 of the proposed Bill restates the economic and social rights as they are in the Constitution, but then we set obligations of national and county governments with respect to economic and social rights. Therefore, I will restate some of the obligations, without probably, restating all of them. I believe some of my colleagues have a copy of this Bill for their reference.

Therefore, we talk about obligations of national and county governments to formulate and implement such policies, legislations, strategies and put in place such mechanism for the realization of economic and social rights. We talk of establishment of such mechanisms as they shall consider necessary for the enforcement of economic and social rights to ensure availability, accessibility, adaptability and acceptability of services that will facilitate the realization of economic and social rights and to put in place adequate infrastructure that would be necessary to meet obligations in realizing economic and social rights.

Further, to put in place measures that target marginalised and vulnerable persons in ensuring that their economic and social rights are realized and that they have access to goods and services that are of acceptable quality. It goes on.

Mr. Temporary Speaker, Sir, if you look at Part Two of the Fourth Schedule which sets out the functions of county governments, you will realise that quite a number of the rights envisaged under Article 43 are, actually, functions of county governments. So, what do we intend to do? Through this Bill, we intend to compel county governments to create county strategic plans for the realization of economic and social rights.

Since we acknowledge that every county has a County Integrated Development Plan (CIDP), we, therefore, just seek to amend the County Governments Act to ensure that we put that obligation under the CIDP so that we do not add an extra ordinary tier of responsibility for counties.

Therefore, within the CIDP, counties will be expected to have a county strategic plan for the realization of economic and social rights. We have set out an elaborate strategy of how these plans need to be developed, including, the participation of the people, preparation of baseline surveys to appreciate the kind of differences in terms of development within the various societies or sections of that society and within the various counties so that this allocation of resources towards economic and social rights is guided

by scientific research rather than by discretion, politics or simply whims of individuals and politicians.

Therefore, it settles a very elaborate planning methodology that intends to infuse in that planning, a certain scientific method of arriving at some of these figures and analysis. This is so that then we involve the people in terms of ensuring that they make certain prioritizations of what they regard as the core needs in the preparation of this plan.

Mr. Temporary Speaker, Sir, we have also agreed to propose within this Bill, that any county can receive grants or donations for the implementation of the strategic plan. These grants can be drawn from multilateral partners or the national Government by way of conditional grants. Therefore, this might help us to create the kind of incentive for counties to prepare the county strategic plan for the enhancement of economic and social rights.

We have also created a mechanism of monitoring or oversight. It will provide an inherent role of oversight for the implementation of economic and social rights to the Kenya National Commission on Human Rights (KNCHR). It has asserted itself as an authority in matters of human rights. I believe the Commission will be given this new mandate to oversee the implementation and enforcement of this Act. Therefore, in that, we have given the Commission extra functions in addition to the functions of the Commission set out in the KNCHR Act. These functions include:-

(1) Monitoring the performance of each county government in the implementation of their programmes;

(2) To initiate and undertaken and participate in collection, preparation, production and dissemination of data and information on the realization of these economic and social rights within the county governments;

(3) To make recommendations to national and county governments on the implementation of policies and strategies and programmes for the realization of economic and social rights;

(4) They may investigate any complaints that may be made in the relation to realization of economic and social rights and take such measures it considers necessary to secure appropriate redress and periodically evaluate existing policies, legislations, strategies and programmes by national and county governments that provide for the realization of economic and social rights and make such recommendations that it may deem or consider necessary, that will ensure that the facilitation of the realization of these rights and advise and make recommendations to the national security assistance authority established on the social assistance act regarding the delivery of social security assistance and programmes within the county governments and;

(5) To mobilise and sensitize communities on their economic and social rights as set out under the Constitution in collaboration with relevant stakeholders and institutions in the area and conduct capacity building, education and information campaigns for this purpose.

(6) To perform any function that the commission deems necessary in the implementation of this Act.

Therefore, we decided to desist from the temptation of creating another authority because today in this country we create one authority after another. We thought that since

a human rights commission exists, our principal obligation is to ensure that we give these functions to an existing institution, to be able to ensure that they play the oversight role in the fulfillment of some of these rights as envisaged.

