

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 25th March, 2015

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

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

PRAYERS

COMMUNICATION FROM THE CHAIR

APPRECIATION TO MPs FOR PARTICIPATING IN THE FIRST LADY'S BEYOND ZERO CAMPAIGN HALF MARATHON

The Speaker (Hon. Ethuro): Hon. Senators, I have a Communication to make.

Hon. Senators, as you may be aware, on Saturday, 8th March, 2015, the First Lady of the Republic of Kenya, Her Excellency, Margaret Kenyatta, led close to 20,000 people to participate in the 2nd Edition of the Beyond Zero Campaign Half Marathon. The goal of the marathon was to raise funds to improve access to healthcare services to the Kenyan people, especially expectant mothers and children.

Hon. Senators, you may recall that the theme of the marathon was “**no woman should die while giving life.**”

I recall that the inaugural marathon was held last year, 9th March, 2014 and that this second marathon, coincided with the International Women's Day, 2015 whose theme was: “Make it happen”. That coincidence was deliberate in order to underscore the centrality of the important role played by women as integral members of the world's humanity and, hence, the need to recognize and lend them our support.

The noble initiative was undertaken in the greater effort to afford maternal healthcare to all mothers so that their children can enjoy life “Beyond Zero”, irrespective of their region or place of birth. This is indeed unprecedented and deserves our commendation and support. It will go a long way towards the realization of Millennium Development Goal (MDGs) 4 and 5 which are:-

4. To reduce child mortality
5. To improve maternal health by reducing maternal mortality by three quarters and achieving universal access to reproductive health.

Globally, the maternal mortality ratio has declined by 47 per cent over the past two decades, from 400 maternal deaths per 100,000 live births in the year 1990 to 210 in

the year 2010. However, in Kenya, maternal mortality ratio remains at an unacceptably high level of 488 deaths per 100,000 live births. This ratio has almost remained constant since 1990.

Further, there are wide regional disparities in maternal mortality within the country, with maternal deaths representing about 15 per cent of all deaths of women aged between 15-49 years, which translates to an estimated 6,000 to 8,000 pregnant women dying every year. The disparities in maternal mortality between counties are considerable, where the county with highest maternal mortality ratio has 20 times the deaths of that with the lowest. The 15 counties with the highest number of maternal deaths and highest maternal mortality ratio contribute over 98 per cent of the national total, and include:-Mandera, Wajir, Garissa, Lamu, Taita-Taveta, Marsabit, Isiolo, Turkana, Nakuru, Migori, Homa Bay, Kisumu, Siaya, Kakamega and Nairobi.

You will undoubtedly agree with me that these statistics are unacceptable. This noble drive initiated by the First Lady, which has received overwhelming support from thousands of people from all walks of life, is not only patriotic but also human centered given the impact witnessed so far.

Health being a fully devolved function, it is noteworthy to mention that the proceeds from the first marathon. Some 21 fully-equipped mobile clinics have so far been procured and distributed to the following counties which were prioritized because they have higher incidences of maternal and infant mortality, they include:- Taita-Taveta, Nyeri, Homa Bay, Samburu, Laikipia, Tharaka Nithi, Baringo, Isiolo, Narok, Turkana, Marsabit, Siaya, Kisii, Kiambu, Kitui, Mombasa, Kilifi, Kwale, Uasin Gishu, Elgeyo Marakwet, and Wajir.

Hon. Senators, for your information, which is one of the issues which you have been called upon to partner, the First Lady also officially launched the 9th Stop Cervical, Breast and Prostate Cancer in Africa (SCCA) Conference on Wednesday, 18th March, 2015, here in Nairobi which is an initiative spearheaded by African First Ladies. The actual conference will be held from 19th to 21st July, 2015 and will be hosted by the First Lady. This will be the ninth in Africa. Our Senate has been requested to fully participate and especially extend the invitation to the Speakers of Parliaments in Africa.

Hon. Senators, it is my firm persuasion the First Lady's efforts towards improving health should be commended. I therefore take this opportunity, on your behalf and on my behalf, to commend and applaud the First Lady for her exceptional focus and tireless efforts in promoting the Beyond Zero Initiative which will afford healthcare services to many Kenyans who would otherwise never have accessed such services. I also laud her for being a good role model to our young girls and indeed many others who care about humanity.

Finally, I also want to convey my appreciation and commend all the Senators and Members of the National Assembly in general who participated in this year's event.

I thank you.

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

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

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, the communication you have just made is so important that I would like to request that you allow us a few minutes to ventilate on

it, if anything only to congratulate what the First Lady is doing. If you agree, I would beg to be the first.

The Speaker (Hon. Ethuro): Be the first; you have two minutes.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I want to join you in congratulating the First Lady. The action by the First Lady is the only thing that attracts many Kenyans towards this Government.

(Laughter)

The Government must be disturbed that it takes the First Lady for them to be reminded that they are failing Kenyans. I am begging, with all the seriousness it deserves, that the Government responds to what the First Lady is doing by doing the following. One, the Government must free the funds for free maternal care to the Governors so that they can administer that fund. Two, it should respond by ensuring that enough funds are given – even if it means conditional grants to our counties – so that our Governors can employ enough medical personnel. The President should feel challenged and deliberately vote in his Budget for more funds to go towards the health sector. Finally, most of those children who die within the first five years of life die simply because of poor focus by the Government on primary health care. We would like the Government to ensure that primary health care is funded adequately.

I thank you, Mr. Speaker, Sir.

Sen. Okong'o: Thank you, Mr. Speaker, Sir. Let me also take this opportunity to applaud the First Lady on an individual decision to do what governments in this country have failed to do for the last 50 years. Some of us who have been in athletics know that for the First Lady to clear a marathon, it is an agonizing event for the sake of the young children and women.

Mr. Speaker, Sir, let me also support the sentiments of Sen. (Dr.) Khalwale that the national Government should not be holding funds for medical care which are supposed to be disbursed to our counties. The First Lady has brought a big challenge to His Excellency the President because she is doing what the Government should do. Corporate bodies in this country must also rise and follow the example of the First Lady. These corporate bodies are only interested in minting millions of shillings from this country and they do not plough back part of the proceeds to the counties. That is a big challenge for them – banks and multinationals – to follow this noble event and example of the First Lady so that this country can move ahead.

Sen. Kagwe: Thank you very much, Mr. Speaker, Sir. I also join you in congratulating the First Lady, Mrs. Margaret Kenyatta, for her Beyond Zero Campaign and her continued effort towards assisting the less able, women and children around our country. She has succeeded in her campaign because of the support she gets from her husband, His Excellency President Uhuru Kenyatta.

(Laughter)

If the President was an oppressive husband, as we have seen in some cases, then the First Lady would not operate in such a free atmosphere. Therefore, in congratulating Mrs. Margaret Kenyatta, we also congratulate His Excellency the President, Uhuru Kenyatta.

Mr. Speaker, Sir, in addition to that, we, as parliamentarians, can also sometimes assist in the process of healthcare by very simple ways. For example, the National Hospital Insurance Fund (NHIF) can assist a lot of people, but there is extreme ignorance about the existence of this small insurance that can help a lot of citizens for very little money. It behooves us, as politicians, that when we are speaking on other matters in our constituencies and in our counties, to speak about the NHIF card so that more people can join the ranks of those who are cared for.

Mr. Speaker, Sir, if the First Ladies in the counties can also emulate this so that there are 47 Beyond Zero Campaigns going on in all the counties, then Kenya can be a very lucky country.

Thank you, Mr. Speaker, Sir.

Sen. (Dr.) Machage: Mheshimiwa Bw. Spika, niruhusu niangaze mawazo yangu kwa kazi nzuri iliyotekelezwa na Mama wa Taifa. Sijui kwa nini aliuita huo mpango wake *Beyond Zero Campaign*, lakini hata hivyo, twamshukuru. Hizi kaunti 20 ambazo amezitaja ndizo kaunti zilizo na wingi wa vifo kwa sababu zingine; vifo vya watoto, vifo kwa sababu ya magonjwa ya zinaa kama vile UKIMWI na kadhalika. Kwa sababu gani akachagua sehemu hizi 20? Hili ni swali ambalo lazima lijibiwe na Serikali. Ukweli ni kwamba hizi ni sehemu ambazo zilipuuzwa tangu zamani. Hivyo basi, Mama wa Taifa aliona haya ndipo akaanzisha *Beyond Zero Campaign*. Namuomba afanye hima ili afikishe gari la matibabu kwenye Kaunti ya Migori, kwa sababu hatujalionga huko na twalingoja kwa hamu. Tunamsihi kwamba asiogope kwani Migori ni mahali pazuri na anakaribishwa kabisa; hakuna viatu tena huko.

Bw. Spika, utu ni kipawa na huyu mama ana kipawa cha utu. Kama vile Sen. Mutahi Kagwe alivyosema, lazima pia tumshukuru mume wake kwa sababu kama angekuwa mjeuri, hangeweza kufanya mradi huu. Uwezo wa mama humtegemea pia mwanauume; hawawezi wakatekeleza lolote bila ya kupewa ruhusa na baraka za mwanamume. Kwa hivyo, twamshukuru Mheshimiwa Rais kwa hilo. Pia, twataka kumuona akiambatana na mke wake siku moja wakikimbia katika mbio hizo; sio tu kumtuma mke wake kukimbia kila wakati. Twamtaka pia yeye akimbie na siku hiyo, sisi sote tutajitokeza kwa wingi na kukimbia naye. Kwa kazi nzuri, ya Kaisari, mpe; twamshukuru huyu mama.

Sen. Hassan: Mr. Speaker, Sir, like the previous speakers before me, I also want to congratulate the First Lady for the initiative she has taken. I also had the opportunity to attend the *Beyond Zero Marathon* this year as testimony of our support for the issues she has highlighted. The First Lady does not only support but advocates around these issues and, therefore, it is inherent on this Government to take cue and implement policies that make this system sustainable. I do not think we can run for the next 10 years simply to sustain these initiatives; eventually, there must be things that the county and national governments must take up.

Mr. Speaker, Sir, in your communication, I was strongly perturbed by the itinerary of counties that you mentioned – Marsabit, Wajir, Mandera, Turkana – this is a

policy of marginalization and, therefore, it is a true demonstration that these counties are some of the marginalized counties historically. So, 50 years on, as much as we run to empower these people, it is a full cycle from the first Kenyatta to the next Kenyatta. They should abandon the policies of Sessional Paper No.10 and adopt the spirit and letter of devolution so that as he sits there, he does not have to read Turkana as his parent or home county as one of those that are greatly afflicted by concerns of health. Therefore, as we take cue, let us not just have the ululation or the energy to celebrate; let us also have the energy or the capacity to reflect.

Mr. Speaker, Sir, I hope that in future, those counties that were better off based on historical advantage will now allow others to be better off before they take off to greater heights because that is the spirit of devolution. That is why most of us probably are sitting on this side of the Senate; because we understand that the ---

(Sen. Hassan spoke off record)

The Speaker (Hon. Ethuro): Order, Sen. Hassan! Your time is up.
Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I watched the race and the accolades for this particular campaign must be given to where it is due, and it is to the First Lady. It has to take the First Lady to walk and rally the private sector to demonstrate that public servants are not doing their job. The First lady has reminded the Cabinet Secretary (CS) that he has not taken any particular subject like this one seriously. As we discuss here and as the private sector is supporting the *Beyond Zero Campaign*, the cancer machines in Kenyatta National Hospital (KNH) are broken down and the people are suffering. If you look at the budget, the Government is not budgeting for it. If you look at corruption, the people are still suffering. Therefore, I want to congratulate the First Lady and just tell this Government that the private sector is willing to support the Government provided that they can be people of integrity and accountability. The Jubilee Government should start signs of transparency, accountability and less corruption.

Thank you.

Sen. Leshore: Thank you, Mr. Speaker, Sir. I also join my colleagues in congratulating the First Lady, who has, indeed, shown Kenyans that one person can do great things in our country. I would like all of us, as Senators and Parliamentarians, to support her. The county government should also come out to support her. I admired the First Lady the other day when she conducted her marathon. As a physically challenged person in this country, I would like to urge my colleagues to join her when the next marathon comes. We will sacrifice because most of our children in the so-called marginalized counties are still suffering, more so, the disabled or disadvantaged persons in Kenya. I would like to congratulate her and give her my full support whenever she comes to my county, because she has gone even further to Turkana, Samburu and those other marginalized counties. I congratulate her *sana* for that great and noble job.

Thank you.

Sen. Billow: Thank you, Mr. Speaker, Sir. I also want to congratulate the First Lady for drawing the attention of this nation on the suffering of the women of Kenya.

(Applause)

Mandera County has the highest maternal maternity deaths in the world at 2,750 per 100,000 people. We do not live on the moon; we live in this country. These deaths are nearly 7 or 8 times the national average.

Even with the attention that the First Lady has drawn on this matter in the last two years, there is no deliberate change in the policy of the Government as we speak on addressing that problem. The coming financial year, the Government plans to spend Kshs.53billion in the Ministry of Health in Nairobi. It will be interesting that this House and Parliament in general has the mandate to allocate resources to areas of priority, yet we have failed, as an institution of Parliament, to give priorities to the suffering and concerns of our women, who are dying in their thousands while delivering our babies. It will be a shame if we look forward to a marathon rather than deciding to allocate resources. That is important.

(Applause)

For some of the areas that have been mentioned, the First Lady - despite the fact that Mandera has the highest maternal mortality - has not travelled to Mandera because of insecurity. This is a matter that the Government needs to look at. How do we have a county in this nation today where the Head of State or his wife cannot travel to because of insecurity and, therefore, our programmes have to be shelved? There is a serious challenge in this country, that despite the fact that we are spending trillions of shillings, we are not focusing on the priorities of development and the needs of our people. We are actually letting our people to continue suffering. As you have heard, two decades later the rest of the world has reduced their percentage to 400, but two or three decades later, our percentage of the number of people dying is more than 500. But I congratulate the First Lady for her efforts.

Thank you.

Sen. Melly: Thank you, Mr. Speaker, Sir. I also join my colleagues in congratulating the First Lady for the wonderful job she is doing for this country. The First Lady under the *Beyond Zero Campaign* has not been allocated any money from the Government to carry out the campaign. She has done a commendable job which has enabled all counties to get some help in order to reduce the number of children dying, and we must support her.

I am also happy that the Government and the Jubilee Administration is restructuring the National Hospital Insurance Fund (NHIF) so that it takes care of both inpatient and outpatient services because a number of Kenyans today cannot afford the inpatient services in most of our health facilities. It is our job, as Senators, to find a way to sensitize members of the public to ensure that they register with the NHIF so that as we fight on issues of children and women, the other population who are poor, are left hanging and who cannot have access to these medical facilities can have a day when they will also have access to medical care like any other Kenyan.

This is a commendable job and I join my colleagues in congratulating the First Lady. She is a true leader and has demonstrated leadership by going out of the way, without any money, to get money from friends and well-wishers in order to finance this wonderful idea.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): I had said finally, but I wish to recognize the only lady who has put a request, Sen. Adan.

Sen. Adan: Thank you, Mr. Speaker, Sir, for this opportunity. I wish to join my colleagues in congratulating the First Lady. Clearly, this is a very serious commitment by the First Lady to make sure that women in this country are not going to die as a result of negligence in medical health care. This clearly demonstrates that, given the opportunity, women in leadership can prove themselves. I wish to challenge the Government to give opportunities to women to manage various institutions in this country.

Mr. Speaker, Sir, hospitals under county governments are worse than they were when they were under the management of the national Government. If you go to the county hospitals right now, women are dying; the hospital staffs do not even care; equipment bought is substandard and procurement is not done in a proper manner. Health is a critical aspect in our lives and Kenyans, especially the county government, need to take serious and effective action in ensuring that our mothers are not going to die because of diseases which can be controlled.

Finally, this is a big challenge to the so-called “First Ladies” in the county governments. Can they emulate the First Lady of this country?

Thank you.

The Speaker (Hon. Ethuro): Next Order!

PETITION

FINANCIAL MISMANAGEMENT AND IRREGULARITIES IN PROCUREMENT BY NAROK COUNTY GOVERNMENT

Sen. Ntutu: Thank you, Mr. Speaker, Sir. Two weeks ago, I rose on a point of order to request the Committee on Finance, Commerce and Budget which was dealing with a petition presented here by the people of Narok to table the Report. The Committee should not be dealing with this matter as if it is rocket science so as to establish the truth. There is a lot of tension in Narok County. I request the Committee on Finance, Commerce and Budget to table the Report. The Narok County does not want to have an interim report.

Sen. Billow: Mr. Speaker, Sir, I thank the hon. Senator for Narok for his concern on this petition. Two weeks ago, I informed the House that we are in the process of finalising an interim report to be submitted to the House. It is interim because we still do not have the Report of the Auditor-General. However, Members of the Committee subsequently decided that an interim report, owing to the circumstances in Narok, would not be appropriate and we could spend another two weeks. I hope that the audit report will be available very soon. That is the only input we are waiting for so that we give one

report which is conclusive which will also not be subject to interpretation because of lack of the Auditor-General's Report.

Therefore, we seek the indulgence of the Senator so that he allows us another one week. In fact, I have been trying to get hold of the Auditor-General this morning and I hope we will conclude the matter in about a maximum of a week.

Sen. Ndiema: Mr. Speaker, Sir, as you know, next week, we will be going on recess. Once we go on recess without settling this issue, Narok will burn. Is it possible for you to lay it on the Table on Tuesday next week before we go for recess?

Sen. Billow: Mr. Speaker, Sir, you should give guidance on this matter. If we get the Auditor-General's Report, we can table our Report before the House. However, in the absence of that, I would appreciate if you gave direction that the Committee submits an interim report on the matter.

Sen. Kagwe: On a point of order, Mr. Speaker, Sir. I am a Member of that Committee. Would I be in order to request Sen. Ntutu that even as we struggle to get that documents, he struggles very hard to ensure that Narok does not burn? Would I be in order to request my colleague to do whatever he can to ensure that the place remains calm?

The Speaker (Hon. Ethuro): You are completely out of order, Sen. Kagwe. You are apparently assuming the role of the prosecutor in the matter of the Republic versus ole Ntutu and others.

The Chairperson is in difficulty because he says that he needs to have a complete report and rightly so. He says that he does not have all the information to provide a full report. My directive is that he should push as much as he can so that the Auditor-General gives him the audited accounts. By the end of Wednesday, you should give us what is available under the circumstances.

Sen. Hassan: On a point of order, Mr. Speaker, Sir. I have come with a lot of weighty requests for statements to this House. We know that after the lapse of a session, the questions also lapse. Since these were pertinent issues, you must give direction. Twice, my questions have been frustrated by passage of sessions. So, I think because of the intricate nature of that issue, you must direct that we have a closure on the matter before we can proceed.

The Speaker (Hon. Ethuro): I have already directed, Sen. Hassan. Your predicament has no bearing on this matter. You are talking about end of the Session when we are at the very beginning of the Session. Therefore, we have plenty of time.

PAPERS LAID

Sen. Ndiema: Mr. Speaker, Sir, I beg to lay the following Paper on the Table:-

REPORT OF THE AGRICULTURE COMMITTEE ON THE
PETITION BY SMALL SCALE HOLDER TEA GROWERS
FROM MURANG'A COUNTY

Report of the Committee on Agriculture, Livestock and Fisheries on a petition by small scale holder tea growers from Murang'a County.

REPORT OF THE AGRICULTURE COMMITTEE ON
HIGH LEVEL FOOD SECURITY WORKSHOP

Report of the Committee on Agriculture, Livestock and Fisheries on high level food security workshop held on 5th to 8th June, 2014.

((Sen. Ndiema laid the documents on the Table))

THE KENYA NATIONAL HOUSING SURVEY
BASIC REPORT 2012/2013

Sen. Kivuti: Thank you, Mr. Speaker, Sir. I beg to lay the following Paper on the Table of the Senate today, Wednesday, 25th March, 2015:-

The Kenya National Housing Survey Basic Report 2012/2013.

(Sen. Kivuti laid the document on the Table)

NOTICES OF MOTIONS

ADOPTION OF FINANCE COMMITTEE REPORT ON THE MATTER OF CEILINGS AND
RECURRENT EXPENDITURE FOR
THE FINANCIAL YEAR 2014/2015

Sen. Billow: Thank you, Mr. Speaker, Sir. I beg to give notice of the following Motion:-

THAT, this House adopts the report of the Standing Committee on Finance, Commerce and Budget, on the matter of ceilings and recurrent expenditure for the financial year 2014/2015, laid on the Table of the Senate on Thursday, 19th March, 2015.

(Sen. Billow laid the document on the Table)

ADOPTION OF AGRICULTURE COMMITTEE REPORT ON
THE HIGH LEVEL FOOD SECURITY WORKSHOP

Sen. Ndiema: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Standing Committee on Agriculture, Livestock and Fisheries on the high level food security workshop held on 5th to 8th June 2014.

(Sen. Ndiema laid the document on the Table)

The Speaker (Hon. Ethuro): Order, Senators! Before we move to Statements, I would like us to dispose Order No.8 and 9 and then we can revert because it is just voting.

BILLS

Second Reading

THE PUBLIC SERVICE (VALUES AND PRINCIPLES)
BILL (NATIONAL ASSEMBLY BILL NO.29 OF 2014)

(Sen. (Prof.) Kindiki on 24.3.2015)

(Resumption of Debate interrupted on 24.4.2015)

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Members! I have been informed by the whips that we have the numbers and that is why I am acting accordingly. Let the Division Bell be rung for two minutes.