Mr. Temporary Speaker, as I draw to conclusion, we have also tried to introduce a possible formula for the determination of marginalized areas. That is why under Part Five of this Bill, we talk about the application of the Equalisation Fund. We want the county planning authorities, the Commission on Revenue Allocation (CRA) and other bodies charged with the administration of these funds to go beyond certain statistics.

They must identify marginalized communities historically. Whether they are in major or out of major cities, they must address issues around the urban poor, so that we look for a strategy that goes beyond just the statistics that usually come from the Kenya National Bureau of Statistics (KNBS).

Mr. Temporary Speaker, Sir, in fact, in this criteria, we talk about the level of development in the area, the standard of delivery of services and basic goods necessary for the realisation of economic and social rights, the level of poverty in the county, the level of infrastructure development in the county and the state of such infrastructure, existing health facilities and accessibility to such health facilities, existing education facilities and access to water and other basic needs or services.

Therefore, we have tried to broaden the criteria so that then those counties that have been severely marginalised will get various categories of funds. One that attacks the various issues rather than the usual simplistic formula just based on an index from the KNBS. So, the counties that are more marginalised in the various areas of development as stipulated in the Constitution will attract more and more funding so that they can realise some of the areas envisaged in terms of what the Constitution was here to do to ensure equity and equality in resources in terms of development.

Mr. Temporary Speaker, Sir, we have given responsibility for delegated legislation so that the Cabinet Secretary responsible for finance shall in consultation under Section 22 of this law, and the Commission within a period not exceeding 12 months from the commencement of this Act, make regulations generally for the better carrying out of the provisions of this Act.

Therefore, there are various areas in terms of the cooperation between county and national governments, the framework for that cooperation, the framework for how the county and national Government can coalesce and cooperate in the delivery of economic and social rights will be subject to regulations. We have been very categorical that these regulations must be done within a year from the commencement of this Act.

We have learnt our lessons that there are regulations today in terms of the management and administration of the Equalisation Fund that have taken forever. We are setting a legal deadline by proposition that this must be done within that framework so that immediately this Act comes into operation, various other areas fall into place which require regulation to further internalize and interpret the realization of this Act.

Mr. Temporary Speaker, Sir, I want to conclude by saying that this Act has two Schedules. The first Schedule is the criteria for the realisation of economic and social rights that is elaborately provided for. This includes the indicators by the Commission of efforts by county governments in the implementation of Article 43 of the Constitution

and they shall include various standards as to whether or not the county has allocated tasks and responsibilities to the various levels of its own government. It will also indicate whether or not it has ensured sufficient human and financial resources for the implementation of these rights, whether or not those county governments have been able to facilitate the realization of the rights in question, whether or not its programme is reasonable in its conceptualization and implementation, whether or not its plan or programme is balanced and flexible enough among other things.

It will indicate whether you respond to unforeseeable circumstances, whether or not its plan includes or excludes a significant segment of the populace leading to unfair discrimination, whether or not it balances short, medium and long term needs, whether or not it has sufficient safety nets such as cash transfers for vulnerable groups and others who seek social assistance, and whether or not its plan or programme responds to the needs of the vulnerable and those in crisis situations.

Mr. Temporary Speaker, Sir, I think this Bill intends to fill in that gap, and as we proceed with the debate of this Bill, and as I respond, I will be able to speak to a few more areas that this Bill provides for. In the interim, I want to urge my fellow Senators to support this Bill because it is a landmark.

There is just one area that I had forgotten with respect to Section 14 of this Bill, that once the National Commission on Human Rights makes recommendations, and these recommendations are then sent to the Senate, the National Assembly, County assemblies, County Revenue Allocation, The Inter-governmental Budget and Economic Council Commission, and disseminated to members of public. Those recommendations, once adopted by the Houses of Senate and county assemblies, they shall be binding to counties to effect in their next circle of planning or in their next strategic plans to the realisation of economic and social rights.

I am very grateful to all those Senators who helped me develop this Bill, I wish to move this Bill and ask Sen. Mutula Kilonzo Jnr. to second.

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

At the first instance, I would like to thank Sen. Hassan for this monumental Bill that seeks to implement and enforce Article 43 of the Constitution. For the avoidance of doubt, I want to read Article 43 and highlight why this Bill is extremely important for this Republic.

Before I do so, under Article 2 (6) of the Constitution, the Constitution has incorporated into law all those treaties that we have signed internationally and made them part of the law. In the little research we have done, it has emerged that Kenya signed the Treaty on Economic Organization and International Covenant on Social and Cultural Rights in 1972. It has taken us all those years since 1972 to incorporate the rights that are contemplated in this Treaty in which we are a signatory, into Article 43.

Mr. Temporary Speaker, Sir, why is it that although this article falls under the Bill of Rights and can be enforced under Articles 22 and 23, the question that begs is: Why then do we need an Act of Parliament? Although these rights are granted expressly in the Constitution and these rights under the Bill of Rights are what we call in law “inherent rights”, it means the minute a Kenyan is born, that child has a right to education. It is not

granted by the National Government. It is not something that you acquire, it is something that is born, it is inherent.

The right to social security is inherent the minute a child is born. You do not have to be 18 years to have this right. The right to clean and safe water is inherent. Interesting, there is a right called “no person shall be denied emergency medical treatment”. Alex Madaga is four weeks on the ground having died because the right to emergency medical treatment was not available. That is the reason why I say that this Bill is absolutely monumental to the sovereignty of this Republic, to the people who matter, to the people who elected us and most important, to the bulk of the population in this country that is marginalized, those that cannot access clean and safe water, those that cannot afford to go to the nice hospitals that you can go to and those that are in slums.

Mr. Temporary Speaker, Sir, in the Republic of South Africa – that is why I said this Bill is monumental – the Supreme Court of South Africa determined an issue about eviction. In this country when the national Government needs to construct a road or somebody has encroached on a public facility, Kenyans are evicted in a manner that is inhumane.

In the Republic of South Africa, the Supreme Court has, in fact, determined that a person who was evicted in violation of their economic or social right - they have gone a step further to make a declaration - that that person should be given adequate and standard housing that the Republic of South Africa and the Supreme Court of South Africa thought was the standard. They have given a deadline and said within a certain period of time, the Government of South Africa should fulfill that order. We do not have that order that the Supreme Court or any court in this Republic under Article 22 can supervise both the national and the county government.

Mr. Temporary Speaker, Sir, the wisdom of the Senator of Mombasa in including the persons who are supposed to do oversight on national Government when it comes to fundamental rights, one of them is the Kenya Human Rights Commission (KHRC). Although we have the right to medical treatment and the KHRC can enforce these rights, women are still dying in Kakamega.

The solution lies in this Bill which provides a framework for a policy. What is the policy of this Government on housing and where can it be found? Can it be accessible to us, as legislators, so that armed with the Constitution, we can go to the High Court and enforce it? Most likely, you will not find it.

This Bill provides a framework for the people of Kajiado to have access to the policy on housing, clean water, food and social security. Armed with this Bill, we will go to the High Court and the people of Kajiado will seek that enforcement. That enforcement might not be realised immediately and that is why a framework has been provided.

Mr. Temporary Speaker, Sir, this afternoon, we were discussing about national identity cards (IDs) and voters’ cards. Without a budget, the right for a person to vote and have an ID card cannot be enforced. This Bill provides a budget framework where, when we are discussing the budget in the Senate, we will be looking for housing and health. Although the Abuja Declaration 2001 talks about 15 per cent of the national Government Budget being allocated to health, what is the reality in Kenya today?

In fact, we have attained 4 per cent allocation this year for the first time. The Kshs59 billion that the national Government has allocated to health is just 4 per cent of the budget. Time will come when your county will be forced to allocate 15 per cent of its budget to health, following the Abuja Declaration. That will happen through this Bill. That is how we will do it. How will we demand, like in Bombay in India, to have minimum standards of housing? Bombay is famous for its slum upgrading programme.