(The Division Bell was rung)

DIVISION

ELECTRONIC VOTING

*(Question, that the Public Service (Values and Principles)
Bill (National Assembly Bill No.29 of 2014) be now read a Second Time, put and the
Senate proceeded to vote by County Delegations)*

AYES: Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. M. Kajwang, Homa Bay County; Sen. G.G. Kariuki, Laikipia County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Leshore, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisi County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

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NOES: Nil

The Speaker (Hon. Ethuro): Hon. Senators, I will now announce the results for the division.

AYES: 28

NOES: 0

ABSTENTIONS: Nil

The “Ayes” have it.

(Question carried by 28 votes to nil)

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

Second Reading

THE ENVIRONMENTAL MANAGEMENT AND COORDINATION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.31 OF 2014)

(Sen. (Prof.) Kindiki on 25.3.2015-Morning Sitting)

*(Resumption of Debate interrupted on 25.3.2015 –
Morning Sitting)*

ELECTRONIC VOTING

*(Question, that the Environmental Management and Coordination
(Amendment) Bill (National Assembly Bill No.31 of 2014)
be now read a Second Time, put and the Senate proceeded
to vote by County Delegations)*

AYES: Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. M. Kajwang, Homa Bay County; Sen. G.G. Kariuki, Laikipia County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Leshore, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisi County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

NOES: Nil

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

AYES: 27

NOES: 0

ABSTENTIONS: Nil

The “Ayes” have it.

(Question carried by 27 votes to nil)

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

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

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. Have you noticed the discrepancy in the results of the two divisions? In the first voting on Order No. 8, the Ayes were 28 while the Noes were nil. In the second voting on Order No. 9, the Ayes were 27 while the Noes were nil. This indicates that there is a Member who is present and did not cast his or her vote. Standing Order No. 80(2) says:-

“It shall be disorderly conduct for a Senator to fail to record his or her abstention in a division.”

I seek your guidance on this matter.

The Speaker (Sen. Ethuro): Order Senators. First of all, I do not think that I ordered the doors or the Bar to be undrawn, especially when a Senator is raising a pertinent point of order. It can only be tantamount to a conspiracy.

You can now open the door and draw the Bar

(The door was opened and the Bar drawn)

I cannot agree more with Sen. Khaniri. I am wondering who could be the Member responsible.

What is it, Sen. Hassan?

Sen. Hassan: On a point of order, Mr. Speaker, Sir. Sen. Musila made it very clear that – in fact, I do not know where he is – that in the first Division, he did not realize that his machine had not responded to the vote, then he voted manually.

The Speaker (Sen. Ethuro): Order Members! We will investigate the matter and find out what exactly transpired. Let us proceed, please.

Sen. Orenge: On a point of order, Mr. Speaker, Sir. I would not have risen on a point of order had it not been for the fact that Sen. Khaniri brought up this issue. In response to that point of order, Sen. Hassan has said that it was Sen. Musila who probably did not vote. During the Division, he was in the Chamber but he somehow left with the Bar still drawn. So, for the integrity of voting, we must be assured that no other doors are open. Can you, in investigating that particular vote, find out how a Senator was able to leave when the Bar is drawn?

The Speaker (Sen. Ethuro): That will definitely be part of the inquiry. You remember that the Chair also made observation that as Sen. Khaniri was on his feet prosecuting that particular point of order, somehow, the doors was being opened and the Bar being drawn. Sen. (Dr.) Khalwale also needs to be investigated for being near where the Bar was being drawn.

(Laughter)

We will start with Order Nos. 12, 13, 11 and then finish with Order No. 10

Second Reading

THE NATIONAL DROUGHT MANAGEMENT AUTHORITY BILL
(NATIONAL ASSEMBLY BILL NO.42 OF 2013)

(Sen. (Prof.) Kindiki on 25.03.2015)

(Resumption of the Debate interrupted on the 25.03.2015 – Morning Sitting)

*(The Speaker (Hon. Ethuro) consulted with
the Clerk-at-the-Table)*

The Speaker (Sen. Ethuro): This is a resumption of debate. The Senate Majority Leader had concluded his contribution. So, we are inviting more contributions to this Bill. Please, proceed Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Speaker, Sir, for the opportunity to contribute to this Bill which I oppose because it has been a declared policy of this country and Government; one, that they are shrinking duplication of parastatals and other similar organizations to cut down wastage. Two, there exists an organization established according to the memorandum and objects by legal notice.

The reason I oppose this Bill is that, one, there are very many institutions in this country that are capable of handling matters of drought. We have a programme called Arid Lands, which has been in existence for a long time, domiciled at the Office of the President, which has been responsible for dealing with arid and semi-arid lands commonly called (ASALs). Three, drought is not a permanent feature of our country. Drought comes at intervals when rains fail or when we get inadequate rains. In anticipation of an emergency, we cannot set up an elaborate parastatal with an office, furniture, secretaries, budgets and many other things.

Mr. Speaker, Sir, this is just setting up offices for squandering public funds. We have a devolved system in the country. As a country, we need the national Government to allocate enough resources and leave it to the county governments to manage exigencies of the weather such as this. It is actually an affront to devolution that after we have devolved and set up county governments, we want to have somebody sitting in Nairobi to

micro-manage how Mandera manages their rain, water deficits and so on. Somebody will sit in Nairobi and pretend to manage---

(Loud consultations)

The consultations should be a little bit lower, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order, Senators! The consultations are too loud.

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

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

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I was making the point that with devolution, it is not proper for this House or any other House to legislate and continue putting authority and use of funds at the centre. Counties have different interests, different pressures and different priorities. This Bill suggests that the Drought Management Authority shall open offices in counties. I will not be surprised to see a drought management office in Kericho, Kisii, Nyandarua, Murang'a and Kakamega where we have rainfall.

What we need to do - and that is why I am urging the House to reject this Bill - is that we encourage--- and I want my chairman of the Committee on Finance, Commerce and Budget to engage the Commission on Revenue Allocation (CRA) that in each county in the Arid and Semi-Arid Lands (ASALs), we have sufficient funds managed by county governments to take care of their drought situation as and when they arise. They should also plant trees in the spirit of the Bill we passed this morning, to manage the environment. I say this because you can see programmes under the Ministry of Devolution. First and foremost, with devolution and 47 county governments, why do you need a Ministry for Devolution? What does it do? The Ministry for Devolution is part of those Ministries that are being used as conduits to create slash funds for running the politics of the country.

Mr. Temporary Speaker, Sir, dams, water pans and management of water are devolved functions but every other day, you see in the newspapers---

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Speaker, Sir. Is the Minority Leader in order, given his status, both in the House and in the country, to make unsubstantiated remarks that the Ministry of Devolution has been used as a conduit for siphoning public funds to do politics? I demand that he substantiates or otherwise be ruled out of order.

The Senate Minority Leader (Sen. Wetangula): You know under what circumstances the National Youth Service was moved to this Ministry and its budget increased by almost 1000 per cent, and is it now selectively roaming around the country to do things that the county governments can do. You know very well that management of water resources is a completely devolved function. Why are billions of shillings domiciled in the Ministry of Devolution and why is the Ministry tendering for construction of dams in the counties?

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Speaker, Sir. The issue is very specific. The Leader of Minority has said the Ministry of Devolution, among other Ministries, has been used to siphon public funds as a conduit to take public funds and use them to do politics. These are very serious allegations. Could he substantiate those allegations by tabling documents, facts, figures and records about how the Ministry of Devolution has been used to get public funds and the same funds used to do politics?

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. Is the Leader of the Majority in order to demand for substantiation when already it is a matter of record in an earlier ruling by the Speaker of this House that a Member cannot be expected to substantiate the obvious? The Leader of the Majority knows very well that in the last Budget, Kshs68 billion was voted to this meaningless Ministry and the only semblance of activity that we have seen is huge advertisements in all the papers, some attempts to go and politic PR-style in Kibera, trying to open roads. Is he in order to demand for substantiation of the obvious?

Sen. Elachi: On a point of order, Mr. Temporary Speaker, Sir. I do not know whether the Senator for Kakamega is in order to say that the Ministry of Devolution went to Kibera to open some roads when he knows very well the work done by the Ministry. We just amended the law and decided that the National Youth Service will go through the counties. Is he in order to say that it is a national function that does not work with county governments?

The Temporary Speaker (Sen. Mositet): The Leader of Minority has been asked to substantiate because it is very clear that you need to substantiate with documents.

The Senate Minority Leader (Sen. Wetangula): In the early 1970s, Jean Marie Seroney, sitting where you are, was challenged in a similar manner on an obvious matter, when the late Martin Shikuku, the doyen of the Luhya nation stood on the Floor of the House and said “the Government was attempting to kill Parliament the same way they had killed KANU”. When he was challenged to substantiate, the Speaker ruled that a Member shall not be called upon to substantiate the obvious.

Mr. Temporary Speaker, Sir, what I have said about the Ministry for Devolution is obvious. With devolution, we do not need a Ministry of Devolution. What is it doing? We have devolved functions in the counties. It is just a recreation of the Ministry of Local Government by another name. Today, they are shifting the NYS to this Ministry, running with it to Kibera to play politics---

Sen. Orenge: On a point of order, Mr. Temporary Speaker, Sir. I wanted to be of help to the Chair and the two leaders. It is rare to have a majority and a minority leader in contention the way they are. At one time, the former Speaker Slade was in a similar situation where allegations were running across from Members and in that instance, hon. Oduya Oprong made an allegation in the House that he saw hon. Mboya give money to hon. Khasakhala.

The Speaker ruled that since the allegations were being made by hon. Members, he would leave the House to make up its mind on who was telling the truth. So, instead of belabouring on this matter, you better leave the House to make up its mind.

(Applause)

The Temporary Speaker (Sen. Mositet): Sen. Orenge, you are completely out of order.

(Laughter)

Sen. Billow: Mr. Temporary Speaker, Sir, we know that hon. Members are embarrassed by the work the Ministry is doing in Kibera and other places; cleaning up the mess of an area that has been neglected by their leader – Member of Parliament (MP) – for decades.

However, is the hon. Member in order to suggest that a Ministry which was an amalgamation of seven other Ministries be done away with? To comply with the Constitution, we had to reduce 40 Ministries to 18. These were seven Ministries including the one concerning the youth. One of the fundamental things that this Government has undertaken is to provide employment to our youth. There is no better opportunity than to bring 20,000 or 30,000 youths to the National Youth Service (NYS) so that they get employment. If the cleaning exercise being done in Kibera is embarrassing him, so be it. There is nothing we can do about it.

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

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

The Senate Minority Leader (Sen. Wetangula): I am ready to receive his information.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, given that what Sen. Wetangula has stated here is nothing but factual, I would like to inform the Senate Minority Leader that if he makes a mistake of withdrawing and apologising, we will pass a vote of no confidence in him as our leader. He must not withdraw and apologise whatsoever. He should be informed about that.

The Temporary Speaker (Sen. Mositet): Sen. (Dr.) Khalwale, are you intimidating the Senate Minority Leader in the House? You are completely out of order.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, protect me from that intimidation. I shall not be intimidated.

Mr. Temporary Speaker, Sir, allow me to proceed with my contribution to the Bill. Let the chips lie where they fell and let people decipher. The distinguished Senator for Mandera County has alleged that the Ministry deals with the youth. I want to deal with that---

The Temporary Speaker (Sen. Mositet): Order, Senator.

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Speaker, Sir. For a long time, the Senate Minority Leader has gotten away with making all manner of snide remarks either at fellow colleagues or the Government of Kenya. We are raising a very particular issue here. No amount of going in circles will purge statements made by the Senate Minority Leader here that the Ministry of Devolution and Planning is a conduit for stealing public money to do politics.

Mr. Temporary Speaker, Sir, he has two options. He should substantiate the theft, withdraw or apologise. Let us not go in circles.

The Temporary Speaker (Sen. Mositet): Senators, all the interventions you are raising either support the Senate Minority Leader or still insist on discussing the matter which was raised by the Senate Majority Leader. We should allow the Senate Minority Leader to substantiate or withdraw his statements if he cannot substantiate.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, there is nothing to substantiate or withdraw. I cannot be called upon to substantiate what is obvious. There are rulings from the Chair that you are guided by. If you deem necessary, let me continue with my contribution uninterrupted. If my distinguished colleagues across the Floor, who conduct themselves in a manner that is not distinguished, you can---

Sen. Elachi: On a point of order, Mr. Temporary Speaker, Sir, I appreciate all that the Senate Minority Leader is doing. However, the most fundamental thing he should tell us is whether the Ministry of Devolution and Planning has nothing to do with this Senate. He knows very well the Ministry is the main pillar. The only wrong thing that we did, as a country, was to merge 18 ministries without thinking about where to put the Ministry of Devolution and Planning. So, he must substantiate and tell us whether that Ministry is there for theft or whether it is working especially for the youth. When he was in the Grand Coalition, he dealt with *Kazi kwa Vijana, pesa kwa Wazee*. This is different.

Sen. Muthama: On a point of order, Mr. Temporary Speaker, Sir. If you go to any public toilet in this country, get to any *matatu* or read any newspaper by the media, one thing that will be mentioned is about stealing of public funds, corruption and intimidation. Are the Senators in order to ask the Senate Minority Leader to substantiate his statement when the same Senators themselves cannot substantiate the projects they are talking about? In the counties we come from, there is no one project that has been initiated by the Ministry of Devolution and Planning. This is on record. Are they in order to ask for substantiation when they cannot substantiate?

The Temporary Speaker (Sen. Mositet): Sen. Muthama, you are completely out of order.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, you have not dropped from the moon. Have you ever seen an Office of the Ministry of Devolution and Planning in your county? Have you ever seen any function being carried out other than being given billions of shillings, micro-managing county devolved functions and playing politics with the youth when we have the Ministry of Youth Affairs and Sports?

The Temporary Speaker (Sen. Mositet): Order, Sen. Wetangula. It is quite obvious. You were just asked to substantiate your statement. If you cannot, then just apologise. That is very clear.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I have said and I will say it again - I want this House to listen to me - I said the following for avoidance of doubt; that, with devolution and the 47 county governments, we do not need a Ministry of Devolution and Planning. I cannot obviously speak your opinion. That is my opinion. That is why we debate here. I cannot stand here to say anybody else's opinion. Let me finish what I said. Then I added that---

Sen. Billow: On a point of order, Mr. Temporary Speaker, Sir. I know that you are a very capable Speaker. I have no doubt about that. However, the dignity of this House is at stake. You have seen what is happening on the other side of the House. Let us not reduce this House to ridicule. A Member should not stand up and say that a Government Ministry was given billions to be looted and get away with it. The fact that a Member stands up and alleges that a Government Ministry is looting and was created to syphon money should either withdraw or apologise.

Mr. Temporary Speaker, Sir, if you allow the Senator to continue insulting us, because he stood there and said that we are not distinguished because we hold a different view from him, there is no business why we should sit here to transact. You cannot allow this House to degenerate into a market place where some Members insult others the way they want; *ama twende zetu kama hakuna Spika*.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, this same Senator for Mandera, who chairs a Committee in which I sit, routinely complains about theft and looting of public funds in our Committee sittings. What is this turncoat behaviour? The President himself has said that corruption has---

The Temporary Speaker (Sen. Mositet): Order, Sen. Wetangula! Please, just restrict yourself to substantiating what you had been requested to substantiate. If you cannot, maybe I will have to apply Standing Order 94.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Out! Out!

(Loud consultations)

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, did you hear that? You are presiding over the proceedings of this House. The honourable distinguished Senator for Tharaka-Nithi has no authority under law or fact to tell me to walk out. This House belongs to the people of Kenya and they shall speak through us, as the alternative Government and Government in waiting. We have a duty to tell you what we shall do when we take the Government and you should hear us.

Sen. Wangari: On a point of order, Mr. Temporary Speaker, Sir. What is worrying me most is actually not the matter being debated, but the authority of the position and the seat that you are sitting on. If I heard you well, you gave a direction; that the Senate Minority Leader either withdraws and apologizes or substantiates. He has said that there is nothing to substantiate or withdraw. Even if he does not respect you, as a person, could he respect the position that you are occupying and the authority of that seat?

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, the distinguished Nominated Senator knows or ought to know how high I hold and respect you, irrespective of where you are sitting. I respect that Chair. In the Seventh Parliament I was in the Speaker's Panel and sat on the Chair for five years. I know the meaning of that seat.

In regard to the ruling, I said and want to say again that the rules of the House do not demand upon a Member to substantiate what is obvious.

Sen. G.G. Kariuki: On a point of order, Mr. Temporary Speaker, Sir. I think that we have been treated very badly this afternoon by none other than the Senate Minority Leader. I respect the gentleman very much, but he, definitely, knows that he is playing around until you forget your directive to him. We are not going to accept this.

Sen. Orengo: On a point of order, Mr. Temporary Speaker, Sir. Just on the rule of fairness, what is it exactly that Sen. Wetangula is required to substantiate? I heard very clearly what he said. What the Senate Majority Leader said is a variation of what Sen. Wetangula said. Since then, there have been so many other variations and nobody should be punished unless the offence is specifically stated very clearly. Would I be in order to ask you to look at the HANSARD tomorrow, so that we know specifically what Sen. Wetangula said and not what the Senate Majority Leader thinks that Sen. Wetangula said? Sometimes even the substantiation may be very obvious. For example, if it is found through the report of the Auditor-General that what Sen. Wetangula is saying is true, then there ends the matter. But it depends on how the question has been put. There are people who went to detention, like Shikuku on matters like this. So, before you---

The Temporary Speaker (Sen. Mositet): Order, Sen. Orengo. There is another intervention by Sen. Wamatangi.

(Sen. Wetangula remained standing in his place)

Sen. Orengo, you finished. Please, just sit down.

(Sen. Orengo spoke off-record)

Sen. Orengo, please, sit down.

(Sen. Orengo resumed his seat)

Sen. Wamatangi: On a point of order, Mr. Temporary Speaker, Sir. The question on the Floor that has directly been posed to you is: The Senate Minority Leader uttered five continuous words, which are in contention; that the Ministry of Devolution has been used as a conduit to siphon public funds. The operative word that the Senate Majority Leader is seeking your intervention on is “siphon.” Please, check it. He is insinuating that the Ministry has been used to steal public funds, while he knows that the concerned Ministry is feeding poor people in his county and Marsabit County.

(Loud consultations)

Mr. Temporary Speaker, Sir, I am on a point of order. I have not finished.

The Temporary Speaker (Sen. Mositet): Order, hon. Senators! Let us allow Sen. Wamatangi to finish.

Sen. Wamatangi: Mr. Temporary Speaker, Sir, I am on a point of order. If this House was for any reason to go by what Sen. Orengo has said, then the only way to proceed is that if the Senate Minority Leader cannot substantiate now, then he should

stop making any contribution. If he is to continue with the contribution, it is only after he has substantiated or withdrawn. If that is going to be tomorrow, then he should stop any contribution until tomorrow.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Temporary Speaker, Sir. Please, allow us to lead you. The Standing Orders state as follows:-

“A Senator who has used exceptionable words and declines to explain or retract the words or to offer apologies for the use of the words to the satisfaction of the Speaker, shall be deemed to be disorderly and shall be dealt with in accordance with the rules pertaining to disorderly conduct.”

Mr. Temporary Speaker, Sir, you have to make a ruling that there are exception words used before the Senate Minority Leader is called to retract or explain. Therefore, I would beg you to take the advice of Sen. Orengo and cause to be given to you the HANSARD, so that you can then rule that the words used were exceptional. Otherwise, these guys are going to throw stones until the end of day, which they are used to do.

Sen. Murungi: Mr. Temporary Speaker, Sir, I rise on a point of order to request you to take control of this House. Some of the Members are dangerously engaging in what could be disorderly conduct. Once you have made your own ruling that somebody should substantiate or withdraw and apologize, there can be no debate after that ruling.

(Applause)

If somebody does not either withdraw or apologize, then the consequences in the Standing Orders should follow. I am just requesting that you exercise your authority as the Speaker and enforce the Standing Orders of this House. Why is the Senate Minority Leader standing up before you give him the Floor? This is further evidence of disorderly conduct. I remember that I was thrown out by Speaker Kaparo for standing up and trying to talk before he gave me the Floor, which is exactly what the Senate Minority Leader is doing. Please enforce the Standing Orders.

(Sen. Wetangula moved to the Dispatch Box)

The Temporary Speaker (Sen. Mositet): Order, hon. Member, Sen. Murungi is on the Floor.

Sen. Murungi: Mr. Temporary Speaker, Sir, let us follow the Standing Orders. This House cannot afford to behave like the other House.

The Temporary Speaker (Sen. Mositet): Sen. Wetangula, there are a number of interventions, let us hear two of them, then I can make a ruling.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. As you make a decision on whether the Senate Minority Leader should withdraw or not, please, be alive to the fact that the matter the Senator is being challenged on touches on corruption. People do not go under armed security or whatever it is to loot the Consolidated Fund. They do it through a lot of tricks, including wasteful expenditure. They actually pretend that they are channeling the funds to particular projects and programmes. It is our contention that until the Auditor-General submits audited accounts

to the Lower House and this House that will confirm that the Kshs 68 billion that went to a non-existence Ministry that is not on the ground, that, the money was properly expended.

We are persuaded to request our friends to note that it was corruption because the Ministry is not on the ground and it does not exist. It was replacing the defunct local authorities whose power went to the devolved governments. So, this is a Ministry on paper, it is not on the ground, it is a conduit for stealing public funds. This is a Government of thieves. The Jubilee Government are thieves, they steal through many tricks - including the Ministry of Devolution and Planning.

(Loud Consultations)

The Temporary Speaker (Sen. Mositet): Order, Senators! We need to respect this House because it is a of House rules. If we are going to allow the interventions to continue, it is quite in order to give whoever is speaking time to speak, so that I can give others time to contribute. I just need to give two people from this side, then I can make a ruling.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I have watched the Senate Minority Leader from the time he started making his contribution with dismay. We are turning this country into a mob-lynching and mob-justice society. The honorable Senator who was on the Floor has been mentioned severally on various scandals.

(Loud Consultations)

(Sen. Wetangula stood in his place)

The Temporary Speaker (Sen. Mositet): Order, Sen. Wetangula! Please, sit down. I have not given you the Floor.

(Loud Consultations)

Sen. Murkomen: I have not finished my point of order.

(Loud Consultations)

The Temporary Speaker (Sen. Mositet): Order, hon. Senators! We are not doing on well and I wish that at least each and every Senator can observe order. Let us allow Sen. Murkomen to complete his point of order.

Sen. Murkomen, let it be a point of order not a Motion.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I have said that we do not want our country to be a mob-lynching society. The honorable Member has been mentioned in many scandals including Tokyo but we have never taken it seriously because nobody has brought substantiation.

So when a person who has been mentioned consistently in a scandal wants to mention others without substantiating, that really defeats the purpose and the object of calling this House an “august House”. If we have to make this House a House of honour, the Member should substantiate what he said, otherwise we will turn this House into a place of lynch-mobs.

Sen. Billow: On a point of order, Mr. Temporary Speaker, Sir. I want to draw the attention of the House to Standing Order No. 91, which states that:-

“A Senator who has used exceptionable words and declines to explain or retract the words or to offer apologies for the use of the words to the satisfaction of the Speaker, shall be deemed to be disorderly and shall be dealt with in accordance with the rules pertaining to disorderly conduct”

Mr. Temporary Speaker, Sir, you directed that he withdraws or apologizes. Standing Order No.91 says, if a Member refuses to do that, he shall be deemed to be disorderly and shall be dealt with in accordance with the rules. The Member should be deemed disorderly by you, otherwise, *hii nyumba itaharibika!*

(Loud Consultations)

The Temporary Speaker (Sen. Mositet): Order, Senators! During the contribution of the Senate Minority Leader, he alleged that the Ministry of Devolution and Planning is being used to siphon funds for politics and other things. The Senate Majority Leader stood on an intervention and requested him to substantiate with documents or apologize if he cannot substantiate.

Let us just respect the issue of substantiation and also apologizing. If the Senate Minority Leader knew very well that he could not substantiate, that one was ruled by the person who had raised the intervention. Personally, I never heard and I think I will just need to go through the HANSARD, which will be---

(Several hon. Senators stood up in their places)

Just wait, Senate Minority Leader! You cannot run away from it.

(Loud consultations)

Order! You cannot run away from it. Senate Minority Leader, in case the HANSARD shows that you had alleged that the Ministry is being used to steal money or that it is used as a conduit to siphon money, then you will be required to substantiate with documentary evidence or withdraw your remarks and apologize on Tuesday.

So, now, let us just go back to the Motion.

(Loud consultations)

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I can now proceed on the Bill---

The Temporary Speaker (Sen. Mositet): What is your point of order, Sen. (Prof.) Kindiki?

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Speaker, Sir.

An hon. Senator: Thief!

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, did you hear somebody shout across the aisle and call people thieves?

The Temporary Speaker (Sen. Mositet): Sen. (Dr.) Khalwale, did I hear you say “thieves?”

(Loud consultations)

Sen. (Dr.) Khalwale: No, Mr. Temporary Speaker, Sir. At no time have you given me the microphone.

The Temporary Speaker (Sen. Mositet): You have the microphone.

Sen. (Dr.) Khalwale: Yes.

(Loud consultations)

The Temporary Speaker (Sen. Mositet): Did I hear you say “thieves?”

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

(Loud consultations)

(Senators shouted at each other from across the aisle)

The Temporary Speaker (Sen. Mositet): Order, Senators! Order!

Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Thank you for giving me the microphone. I have heard you clearly; you are asking whether I have called anybody “thieves.” You had not given me the microphone; so, I do not know from which microphone I might have called anybody a thief. If you check with the HANSARD, I am not on any record.

Thank you, Mr. Temporary Speaker, Sir.

(Loud consultations)

(Senators shouted at each other from across the aisle)

The Temporary Speaker (Sen. Mositet): Order, Senators! Order!

Hon. Senators, while I am seated here, I can equally see each and every hon. Senator and I can also hear you. I think I heard you, Sen. (Dr.) Khalwale; you shouted “thieves.” So, please, can you come out clearly on what you meant by “thieves.”

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, we have fought corruption in this House---

Hon. Senators: No! That is not the issue!

Sen. (Dr.) Khalwale: Then you can have the microphone!

Mr. Temporary Speaker, Sir, I want to insist that we have fought corruption in this House and the people who perpetuate corruption, in English, are called “thieves.”

Mr. Temporary Speaker, Sir, Members who belong to the “sky team,” which moves from parastatal to parastatal extorting public funds from heads of these parastatals should not dare challenge me to call them “thieves”. You are thieves! You intimidate our chief executive officers so as to come to harambees in Mumias and Kakamega. You are thieves!

(Loud consultations)

(Several hon. Senators stood up in their places)

The Temporary Speaker (Sen. Mositet): Order, Senators! Order! Order! I will not allow this to go on.

(Loud consultations)

Order! Order! Order! Order, hon. Senators! I am going to read Standing Order No.110. Please, let us be orderly.

(Sen. Muthama spoke off record)

I never heard that.

Sen. Muthama *(Off record)* We are bringing it to your attention---

The Temporary Speaker (Sen. Mositet): Order, Senators! Order! I am reading Standing Order No.110(2)(a). It states as follows:-

“The Speaker or the Chairperson of Committees shall order any Senator whose conduct is grossly disorderly to withdraw immediately from the precincts of the Parliament-

(a) on the first occasion, for the remainder of that day’s sitting--- .”

I am reading this for Sen. (Dr.) Khalwale.

An hon. Senator: Withdraw!

The Temporary Speaker (Sen. Mositet): So, Sen. (Dr.) Khalwale, I heard you calling other Senators “thieves” and you continued repeatedly calling them thieves. So, please, for the rest of the day’s sittings, just go.

An hon. Senator: Out! Out!

The Temporary Speaker (Sen. Mositet): Where are the Serjeant-at-Arms?

(Sen. (Dr.) Khalwale walked out of the Chamber, dancing)

(Other Senators from the Opposition side stormed out in protest)

We are back on the Bill.

Proceed, Sen. Billow.

Hon. Senators: *Tumewaachia Nyumba!*

The Temporary Speaker (Sen. Mositet): Proceed, Sen. Billow.

Sen. Billow: Thank you, Mr. Temporary Speaker, Sir. I rise to strongly support this Bill. The National Drought Management Authority Bill is a very important Bill for up to 14 counties that are pastoralist and up to 22 counties, if you look at counties that are in the Arid and Semi-Arid Lands (ASALs)--- The subject of this Bill is about drought and no one can tell us in this country that drought is not a problem unless you do not live in this country; unless you live on the moon or you do not have a conscience. Unless your conscience does not allow you to know what is happening with the rest of the Kenyans, you cannot say that this Bill is irrelevant or that the National Drought Management Authority, which is being created, is not necessary.

Mr. Temporary Speaker, Sir, this Authority was, in fact, created in 2011 vide Gazette Notice No.171. When that Authority was created in 2011, the Senate Minority Leader, who is now opposing this Bill, was in that Government and none other than his boss, the former Prime Minister, was pitching for this and was actually responsible for the creation of the Authority. The only thing that this Bill does is to put this Authority in a statute; to entrench it in law so that it is not just in the Kenya Gazette.

Mr. Temporary Speaker, Sir, for the people who represent 25 per cent of the population of this country and who live in 80 per cent of the land mass of this country, drought is the single most important problem they have in their lives. So, it is a very important Bill, and I strongly urge hon. Members here to support it.

Mr. Temporary Speaker, Sir, this Bill is not just about drought; it is about the management of drought. I am surprised that the Senator for Marsabit – who comes from the area where today, as we speak, thousands of animals are dying because of drought – can walk out of this House simply because of party politics.

Mr. Temporary Speaker, Sir, it is important that Kenyans appreciate that the challenge we have in this country is not whether there will be a drought or not, it is how to manage drought. Therefore, this Authority is very important because what they do is set out very clearly in Clause 5, which deals with the most important issues regarding drought. This clause deals with the policies and programs. This Authority will deal with the response mechanisms on drought. It will also deal with integration issues regarding those people affected by drought. More importantly, the National Drought Management Authority (NDMA) has offices in all those counties where there is drought for instance, in Mandera County.

Their main role is one of the functions listed there; the early warning system. They are the ones who carry out an assessment and bring out issues regarding the

possibility that there will be a drought or that there is, indeed, a drought and what levels of emergencies are there so that the Government can plan interventions appropriately.

This is a very important issue because although we have had NMDA in the last four years, the level of support and finance that has been given to this department in the Ministry of Devolution and Planning has been very limited to the extent that the level of interventions when there is drought has been minimal. Every year, including up to last year and even as we speak--- Last week, we had a meeting on this matter and we have seen that in West Pokot, nearly 50,000 people are facing starvation because of drought. In Marsabit, it is even worse; in Wajir and all those counties in that region of the country, the lives of people are at stake and animals are already dying.

What we are seeing is a situation where, every year, we know that there will be a drought; but the level of preparedness and planning has always been inadequate. To make it worse, the level of intervention is minimal. What the Government has always done is to provide a small amount of money to carry out off-take buying of livestock. Last year during the drought, the Government Ministry provided about Kshs.300 million or Kshs.500million for off take in a situation where hundreds of thousands of animals were dying.

I remember a few years ago, there was a time when we expressed total loss of livestock valued in excess of Ksh70 billion. In a situation like that, when we are not providing enough funding to deal with this emergency to enhance our preparedness and planning, then we are actually destroying the livelihoods of the people in this region - pastoralists, Arid and Semi-Arid Lands (ASALS) of this country.

Mr. Temporary Speaker, Sir, many years ago, the last colonial Governor who was in this country said the following about that part of the country in the north: There is a part of Kenya that other Kenyans do not even know about and, much worse, they do not even care about. Fifty years after Independence, that statement is becoming true.

One of the Members who just contributed on the other side was very clear that “we do not need this.” What it means is that he does not know the level of suffering and the destruction that drought causes every year on the lives and the livelihoods of the people in this region. In every other part of this country, those who are dealing with sugar, coffee and tea have authorities, government organizations and State corporations which provide for them marketing, support in crop development and many other areas. But for pastoralists communities who have been subjected to suffering every---

(Loud consultations)

Mr. Temporary Speaker, Sir, there are loud consultations.

People in those regions have never had an Authority that focuses on the effects of drought and mitigation against it. All over the world in many countries - in Australia and others - drought is not a problem; but such an entity exists there. The Governments prepare mitigation and intervention; they plan so that with or without drought, there is no effect on the lives of the people. Fifty years later, we cannot demonstrate that. As a result of these problems of drought, we always watch, on television in our living rooms, thousands of Kenyans in parts of this country, including Turkana, Kajiado and Mandera

surviving on wild fruits and famine relief because their livestock and livelihoods have been destroyed.

On average this Government spends between Kshs.3 billion to Kshs.7 billion annually on famine relief. Why do you continue giving Kenyans famine relief? It is because their livelihoods have been destroyed by drought. Their animals have been destroyed and this is why we need an authority that can sit, plan and come up with research on the policies, programs, interventions and all those things.

As we speak, as the Senator for Mandera, I am also the President of the Pastoralist Livestock Summit representing 14 counties.

(Applause)

One of the most important things on the agenda of that summit is how to deal with drought which is affecting our people today as we speak in up to eight counties. The Government has already announced what interventions it is going to take on the eight counties where the lives of people are at stake, yet someone can stand up in this House and say we do not need this. The same people are getting billions of shillings in write off for Sugar Development Levy every year. We need to think about the rest of the country. It is important that, as leaders, we must take responsibility to change our country.

We cannot develop this country when one half of this country is living on famine relief. You cannot develop this country when one half of this country is in a desert where there is no livelihood. This Government has made the commitment to change and diversify so that they can develop irrigation, for example, in those parts of the country. How do you deal with irrigation when you do not have even measures in place to deal with drought? In Clause 5 of this Bill, it says that they will come up with mitigation measures in order to enhance food security. They need to design projects and programs to create resistance and resilience to drought and climate change.

I wish to talk about climate change and I want Members from the so called “highland” areas to listen. The United Nations Environment Programme (UNEP) headquarters is in Nairobi and if you have ever attended any of their meetings in recent months, those people dealing with climate at the UNEP Headquarters here in Nairobi have announced so many times that climate change is going to affect East Africa so much that in the next 10 to 15 years, this region - Kenya, Uganda and Tanzania - will not be able to feed themselves. What is happening is a situation where parts of this country that have always had rain and have always been wet are becoming drier.

Anyone here who comes from Murang’a or parts of Nyeri will tell you that climate change alone is going to affect people. So, it would be important for us to have an authority that focuses on how to deal with the effects of climate change; on who can plan and interact with those kinds of institutions and plan for this country. We cannot talk of development because this country now suffers more than any other country in East Africa regarding food security. We are a basket case and yet we do not plan on how to deal with this situation. Do we want to create more people lining up for food when we can plan through institutions like this one on how to provide food? So, it is important that this authority is anchored in law so that it can get adequate funding.

The only area that I have concern with is in the financial provisions in Clause 18 of the Bill; the establishment of the fund which is not clear. It simply says that “there shall be a fund known as the National Drought Emergency Fund.” It is important in this country that the type of funding must indicate what level of funding will be availed from the Government. When it comes to the Third Reading, I am going to bring proposals that this National Drought Emergency Fund shall receive a percentage of our national revenue.

We cannot be given vague information. As I speak now, they have not had a billion shillings since they were set up and yet they are supposed to be dealing with the 24 counties that are affected. I want to encourage Members to think about it so that we provide a percentage of our national revenue.

With those few remarks, I support.

Sen. G.G. Kariuki: Mr. Temporary Speaker, Sir, I want to submit that this Bill is very important and long overdue. When we start discussing the details of the Bill, we should also deal with the policy and its intention. I hope that the Drought Management Authority will be an institution which can be relied upon. I want the House to understand and appreciate that drought is a major problem. If we have long periods of drought, that makes the people in our country poorer than they are. When farmers are no longer in a position to produce food as a source of livelihood, that should make us read the signs of the times.

Mr. Temporary Speaker, Sir, the whole Arid and Semi-Arid Lands (ASAL) in the next few years will be totally ungovernable owing to very many issues. We are talking about management of food security among other issues. We must know that the source of our survival in this country is the pastoralist and the farmer, if they are taken care of properly. Today, if you look at Mandera, Garissa, Wajir, Laikipia, Pokot, Baringo and Samburu counties, they are experiencing a lot of insecurity. Why is this? First, this is because they depend on the Government for food. However, this food does not reach the real needy people. It disappears in the process of being distributed. It is sold by the so-called food distributors. There are people who do not wish to have those areas being self sufficient because their businesses will not flourish.

Mr. Temporary Speaker, Sir, Kenyans have a culture of making money out of any situation. The continuation of drought in Kenya has made quite a number of people rich. We have men and women who are extremely rich as a result of the prevailing drought because they import food and sell it at very exorbitant prices. Since time immemorial, we have been going through this process.

We know that it is not a big deal to convert these areas to be productive. However, some people, unfortunately from the marginalised communities have been forgotten. The Government’s philosophy is to take away guns from these people. This ends up being a big issue and yet is not a big issue. How can we disarm people who are hungry? They use the guns to look for food. We need to understand that we are the ones in Government and should manage our country so that no one dies out of hunger. It is a pity that in this country, people continue to keep on dying out of hunger.

Mr. Temporary Speaker, Sir, the drought situation cannot be blamed all the time because we can create dams and other areas to hold water from the rain. We keep on

saying that the drought situation is unmanageable and yet we are the ones who are not manageable. The leadership of this country has to think about managing our affairs. We should manage our people in a way they will appreciate those who are in Government.

We keep on talking about drought management interventions. We keep on talking about these interventions. That shows that we know that we will experience drought at some point. Why do we employ the police force? Why do we also employ doctors? We do so, because we know people will get sick and that others will commit crime. That is why we employ all these people. Why can we not do the same thing to ensure that we have plans to tackle the impending drought? Creating institutions and giving them all the power does not change the situation. Mr. Temporary Speaker, Sir, the problem in this country is that anybody can wake up in the morning and think about creating an institution where he can get employment. That is the point we are at. People are hunting for employment while others are dying and suffering. The issues I have talked about affect areas where even our own policemen and women cannot dare to go fight. These people have armed themselves to the teeth with sophisticated arms. They are ready to die. Any man would prefer to die than live hungry. That is a very serious matter that we must consider when we are standing here.

Mr. Temporary Speaker, Sir, I associate drought with many other problems. You can give these people something like - create dams. However, this situation can also get out of hand and become a security issues. Therefore, any person suggesting that this Bill is not necessary or appropriate, just like my friend from Mandera, I will say is a person who does not belong to this country.

Mr. Temporary Speaker, Sir, it is important to create an authority like this one. However, how many authorities do we have in this country? We have very many authorities. In fact, if someone was to sit down and work out the amount of money spent through authorities and balances the expenditure and what it does, you would be surprised. This is a group of well to do people who are well educated, businessmen who are very intelligent. Their work is nothing, but to enjoy the sweat of the poorest person in this country.

Mr. Temporary Speaker, Sir, we know that there will be a lot of rain in the next one week or two. Where is our level of preparedness? We have created about 1,000 dams in this country. We are talking about spending money to grow crops in about 1,000,000 acres. This will be a dungeon of money eating.

Mr. Temporary Speaker, Sir, if you want that money to be spent wisely, pass it on to the ordinary small farmers and manage them like we used to do with GMR. However, when you say you can start an institution of one million acres and you are going to do “a,” “b,” “clause” and “d” and you have failed to do even 50 acres, I think we are deceiving ourselves. Time has come when we must now be clear and open. Let us say what we do not know and what we do not know, we must know.

Mr. Temporary Speaker, Sir, what is fertilizer? We cannot effectively distribute fertilizer that we just imported. We know the number of bags that of our farmers need and yet we cannot distribute it. I plead with the Senate Majority Leader and the Government that it is not because we do not have law and that is why we are where we are. However, it is because we are not ready with priorities, especially those that do not

give you any money. It stays suspended until the time when somebody somewhere will find a way of making money then a project becomes very lucrative and important.

Mr. Temporary Speaker, Sir, we must know that we are creating a problem in this country against our own system. For example, each year we are producing about 55,000 graduates, but what are you doing with them? When they decide to revolt and advise people on criminal lines, I do not think we shall have any machine to stop the kind of atrocities which may be committed by these young men and women because we have neglected them and we continue to do so. In fact, I have not seen any person who is so sensitive about the welfare of the ordinary person. It is most unfortunate that we come here, enjoy ourselves, talk about a certain Ministry and yet this is something which can cause some people to walk out. Are we here sincerely for the people of Kenya?

Mr. Temporary Speaker, Sir, the Senate Majority Leader should now start thinking critically about where we are taking this country. We cannot continue the way we are going on; that you make money and that is the end of it. It is a very sad situation and we keep on talking about 2017. What is that? We had 1963 and 1969 which passed by and yet we are still here. I do not want you to get to my age when the situation is the way it is. You need to change it for the good of the people sitting here and that person who is looking at us when we are talking.

I do not know why we think that people who are surrounding us here, for example, messengers and others, do not know what we are doing here and that we are just magicians or very important men and women. Let us not deceive ourselves. How did the revolution of 1919 in Russia come about? Other revolutions that have taken place are because of people who have made wealth and money and started looking down upon other people without knowing.

Mr. Temporary Speaker, Sir, almost 60 per cent of this country is underutilized. I mentioned Turkana, Laikipia, Samburu, Baringo, Wajir and many counties. This is a country where a person's head may go "bad" and he declares an area as his own or unilaterally independent for himself; who is going to stop him from doing that? Are we prepared? Do we even have food to give to our soldiers? When you bring *askaris* in Laikipia County to protect or stay in one area of a police post, we are told to give them food. We have messed ---

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

Sen. (Prof.) Lonyangapuo: Thank you, Mr. Temporary Speaker, Sir. I also rise to support this Bill. As indicated, we want to have an Act of Parliament establishing the National Drought Management Authority (NDMA). Sen. G.G. Kariuki clearly said that there has been established so many authorities in Kenya to the extent that when the new Jubilee Government came into power two years ago, it reviewed the 240 authorities bringing them back to around 180. This means there has been a reduction on some of them. The functions we are trying to assign to this new NDMA at the national level have always been carried out by some authorities that I do not know whether they are still there or they were closed.