Mr. Temporary Speaker, Sir, they have gone through a framework process. In a famous case called Olga Tellis Case, people living in the pavements said that they should not be evicted and the Supreme Court upheld their argument that they cannot be evicted from the pavements where they were living because it was the obligation of the State to provide them with proper housing.

I am looking forward to a day when Kibera will not be the Kibera we know today, because we have the resources. A Cabinet Secretary in this Republic will not take credit for building toilets or constructing drainage, because it is the inherent right of the person in Kibera to have a toilet; it is not a favour. Therefore, this Bill is important. Sen. Hassan has done justice to a right granted by the Constitution. It is inalienable and inherent in every child, but how do we enforce it?

Mr. Temporary Speaker, Sir, Article 22 has given us the right to enforce it, but where is the policy framework? How will we challenge the national Government and county governments? That is why this Bill is critical. If there is one Bill that we should discuss as a matter of priority, it is this Bill. This is what Wanjiku has been looking for. She has not been looking for counties to have big cars or legal, political and all the advisors that they have. Wanjiku voted for this Constitution so that she can have what is in Article 43.

Mr. Temporary Speaker, Sir, the reason is economic and social rights. Should a Kenyan be ostracized in the community because he does not have a decent house? By the time one has a decent house, you uplift their economic standard. We should move from the principle that everybody in Kenya lives below a dollar a day. This is what we call progress of the Constitution.

Although the drafters of the Constitution never contemplated that there would be legislation, I thank Sen. Hassan for finding it wise, maybe his stint at the Kenya National Human Rights Commission (KNHRC) and his interaction with some of these things, has been a forte. I support this Bill because I can see light at the end of the tunnel for the people who matter in this Republic; the people who vote for us, who are the most marginalized, who suffer the most, are overtaxed, suffer when we have corruption and who suffer when the rest of us are enjoying the fruits of Independence. The founders of this country lost their lives, their freedom, rights of having ostentation; living well so that a majority of Kenyans can have economic and social rights.

I beg to second.

(Question proposed)

Sen. Sijeny: Mr. Temporary Speaker, Sir, thank you for giving me this opportunity to comment on this Bill. I wish to commend and thank Sen. Hassan for

thinking and coming up with such a Bill. This proves that we need fresh blood. The young people are looking at leadership with different lenses.

The Bill enables the implementation of Article 43 just as the Reproductive Health Care Bill which I presented to the Senate and is still pending. It deals with the economic and social status of Wanjiku. Article 43(1)(a) of the Constitution states:-

“Every person has the right—

(a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;”

Any State that upholds these basic rights definitely cares about the welfare of its citizens. As we know, a healthy nation is a wealthy nation. When citizens take care of their health and have access to proper and adequate housing and freedom from hunger, clean and safe water, plus education, it means that you are headed to the right direction. Within no time, Kenya can become one of the most developed countries in the world like other super powers because we will get out of poverty line.

The habit of always seeking donor funds due to high level of poverty will be a thing of the past. Once the Bill is enacted; it will ensure that people have adequate housing. It is very pathetic when you visit slums like Kibera and Mathare where we have our family, friends and constituents.

When you visit such places, you find people living in very deplorable conditions, yet Kenya is not as poor as other States. We have seen other States with limited resources. For example, Turkey has done wonderful jobs with the limited resources. The money is given, utilized to the latter on what it was budgeted for and accounted for. They are very clean and happy people. Even their values matter. Everybody must be fit. When estates are built, there are foot paths even within the low housing areas. There are also gyms which are built for children. In fact, anybody can walk in. Gyms are things that many people cannot afford; they are out in the field. Those people are fit at a little cost or nothing at all.

Kenya is a signatory to many international instruments. Kenya has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR). Why has the country not made good steps to ensure that its citizens are well taken care of as per what they had signed for?

Article 2 of the same international instrument says: -

“Each party State to the present covenant undertakes to take steps individually, and through international assistance and cooperation, especially, economic and technical, to the maximum of its available resources with a view to achieving progressively, the full realization of the rights recognized in the present covenant by all appropriate means.”