Along the Tana River, to utilize the water in order to mitigate drought in that region, there existed the Tana River Development Authority (TARDA). For waters around Lake Victoria, we have had the Lake Basin Development Authority (LBDA). In

Rift Valley, we have had the Kerio Valley Development Authority (KVDA) and the one passing through Samburu going all the way to Isiolo. So many authorities have been there, dealing with this.

Mr. Temporary Speaker, Sir, as we discuss and approve this Bill, it is important to take stock of what these other authorities have done. Have there been any results, at all, to mitigate drought? In my county, KVDA was assigned and was supposed to make sure service dams are constructed as well as make huge dams on the flowing rivers, so that water can be utilized for irrigation purposes and so on. Unfortunately, most of these authorities have not lived to the standards that they were actually created for. Some of them have become employment bureaus for political leaders and class around those regions where they are. So many people are dumped into those authorities to the extent that the very objective they were put there disappears.

It, therefore, means that although we are looking at this one, we are calling it the NDMA, in Nairobi, but the problems are in the counties. We expect that as this one is set up, also small, little authorities that specifically deal with issues to do with drought in counties are going to be assisted by this main umbrella body, the NDMA.

Mr. Temporary Speaker, Sir, right now, as a result of the 2014 drought, most pastoralists in the northern part of Kenya and the Rift Valley have greatly suffered to the extent that they have migrated with their animals looking for pasture and water. As a result, a lot of misunderstanding has arisen. For example, when you move within the environs of Nairobi, you will see pastoralists of Maasai origin moving around with their livestock, looking for water and grass. We have been in existence as a nation for over 50 years, but we have never internalized to accept that we shall never remove pastoralism from the hearts of the people who practice it. Instead of taking the relevant measures to make sure that drought effects are fully mitigated and contained so that we have water and grass in some of the regions, we have not bothered at all.

Mr. Temporary Speaker, Sir, right now, in Baringo and Laikipia counties, there is a big problem because the Pokot and Samburu communities are being looked at as though they are invaders of farms that have grass and water. This is the time we should be able to look at this situation critically rather than condemn the people who are moving around with their animals. We should have some dams that contain some water. Fortunately, every year, we get sufficient water in Kenya which runs all the way to the Indian Ocean, Lake Victoria and from where I come from, most of it, flows into Lake Turkana. The people of Turkana and West Pokot have been completely left at the mercy of drought and yet if we were able to harvest some of that water, we would be using it for irrigation.

Mr. Temporary Speaker, Sir, there was an ambitious programme by the Jubilee Coalition Government of putting one million acres of land under crop production. This was in order to mitigate hunger which is also associated with drought amongst Kenyans. We know some of the most notorious counties where hunger is a big problem. Every year the Ministry concerned – it used to be called the Ministry for Northern Kenya, but now it is housed in the Ministry for Devolution – should know that food has to be bought. Right now, up to 50,000 families as at last week, are in need of food aid from the Government. The Government has no choice, but to feed these people because they belong to this country.

Why should we wait until a disaster arrives before we step in and yet we have had big lessons every year for the last 50 years? The one million acres that we intend to farm in Kilifi and Tana River counties - and yet you do not have farmers there who will be weeding and harvesting. It would have been prudent to take part of it to Garissa and Mandera. The portions for farming should have been distributed equally. Personally, I believe every county should have been made to set aside at least 10,000 acres. That would translate to 470,000 acres of land that would be under irrigation in the whole country, including Nairobi that has no space, but could lease land from West Pokot or any other county for as many years as they can, where they can get food for their people who are suffering in Kibera and Mathare.

Mr. Temporary Speaker, Sir, when I was the Permanent Secretary in the Ministry of Industry, the former Government went and revived the schemes along the Tana River. There was a lot of produce, but because there was nobody to harvest it and no stores, aflatoxin came in and all the maize got rotten. This was because there was no proper planning. Suppose we distributed this irrigation programme accordingly, it would become the issue of, for example, Kiambu County which has no land to go and negotiate with the people of Isiolo County or Makueni County and pay for a lease of 20 to 30 years, for the time they want to do their irrigation and farming. Unless we take radical steps, we will be creating these authorities which will become employment bureaus for some people while we do not make headway at all.

We are proposing in this Bill to have the National Drought Emergency Fund. Are we saying that we have never had any fund at all? We have had some funds before and that is why when landslides occur, we mitigate. This has become a ritual in Budalangi every year. In the next one month, the rains will come and then we will start running around making the very famous statement. If you may allow me to paraphrase in Kiswahili, like the woman who was quoted saying: “Wapi Serikali?” She wanted to know where the Government was, to come and rescue her because the waters had swept her and separated her from her children and her house had been submerged. What lessons do we need to learn any further than what we have learnt in order to do things right?

Mr. Temporary Speaker, Sir, as we talk about drought mitigation measures, what are we doing to the cotton industry that was giving us clothes, for example, the cotton development? This goes hand in hand with the waters that you are going to harness in the dams for irrigation purposes. We should be able to revive the dead textile firms that we had. We cannot depend on a neighbour in the Middle East or Europe to faithfully continue to produce clothes for us and yet we have soils that are better than theirs. As it is suggested here, this NDMA can do a lot if we pass this Bill and possibly most of the things that are suggested here are implemented.

One of the functions of this NDMA in Clause 5(e) is to facilitate national and county level drought contingency processes and preparation of national and county level drought contingency plans. Are we saying that we do not have any plans at all, or are we just copying and pasting from what we had before? We need to publish and disseminate some of the information. We should also indicate in this Bill how the county government will be able to link up and work with them in order to establish their own NDMA. We are

supposed to try as much as possible to eliminate the effects of drought and not to minimize as it is ambitiously projected in this Bill.

Mr. Temporary Speaker, Sir, with regard to the number of people proposed to compose the Board in part (d), it says that they shall be four persons who shall be competitively appointed by the Cabinet Secretary with the approval of Parliament. This means that they have to advertise. I hope that is what they are going to do. It also talks about people having degrees. However, I do not know what type degree because everybody has a degree. This is a specialized Authority where we must put people who know what they are doing. These should be people who have studied things that are related to what we are trying to mitigate.

We are also saying that they will serve for four years. What about the other parastatals? I hope this is the time we should be able to bring uniformity. This Bill is proposing four years. Therefore, we must have uniformity. The Bill also stipulates that the process has to be competitive and transparent. Is it really going to be transparent? We have forgotten to also include people living with disability, but only quoted the gender and the minorities. This NDMA needs properly trained persons in order to fight drought. If we had the technical personnel, we would have advised the Executive in this country that the one million acres should have been spread out among the counties. I, personally, want West Pokot and Turkana counties to have a share so that our people do not fight over very thin cows. Right now, a cow in West Pokot fetches Kshs2,000 while people are dying.

Sen. G.G. Kariuki, we have gone to Laikipia County because we are looking for grass. We are not interfering with anybody. We are praying for rain to come this week, so that the grass in Laikipia County can be left in peace.

Mr. Temporary Speaker, Sir, lastly, in Clause 12(2)(b), a person shall be qualified for appointment as the secretary or to be in charge of this authority by looking at very many things. These include qualifications, experience and years of experience. What is the difference between the two? We must merge that so that we only talk about one thing because it does not make sense. Otherwise, I support this Bill. As soon as it is approved and assented to, we should form this NDMA. Since I am sure that we will pass this Bill, I hope that the vetting of the board members will also come to the Senate and not the National Assembly alone.

Mr. Temporary Speaker, Sir, I support.

Sen. Hargura: Thank you, Mr. Temporary Speaker, Sir. The National Drought Management Authority Bill (National Assembly Bill No.42 of 2013) talks of an authority which is supposed to be dealing with droughts management which basically applies to the ASAL areas. We have had many of these authorities; the Arid Lands Resource Management Programme (ALRMP), the Ministry of Northern Kenya and other Arid Lands. We now have the authority under the name which is referred to in this Bill as the former authority which was created under Legal Notice No.171 of 2011.

Mr. Temporary Speaker, Sir, this issue of authorities, drought and arid areas seems not to be taking us anywhere because we still have a lot of authorities. We have the Ewaso Nyiro North Development Authority, Ewaso Nyiro South Development Authority, Kerio Valley Development Authority, Lake Basin Development Authority, The Tana and

Athi River Development Authority and many others. We should ask ourselves what we are trying to solve here because we are just creating authorities. I think we are not assisting Kenyans in any way by creating these authorities. We need to sit down and critically look at what we are trying to address.

Mr. Temporary Speaker, Sir, we know very well that given the climate change, we do not expect these droughts to end. In fact, we expect them to be more severe and longer. So, we cannot sort them out or cushion our people through just coming up with authorities. Can we think critically and see what we can do to come up with some projects or programmes which will enable our people to develop or adopt ways of living, which will make them to withstand these droughts? When you go through this Bill, it seems that this authority does not seem to go the extra mile. It is just like any other authority.

For example, in northern Kenya, there is the Ewaso Nyiro North Development Authority which covers a very big part of northern Kenya, all the way from Nanyuki, Laikipia to Mandera. I have gone to those offices and when you ask them what they are doing; they tell you that they do not have any funds. They will tell you that they are waiting for funds from the Ministry of Water and Natural Resources, the Ministry of Devolution and Planning or the National Youth Service (NYS).

We are taking ourselves round in circles. Nobody can say that drought is not a problem in this country. What I am saying is that, it is even getting worse because of climate change. Why can we not sit down and look at what is affecting our people? As a Government, what can we do to cushion our people against drought? How can we make their ways of life adaptable to the climate change, so that we can have better ways of cushioning our people by coming up with grand projects which will make their ways of life sustainable? Maybe, that could be the only way that we can go. Otherwise, with this trend of coming up with authority after authority and superimposing them, we may not assist our people.

Mr. Temporary Speaker, Sir, right now, we have the NDMA and other authorities like the Ewaso Nyiro Development Authority. On the ground, they cover the same areas and do almost similar projects. However, the main issue is the focus and funding of those projects. In the Constitution, we have something called the Equalization Fund which is supposed to address these areas on how to improve infrastructure so that we can at least improve the livelihoods of our people. However, since the promulgation of the Constitution, this could be the fourth year and none of those funds have actually trickled to the ground.

The other day, we were told in a forum of pastoralists leaders that the Equalization Fund will be used by the national Government to create a similar outreach like this NDMA, which will still be run from Nairobi. That is duplication. We do not need these structures or authorities; what we need are the funds to get to the people on the ground. Let us improve on how we deliver the services to the people by making sure that we have the necessary funds availed to the people.

Mr. Temporary Speaker, Sir, if you look at Part Three of this Bill which talks of financial provisions, it just says that they will establish a fund to be known as the National Drought Emergency Fund. If we are serious enough, then we should say where

this fund is coming from and what percentage it is. It just talks of “such moneys as accrues”. We are not committing ourselves to what the source of that money is and how much it is. If we are told that it is at least a percentage of the national budget, then we can understand that the Government is serious and that there is a fund set aside and this authority will be different from the others, because we already have others in the region like the Ewaso Nyiro Development Authority.

I am referring to it because it is the one that falls in the area where I come from. They are not doing anything. Right now, they have ground to a halt. So, when we come up with another like this one, and we are not committing any funds to it, then it will be business as usual. We will just have another outfit which will be purporting to be addressing real problems.

Mr. Temporary Speaker, Sir, as much as I accept that, there is a need for having a body to address drought, that body should come up with programmes that are not just emergencies during drought, but programmes which will cushion the residents who come from the affected areas, against drought. That is worldwide, but we have to come up with programmes which will cushion the citizens of this country against the effects of drought. That should not wait until the drought comes before coming up with emergencies. I remember last year I attended a function where the authority that we are trying to phase out had a programme totalling to Kshs39 million in my county trying to address emergency drought issues, including water tankering, providing fuel to drill boreholes and so on.

All these are emergency measures, but if we come up with an authority like this, we should give it enough funding and consolidate other authorities doing the same work. We have a parastatal like Ewaso Nyiro Water Development Authority which is already dying and now you come up with another authority. If it is not well planned then we shall just be incurring recurrent expenditure on authorities which are of no use to the public.

Mr. Temporary Speaker, Sir, I would rather we have a Bill which will create one authority to cover all these issues. If we do this, then we shall sort out the problems facing our people. Otherwise, if we go this way, we will not be doing anything.

If you look at the objective of the fund, in part three, it talks of timely response to drought, an emergency fund to minimize the effects and technical expertise to improve on drought management. If we have to come up with an authority let us do it, but involve the people who know and want to address the problem and not people who want to have an authority that will do what the others have been doing over time.

Mr. Temporary Speaker, Sir, I support the idea, but I would like this Bill to be amended so that we have very clear budgetary allocation in terms of a percentage of the national budget. The objective of the fund should not just to fire-fight during drought, but it should come up with programmes which will prepare our people to withstand drought. As it is now, when it gets dry, people just watch their animals as they grow thinner until they drop dead. When the rains come, the people have to look for money to start all over again. That is where cattle rustling comes in because somebody has to go and get from the one who has a few left so that he can start again; that is restocking basically. This way, we shall not be moving forward.

Let us get a proper authority which will assist our people. I would like to support the Bill after the amendments.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I stand to support this Bill. First of all, I strongly believe that the National Drought Management Authority Bill is an inter-Governmental Bill which creates an inter-Government institution which will serve both the national and county governments. I wish the Senator of Marsabit had sat a little bit longer in this House because this Bill is basically about him and institutions that need to be strengthened to assist the people in marginalized areas. These are areas that have been marginalized since Independence.

Mr. Temporary Speaker, Sir, I was in Mandera on Monday and was told that the size of that county is 20,000 kilometre square. When you look at Wajir, you will find that it is double this size. Marsabit is almost five times the size of Mandera. That part of our country has been left out for long even before the colonial days; no kind of assistance has been given to those people and no effort has been put into investing resources in those areas. That is the largest land mass in this country. If you go to a place like Mandera, it is a tip corner of this country. It is a gateway to Ethiopia and Somalia. That place is very useful for the present and future of this country. It is a strategic place for business and security. Such an area needs a concerted effort and it is not enough to say we have created devolved government.

If there is a scientific calculation that would show how much money would go to those regions and how much they are going to mandatorily budget for drought management, then we would say we do not need an institution for that purpose. Considering that the Division of Revenue Bill creates only two ways of dividing the money, counties have their own right to budget what they want and may not put effort on matters of drought management. It is important that for national interest, there must be a national institution that makes interventions and gives extra resources in the management of counties.

Mr. Temporary Speaker, Sir, look at the NDMA for the few years it has existed; it has managed to attract funding from foreign institutions like the European Union (EU). This institution does its work in Samburu, Wajir, Marsabit, Mandera, Turkana and West Pokot counties. We cannot over-emphasize the necessity of a body whose objective is to ensure that we do away with drought and find ways of mitigating the effects of drought.

Mr. Temporary Speaker, Sir, when we sit in this House, it is a big shame if we do not deal with county matters, equity and equalization in counties, among others. We are supposed to be debating the value, merits and demerits of this Bill. However, we focus on discussing non- issues. We debate things that do not exist and which are out of context when our people are dying of hunger. We must live by the name of this House. This is a House of reference, honour and dignity. This is a place where the people of Kenya gave us the mandate to come and defend their interest.

Mr. Temporary Speaker, Sir, it is not enough that Sen. Murkomen comes from a county that is fairly endowed with good rains. It is not enough to say one comes from Kakamega where there are tropical rains all the time. It is not enough that one comes from Bungoma which is within Mt. Elgon region and thus getting good climatic conditions, but you do not know what a drought is. One has to have a national interest if

you are a Senator of this Republic. You must have a mind that if Mandera, Kajiado, Wajir or Marsabit is in pain, then even Bungoma is in pain and even Elgeyo Marakwet is in problems.

Therefore, we cannot say that since this NDMA may not serve Kisii, Kisumu or Siaya County, we cannot fail to provide law that will equalize this nation. The future of this country is the large land mass in the northern part of this country. If we do not want to turn this land like the Tennessee Valley of the USA or Alaska which had harsh climatic conditions, but due to strategic investment by the rest of the nation, you turn places into potential areas. For example, the Tennessee Valley Authority is a place where they are producing the cheapest source of energy in the whole of America. There was a strategic decision to create Tennessee Valley Authority which serves seven states. Therefore, if you create a good Tennessee Valley Authority and provide the strategic resources, then you are going to serve the nation. This is what we need to do.

Mr. Temporary Speaker, Sir, this is one reason that unlike today where the President has the responsibility to appoint the chairperson and the management of a committee, we have a wonderful provision in the law that creates a provision for the Senate to do that. This is one of the very few institutions that the Senate and the National Assembly will approve Members of the Board and the Chairperson. That gives it the status that it ought to have; a status that is not equivalent to any other parastatal because this House will preside over approval of the Chairperson and members of the Authority. Therefore, we have the time and the chance to vet the kind of people who will serve.

Mr. Temporary Speaker, Sir, it is not good to assign responsibilities to the President or the Ministry. Many people have said one or two things about the Ministry of Devolution and Planning. It is important for people to appreciate that the Ministry of Devolution and Planning does not just deal with matters of devolution or county governments. The Ministry also deals with matters of planning and drought management. We must respect the various departments in the Ministry. The State Department of Planning is the one that deals with these matters. In that Ministry, there is another State Department that deals with matters of devolution. It is important for us to appreciate that devolution - and I have said in this House over and over again - is not county governments.

Chapter 11 of the Constitution is not called "Devolution." Instead, it is referred to as, "Devolved Government." Under Article 6(3) devolution is a concept that must also permeate national Government institutions and be cascaded to the local level. Devolution is the ability of national Government institutions to reach my village. Devolution should not be devolution because county governments are dealing with some matters. That is why Article 174 is very clear that, one of the objects of devolution is to create entities and mechanisms for the national Government to reach the local people.

It also creates a mechanism for county governments to reach the people. It is not enough for a governor to sit in Mandera or Wajir Town, to say: "Behold we have now devolved." The Constitution states that services should be taken closer to the people. So, let us not just focus on semantics and arguments which do not go to the substance of the Bill or the argument of what a devolved government is.

Mr. Temporary Speaker, Sir, I am proud of the work that the Ministry of Devolution and Planning is doing. As your Chairperson of the Sessional Committee on

Devolved Government, I am proud of the work that the Ministry does in capacity building. I am very proud of what the ministerial departments are doing. What is surprising, despite the noise that the Council of Governors usually makes in political rallies, is that all the governors have a wonderful working relationship with the Cabinet Secretary of the Ministry of Devolution and Planning. It should not just be political noise. People have to sit down like we sat with her today to appreciate that there are ministerial working committees that deal with matters of sector by sector.

Usually, quarterly, the Ministry of Health at the national level and departments of health at the county level meet and agree on various things. The same thing happens in the Ministry of Environment, Water and Natural Resources and the Ministry of Transport and Infrastructure. There is a lot going on outside the limelight and the political arena. Therefore, we cannot condemn public officers in this House; we must give public officers support and behave in a manner that shows respect.

In my contributions yesterday regarding Articles 73, 74 and 75, I said that the Constitution instructs us, as a House, that every time we make utterances and comments in this House, we must remember that this country has bestowed upon us a very important task and responsibility to preside over on behalf of millions of Kenyans who cannot sit here. We cannot condemn public servants unheard. We cannot make assertions about corruption without substantiating them.

Mr. Temporary Speaker, Sir, let me be very candid here. One of the things that have actually undermined the fight against corruption in this country is that every time there is a suspect, we do not respect the constitutional requirement of persons remaining innocent until proven guilty. Chapter Four of the Constitution is very clear on that matter. For those mentioned in the Anglo-Leasing scandal, we must respect the fact that even if somebody's name has been called to sign a statement, the person remains innocent until a court of law proves that they stole money through the Anglo-Leasing scandal. If someone is mentioned in the Tokyo scandal, no one should condemn them until a court proves that they are the ones who stole and sold Kenyan embassies. If someone has been mentioned in the maize scandal, we should not condemn them until a court of law says; behold, this person was found guilty.

Mr. Temporary Speaker, Sir, if we become a country of mob justice, we will undermine the rule of law. We will undermine the constitutional responsibility and the principle of someone remaining innocent until proven guilty. My colleagues seated on the opposite side should know that we, as a House, want to start cultivating a culture of maturity; a culture that appreciates innocence of other citizens. We must always remember the principle of someone remaining innocent until proven guilty.

Mr. Temporary Speaker, Sir, I want to conclude with a story from the Bible. The Bible gives a very interesting story that Jesus said in a parable where one man who owed another a debt of say Kshs5,000. The master forgave him because he went to kneel before his master. The master told him; "because you are unable to pay the debt, I forgive you." When the servant left his master's office, he found another colleague; a fellow servant, who owed him, let us say, Kshs1,000. He ordered the fellow servant to pay him the debt or take him to prison.

It happened that the master who had forgiven him was walking round his land. He found the servant, whom he had just forgiven, holding the other by the neck and wanting to strangle him. The master wondered, “Are you not the same person I have just forgiven Kshs5,000 and you want to kill someone for only Kshs1,000? Since you are doing this, I will ask that you be locked in cells and until you pay me back Kshs5,000.” The servant who owed the other about Kshs1,000 was forgiven.

Mr. Temporary Speaker, Sir, there are many people on the other side of this House who “owe” this country, Kshs5,000. They owe this country more than the people they accuse. It is important to remind my colleagues seated on the opposite side that before they point fingers at those who owe this country Kshs1,000, Kshs5,000 is being asked from them. They have to account for Kshs5,000. This means that there is greater responsibility for things that you have done, seen and acted upon before. Therefore, it is very important to be magnanimous, careful in our place of work, and be careful about how we behave and the utterances we make because this nation has never forgotten the Kshs5,000 debt.