From 1972 to date, we celebrate when this international people, like when President Obama was a Senator, he went there. Any international person who comes to Kenya--- Kenya has the largest slum called Kibera in the world. This is an embarrassing situation. When you visit other counties, like Baringo, Turkana and other ASAL areas, people are starving. There is no water or food. Why is this the case? Where are our priorities?

Mr. Temporary Speaker, Sir, once this Bill is enacted, the Government will be forced to come up with strategic means of ensuring that the human rights and the dignity of the Kenyans as enshrined in the Constitution is protected. It will tell us the steps it will use to ensure all these economic and social rights are provided for. Once that strategic plan has been implemented, it gives a way of monitoring and evaluating.

We monitor, evaluate and ensure that, what we plan to do, we will do. We will state what the challenges are and why. Where were we? How did we reach there? What other distance do we have to reach where we want to go? It will be a result-based kind of system that Kenya will be moving to. This is the right direction that we should not shy away from. We should hold it by the horns and move on. We should ensure that that our country becomes better.

This Bill ensures that there is budgeting and the Equalisation Fund and that it is utilised well. All this wastage that is happening will be a thing of the past because we shall have known where and what we want to do. We shall have set minimum standards, having the highest attainable standards, as we have seen in Article 43. For example, how many educational institutions did we have? What amount of water and percentage did we have before? What have we gained? Where do we want to go? When we do all this, we will be smiling and everybody will have a decent house and clothing.

You do not have to buy those expensive suits for Kshs100,000. However, if people are provided with good clothes, for example, we know that Toy Market in Kibera has very nice clothes. All the teenagers go to buy clothes there irrespective of their social status because they are good, clean and in good condition.

Mr. Temporary Speaker, Sir, this is what we have been saying. People should be given an opportunity to choose what they can fit within their budgets but still mix with others without being embarrassed or ashamed. The country can then say we have clothed our people and we do not have anybody walking naked because it has protected their socio-economic status.

The reason why I am excited about this Bill is because once implemented, the people who will gain most are women because they will have proper housing and access to water. Sen. Musila, who was earlier here, understands what women go through while looking for water. In semi-arid areas, women waste a lot of time looking for water. In some parts of Siaya County where I come from, it is dry and during our school days in boarding schools, we used to walk long distances looking for water because we could not get it in our schools.

Mr. Temporary Speaker, Sir, if we have water in our schools, children will study and will not have to spend days looking for water. Building classrooms and structures becomes easy because everything is within reach. We will have intelligent healthy children because their mothers are able to cultivate and it also gives women enough time to think of doing other businesses. It will not only involve taking their produce to the markets but will also give them space for leadership. They can be Members of County Assemblies, village elders or be nominated to Parliament because the other gender roles which are normally attached to women become less. It is easier to access and do everything quickly and improve the society.

I support.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Speaker, Sir, I rise to support this Bill proposed by my dear friend, Sen. Hassan. Sen. Hassan has made us proud. I have always said that the Constitution of the Republic of Kenya lays down broad principles of governance and provides in certain instances specific provisions for institutions that should be established for realising the principles in the Constitution, the goals and objectives on democratic governance and the developmental outcomes from this democratic governance as enshrined in our Constitution.

In many articles in the Constitution, there is usually a refrain that Parliament shall make legislation to implement these provisions.

Mr. Temporary Speaker, Sir, the Bill of Rights is specific with no doubt whatsoever under economic rights in Article 43. What is intended is not to make this article look good in the Constitution so that we say that we have a Constitution in which the Bill of Rights; social and economic rights are enshrined, but it gives the State an obligation to do certain things.

For example, it tells the State that every Kenyan citizen or person has the right to the highest attainable standard of health. This includes the right to healthcare services, including reproductive healthcare.

Mr. Temporary Speaker, Sir, a Kenyan citizen – like it happened recently where a Kenyan was denied healthcare – can go to court and say that the Constitution gives him or her the right and they have not been granted. Therefore, they can hold the State responsible for not making it possible for them to access the right. The State can turn around and say that it provided for the right in the Constitution, but legislation has not been established to ensure that, that right is fulfilled.

Rather than wait for the State to have that excuse, Sen. Hassan wants to ensure that there is a law not only establishing an institution for making sure that these rights are implemented, but also giving that institution the responsibility to monitor and oversight the two levels of Government which are responsible for implementing these rights in Article 43.

Mr. Temporary Speaker, Sir, what is very impressive about Sen. Hassan's Bill is that it proposes how to arrive at evidence-based policy making and planning at both levels of Government. That will give the Government the opportunity to make choices based on proper planning, but not on mere imagination. As a planner, it is important to understand that when you plan, you plan to make it possible for certain critical choices to be made. The choices cannot be made without evidence on how they have to be made.

Let me give an example of what I mean. Clause 11 of this Bill states that a county government shall, for the purpose of preparing its county strategic plan---. By the way, the Bill has already said that the county strategic plan will incorporate how these rights shall be taken into account by the county. In other words, no plan which does not contain the economic and social rights that every Kenyan is entitled to according to the Constitution will be brought to this House for approval.

Clause 11 states that:-

“A county government shall, for the purpose of preparing its county strategic plan, carry out a baseline survey in order to determine the following:

- (a) the existing situation and gaps within the county with regard to supply of goods and delivery of services aimed at ensuring the realisation of economic and social needs of the residents within the county;
- (b) the areas of priority that require immediate intervention by the county government in the realisation of economic and social rights of residents within the county;
- (c) the best interventions that would ensure that the gaps identified under Paragraph 3 are addressed;
- (d) the financial implications and the resources that would be required to address the gaps;
- (e) the outcomes of previous interventions; and,
- (f) the appropriate interventions that should be carried out, subsequent to the survey, in order to ensure the realisation of economic and social rights of the residents of the respective county and the expected outcome.”

Mr. Temporary Speaker, Sir, I am reading this particular part because at the moment, this is the biggest sin that counties are committing.

There are the so-called integrated plans which are not necessarily based on evidence, facts and data. I would guess that if you took the integrated county development plans of about five counties, you may find that they are carbon copies of each other, whereas the realities in counties are very different.

When this Bill is implemented, it should be an example for getting data and evidence for all other aspects of planning in the counties. This particular one just deals with social and economic rights. However, I am quite sure that if you plan in the counties to build roads and other infrastructure to collect revenue, levy certain taxes allowed by the Constitution, they should all be based on proper baseline surveys.

Mr. Temporary Speaker, Sir, this brings me to a very crucial issue. To what extent can counties have baseline surveys if they do not have their own capability of collecting statistics? At the moment, I would guess that all counties entirely rely on statistics generated by the National Statistical Authority (NSA), which has its branches in counties. However, we have two choices; one, either to make sure that counties domesticate the branches of the NSA in those counties – I am not quite sure whether these branches exist in all counties – or the counties, notwithstanding the existence of the NSA branches, establish their own statistical departments for purposes of collecting data and baseline surveys for planning.

In other words, the County Executive Members in charge of planning of finance do not have the same portfolio as finance. This is because the planning person gives information to the finance person so that the finance person can allocate adequate resources in line with the information that the planning executive member gives them.

In this regard, knowing fully well that finance ministers the world over are always very conservative about finances, it will not be any different from counties. In this regard, the planning portfolio in a county will be responsible for these baseline surveys so that the allocation of money as envisaged in Article 11(d) where the Bill says the financial implications and the resources that will be required to address the gaps.

In other words, those resources can only be available and be allocated for addressing the gaps in the event that there is concrete data and information making it possible for the person who holds the financial portfolio to make that decision on the basis of evidence.

Mr. Temporary Speaker, Sir, I am not talking much about the national Government because it has had a long time experience with this kind of thing. However, county governments are a recent phenomenon and they have not taken planning, data and baseline surveys very seriously. I do not blame them because quite a number of them have not been in Government before.