Mr. Temporary Speaker, Sir, this Bill concerns the establishment of the NDMA. It is a wonderful Bill. We must support it. I support the president of the pastoralist group, hon. Sen. Billow and his team, including you, Mr. Temporary Speaker, Sir. I urge this House to note that when a brother is in problems that is the right time for us to surround them. This is because one day, when we reach the seat of judgement, we will be told that: “I was thirsty and you gave me water.” This will happen through the National Drought Management Authority Bill. They will say, “I was hungry and you gave me food. I was suffering and you paid me a visit.” We must show solidarity in this House with those who are suffering. We might think that we are in a better county with good resources and wonderful opportunities. However, we must side with those who are weak because a nation’s pride is seen by how they side with the weak.

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

The Temporary Speaker (Sen. Mositet): Hon. Senators, for those who want to contribute, we still have one more Bill and another Motion. Please, if I happen to give you time to contribute, just do it in five or even three minutes.

Sen. Elachi.

Sen. Elachi: Thank you, Mr. Temporary Speaker, Sir. I rise to support this Bill. First of all, I thank the National Assembly for passing the Motion to ensure that we have a National Drought Management Authority.

Today we are seeking to remove it from the order of the Executive and giving it a precise statute within the law, so that it can work better than what it is doing today. For about 50 years, we enjoyed good climate. At some point, Nairobi was referred to as “the Green City in the Sun.” As much as my brothers on the other side talk about areas that have a good potential for agriculture, I do not think that there is any area that has the best climate. Every part of this country is affected. Our forests have been depleted.

Drought does not only exist in areas that have been marginalized for many years. Today, even the catchment areas in this country have the same challenge. Farmers are suffering because of climate change. Even if they plant their crops, some diseases clear them. Therefore, we need to support the Government in ensuring that while the United

Nations supports us and the Millennium Development Goal No.7 talks about a sustainable development into country policies and reversal of the lost environmental resources; we, as a country, must come out to ensure that we have an institution that can specifically deal with climate change and drought.

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

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

Mr. Temporary Speaker, Sir, very soon this House will be discussing the Food Security Bill. That is why we must ensure that the NDMA works. We know that between seven million to ten million Kenyans sleep hungry because of the challenges of climate change. Today the Meteorological Department is unable even to tell when we will have short or long rains. It is unfortunate that those who want to be Presidential candidates in this country are saying that they will rule this country in 2017, when indeed, they cannot address the issue of about 70 per cent of the country that suffers due to lack of drought management. They have decided to walk out. I am wondering how they will become Presidents of this country if they cannot talk to the pastoralists. Today, the pastoralists have more constituencies than any other group. So, if you need votes in this country, you need to talk to the pastoralists.

Mr. Temporary Speaker, Sir, the functions of the NDMA are very clear in the Bill. I know that there is a task force that has been working on the order of the President on parastatals. They need to determine which parastatals will remain and which ones will go. If we were to be asked, we would say that we have many parastatals that we do not need. However, this one should be retained. This is because it is assisting the functions that have been devolved. Under agriculture, these functions include crop husbandry and many other functions. These functions can only be undertaken if there is a good system of managing drought.

I want to thank the Ministry of Devolution and Planning under the Cabinet Secretary, Anne Waiguru. Through the National Youth Service (NYS), we have started sinking and building dams. If that Ministry had not revived the NYS, I do not know where we would be today. Therefore, I am surprised that our brothers on the other side are criticizing the work of young people who are now being empowered economically. What we have seen in Kibera for 50 years is a shame. Today, Kibera is breathing cleanliness, thanks to the Ministry of Devolution and Planning. Today we have Beyond Zero clinics and a road that goes through Kibera from Riara to the other side. To the people there, this is a miracle. This NDMA will be key in the management of the environment. It is not just about water, but also the management of plastics in the country and ensuring that we breathe clean air.

Mr. Temporary Speaker, Sir, I am surprised and sad that the people who served as Ministers, Permanent Secretaries and Senior Secretaries in the Government can stand today and blame others over corruption, which has become a song in this country. The biggest challenge that we face in this country is our character, attitude and the way we

look at things. We cannot address the issue of corruption in country by pointing fingers at others.

There are those who engaged in corruption before they came to Parliament. Some were doctors. If you follow their record, you will be very surprised at how they operated. Some even ended up in the books of the Judiciary and they have the audacity to come to this House and shout “shame” and “corruption.” They should be ashamed even to be in the Senate, which is a House of solutions. This is a House which is trying to resolve the problems which we created ourselves. It is a House of reflection and asking oneself: “Did I ever raise a finger? Can I really take a Bible and swear that I never took anything that belongs to Kenyans? Did I or did I not mismanage the resources that I was given to manage as a director somewhere?”

I would want to plead with my brothers that if you have ever been a Minister in this country, you should not raise a finger, because your hands are dirty. Your hands are bleeding and Kenyans are crying. Today, the President is trying to revive this country after the Grand Coalition Government that some of us did not understand. That Government took us to a road where everything was looted and taken. We must appreciate that the President has ensured that devolution works under the new dispensation. We need to start with a new slate in this country.

However, my brothers still think that when we moved into a new dispensation in 2010, we forgot what happened before. They now think that they should be the ones to stand up and say that they are not corrupt. Shame on them! We must start reflecting in this House as we look towards building this country. It is time we stop using the word “corruption” and look at our character and attitude as we deal with people in this country. We need to bring back our people to understand that Kenya is a country where everyone, even those in the ASALs, can benefit in this country. I believe that through the leadership of the Jubilee Government for the next 20 years, we will take this country where it belongs.

I beg to support.

Sen. Wangari: Mr. Temporary Speaker, Sir, I rise to support this Bill. Gone are the days that aridity and semi- aridity was a preserve of a few counties in this country. As I said in the morning, 80 per cent of land is actually arid or semi-arid. Gone are the days when it was only Marsabit, Mandera, Wajir and Turkana counties. Right now, if you go to Kieni people are asking for relief food.

The Temporary Speaker (Sen. Murkomen): Sorry, Senator Wangari, what is it Sen. (Prof.) Kindiki?

The Senate Majority Leader (Sen. (Prof) Kindiki): On a point of order, Mr. Temporary Speaker, Sir. I am sorry for interrupting my sister Sen. Wangari. However, looking at the time and also considering, as the Speaker directed, we have The Mining Bill (National Assembly Bill No. 8 of 2014) as well as the other Order relating to the financial issues with county assemblies, I am asking whether, with your indulgence, I can move a very short procedural Motion to extend the sitting time past 6.30 pm?

The Temporary Speaker (Sen. Murkomen): I think, Sen. Wangari, we will hold your time. If the Senate Majority Leader does not move that Motion now, he will never

move it because the Standing Orders are clear that it must be done 30 minutes before time.

You may proceed, Senate Majority Leader and thereafter we will go back to Sen. Wangari.

PROCEDURAL MOTION

EXTENSION OF SITTING TIME UNTIL THE CONCLUSION OF ORDER NOS.11 AND 13

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

Pursuant to the provisions of Standing Order No.30 part 3(a) of the Senate, the Senate resolves to extend its sitting time today, Wednesday 25th March, 2015 until conclusion of Order No.13 on The Mining Bill (National Assembly Bill No.8 of 2014) and Order No.11 relating to the Motion by the Standing Committee on Finance, Commerce and Budget.

As I have said before, I sought your permission to move this Motion. We are approaching 6.00 p.m. and we have to request because earlier on, the Chair had ruled that we need to conclude Order No.13 and 11 in that order. For those reasons, I beg to move and request the Senate Majority Whip Sen. Elachi, to Second.

Sen. Elachi seconded.

(Question proposed)

(Question put and agreed to)

(Resumption of Debate on the Bill)

The Temporary Speaker (Sen. Murkomen): Sen. Wangari proceed.

Sen. Wangari: Mr. Temporary Speaker, Sir, I was talking about the issue of drought in this country and the fact that 80 per cent of our land is arid or semi- arid. Yesterday, my own Governor of Nakuru was appealing to the national Government to supplement Nakuru people with relief food. It is that bad. It has stopped being a Marsabit or a Turkana issue, it is now a national issue. I will take a very short time because I am Member of the Committee on Lands and Natural Resources and we have ventilated on this matter. We also did public participation and made a Report to this House on this Bill. More importantly, we shall be moving amendments at the Committee Stage in terms of the issues that we felt need to be corrected in this Bill.

The establishment of this NDMA, not under a legal notice, but under an Act of Parliament, will not only be good on paper. However, it will be very good for this country if this authority can be given adequate resources so that it can deal with recurrent drought in this country. We have been seeing these photographs in the news, of children from Baringo and Turkana going as far as tens of kilometres to look for water. We have

seen women trying to fend for their children and they are unable to feed them because there is no food. We have seen people from the lower part of Murang'a asking for relief food because it is no longer the issue of north eastern; it is a national issue. Although we have many other authorities which are dealing with these issues, it cannot hurt to have a national board or authority to deal with this problem.

I also agree with some of the speakers who have spoken before me in terms of the funding, because any authority is as good as the resources allocated to it. We will be seeking to make sure that this authority does not rely on the gifts or the goodwill of the Government of the day. We should put in law that some money be allocated for the authority to do its work.

Mr. Temporary Speaker, Sir, the other point is the representation of the Council of Governors (CoGs). Yesterday as I was watching my Governor appealing for relief food, it was very heartbreaking. I was also concerned because when this Bill came here, it did not have any representation from the CoGs or from the counties. We, as the Senate, it is our responsibility to make sure that even as this Board is constituted, we have a perfect representation from the CoGs or a representative from their committee, depending on how they operate, so that they can give input, because they are the people on the ground. The people starving in the counties, the children lacking lunch or food in the schools are in the counties and the Governors are the ones who feel the heat before it comes to the national Government.

Mr. Temporary Speaker, Sir, the role of this NDMA is not just on paper, but it is going to do quite a substantive job and add value to what is already going on. In fact, it is supposed to actually do research and advise any other authority, body or agency that is dealing with issues of drought; it offers technical support and that is why we must support it. When we look at the projections, in the next 10 or 20 years – depending on how we are very good in environmental destruction and how we are not protecting our environment – this 80 per cent will actually grow. If we do not mitigate, then we will go back and I do not know what we will tell our children or grandchildren.

Mr. Temporary Speaker, Sir, I want to support this Bill fully and say that despite having other agencies, it still suffices and it is still very crucial that we have a NDMA that is actually anchored in law; with proper channels of funds and with proper management to deal with the drought problem in this country.

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

Sen. Gwendu: Thank you, Mr. Temporary Speaker, Sir, for giving me the chance to add my voice to this Bill, which I also support fully. I would like to begin my statement by anchoring what my fellow Senator has said; that drought is no longer a problem of particular counties or in particular areas, but it is a problem for all of us. We should, therefore, look at how we can solve this problem, number one, to avoid deaths; and, number two, to avoid people keeping on begging. When you look at the pictures of drought which are brought to our attention in the media or even outside this country, it looks like Kenya is one place that drought has taken its toll.

I heard the previous speakers, some of who were talking about not seeing the need of having many authorities. However, some authorities in this country have succeeded and have actually put us somewhere we can count in terms of development,

for example, the Lake Basin Development Authority. It was an Authority that was being viewed as dead. However, right now, with the right funding, we see the NDMA gearing development towards the Western circuit and the counties that are surrounding it.

I am looking at the NDMA as an authority that will sort out a problem that affects each and every one of us; that affects Kenya as a country, our children and the generations that will come after us. We need to look at what drought does to us, the effects of drought and what this NDMA will do for us.

Another thing that the previous speaker talked about is funding. If this NDMA is funded well, it will solve a problem for now and for generations to come. The success of any authority depends on financial support, leadership support and the objectives that have been set for it. The fact that this NDMA has been set under an Act of Parliament is a good thing. We will ensure that the objectives are followed, funding is given to it and we will solve a problem for now and for generations to come and.

With those few remarks, I beg to support.

Sen. Sang: Mr. Temporary Speaker, Sir, from the outset, I support this important Bill. Right now, drought is a major issue in this country. Whereas we have had these counties which have traditionally been known to be drought-prone, that is, the northern Kenya counties, it appears that with climate change, global warming and other factors, counties that have traditionally received rain throughout the year like my county are now experiencing some level of drought. I come from Nandi County where we have never experienced drought. We have always had rain throughout the year. However, this year particularly, since November last year all the way to mid-March, we have never witnessed the kind dry spell that we currently have.

Mr. Temporary Speaker, Sir, it is important to note that when we talk about drought management, we should not confine our minds to the traditional northern Kenya counties. Be it as it may, it is important to note that, we, as a House, are also tasked with the responsibility of protecting and serving the interests of counties; whether the specific counties where we were elected or all the 47 counties generally.

Whereas we know that some aspects of drought management is a function properly devolved to counties, it is important to note that if we want to support other regions in this country, as a country we must have mechanisms and programmes that target to address some of the major challenges that other counties are facing in this country. It would be unfair to expect that a county like Wajir, Mandera and Garissa would have to depend on resources allocated to them through the County Allocation of Revenue Bill in order to deal with the serious challenges of drought.

It is important if the national Government can step in to support some of these counties. It is a pity that the leaders from some of those counties stormed out of this House when we are discussing serious Bills. My county may not benefit much from this authority, but it is painful to see Senators representing those particular areas joining others who come from regions that are generally well endowed in terms of rains and resources, and found their way out of this House instead of supporting this important Bill. It is important that we pull together.

We sit in this House late into the evening because we believe in the manifesto of the Jubilee Administration. We, as a Government, made a commitment. Those of us in

this House who support this Government, must ensure that it delivers its promises so that some areas which have faced serious challenges of drought get proper practical interventions to support them.

I have a few issues to highlight. One is the composition of the Board proposed by this Bill. It is important to provide an approval mechanism that is clear. Members of this Board will be approved by both Houses of Parliament. We have seen the benefit of a joint process of approving public officers in this country.

Recently, when we vetted the Inspector-General of Police, it is important to note that whereas the Senate looks at issues from the perspective of counties, the National Assembly will have its own perspective of issues. The fact that the Senate will be part and parcel of that approval process will ensure that we look at the correct composition, engage and vet some of these nominees before they are appointed to the positions and establish their competencies and understanding of the role they are supposed to play in executing their mandate in the Board.

Provisions have been provided so that the NDMA will produce an annual Report that will be presented to the Minister. The Minister will cause it to be transmitted to the National Assembly. I think that is a bit of a misnomer. This House has to access these reports so that as we hold our counties to account, we ask them what practical steps they are undertaking to deal with some challenges after being given advice. It is important to note that one of the functions of the NDMA is to provide technical advice to counties on how to tackle some of these challenges. That is important.

At the Third Reading, we should amend and provide proper working mechanisms to ensure that the annual report finds its way to the Senate. We should discuss it and engage with the institution so that they deliver on their mandate as provided in this Bill. The other component is to engage with the county assemblies. I know we may not give that responsibility to the Minister in charge of Devolution and Planning to cause the publication of that report to various counties. However, the responsibility can be taken up by the Senate so that once it is presented within the Senate; the Senate causes it to be transmitted to the 47 counties. Our county assemblies in this country should engage their respective county governments on some of the steps, programmes and initiatives that they should undertake to deal with issues of drought management within counties.

We, as a Senate, are having a good day. We are dealing with three or four critical Bills that are geared towards ensuring that we deliver our mandate of protecting and serving the interests of counties. We have complained in this House more than once and said that we need to have some Bills transmitted to our House. We are not just asking for Bills to be transmitted to this House just because we want to participate in a process and ensure that the Senate is mainstreamed within the legislative process. However, we appreciate the fact that the Senate has a unique perspective of looking at business that is brought before it. This is justified.

Looking at some of the proposed amendments that we intend to move once this Bill is committed to the Committee of the Whole at the Second and Third Reading---. We are looking at the content perspective of the county governments to ensure, as Sen. Wangari mentioned, the representations of county governments are adequately captured within this Bill.

I persuade some of our colleagues that, whereas, generally, certain counties may not appear to be within the cluster of counties that experience drought---. In my own county, Tinderet Constituency is fairly dry. We will need technical advice from this NDMA on how the County Government of Nandi will handle it. That way, we will be able to find initiatives and programmes that are able to address some of these things. Therefore, I know when you go to Bungoma, Kakamega and any other county in this country, you will find one or two sections that are fairly dry. We need to look at this issue in a more holistic manner and move in that direction.

Mr. Temporary Speaker, Sir, the aspect of corruption in this country is a major issue. One of the challenges is that when people are mentioned in corrupt deals or have presided over corrupt activities, we always insist that due process must be followed. However, it is quite unfortunate that people who have gone through the pains of their names being maligned and published in newspapers and other media forums as having participated or presided over corruption in various offices that they occupied before finding their way to either the National Assembly or the Senate, are the same people who will drag other people's names in the mud. It is important that if you want to be respected, you must start by respecting others. If you want people to presume you innocent, you should be able to reciprocate.

There is a culture in this House of some of the senior Members – I appreciate that all of us are first timers in the Senate, but for those of us who have engaged in public life whether they started from KANU through nomination all the way to the Senate – to look down upon the young Members is unacceptable. We have hon. Senators in this House who have continued to refer to some of us as “young Senators” without making references to themselves as being “aged Senators”, if I have to use those adjectives. Let them call Sen. Sang, young Senator, but also call themselves aged or aging Senators. It is important that we respect ourselves as colleagues in this House. We are able to appreciate that young as we may be, or aged as they may be, the people of their counties saw it fit that in their senility or whatever it is, that they would still be able to serve in this House.

In our youth, they saw it fit that we should become ---

The Temporary Speaker (Sen. Murkomen): Order, Sen. Sang! Did you use the word “senility?” There is no senile person here. They might be old or aged, but not senile. So, I want you to withdraw and apologize.

Sen. Sang: Mr. Temporary Speaker, Sir, I withdraw, but I do not know whether to apologize to you because I did not make any specific reference to any person.

The Temporary Speaker (Sen. Murkomen): Just withdraw.

Sen. Sang: Mr. Temporary Speaker, Sir, it suffices for me to withdraw.

We must be able to conduct our businesses with mutual respect as colleagues. Irrespective of the political differences that we have as colleagues, it is important for us to engage our colleagues or amongst ourselves in a more respectful manner; a manner that we are able to ensure that we encourage each other and bring out the best of this House. So far, this House has been respected as a House of reason. We have seen altercations in the other House that sometimes are not healthy. So far, this House has conducted itself in a mature manner. It is one of the responsibilities for each and every

one of us to ensure that the dignity and the maturity of this House is preserved by engaging maturely.

With all those remarks, I support.

The Temporary Speaker (Sen. Murkomen): There being no other speakers, I call upon the Mover to reply.

Sen. Ndiema: On a point of order, Mr. Temporary Speaker, Sir. I thought I had requested to contribute to this Bill.

The Temporary Speaker (Sen. Murkomen): Sorry, I think there must have been a problem. This afternoon there have been problems with cards. Sometimes they do not show. Like now that card shows “Unit 30, no chip card”. That means that it is not reading well. Now that you have told me, you can proceed.

Sen. Ndiema: Thank you, Mr. Temporary Speaker, Sir, for allowing me to contribute to the debate on this Bill. Looking at the Bill, drought is an issue that deserves all the attention because it affects a big portion of this country. Drought and other weather phenomena are equally important. Since there are so many issues concerning climate that are affecting the country and in view of the fact that there is need to collapse functions to one Authority, I would think that if this Bill was expanded, so that its functions capture the other climate change phenomena, it would go a long way in mitigation.

Issues of climate change include flooding. If we are going to form this NDMA and then, later on, we realize that we also need to manage floods and the environment which we have this afternoon been talking about--. I would support this Bill provided there would be amendments to bring in these other weather phenomena. It should read: “Drought, Climate change and Environment Management Authority.” This is so because most of the functions that this NDMA will carry out are already functions that have been assigned to the county governments by the Constitution.

We may end up with an authority that has very little to do. We could expand it to include these other issues like floods and diseases that affect crops like the Maize Lethal Necrosis Disease (MLND) which affects maize. I would expect that this authority also deals with issues of mitigating the effects of such diseases.

Mr. Temporary Speaker, Sir, there is also the issue of foreign plants that have been introduced in this country, which are causing havoc, particularly in the same drought affected counties. In this case, I am referring to a plant called *Mathenge* tree which is really affecting very many areas. If we are talking about drought, then such issues may not be captured. We should bring in such issues. Drought continues to endanger the lives of our people and property.

There is a lot of mismanagement of our natural resources, including land. We are no longer planning on land use. The Constitution talks about proper land use, but since the enactment of the constitution, there seems to have been no effort to effect policy on land use. In this case, I am thinking about issues of zoning. We can zone this country and know which areas grow maize like Trans Nzoia and support them fully. In areas of rangeland, we should support range management and the pastoralists to improve on their livestock, management, grazing land and provide water.

I can understand the frustration and suspicion that sometimes come when we talk about arid lands, drought and range management. This is because in the past, institutions have been formed ostensibly to tackle issues of drought. Even a Ministry was formed in the last Government to deal with those arid areas affected mostly by drought. However, the residents of those areas have nothing to show for what those institutions did.