Quite often, people do not understand that collecting data and information is a scientific enterprise and not something that you do overnight. I know of counties which when they are preparing the County Integrated Development plans write to their various departments, retreat somewhere and ask them for the priorities. Priorities are given and the various heads of department are given the County Integrated Development Plan and they will have very little to do with revenues available for implementing those priorities. They do not come as priorities any more but as a catalogue of proposals not related to any hierarchy whatsoever.

Mr. Temporary Speaker, Sir, the second thing is the structure of county governments with regard to implementing what Sen. Hassan is proposing here. Apart from undertaking to identify the gaps and so on, there is a much more basic issue. From whence does this information come?

If you look at all county governments today, in both the Constitution and the County Governments Act, it is said that devolution must go up to the grassroots. I cannot quite remember which part of the Constitution it is but when you go to the section on devolution, there is that fundamental statement that the whole object of devolution is that it is meant to go up to the point where people live.

This Constitution envisaged the beginning of devolution at the village level. That is why it was proposed that the first level of devolved government should be the Village Council comprising of five persons; one third of which must be of either gender. I would like to be informed whether there is any county today, which has established the Village Councils. Of course, the Constitution has latitude, which says it should be done as resources are available. Maybe this is where the Commission for Revenue Allocation (CRA) comes in; and what *Okoa* Kenya is proposing, that, indeed, in order to ensure that we implement all the structures of devolution as envisaged in the Constitution, there should be sufficient resources. Resources should follow functions.

At the moment, even if you look at the Fourth Schedule of the Constitution where there is division of functions, and if you did a neat analysis of budget reallocation, you will still find that not all functions that were devolved to county governments have enough resources for those functions to be performed. I am glad that, in this Bill, Sen. Hassan has proposed the steps to be taken to ensure that those resources are available, including zeroing in on the Equalisation Fund and conditional grants as aspects or sources of getting these resources to finance specifically, the social and economic rights.

However, this will mean, therefore, that we have a robust debate in this House with the CRA in terms of the size of the budget that will go to the Equalisation Fund

notwithstanding what is in the Constitution but what we may actually make as a conditional grant to the county, specifically targeted to realizing social and economic rights. I know somebody will say that there is already money going to education, health and so on, and these are essential parts of social and economic rights.

However, if we have to meet what is actually enshrined in Article 43, we shall have to go beyond the routine allocation to the existing budgetary line that we are used to because, so far, whatever has been allocated to those lines does not even meet the needs of the county at the moment. I am assuming that we will have county governments which are accountable, transparent and which will use the resources that are allocated to them effectively and equitably.

In any case the Constitution---

The Temporary Speaker (Sen. Mositet): Order, Senator. Your time is up. Sen. Orengo!

Sen. Orengo: Mr. Temporary Speaker, Sir, I congratulate my brother, Sen. Hassan, for moving this Bill. It is unique in many ways because soon after Independence, those who fought for it, including the likes of the late *Mzee* Kenyatta in Kenya and the late Nyerere in Tanzania and even the late President Nkurumah in Ghana said that on attainment of Independence, our principal role was not now the normal business of politics or fighting on the platform of freedom or human rights.

For that matter, there are many African nations which stated that this new beginning was so demanding and there was no time to achieve many of the desires of other people or stakeholders who were fighting simply for democratic space and human rights. But for them, the subject of the day was the struggle against poverty, illiteracy or ignorance and provides health to the ordinary people. In fact, I can say that there were some countries which I would not want to mention that totally ignored the Bill of Rights and cared not to have the Bill of Rights in their written constitutions.

Mr. Temporary Speaker, Sir, therefore, if I go back to the beginning, it looks like this Bill is a restatement of what some of our founding fathers were saying that we need a fairer society, a more friendly and caring society in which education, health and shelter was available to the common citizenry even before talking about what I normally refer to as the fundamental human rights that include the freedom of expression, assembly and others. That argument was used to roll back the major achievements that we had gallantly fought for including the multi-party system which was fought on this basis.

Principally, it had very little time to deal with common politics that the business of the day was providing health and getting rid of illiteracy to our people. What happened subsequently was that neither was freedom nurtured but even the provisions of these services were never given by the nations that emerged after the struggle for Independence.