Dams and water pans have been dug, but they have not yielded any useful effect. That is why when we talk about an authority to deal with drought again, many Kenyans are suspicious. I hope that should this authority be formed, it is important that its functions are spelt out clearly and it does not conflict with the roles of other institutions, especially the county governments. We hope that it will be complementary and that they will deal with policies, just as the national Government is assigned issues of policies, but the implementation is left to the counties.

Mr. Temporary Speaker, Sir, I also believe that by forming this institution, it will not take away any responsibility or funding allocations from the county governments. As I speak, we are seeing that even in the current budget; some Ministries are still performing functions that were long devolved. We still see Ministries constructing water dams. Constructing water dams is a function that should be done by the counties.

I want to support the idea that the climate change effect is not specific to certain counties. It affects all counties. If any part of the country is in problem, all tax payers in Kenya are equally affected. Even the high potential counties are also affected by climate change. I have talked about floods.

This year, the rains have delayed, but counties like Narok, Bomet and Migori have not had their usual rainfall and we think there is going to be shortage of food. The little that was harvested in the North Rift, despite the imminent shortage of food or maize, the Government through the Ministry in charge of procuring and storing that maize is not doing anything. Lorries have been queuing in Moi's Bridge, Eldoret and Kitale depots, but the Government is not buying the maize. Instead the price of maize has been reduced while the cost of production has been going up. As I am talking now, Trans Nzoia has not received the DAP fertiliser. Last year my county was able to distribute about 200,000 bags of fertilizer. This year we have only received 20,000.

Mr. Temporary Speaker, Sir, as we discuss the issue of drought management, we should also know that drought management depends on how we utilize the high potential areas to support the areas affected by drought.

Regarding the issue of security; banditry and cattle rustling, unfortunately and invariably, happens in the same areas that are constantly affected by drought. This is an area that has to be tackled in terms of security so that we can comfortably say that we can handle issues of drought.

Mr. Temporary Speaker, Sir, education for the children from areas affected by drought is key. As I speak now, some parents in those areas are not able to send their children to school because their livestock has been decimated, foot and mouth diseases has affected their livestock and, the other day, the markets were closed.

I hope if an institution like this is formed, it should tackle those issues such that it does not only address drought, but also mitigate in terms of supporting the children from those areas to get education. If the population in those areas is educated and can earn

livelihoods even outside those areas, the pressure on land would not be there. I am sure those areas will sustain their economy.

With those few remarks, I will support formation of this authority provided that it is expanded to deal with issues of climate change, environment, floods and national diseases.

The Temporary Speaker (Sen. Murkomen): Thank you. There being no other contributor, it is now time for the Mover to reply.

Senate Majority Leader!

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, mine is to thank all those who have contributed to the Second Reading debate on this Bill. I also appreciate how useful most of the suggestions have been towards improving this Bill. One thing that has come out is that drought is a national disaster. Earlier, it was a bit discouraging when some Members wanted to bring side issues and tried to distract us from addressing a matter that is very grave. For many of the Senators who sit in this Chamber, drought is a catastrophe that threatens to wipe out our people. If there is one authority that we must have, it is the Drought Management Authority. We would not buy the theory of duplication. If we have to dissolve 50 other corporations to remain with this one, so be it.

Mr. Temporary Speaker, Sir, I represent Tharaka-Nithi County. Three-quarters of the people of Tharaka-Nithi County are staring at starvation as we speak. Interventions that have been put in place are inadequate. People, adults - men and women - are pleading for relief aid. There is nothing as dehumanising as a family which cannot put food on the table. There is nothing as embarrassing as being unable to put food on the table.

I have heard that there is need to estimate the kind of funding the Authority must have. I agree fully so that we do not have the kind of interventions that we have at the moment. Right now, I know that the Ministry of Devolution and Planning is assisting some of the vulnerable counties. However, you will be shocked that in a whole county like Tharaka Nithi, the other day we made some requests. We were told 1000 bags of maize, 500 bags of beans and I do not know how many kilogrammes of cooking oil had been sent. That is negligible.

Mr. Temporary Speaker, Sir, we need adequate funding so that we have massive interventions with an aim. In fact, I would like to see timelines where the Authority can tell the country how to get rid of drought and its consequences. I agree, scientifically, we might have very little in terms of controlling drought because it is more of a natural phenomenon which may be beyond our country because of the interconnectedness of the global environment, climate change and global warming. These are challenges that affect us as a result of events taking place thousands of miles away from here. We can deal with the effects of drought such as famine.

Mr. Temporary Speaker, Sir, it does not rain in the Middle East, in countries like the Sultanate of Oman; Qatar, Saudi Arabia and United Arab Emirates. Have you heard of hunger and famine in the Middle East? The answer is no. The issue is not how we can bring back the rainfall. That is part of it. However, there are many places where people - in the biblical language - do not sow. They do not worry about planting or toiling on land

but they eat. So, we must look at how we can cushion our nation from the pangs of hunger, starvation and famine, notwithstanding the horrible phenomenon of climate change.

Egypt is 99 per cent desert. Similarly, Israel is 99 per cent if not 100 per cent desert. But today, those two countries are the leading exporters of horticultural produce. So, let us not dwell on rainfall so much. I am not saying that we do not need rainfall. I have given you examples of countries where there is no rainfall, but they eat, drink and have a lot to spare.

Mr. Temporary Speaker, Sir, it is not true that this Bill is just trying to create an authority to respond when there is drought. I heard two Senators contributing and trying to purport that this Bill is just to help us deal with famine and the effects of drought. That is not true. This Bill tries to create an authority to help us prevent drought where possible. But in the likely or unlikely event of drought, the Bill will help us mitigate the effects of that drought and respond in terms of contingency measures when drought has struck.

Today, cattle are dying in many parts of this country. Therefore, I am surprised when somebody tries to tell me that this is not a serious matter because it has been given enough attention. The number one threat to even national security today is drought. Farmers are losing their livestock.

I am speaking with a lot of pain because even in my own county, permanent rivers where animals used to drink from have dried up. People in my county have to travel for 70 kilometres with their animals to get water; then one wants to tell me that this is an idle matter that we can trivialize. I want to reiterate that even if it means abolishing 50 other parastatals and strengthening this one, I will advocate for that kind of intervention. When I say so, I am not just speaking for the people of Tharaka-Nithi County, but for nearly three quarters of the counties of this country.

Mr. Temporary Speaker, Sir, lastly, the Senator for Trans Nzoia has talked about the inclusion of climate change and environment issues. We are jumbling issues. Drought management is about actually food security and making sure that our livestock and crop yields are able to be sustained with or without precipitation. So, do not mix issues. Climate change is already a very complex issue, which has to do with the control of carbon and greenhouse gases which we have no control over. So, if you bring the issue of climate change here, which is a separate and complex scientific phenomenon, you are jumbling up issues.

I would rather we have climate change as a different issue, because we are talking about things like environmental modification techniques; very sophisticated science. That is part of the solutions that might be found when looking at the climate change from that perspective. Some countries even create their own rainfall. This is called environmental modification techniques, where you just use nitrogen to strike the clouds and then rain will come down, which is not very different from rainmaking. The only difference is that you use science instead of magic.

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

The Temporary Speaker (Sen. Murkomen): You do not have the microphone. Please proceed.

Sen. Ndiema: On point of order, Mr. Temporary Speaker, Sir. Is it in order for the Senator for Tharaka -Nithi to imply that issues of climate change have no relation and should not be tackled together with issues of drought?

The Temporary Speaker (Sen. Murkomen): He is already out of the Dispatch Box but also that is his point of argument, which was counter to your point of argument, so it is not an issue that is really out of order because that is a question of research and perspectives. You have made your point and he has also made his. I think what you are saying is arguable. You no longer have the Floor.

What is out of order, Sen. (Prof.) Kindiki?

The Senate Majority Leader (Sen. (Prof) Kindiki): On point of order, Mr. Temporary Speaker, Sir, I know that I am *functus officio* otherwise I would have been prepared to educate my brother, the former Principal Immigration Officer. These are things that I taught in the university for more than a decade and I know what I am saying.

I seek your direction in terms of the remaining two Orders. As you have directed, we have The Mining Bill (National Assembly Bill No.8 of 2014) Order No. 13 and the Report on the Standing Committee on Finance, Commerce and Budget. I wanted to seek your indulgence for one minute, if you allow me, because it appears that we may not do statements today but there is one short Statement which will not take more than two minutes, which is very critical, which is the Statement on business for the coming week. It is important because we are going on recess next week and tomorrow, we are not sitting because of the Joint Sitting which will be addressed by the President. I kindly request you to allow me two minutes to go through the Statement on the business for next week.

The Temporary Speaker (Murkomen): The Senate Majority Leader, that is important but we are not yet done with the Bill. You have just finished moving.

The Senate Majority Leader (Sen. (Prof) Kindiki): Mr. Temporary Speaker, Sir, I forgot to raise a similarly important point of order, maybe I should have come early. Given the numbers that we have, I rise under Standing Order No.54 (3) to request the Speaker to defer the putting of the question on the Second Reading of this Bill until such a time as the Chair may direct.

The Temporary Speaker (Murkomen): The Senate Majority Leader has made an important point as the tradition has been. This Bill will be voted on in the next sitting when we have the requisite number. I grant his point of order and also grant the initial point of order in terms of tabling the business of the House if he may do so in two minutes as proposed.

Proceed.

(Putting of the Question on the Bill deferred)

STATEMENT

BUSINESS OF THE WEEK COMMENCING
TUESDAY 31ST MARCH, 2015

The Senate Majority Leader (Sen. (Prof) Kindiki): Mr. Temporary Speaker, Sir, this is the Statement regarding the Business of the Senate for next week. I want to start by saying that the Business of next week will be interrupted or conditioned by the activity taking place tomorrow at 2.30 p.m.

As hon. Senators would know, His Excellency the President Hon. Uhuru Kenyatta will address the Joint Sitting of Parliament tomorrow Thursday 26th March, 2015 at 2.30 p.m. That is the reason we are giving the Business of the week earlier because we will not have Statements tomorrow.

On Tuesday, 31st of March, 2015 at 12.00 o'clock, the Rules and Business Committee (RBC) will meet and schedule business for the week but also in accordance with the Standing Orders, the Senate is expected to commence debate on the Presidential Address for a period not exceeding three days.

So, because of that requirement, we will commence debate on the Presidential Address on Tuesday morning and that will continue to Tuesday afternoon which, according to the Standing Orders, I understand should be considered as the second day; and Wednesday morning.

On Wednesday afternoon, which will be on 1st April, 2015, the Senate will continue with business which will not be concluded today, giving priority to Bills that are going to go to the Committee of the Whole, especially Bills that have constitutional deadlines; namely The Environmental Management and Co-ordination (Amendment) Bill, The Public Service (Values And Principles) Bill and the expected Public Audit Bill.

Mr. Temporary Speaker, Sir, on Thursday, 2nd April, 2015, the Senate is expected, subject to the direction of the Rules and Business Committee (RBC), to debate various Bills that are on Second Reading or Committee of the Whole, including Bills that have constitutional deadlines that will not be discussed or that will not have been concluded as well as other Bills that have come from the National Assembly but have been with this Senate for a long time. I want to point out two Bills, the Mining Bill and the Drought Management Authority Bill, which we have had for a while. It is hoped that we can finish those Bills on Thursday.

Finally, Mr. Temporary Speaker, Sir, as hon. Senators may be aware, our Senate Calendar – which we adopted at the beginning of this Session – requires that we proceed on recess next week on Thursday, 2nd April, 2015. I will, therefore, be moving an Adjournment Motion at the conclusion of business on that day and, for that reason, especially given that we have a number of Bills with constitutional deadlines and other Bills that have come from the National Assembly and have been with us for a long time, I want to appeal to Senators to be present so that we can conclude that business and proceed on our recess as per schedule. This is important so that we do not interfere with other planned activities of Committees. Our Calendar is normally aligned even to the Calendar of the National Assembly and county assemblies countrywide.

Mr. Temporary Speaker, Sir, with those remarks, I now beg to table this Statement on the Table of the Senate.

Thank you, Mr. Temporary Speaker, Sir.

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

PROCEDURAL MOTION

ELECTION OF SENATOR TO PRESIDE OVER THE HOUSE PURSUANT TO STANDING ORDER NO.18 AND ARTICLE 107(1)(C) OF THE CONSTITUTION

Sen. Keter: Thank you, Mr. Temporary Speaker, Sir. I stand on a point of order pursuant to Standing Order No.18 and Article 107(1)(c) of the Constitution of Kenya that Sen. Stephen Sang be elected to preside over the sitting of the Senate for the remainder of the sitting today, 25th March, 2015.

I say so because the next agenda is the Mining Bill, which is very crucial. Knowing that you also represent a county called Elgeyo-Marakwet, which is very vital, I know your input in terms of presentation on that Bill is very important. I am not saying that Sen. Sang's presentation is not important, but having been there for a long time and I am not seeing any of your colleagues here, I am just appealing to the House to elect Sen. Sang to stand in for the remainder of today's sitting.

I beg to request Sen. Elachi to second me.

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Speaker, Sir. I had risen on a point of order because I could not see Sen. Sang, but I have seen him walking into the Chamber. So, my point of order has been overtaken by events.

The Temporary Speaker (Sen. Murkomen): Okay.

Sen. Elachi Seconded.

(Question proposed)

(Question put and agreed to)

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

COMMUNICATION FROM THE CHAIR

DEFERMENT OF THE REPORT ON THE STATUS OF FINANCIAL ALLOCATION TO COUNTIES BY THE CRA

The Temporary Speaker (Sen. Murkomen): Before the Senate Majority Leader can move, I have a communication to make. Initially, the Speaker had ruled that we must conclude business on the Order Paper, Order Nos.11 and 13, which is the Report of the

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Standing Committee of Finance, Commerce and Budget. At this juncture after consultation with Members of the Committee, they have requested that considering the seriousness of this matter, the Chair of the Committee will be here to move that Motion and a few Members of the Committee will make contributions to it. Considering that also the person who had requested for the Statement, Sen. Hassan, is not available, I propose that the business be deferred to a day that will be designated by the Rules and Business Committee (RBC) and the Speaker. Therefore, for now we cannot proceed to that order. Once the next Order, which is the Mining Bill, is done, then the House will stand adjourned.

Second Reading

THE MINING BILL (NATIONAL ASSEMBLY BILL
NO. 8 OF 2014)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Temporary Speaker, Sir. I beg to move that The Mining Bill (National Assembly Bill No. 8 of 2014), be read a Second Time.

Mr. Temporary Speaker, Sir, Kenya has been governed for a long time by a mining law that has been in existence for nearly 70 years. It is in connection with that that this Bill intends to replace the law that has applied in this country for so many decades; a law that has been overtaken by events and has become nearly obsolete; the Mining Act, Cap. 306. It is for that reason that The Mining Bill, 2014 also intends not only to replace the Mining Act, Cap. 306, but also to consolidate laws relating to mining which were scattered in two other Bills, including the Trading in Unwrought Precious Metals Act, Cap. 309 and the Diamond Industry Protection Act, Cap. 310. Other than modernizing and consolidating mining laws, this Bill seeks to give effect to a number of key provisions of the Constitution of Kenya. These include; one, Article 60 of the Constitution, which provides for principles of National Land Policy.

Two 2, Article 62(1)(f) which in its definition of public land includes minerals and mineral oils. Three, Article 66(2) enjoins Parliament to enact legislation dealing with investments in property for the benefit of local communities and their economies. Four, Article 69 of the Constitution obligates the state to adopt or take into account the following principles and environmental and natural resource protection and management. There is the principle of public participation, the principle of environmental impact assessment, environmental audit and environmental monitoring.

There is also the principle of utilization of environmental and natural resources for the benefit of the people of Kenya. With regard to clauses 5 and 6, this Mining Bill gives effect to Article 71 of the Constitution which enjoins Parliament to enact a law to ensure that all transactions regarding natural resource exploitation are ratified by Parliament. Very quickly, this Bill has a number of clauses. I will highlight just a few because I believe that hon. Senators had an occasion to study and scrutinise this Bill.

With regard to ownership of minerals, this Bill does not move away from tradition and international best standards. We know that all over the world, minerals are the

common wealth of a nation and are invested in the state. Therefore, in Clause 6, this Bill provides that every mineral, as long as it is in its natural state, whether found on land, under land, in water or under water, whether in a lake, a river or a stream, whether found in the exclusive economic zone or the territorial waters of the state, all minerals wherever found, whether in water, Exclusive Economic Zone (EEZ) or territorial sea are the property of the Republic of Kenya and they are vested in the national Government in trust for the people of Kenya. The operating phrase is that the Government of Kenya is vested with minerals in trust for the people of Kenya.

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

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

Mr. Temporary Speaker, Sir, I say so because in the past, natural resources vested in the state have not been regarded as property in trust. They have been regarded as personal property of state officials and, therefore, this Bill tries to move away from that paradigm. Any person who discovers minerals where there is no apparent holder of a mineral right or any land which is not held by the person who has made the discovery must report the discovery to the Cabinet Secretary. There are a number of general provisions. For example, Clause 10 deals with searching, prospecting and mining. It says:-

“There will be no such prospecting or mining without a permit or a licence.”

The difference is that a licence applies to large scale operations while a permit applies to small scale or artisanal mining operations.

Section 11 says:-

“Mineral rights may not be granted to a person of unsound mind, under 18 years or who is an undischarged bankrupt.”

You cannot give a licence or permit to mine to a child or a man who is insane unless it is the man in the story in the case of *Banks versus Good Fellow* which we used to read in the Law of Succession, where some mad man would temporarily become sane. I think that is an avenue worth looking at because sometimes I am told human beings suffer from two conditions; temporary insanity where somebody is sane but temporarily becomes insane. However, there is a reverse condition called temporary sanity, the case of *Banks versus Good Fellow*. That was on a light note.

The person to be given mineral rights must also have the required technical capacity, expertise, experience and financial resources to do mining operations. In the past, we have seen so many briefcase mining companies granted licenses. These people do not have offices, address, engineer, geologist, money or a bank account and then you see somebody possessing 10 or 20 mineral rights. When the Jubilee Coalition Government took power, one of the things the President did was to establish a task force which was chaired by my distinguished Senior Counsel, Mohammed Nyaoga, whom we approved in this House recently to also chair the Commission of Inquiry on the situation in Makueni.

The purpose of that task force was to look at licenses that were given especially towards the last general elections. We are told that some as many as 15 licenses were given to one person who has no office, account, money, fixed abode or a single geologist. Therefore, this Bill is trying to do away with briefcase beneficiaries of mineral rights.

Mr. Temporary Speaker, Sir, in the interest of time, I will highlight the issue of the administration. The Cabinet Secretary (CS) has been given powers to administer the issue of general administration of this Act. In doing so, the CS is required, first of all, to ensure he or she is acting in accordance with Article 201 of the Constitution. It is in regard to the principles of public finance on openness and accountability, so that you do not use this to collect royalties, fees and charges which you are not accountable for. We have seen how the infamous Goldenberg case misused this royalty system to the detriment of the economy in the 1990s.

The CS also, in administering this Act, has the power to make rules relating to how applications for mineral rights will be considered and the issue of negotiations, grant, revocation, suspension or renewal of mineral rights. Under Clause 16:-

“The CS may advise or seek the approval of the Cabinet to declare certain minerals as strategic minerals.” There are certain minerals that require a special regime and they are called strategic minerals. He has that power to declare certain minerals as strategic minerals but through the approval of the Cabinet.

Clause 17 establishes the Directorate of Mines and the Directorate of Geological Survey at the Ministry headquarters. They must make sure that these directorates are not only filled at the headquarters, but they should have offices in every county to make sure that the people of Kenya have reasonable access to the services they render.

Mr. Temporary Speaker, Sir, I want to rush to a number of mining institutions and bodies that have been established. The first one is the National Mining Corporation which has been established in Section 24 as the investment arm of the national Government in terms of minerals. Its purpose is to engage in mineral prospecting and mining and also to invest on behalf of the national Government. This provision has been borrowed from international best practice; South Africa, United States of America, Canada, Australia, China, Indonesia *et cetera*. These countries have companies that deal with mining so that as you license and permit the private sector, whether Kenyans or foreigners, to prospect and do mining, you have a State Corporation that is also doing mineral prospecting and using the proceeds of that business to invest. That is one way of making sure that the wealth that is found in minerals is protected and harnessed for present and future generations.

The other institution that is established under the Bill is the Mineral and Metals Commodity Exchange. The purpose of this institution is to facilitate efficiency and security in mineral trade.

Thirdly, there is the Mineral Rights Board which is a very important Board because it has the function of advising and recommending to the Cabinet Secretary, grant, rejection, retention, renewal, suspension, variation, assignment, trading, tendering or transfer of mineral rights agreements.

These are very extensive powers. This is so that these issues are not dealt by one person in the name of the Cabinet Secretary, but there is Mineral Rights Board to

consider those kinds of agreements. The Mineral Rights Board will also advise on areas that are suitable for small scale and artisanal mining and areas which mining operations may be restricted or excluded. It may also declare certain minerals as strategic minerals and may also advise on fees, charges and royalties that are payable.

Finally, I want to talk about general provisions in this Bill such as the various categories of mineral rights from Clause 40 downwards. We have two major categories; large scale operations and small scale operations. The large scale operations in terms of mineral rights include reconnaissance licenses, prospecting licenses, retention licenses and mining licenses. For small scale operations you have prospecting permit and mining permit.

Mr. Temporary Speaker, Sir, there are very many other technical and very extensive provisions on what happens in light of each and every of those categories that I have highlighted. But allow me to highlight two other things before I end my remarks. The first one is that mineral rights under the new Bill will not be granted without conditions as has been the case before where you are given a block to prospect for a certain mineral and then that is it. There are certain conditions, if you look at Clause 42 of the Bill which may be imposed including conditions that you must protect the environment because we have seen how mineral exploration has turned some places on this earth into hell on earth. The Niger Delta is a glaring example of how exploration of mineral oil has become a huge curse for the people of the Niger Delta despite those communities being the host and, therefore, supposed to be the beneficiaries of that wealth.

There might be conditions regarding the safety of prospecting and mining operations. We have seen people collapse and buried alive in mines. So, the grant of those permits and licenses must be subjected to health and safety conditions. But also very important is the issue of conditioning the maximum number of blocks per person or company, so that we do not have one prospector carrying all the licenses or a cartel of two or three prospectors, carrying licenses and yet, they do not have the technical capacity, the financial capability or the wherewithal to even prospect and do the mining itself. So, there might be conditions on how many blocks for exploration one can be licensed to do.

Mr. Temporary Speaker, Sir, under Clause 45, the beneficiaries of mineral rights must also have registered offices, once again to avoid briefcases. This is one area which has been abused. I said that I was concluding, but just allow me to highlight one last thing that I think is important; the requirement or rather the recognition in this Bill of small-scale artisanal mining operations, especially those that have been going on customarily. In spite of the fact that any mineral, wherever found belongs to the state, the national Government, in trust of the people, there is nothing in this Bill that makes it illegal. In fact, it says:-

“Nothing prevents the taking of soil, clay iron, salt or soda from any land except land subject to a mining right from which it has been the custom of the members of the community to which that persons belongs”

In other words, there are things that are customarily done. Some kind of small scale and customary mining activities are not affected by the operation of this Bill. As I

have said, this is a very technical and detailed Bill. I have given an overview and believe that as we continue with debate, we will see how this Bill can be improved. It is timely; it is one of those Bills that made this Senate unanimously resolve to go to court if it was not brought here. This is because we believed and still believe that mining is so critical to the prosperity of our counties that there is no other Bill that relates to counties more than the Mining Bill.

Mr. Temporary Speaker, Sir, you remember the Senate Majority Leader – at the risk of blowing my own trumpet – stood as firm as a rock and said that on this Bill, we would demand that it be brought here to the Senate. We are very happy that it was brought here. That is now history behind us. However, we need to process this and have input that will validate the reason that we gave, which is that, this is a Bill concerning counties and we need to protect the interest of counties by ensuring that this Bill is enriched.

Mr. Temporary Speaker, Sir, with those few remarks, I beg that The Mining Bill (National Assembly Bill No. 8 of 2014) be read a Second Time, and I request the Senate Deputy Majority Leader, the Senator for Kericho County, Sen. Keter, to second.

Sen. Keter: Mr. Temporary Speaker, Sir, from the outset, I want to congratulate you for having been elected to Chair the remaining session this afternoon. It is not an easy job so you deserve all the congratulations.

The Temporary Speaker (Sen. Sang): Sen. Keter, you have never acted in this position, I am not sure how you know that it is not an easy job.

(Laughter)

Sen. Keter: I appreciate that I have never acted in that position but I saw the way you were sweating while trying to adjust. It is not a small seat.

Mr. Temporary Speaker, Sir, in seconding this Bill, I want to say that it is a very important Bill. This is the Bill which the Mover has explained that over 70 years we have been having different legislations governing the mining industry. Therefore, the repeal of the legislation to provide a framework to manage mineral resources is very important. I say so because Kenya is endowed with many mineral resources but the way they are managed is not to the benefit of Kenyans. We have had many companies in Kenya like Tiomin Resources Company mining titanium in Kwale for many years. There have been issues there. We have also seen companies coming to explore on rare earth and other minerals. All these are very important. They are multi-national companies from Australia and Canada which are involved in exploration of minerals. The activities of these companies are not monitored at all. The management of the mineral resources were falling under hydrocarbons or the petroleum products which is under the energy sector. Oil exploration falls under the Energy Act but hydrocarbons like the geothermal exploration also fall under the Energy Act. So to have this confined to specific mineral is very good.

Mr. Temporary Speaker, Sir, the Bill is quite detailed and it covers all the areas. We also have mining institutions and bodies under Clause 22. This establishes a National Mining Corporation. This has been done in hydrocarbons and the petroleum industry

where we have some parastatals which are Government owned. The establishment of the National Mining Corporation has many issues which mandates the body on what to do. It gives a wider picture of how these resources can be managed. In Clause 22(2), it says that the corporation shall be a body corporate with perpetual success and a common seal. It is given all the five items and I hope Senators have gone through it. This Bill also went through public participation and I believe the public had an input.

Mr. Temporary Speaker, Sir, of concern is the Government participation. In most areas, the Government only gives licences but it does not follow up or become involved. This Bill has provided a 10 per cent free carrier in the share capital. That is confined to large-scale mining. If there is a specific carrier, for example, with the rare earth, which is worth billions of shillings, the Government will have a share without the cost of 10 percent. This is good to the revenue of this country. If one will have 10 per cent free carrier, it will go into assisting our Exchequer. This has been elaborated under Clause 48 and says where a mineral right is for a large scale mining, the state shall acquire 10 per cent free carrier interest in the share capital in respect of which financial contribution shall not be paid for by the state.

There is also the local equity participation and this is very important. I had mentioned earlier that most of the companies doing exploration are multinationals. Once they are given a licence, they go to the London Stock Exchange, New York Stock Exchange or the Hong Kong Stock Exchange and float their shares. They list their shares there and get money without even spending their resources. Clause 49 of this Bill states that the Cabinet Secretary should prescribe the limits of capital expenditure on local equity participation. Of more importance is Clause 49(2) which says:-

“A holder of a mining license whose planned capital expenditure exceeds the prescribed amount shall lease at least 20 per cent of its equity on a local stock exchange within four years after commencement of production.”

That means that all the companies will be mandated to list, at least 20 per cent, in the Nairobi Securities Exchange (NSE) unlike in the past where they could get licenses, get into the flights to various countries and offload their shares in the London Stock Exchange. This will be beneficial to our country in terms of growing our economy. I say so because we have seen how management of mineral resources has been done in other countries like Australia and Canada. In their budgets, a lot of resources are got from the minerals. However, in Kenya, we have done nothing. There is nothing we get from resources apart from providing licenses to people to move around without knowing what they are doing.

Countries like Zimbabwe, despite all the problems and sanctions, they have survived because of minerals. They export a lot of minerals which they use to fund their development budget and expenditure. So, as a country, if we manage resources very well, we will grow our (Gross Domestic Product) GDP by a double digit as soon as it is expected.

Another issue which this Bill captures is employment and training of Kenyans. This is an expertise field. We have companies that will come with their expertise. The experts will do the exploration. Without proper training to Kenyans, jobs which will remain are the smalltime jobs which are manual. However, the Bill provides very clear

instructions that anybody who will be given a licence must provide a way on how to engage in employment and training. That is the first requirement which has never happened even in hydrocarbons and petroleum industries. You will find that the people who do exploration are not from Kenya. Even if they pump in about Kshs1 billion, that is just an example, out of that, 80 per cent goes to them. However, Clause 46 of this Bill is very clear and it states:

“The holder of a mineral right shall give preference in employment to citizens of Kenya.”

This is very clear unlike other Bills which we have seen. So, this Bill will ensure that Kenyans will acquire skills and be employed in the complex business of minerals. So, we need to support this Bill.

It is very elaborate and touches on all areas. It has an exit clause for those who will not perform and dispute resolution mechanism, in case of a dispute arising from how to share capital among even the locals or the Government. Everything has been explained in this Bill.

It also covers very well the health and environment impact factors, which the previous laws did not capture. For example, the people who live in the area where titanium is mined can complain if they encounter problems. So, the Bill really captures all those issues and I want to urge this House to support it 100 per cent.

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

(Question proposed)

Sen. Murkomen: Thank you, Mr. Temporary Speaker, Sir, for giving me time to contribute. I would like to sincerely congratulate you for being elected for the first time to preside over the business of this House. You are competent to handle this business and I can only say that your future dreams are valid. It can only open better opportunities for you.

Mr. Temporary Speaker, Sir, this Bill is very impressive even from the manner in which it is being presented. It is very detailed and technical, as the Senate Majority Leader who moved it indicated. I must also laud the contributions of the Deputy Majority Leader who actually looks extremely competent on matters of energy. Maybe it says something about his past experience as an Assistant Minister in the Ministry of Energy. He has dealt with the technical issues. As a lawyer, I will just focus on some of the things that I think are salient in terms of the management of our resources.

It is important to realize, like Sen. Keter has pointed out, that whereas oil can be classified in proper English as minerals, this Bill excludes, in its definition, matters related to petroleum, hydrocarbons and water, because water can also be a very precious mineral. Therefore, it gives us the chance to continue with the other Bills also which deal with petroleum and water laws that are already in place in this country. So, this Bill is confining itself to issues that are related to just the minerals.

I have a lot of interest on matters of minerals. It may interest you if I let you know that my father is a dealer in matters of gold. In my youthful years I used to buy gold from small artisans---

The Temporary Speaker (Sen. Sang): Senator, you have been quoted in this House and out of this House severally, indicating that you are a son of a pastor.

Sen. Murkomen: Mr. Temporary Speaker, Sir, my father in his evangelism, like Paul in the Bible, also engages himself in other responsibilities. Paul used to make tents and preach the gospel at the same time. So, one of the things that my father used to do on the side is actually to buy gold from small miners in the famous River Embobut. When I was barely 15 years old, I also used to buy gold on his behalf. Therefore, I have a lot of interest in issues of regulation and licensing to small artisans.

It is not said but if you go to North Rift, especially West Pokot, you will find there are a lot of deposits of gold, gypsum and cement. If you go to Elgeyo-Marakwet, you will find gold and many other undiscovered precious stones in a place called Koitilial in Marakwet West. We have other very important and wonderful minerals that are yet to be explored. So, that could be the same for many counties.

Therefore, it is important to have a legal regime or system that provides institutions that are going to manage issues of minerals in a very organized manner. That is why I have been impressed by Clause 17, which institutionalizes the Directorate of Mines and Directorate of Geological survey. It also provides its functioning and an institutional frame work for the directorate to promote management of mineral resources; to assist the country in matters of regulation and ensure that there is compliance with conditions that are provided for, and related to mineral rights. This becomes like the overall institution that is working together with other institutions that I will mention shortly, that are dealing with regulation and administration of matters of minerals.

As a country, we are moving from an agricultural country to matters of minerals. We need to open up that potential and take advantage in terms of building our economy by exploring and making use of the minerals. The functions of Directorate of Geology are also enunciated in this Clause 21 and making it very clear that they will do a lot of geological analysis and valuations.

Mr. Temporary Speaker, Sir, I hope to deal with matters of monitoring seismic activities and mapping of various potential geo-hazards. We need these institutions to be in place and to be accountable. If you travel along the Rift Valley, you will find that the rivers and the lakes are swelling. For example, Lake Nakuru has swallowed a number of hotels, roads and the trees within the National Park. If you fly over Lake Naivasha and Lake Nakuru as I often do, you will find that the flamingoes that were usually around that place have migrated because of the swelling of the rivers.

Many hotels were swallowed by Lake Baringo and Lake Bogoria, and many people displaced. We need this Department of Geology to advice the country about geo-hazards because the explanations we get are scanty. We have never debated properly and got an institution that tells the nation what exactly is going on along the Rift Valley. There was a time we experienced tremors and earthquakes. Prophets have taken the credit to be the ones who have prophesied but we need scientific explanations on the issues happening in those areas.

Clause 22 provides and establishes the National Mining Corporation, as State Corporation that deals with matters that are very important for the management of engaging the mineral prospecting and mining and invest on behalf of national

Government. If you saw the areas that were highlighted by Sen. Keter, about the Government having a 10 per cent share in large mining, we now have institutional framework on how to invest in those areas and how the Government can hold shares in companies that are listed not just in the Kenyan Stock Exchange but also London, New York and Singapore Stock Exchange.

Therefore, we have an institutional framework that ensures that revenue that is going to be received is properly managed and utilized. They invest on behalf of the national Government and acquire agreements for exploration and protection of mines. There is also a very critical institution.

Apart from the National Mining Corporation, you also have a very critical institution called the Mineral Rights Board, which is in Clause 40. This body is very useful and its composition includes the Chairperson of the National Lands Commission (NLC) and the Director of Mines. The body is inter-Ministerial and inter-Governmental and even the Director of Geological Surveys and the Director of Mines sit there. This ensures that you bring together all these actors and players in matters of mining in a board that will ensure that the board will not be doing business. This board is basically a regulatory board which deals with grants, rejection, retention, renewal, suspension, revocation, variation, assignment, trading, tendering or transfer of mineral rights agreements. It deals with areas to allow suitable small scale and artisan mining.

I really look forward to the formation of this corporation so that my people in Elgeyo-Marakwet and Embobut specifically can start applying for licences to continue exploring. But also at the same time, if you have seen how mineral exploration and mining is done, particularly for gold, if you walk along the beautiful River Embobut or River Aro'rr, you will find that it has a lot of holes which can be hazardous to people who are operating along that river, to animals which are going to drink water there and it can also be destructive and waste the water that is supposed to be used downstream.

So, Mr. Temporary Speaker, Sir, it is important that there is such an institution so that we have regulations and licenses granted; this will also ensure that there are certain conditions which are given to the small scale and artisanal miners so that, then, the national Government can earn revenue from them. At the moment, the greatest benefit from these people is that although they get a little bit of money here, with one person getting Kshs5,000 or Kshs10,000 in two or three months in the high seasons; mining in my area comes in seasons. Therefore, it is important that a little bit of it is given to the State so that it can serve our country.

Mr. Temporary Speaker, Sir, this law is very useful because it categorizes mineral rights. There are licences which are provided for large scale operations, for the small scale operations; you have reconnaissance licence, prospective licence, retention licence and mining licence. We also have prospecting permits for small scale holders and mining permits. This is good because we do not want every Tom, Dick and Harry just accessing our resources without proper licensing and conditions that are required. This law, therefore, provides the manner in which to deal with all these issues.

Mr. Temporary Speaker, Sir, if you look at this law, it is very scanty in terms of compensating local communities where the minerals are received. This law is not outlining exactly what benefits are going to accrue to the local community, which is

good, because we have another law that was moved by this House after being proposed by a Committee which is headed by Sen. (Dr.) Zani.

You and I sat in that Committee, including many other Senators. It is important that these laws are married together because you will remember that we went to Turkana, Elgeyo-Marakwet, Kwale and many other counties. It is important for that law to be interlinked in the long run. Even if the two laws are passed separately, in the long run, we must bring back amendments to this House to interlink the two laws so that then, you have clear provisions as to how our local communities will benefit if they discover certain minerals in a particular area. This amendment will also specify how then these resources – which are national resources – shall benefit the counties through the Division of Revenue Bill or whether there are certain percentages that are going to be left to specifically benefit counties.

The other good provisions in this law are the provisions of Part 11, among others, dealing with the environment, recognizing that sometimes, mining can be very hazardous and can pollute the environment and these provisions aim at protecting that environment, water rights and other rights. I have just given an example of land use in my area and I said that we need to ensure that the land use laws are protected and provided for; we need to ensure that the environment is not polluted or messed up and that the people are not affected, health-wise, basically as a result of mining that is not considerate.

This Bill is so detailed and I hope the relevant Committee - which I suppose is either the Committee on Lands and Natural Resources or the Committee on Energy - has looked at this Bill so that when we move to the Committee Stage, they can lead us in whatever amendments which are necessary from a detailed perspective so that all of us can benefit from the expertise of a Committee of this House which will enable us as we look at whatever amendments. Be it as it may, considering that this Bill was not drafted by just one person; it has gone through various processes of public participation, thoughts of experts on matters of minerals and mining were included, I think we can trust them to have suggested a very good Bill and it is important to benefit from our Committees.

With all those many remarks, I am proud to have contributed to this Bill and to have sat here on the Second Reading of the Bill. I would encourage our Members on the other side - because I can see that their activeness and participation in this Bill is very scanty - that in future, they must not deny the Minority side an opportunity to also speak to important Bills in this House so that we do not just sit in this House, shout at each other, make noise and unwarranted allegations. The Senate Minority Leader who unfortunately did not sit---

The Temporary Speaker (Sen. Sang): Proceed, Sen. Chelule.

Sen. Chelule: Thank you, Mr. Speaker, Sir, for giving me this time to also contribute to and support the Mining Bill. I am happy that this Bill has been debated by very powerful debaters in this House. It is a very detailed Bill which came through a Committee that I sit in. I have gone through it exhaustively and two reasons as to why I support this Bill is because it speaks about the criteria on how mining activities are supposed to be undertaken in our country. Unlike those other days where people could be given permits or certificates to continue mining even if they were not known where they came from.

This Bill also speaks about the sharing of resources between the three levels of Government. One thing about this Bill that makes me happy is consideration of the community. In this Bill, the community is considered in that communities are not going to be taken by surprise whenever there is an issue on mining or when mining activities are taking place in a particular area. The communities will be sensitized and get to know who is coming to do what and what percentage they shall get as a community.

The other reason I support this Bill is because it defines a community. Many times we have not known what a community is but in this Bill, the community is specified and it will be understood as the host community, especially those who are hosting international companies in their various areas. It is also a Bill that I believe will keep the communities in the know; that the communities will not be in darkness whenever there is a certain mineral in their areas. For example, Nakuru where we have several minerals yet the communities are not aware. In this Bill, everything has been mentioned, specified and provided for. It also mentions about sharing of royalties, that 60 per cent will go to the national Government.

Sen. Murkomen: On a point of order, Mr. Temporary Speaker, Sir. Is it in order for my sister to mislead this House that this Bill is listing the minerals in Nakuru County when it is generally about mining and does not give any specifications?

Sen. Chelule: Mr. Temporary Speaker, Sir, I did not want to mention Nakuru County only. I was only giving Nakuru County as an example. This Bill speaks about the whole country. I was mentioning Nakuru County so that I refer to a certain mineral. I come from that county but I am not talking about Nakuru County. I am talking about Kenya as a whole.

The Temporary Speaker (Sen. Sang): Sen. Murkomen, Sen. Chelule has talked about some of the minerals that are found in Nakuru. The Bill stipulates the various types of minerals as it were. I believe that Sen. Chelule was alluding to the minerals that are found within her county. Her entire list did not necessarily relay minerals that are found in Nakuru. Therefore, she is perfectly in order. Sen. Murkomen is completely out of order.

Sen. Chelule: Thank you for saving me from that situation. With those few remarks, I beg to support the Bill.

Sen. Karaba: Thank you, Mr. Temporary Speaker, Sir. Let me also join my colleagues, Senators, in congratulating you for “being” what you are on that Chair. I know the seat is hot. However, it may have cooled a bit in the evening when all is said and done.

The Temporary Speaker (Sen. Sang): Sen. Karaba, I am the Temporary Speaker. There is nothing like what I am on the seat. Could you properly address me?

Sen. Karaba: Mr. Temporary Speaker, Sir, I am happy that you have given me a chance to contribute towards this Bill. The Bill is good. The Bill comes at a time when very many counties are out to come up with various forms of discoveries and prospection in various minerals. This will be captured in another Bill which will be coming later concerning the establishment of Independent Commission on County Boundaries by Sen. Mutula Kilonzo Jnr. Therefore, all these Bills are coming at a time when many counties want to own their land; they want to be seen as if they own minerals. Some minerals have been discovered and have already been exploited.

You may also have realised that there has been a craze of mineral prospection and discoveries and people wanting to own minerals in their counties. They seem to be very pertinent that the moment they discover some minerals, they go ahead to ensure that the area is surveyed. They also put a claim to such land so that they are heavily compensated by mineral owners.

Minerals are natural resources. The moment they are exploited, a lot of money is accrued by either the county or the country. However, going by what we know and the benefits we have got from various discoveries, for instance, Magadi Soda which is found in Magadi made it possible to have a railway line to be built from Konza to Magadi Town. The construction was done by a foreign company, Imperial Chemical Limited (ICL). That railway line has benefitted not only Magadi and Konza towns but also people living along the railway line. This is just because of the mineral trona which is refined to become salt and other associated chemical industries. These minerals are associated with the presence of the lake. We are discussing like we are trying to embark on minerals which, otherwise, have not been known to be there before. The moment they are found, you can see the benefits accruing to the people living along the riverine or the same areas where such minerals are found.

We are yet to get the Lamu Port-South Sudan-Ethiopia-Transport (LAPSSET) corridor starting from Lamu and this one has attracted a lot of attention. The Lamu Port is coming up just because it is going to be used to export quite a number of minerals coming all the way from Turkana, South Sudan and southern Ethiopia. The railway and the pipeline to be constructed is a clear indication that the country is moving in the right direction. The moment that infrastructure is developed, we are going to see a lot of Kenyans employed in the Lamu for construction works in the port and also to put up the railway line and so on.