Mr. Temporary Speaker, Sir, there was a famous writer who wrote about the false start in Africa. In all directions, Africa was getting everything wrong. This Bill reminds me of the struggles that were going on in the 19th century. There was a famous Prime Minister in England known as Benjamin Disraeli(?). He was not only a politician but also a writer who wrote so many novels including the “*Sybil*”. Its other subtitle was called “*The Two Nations*”. His concern was that at the time when England was enjoying

the greatest prosperity, an emerging aristocracy was having everything that they wanted but the poor were becoming poorer to the extent that another writer known as Charles Dickens wrote a famous novel known as “A Tale of Two Cities”.

This narrative and conversation was going on not only in England but even in France where another writer known as Honore de Balzac wrote a lot about the social condition in France at the time after the revolution in which there was a lot of expectation. A lot of his writings came after the fall of Napoleon Bonaparte.

Mr. Temporary Speaker, Sir, I am saying all these because I want to contextualize that prosperity sometimes - if it is not properly examined - can result on the rich becoming richer and the poor becoming poorer and the rule of law would always have the mighty being guided by the law but the down-trodden would not only be required to abide by the law but would be exploited and suppressed in circumstances in which the state of humanity can be questionable if looked at as a whole.

I think this Bill is addressing a very important point that we have not grappled with over many years. When I think of these writers that I have been talking about, you look at Nairobi and it is an exemplification of what either Charles Dickens or Honore de Balzac or Benjamin Disraeli were writing about their societies. When you fly over Nairobi, it is as if you are seeing two cities; one, showing the best exemplifications of wealth and another showing the condition of the downtrodden who are living in sub-human standards.

What is it that Sen. Hassan is trying to do? He says the time is now to start implementing the ‘third-generation rights’ under the Bill of Rights. That they are as much part of the Bill of Rights as the other rights we keep talking about every day. When those rights are violated, we constantly go to court, litigate and get results through a judicial process.

How do you deal with a human condition of those staying in Kibera and other slums in our cities or workers who are working in salt mines in Malindi, Lamu and other coastal areas? We must have an instrument or a process whereby these basic rights can be realised. If they are not realised, we should have a process where there is accountability. If we cannot have accountability, we must make sure that at the very minimum, certain State organs at all levels of Government will be required to ensure that these standards are met. They should not just exist in the Constitution.

There should be a robust regime of the law that would make it possible for all citizens to have that respect and joy of being part of this country. The joy of being part of this country is to give people opportunity and make sure that their conditions would be in line with a modern democratic society. A modern democratic society is not just about freedom such as we are enjoying in this Chamber of just saying what we want to say or think as we want, but also make sure that people get services.

The principle of devolution was a way of trying to deal with this problem. We always talk about how county governments are performing. It is because out of frustration that our constitutional mechanism of fund was set up to ensure that resources reach all parts of the country. Objectives of devolution say in part that even within counties, every member of our society in all parts should be able to enjoy a certain degree of prosperity.

This Bill, therefore, is offering a mechanism through which we can put county governments to account and empower the Commission to be in a position to inquire into the condition of our people on, not a sporadic basis, but rather a regular basis. That way, we will have a record on how we are performing on these rights. These rights are more important than some of the rights that we keep on talking about. They will assist to build a more equal, fairer and perfect Republic of Kenya.

Many revolutions, particularly in Eastern Europe and Europe as whole have been about the conditions of the ordinary people. The revolution that took place in France was not so much about *Liberté or égalité*. I am glad that yesterday at Wembley, those pronouncements were there.

ADJOURNMENT

Temporary Speaker (Sen. Mositot): Sen. Orengo, when Senate next resumes on the same Bill, you will have five minutes to complete. You will then have built the momentum on the same.

Hon. Senators, it is now time to interrupt the business of the Senate. The Senate stands adjourned until tomorrow, Thursday, 19th November, 2015, at 2.30 p.m.

The Senate rose at 6.30 p.m.