Mr. Temporary Speaker, Sir, here, we are to discuss Kenya as a country which has of late become a mineral rich country just like South Africa which is known internationally as a mineral storehouse. So, we can also equate our Kenyan discoveries of what we are doing to a storehouse in East Africa. That will bring to a lot of contribution particularly towards the urbanization, employment, infrastructural construction like railways, roads and pipelines. We need to think about this development aspect.

You note that a lot of other minerals have been known to be in a raw state and the moment these minerals are refined; smelted like copper or refined like gold in Macalder and Migori, they are exported to international markets where they fetch a lot of money. This will earn revenue and also foreign exchange to the country. This can also be translated to mean that the same money can be used to develop other things. This is what we are trying to envisage because we are trying to compare Kenya with other countries which have been mineral rich and know the benefits of minerals like are South Africa, Nigeria which produces oil and Germany where there is coal. These countries have benefited a lot from the exploitation of the minerals to a very great extent, to a point where they are said to be industrial rich and in the first or second category in the world. This is what we are all aiming at.

The moment we come to think about the mining – how we can refine, transport and sell overseas – we are also thinking about the expansion of our economy which is

broadly agricultural. However, the moment we include minerals, we are going to have it more diversified and our exports will not only be agricultural but also include hard minerals. That will guarantee our economy to a point where it can be said to be a steady economy. This is what we are looking for.

Mr. Temporary Speaker, Sir, according to what I have seen in the Bill, it has captured all the aspects of production, marketing and ownership including royalties. Some counties will benefit from such exploitation and we have seen it happen in mineral rich counties like Elgeyo-Marakwet where there is fluorspar. If you get to that area, the road from Marigat, if I can remember very well, to Kabarnet all the way to Iten, has made it possible because of exploitation and export of fluorspar.

The Temporary Speaker (Sen. Sang): Order, Sen. Karaba! Did I hear you talk about Keiyo-Marakwet County?

Sen. Karaba: Keiyo, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Sang): It is known as Elgeyo-Marakwet County.

Sen. Karaba: Thank you, Mr. Temporary Speaker, Sir. However there is fluorspar as a mineral in that area.

Therefore, if you wanted to get to know what the actual benefits of that mineral are, you will even see that the road from Iten to Tambach, Kabarnet and then down to Nakuru was made possible because of such mineral deposits which were to be transported before they are exported. Through that, the infrastructure of the place had to be done. A lot of money was used to construct and expand the road. These are some of the benefits we are trying to look for. The moment such benefits accrue, people in those mining areas will benefit.

Mr. Temporary Speaker, Sir, there are other examples like the minerals from Suswa, Mt. Longonot region and those areas that produce gas. We also have the Maasai who are seeking compensation. They have become more aware of their environment because they want to know what benefits they will get from such mineral exploitation. As a result of this, we have very many people who live in such mineral rich areas benefiting from the same. The prospecting companies, whether foreign, will construct other facilities such as hospitals, schools and other social amenities that will affect the people living in those areas. This happens because of the spill-over of the money that is accrued from the sale of those minerals. We are, therefore, supporting a Bill which will earn us a lot of money. That is why I think it is necessary to support this Bill.

I beg to support.

Sen. Elachi: Mr. Temporary Speaker, Sir, I also rise to support the Bill. First of all, I would like to thank the drafters of the Bill for ensuring that indeed the definitions of certain technical terms have been explained in the Bill. For many years, those who have been engaging in mineral prospecting have been complaining about those terms.

The Mining Bill has come at the right time when Kenya is experiencing massive growth within the mining sector. The Bill aims to revoke the existing legislations relating to mining and to establish a new legal framework for management of mineral resources in Kenya. All along, we have depended on the Mining Act of 1940. We also had the Diamond Industry Protection Act and many others. But now we are debating this Mining Bill to come up with a proper Mining Act. Thanks to Sen. (Dr.) Zani who had also

brought the Natural Resources Bill. It is up to this House to ensure that as we look at this Bill, we ensure that we look at the similarities between the two Bills so that we can synthesize them together and come up with one Bill or different Bills for the benefit of this country and for the county governments to ensure that the communities benefit from mining.

Mr. Temporary Speaker, Sir, the Bill also brings in a very interesting article of the Constitution. Article 201(c) says:-

“the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations;”

It goes down to Article 201(d) to say that:-

“public money shall be used in a prudent and responsible way; and--”

I want to give a story of mining in Mwatate in Taita-Taveta. For many years, the community has witnessed private investors come and exploit the minerals that are there and yet the people within that area, always live in poverty. As much as they are proud that they have the natural resources, minerals and mining around them but they do not benefit from these natural resources. In Kwale, we have had to wait for many years for the titanium to be mined. It is after 10 years that the company has been able to export some of it because the communities there could not understand how they had the natural resource that they were blessed abundantly with, yet they could not see its benefit.

Mr. Temporary Speaker, Sir, this is because many private investors had taken advantage. They knew that the community does not understand absolutely anything about mining. Therefore, they just came in and started exploring. Also, even within the mining sector, there was no policy that would compel companies to plough back part of the proceeds to do a school or hospital for the community and educate the community to own what they are doing. Therefore, it ended up with people killing each other and sometimes, even the community was frustrating the whole industry. However, with the new Mining Bill, the communities through public participation will understand who is coming and they are going to work together.

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

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

Mr. Temporary Speaker, Sir, we now have county governments and the Senate which protects counties and their interests. Therefore this Bill is important to everyone, including the Cabinet Secretary. We will have to look at the work of the Cabinet Secretary when considering proposed amendments to the Bill. We also do not want to pass a Bill which again will become an impediment to the county governments; that they cannot question some of the same challenges that they have been facing. We shall, therefore, have to go clause by clause to understand properly the work of the Cabinet Secretary.

You will find that the national Government and the county governments are fighting over the same issues and resources that we are talking about. When you look at the Bill, Clause 20(2) talks about the Director of Mines or a duly authorized officer may

at all reasonable times enter upon any land, licence area, permit area or to any premises for the purposes of inspecting such area, premises or workings.

We are now bringing in the issue of inspection because the employees of these companies have been complaining for years about poor working conditions. In this country, we have very good documents but due to bad practices like corruption this has not been the case. So, this new law will a penalty for non-compliance in order to protect our people. Right now, many Kenyans know that they have a right due to the new Constitution. So, they will come out and complain. Indeed, this Mining Bill has penalties and not just penalties for the director but everybody who has been given a position.

Mr. Temporary Speaker, Sir, we also need to ask ourselves how to ensure that we do not have a conflict between the natural resources law and this Mining Bill. It would be very important to do a comparison so that we can know which ones were left out or which ones need to be merged. In Tanzania, where there is a lot of mining going on, there is a good law that protects the community. That is why the community is able to protect its interests. The communities around the mines are the beneficiaries. If the communities benefit from their resources, they become the watchdogs of the mines and also become friendly to the company that is mining those natural resources.

Mr. Temporary Speaker, Sir, last year, the President of the Democratic Republic of Congo (DRC) came to search for the gold saying that they had been taken by a Kenyan. When you listen to the amount that was at stake, you ask what befell us as a country. When you look at DRC and imagine the war and the poverty there, we would hate to see our country going through the same experience. When I look at Turkana, there are now many explorations going on, but we need to consider the local community and not the owners of the land.

Apparently, Kenyans are so smart because they bought land so cheaply and will want to benefit as the local community. You will realise that is what we have done and will come again to haunt us. Therefore, we should have a law that protects the local *mwanachi*. When your land has been blessed with any mineral, protect it and let people not exploit you. You should listen, understand and be sensitised on a law that will open up your business, remove you from poverty and put you to where every person would wish to be where there is no poverty.

Mr. Temporary Speaker, Sir, this Bill also brings in a Mining Tribunal. When the Mining Tribunal is established, we want to see participation across the board; both at the county government and the national Government level. Therefore, we urge the Cabinet Secretary, as he gets all these powers to ensure that county governments have equal power because some years to come, as much as we are doing all this, we will have to amend some of these laws to suit both levels of government.

Some counties will have moved on because they have resources. For example, Tharaka-Nithi and Elgeyo-Marakwet counties have a lot of minerals. There is the Njemps Community, a small community in Baringo which has rubies mineral but nobody has ever gone there to exploit them. So, in every corner of this country, you will find some resources.

Sen. Sang: On a point of order, Mr. Temporary Speaker, Sir. Is the Senator in order to mislead this House that whereas the contents of the Bill spell out that minerals

belong to the state, she has gone ahead to mention communities like the Njemps and associated them to own certain minerals? Do the rubies in the area occupied by the Njemps belong to the Njemps or do they belong to the state? The Senator seems to be going against the provisions of the Bill itself and even the Constitution by allocating herself with the responsibility of distributing minerals to communities.

Sen. Elachi: Mr. Temporary Speaker, Sir, that is why I said that some years to come we will have to amend the same Acts we are creating because at that time different communities within counties will have realised that they have different minerals which they do not tap. I know that minerals are state controlled. However, we should not forget that. That is why I said that we must make sure that within the law, conflict which may arise is taken care of. I agree with Sen. Sang.

Within counties, we have communities. The communities will claim that they were the indigenous owners of this or that resource. Therefore, when the Government takes away their land, it must compensate them. That is something, especially for the Senate, to think about. That is why the Bill by Sen. (Dr.) Zani ensured that there is public participation so that we could listen to the voices of communities as much as the state claims that it is within the Constitution. We should not forget Article 60 of the Constitution which talks about land issues. There should be public participation so that as much as we say this is for the state, everyone is agreeable to it.

Mr. Temporary Speaker, Sir, as I conclude, I appreciate what the national Government---

(Sen. Elachi spoke off record)

The Temporary Speaker (Sen. Murkomen): Sen. Elachi, your time is up.

Sen. Sang: On a point of order, Mr. Temporary Speaker, Sir. Would I be in order to donate one minute of my time to Sen. Elachi to wind up in a more honourable manner?

The Temporary Speaker (Sen. Murkomen): No problem.

Sen. Elachi: Thank you, Mr. Temporary Speaker, Sir, and Sen. Sang. As I wind up, I thank this Senate for the work that it has done today from morning up to now. We have talked about natural resources and minerals of our country; proceeds that we believe are the future of the generation to come. If we finalise on that, we will have unlocked the precious mines of our people and unlocked the fruits that God gave us. The Bible says that it is only after 50 years within a jubilee season that you can see fruits that you were blessed with.

Thank you, Mr. Temporary Speaker, Sir.

Sen. Sang: Mr. Temporary Speaker, Sir, I rise to support this Bill. From the outset, I want to say that this evening, I am a very excited Senator. Since the first session in the morning, we have been handling Bills that have direct impact on the welfare of our counties. Sometimes, I get demoralised when we come to the House and spend three or four hours on some statements. Then, we spend another two hours on Motions and at the end of the day, we spend very little time on Bills. If you look at the Constitution, you will see that the role of the Senate is to legislate, oversight and protect counties.

Mr. Temporary Speaker, Sir, looking at both the morning and evening Order Papers, there is no doubt in our minds that we have executed our mandate of protecting and serving the interest of counties properly. Mineral resources are some of the greatest valuable resources our country has. For a very long time, as the Mover of this Bill mentioned, we have had several isolated and disjointed legislations relating to minerals and mining. It is important that we are now consolidating them.

Mr. Temporary Speaker, Sir, you will realise that before the passage of the new Constitution, we had various sectors being governed by various legislations. Sometimes, you are unable to coordinate and tell some of the critical legislations and provisions governing those areas. One of them is the area around land. We have done very well in passing some legislation on land that has consolidated a number of the pieces of legislation around land.

Mr. Temporary Speaker, Sir, we are discussing the Mining Bill. This is one of the critical legislations furthering the enhancement of participation by citizens of this country in terms of exploitation of natural resources. Most of the resources are found within counties. We have seen gaps around legislations on minerals that enabled unscrupulous businessmen and individuals to corruptly acquire parcels of land within areas that minerals existed.

Mr. Temporary Speaker, Sir, you will remember the excitement that greeted the discovery of oil in this country. Members of Turkana County were very excited, singing and dancing when it was announced that oil had been discovered in Ngamia 1. Unfortunately and unknown to them, the land had been grabbed and taken three months before the announcement. All of us were wondering how the land grabber realised that oil would be discovered in Ngamia 1 in three months' time. Later, we realised that that information could only be accessed by that particular individual through the confines and discussions within some corners within the Ministry of Foreign Affairs. We cannot tell how some of the individuals who occupied very senior positions within those Ministries got to acquire the land.

Mr. Temporary Speaker, Sir, it was quite unfortunate for a whole community to jump into jubilation, excited and celebrating, only to realise that the land had been grabbed and was, indeed, private land. Being a Christian and knowing that God does not sleep, we are told that somehow the proceeds from that private grabbed land landed in the wrong hands. The very excited unscrupulous businessman lost everything and may have had to resort to other scandals to get back resources, but that is a story for another day.

Mr. Temporary Speaker, Sir, we have gold in Nandi County. There is an investor who has invested in the mining of gold within Nandi. Individuals and communities which live within and around the mining area were persuaded to sell their land, not knowing that it actually had minerals. This individual has fenced the entire area which is almost 300 acres and nobody knows what goes on there or how much gold is mined everyday. The local community always sees a helicopter landing there, picking gold and flying away. Article 64 (2) of the Constitution talks about Parliament enacting legislation to ensure that investment in property in whichever area is able to benefit the local community and their economy. People living around this mining area in Nandi have never benefited in whatever way from the deposits and mining that goes on there. When Members of the

County Assembly (MCAs) of the County Assembly of Nandi who are in the committee in charge of minerals, land and environment tried to visit the area, the proprietor locked them out and said that he was not going to open the place.

The Temporary Speaker (Sen. Murkomen): Sen. Sang, did you mean Article 66 (2)? This is just for the record.

Sen. Sang: Exactly, Mr. Temporary Speaker, Sir. It is Article 66 (2). Thank you for that.

One of the cardinal principles of the new Constitution is transparency. People, especially leaders, should be able to access information as to how much is being mined by the investors, so that they can ask what the contribution to the local community by that private investor is. I am excited that this Bill provides an opportunity for the national Government and county government to understand and get to know what minerals are available within their counties. This will enable us to start engaging from a point of information and knowledge on how local communities can benefit from these investments.

I am excited that whereas the Mining Bill was conceived, debated and passed by the National Assembly and then transmitted to us, we are in the process of finalizing the Royalties Bill in this House, that will then be transmitted again to the National Assembly. Looking at the two Bills, they complement each other. As mentioned by a number of Senators, we need to look at the provisions in these Bills and find a way of dovetailing them, to ensure that we seal any loopholes with regard to investment in minerals. This will ensure that communities to benefit from these resources.

When exploration and actual mining is done, sometimes the process causes a lot of untold damage to the environment. We should ask ourselves: How do we deal with dereliction after the minerals have been mined? We have seen investors investing in some mining sites, they do a lot of excavation and once they are done with obtaining the minerals that they were keen on, they leave the area in a state that is hazardous to the community. It is important to put in place provisions that will ensure that once mining is done, the land is reverted back to a state that is habitable to communities living around that area.

I am excited that provisions within this Bill indicate that priority will also be given to communities living around these areas in terms of accessing job opportunities that are created by these processes. That is a very important provision. We hope that the responsible Members of the Committee that processed this Bill will flag out of those issues relating to the perspective of county governments with regard to mining. When we go to the Third Reading, we agree that X, Y and Z provisions in this Bill need to be realigned with the new constitutional dispensation with regard to county governments, so that they are engaged early enough. These county governments invest in these minerals and their exploitation benefit our county governments.

In the benefit-sharing arrangement, and I think we may need to find a way of anchoring some of those provisions on benefit-sharing that may make references to the other Bill on royalties, in terms of that formula, we need to find a way of catering for the immediate local communities. Within Turkana County, for example, we have the communities living around Ngamia I. These are the communities who will be affected by

the dust during excavation and the mining process. Therefore, they must be protected from some of those health hazards. There will be need to look at the wider community around Ngamia I and the entire Turkana County. In my county, gold mining is being done in a place called Chemase. The local communities in the area need to have a greater benefit, maybe better than ourselves who are living further away. In working out that benefit-sharing agreement, we need to consider those communities living very close to these areas.

The component of the Government of Kenya being one of the investors within this sector is an excellent one. I know there has been a push towards privatization and that explains the process we are taking with the tea industry and the sugar cane sector. However, mining is one of the critical and sensitive sectors for us to just to leave it to the private investors. The component of national Government or the country investing in that sector is an excellent provision that we need to consider so that we maximize benefits accruing from some of these natural minerals and natural resources that this country is endowed with.

I congratulate the Mover of this Bill and the Senate Majority Leader for being consistent in ensuring that this Bill finds its way to the Senate. When the Senate Majority Leader moved this Bill, he took a bigger share of that glory. Some of us were cheerleaders and we urged him on as he gave the assurances that he had talked with the President, Deputy President and the Government in general and that that Bill was going to come. We need to appreciate the Senate Majority Leader because he delivered. It is unfortunate that the Members of the other side of the House are nowhere to be seen when we are discussing serious issues affecting their own counties. This is one of the Bills that we needed to pull in the same direction.

With all those remarks, I support this Bill.

The Temporary Speaker (Sen. Murkomen): There being no other request, I would like to call the Mover to reply.

The Senate Majority Leader (Sen. (Prof.) Kindiki): I thank you, Mr. Temporary Speaker, Sir. Once more, I want to take this opportunity to thank my colleague Senators for a very illuminating and active debate. I have learned a lot from many of those who have contributed. Sen. Keter brought out very useful industry-related matters of the Bill which I did not bring out in my general overview. I also recall that the Temporary Speaker when he was in another capacity as an ordinary Member of the House, he also made very useful comments from legal and community perspectives; as well as Sen. Elachi, Sen. Chelule, Sen. Karaba and Sen. Sang. I have listened and heard---

Sen. Sang: On a point of order, Mr. Temporary Speaker, Sir. Would I be in order to insist that the Senate Majority Leader mentions my immediate former title? I acted as the Speaker of this House ably, I believe and, therefore, as he recognizes all of us, would I be in order to request that he acknowledges my immediate former status?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, with due respect, I want to go on record as appreciating the Senator for Nandi County, Sen. Sang, who has had the privilege today of serving as the Temporary Speaker. I understand why he insists on that recognition; because from the body language, while it

lasted, he appeared to have been enjoying every bit of it. He also appeared uncertain he might not get such an opportunity again in the near future.

(Laughter)

But having said so, I congratulate him on a job well done. He has done a lot of justice in terms of this Bill and adding value to this Bill.

Mr. Temporary Speaker, Sir, the most important thing in this Bill is not how many licences we will give to whoever; it is not even the setting up of a State Corporation to do mining; it is on how we treat the communities and the benefits the communities where those minerals are found will get. Exploitative tendencies has destroyed mining operations and shattered prospects of a thriving society, where minerals are found. I speak with authority because in my previous life, I used to be a professor of international law. In my consultancy work, I used to travel around the world – and that explains why I rarely travel these days – because I travelled around the world from Brazil to India, to Madagascar, to Helsinki, to Calgary in Canada, to Hanoi; I went to all the places in this world; not to mention Costa Rica and other strange places like Paraguay and Cape Town. One of the things that kept cropping up is that the success of the mining industry in a country rests on benefit sharing and how communities where minerals are found benefit from the wealth created. So, it was a bit strange when there were attempts by some forces to try and smuggle this Bill without reference to this House.

(Applause)

Mr. Temporary Speaker, Sir, where the rubber will meet the road on this matter is how the coal that is found in Kitui County will benefit, first and foremost, the people of Kitui before even benefitting Kenya; how the oil in Turkana – and now I am told even in Elgeyo-Marakwet, possibly – will first benefit the people of those counties before it benefits the rest of Kenya; how the titanium in Kwale and the iron ore in Tharaka-Nithi will benefit the people of those counties before benefitting Kenya.

So, Mr. Temporary Speaker, Sir, this Bill has come at an appropriate time. It will run fictitious and briefcase prospectors of minerals out of town for good. You must have not only the technical capacity, but also the financial capacity; we must know who you are. It will also remove the powers of granting mineral rights from one person to institutions, especially the Mineral Rights Board, among other institutions.

So, Mr. Temporary Speaker, Sir, I do not want to repeat myself. I just want to say how happy and proud I am that I have benefitted from the contributions that have been made by my colleague Senators.

With those few remarks, Mr. Temporary Speaker, Sir, I beg to move that the Mining Bill (National Assembly Bill No.8 of 2014) be read a Second Time.

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

On a point of order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Murkomen): What is it, Sen. (Prof.) Kindiki?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Temporary Speaker, Sir, for allowing me to rise on a point of order. I am rising on Standing Order No.54(3) to request that given the numbers that are currently present in the House, it may not be possible to successfully carry out a vote. I, therefore, request you to allow the deferring of the putting of the Question on this matter to such a date and time as the Speaker may direct.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Murkomen): Very well. Considering the tradition, practice and the decisions of the Speaker in the past, it is only prudent that this Bill appears on the Order Paper in the next sitting of this House for purposes of voting. So, I defer it to the next sitting of the Senate.

(Putting of the Question on the Bill deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Murkomen): Order, hon. Senators! There being no other business, it is now 8.37 p.m., and it is time to adjourn the Senate. The Senate, therefore, stands adjourned until tomorrow, Thursday, 26th March, 2015, at 2.30 p.m. The Senate will meet in the National Assembly Chambers for a Special Joint Sitting on the Presidential Address.

The Senate rose at 8.37 p.m.