

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 25th March, 2015

*The House met at the Senate Chamber,
Parliament Buildings, at 9.00 a.m.*

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

PRAYERS

STATEMENTS

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

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I have been waiting for a response on two statements that I raised last month. They were given a time period of two weeks, but they are yet to come.

RECRUITMENT OF THE NYS GRADUATES FOR FOREIGN JOBS IN THE UNITED ARAB EMIRATES

Sen. (Dr.) Khalwale: I have a statement on recruitment of the National Youth Service (NYS) graduates for foreign jobs in the United Arab Emirates.

STATUS OF MUMIAS SUGAR COMPANY

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I also have a statement on Mumias Sugar Company.

The Speaker (Hon. Ethuro): The statement on Mumias Sugar Company is for the Committee on Agriculture, Livestock and Fisheries. What about the one on recruitment?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, the one on recruitment is for the Committee on National Security and Foreign Relations.

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

The Chairperson, Vice Chairperson or any Member of the Committee on Agriculture, Livestock and Fisheries?

Let us give it a bit of time.

MALPRACTICES IN THE HEALTH SECTOR

Sen. Nabwala: Mr. Speaker, Sir, on 24th February, 2015, I also requested for a statement from the Committee on Health concerning the Kenya Medical Practitioners and Dentists Board. A Motion had been passed in this House for the state organ to devolve and open offices in counties. However, this has not been done to date. Owing to their inaction, we have continued to have people in the counties being mistreated because of misdiagnosis by doctors.

The Speaker (Hon. Ethuro): Chairperson, Vice Chairperson or any Member of the Committee on Health?

I guess you know that the Procedural Motion came yesterday. So, Members may not have been prepared for this morning. We could revisit the statements in the afternoon.
Next Order!

(Statements deferred)

COMMITTEE OF THE WHOLE

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

THE POTATO PRODUCE AND MARKETING BILL
(SENATE BILL NO. 22 OF 2014)

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

The Speaker (Hon. Ethuro): Order. I suggest that Order Nos. 8 and 9 be pushed to the afternoon. Let us deal with Order No. 10.

(Committee of the Whole deferred)

BILLS

Second Reading

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

(Bill deferred)

The Speaker (Hon. Ethuro): The Senate Majority Leader (Sen. (Prof.) Kindiki).

Second Reading

THE ENVIRONMENTAL MANAGEMENT AND
CO-ORDINATION (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 31 OF 2014)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg that the Environmental Management and Co-ordination (Amendment) Bill (National Assembly Bill No. 31 of 2014) be read a Second Time.

Before I move this Bill, I apologise. My voice is a bit distorted as a result of flu. Nevertheless, I will try as much as possible to deliver the substance.

Mr. Speaker, Sir, in 1999, Kenya adopted a new environmental law known as the Environmental Management and Co-ordination Act (EMCA), No.3 of 1999. This law is one of the most revolutionary and modern pieces of legislation in the environmental field, incorporating many of the international standards which were enforced by that time. However, in accordance with the new Constitution, two developments have taken place. First, the Constitution itself in the Fifth Schedule envisages that there must be another legislation to deal with the environment. At the same time, even if the Fifth Schedule did not demand a new legislation on environment, there is great need to align the existing Environmental Management and Coordination Act (EMCA) with the new Constitution in various aspects. Therefore, this Bill brings the new Constitution into focus, especially in the context of devolution.

There are three preliminary things. First, as I have said, this Bill aligns the EMCA of 1999 to the new Constitution. Secondly, the purpose of this Bill is to ensure that Kenya's environmental law is consistent with the new system of devolution, which as you know, has placed certain aspects of environmental management under the custody or jurisdiction of county governments, while at the same time, aspects of the environmental control and policy have remained with the national Government.

Thirdly, also in line with the new Constitution, there is need to incorporate all international treaties in the area of environment that Kenya has ratified, as well as principles of customary international law, in line with Article 2(5) and (6) of the Constitution, respectively.

What does this Bill propose to do? It amends the EMCA of 1999 by removing references to district environmental committees and provincial environmental committees, as well as local authorities. It replaces those terminologies with the establishment of a county environmental committee by the Governor. At the same time, it replaces local authorities with counties. Of course, the Bill replaces common terminologies like "permanent secretaries" with "principal secretaries", "Ministers" with "Cabinet Secretaries" *et cetera*.

Section 3 of the EMCA emphasizes or entrenches the right to a clean and healthy environment which already exists in the current EMCA of 1999. What this Bill does is to enlarge what lawyers call *locus standi* or the capacity to sue. Who can actually go and claim the right to a clean and healthy environment? It involves persons who are suing on their own behalf, but also persons who are suing on behalf of other people whose rights

have been violated, as well as people who are suing on behalf of groups, associations and other corporate or juristic persons.

The Bill brings a new Clause 3A which, as I have said, is supposed to actually bring into life the Bill of Rights; in this case, not in connection with the right to a clean and healthy environment, but with the right to access information. It says that every person will have the right to access information held by the National Environment Management Authority (NEMA); the authority that is created and empowered to administer the implementation of this legislation.

There is a new Clause 5(8) which is on the headquarters of the Authority, which remains in Nairobi as provided for in the existing Act. But this is a new addition that says that although the headquarters of NEMA will remain in Nairobi, NEMA shall ensure that its services are accessible in all parts of the country. This gives life to Article 6(3) of the Constitution that says that all state organs and agencies of the national Government must ensure that they decentralize and make their services available to the entire country.

Mr. Speaker, Sir, Section 9 of EMCA is amended to entrench the principle of public participation in terms of environmental and natural resource management and conservation. Article 69 talks about the need to involve the public in the management and conservation of the environment and natural resources. Therefore, this provision gives life to Chapter Five of the Constitution.

Section 10 of EMCA is amended through this Bill to make the Cabinet Secretary the appointing authority of the Director-General of NEMA as opposed to the President, which is the case in the existing legislation. However, the same section is amended to empower the NEMA Board to appoint the Director-General in an acting capacity when there is a vacancy, pending the filling of that vacancy, so long as that acting appointment does not exceed six months.

Section 14 of EMCA is amended to subject the salaries and allowances of the Director-General and other directors of NEMA to the Salaries and Remuneration Commission (SRC) guidelines and directives. This aligns the issue of salaries and allowances of NEMA officers with Article 230 of the Constitution, relating to the SRC.

Section 23 of the principal Act is amended to ensure that the accounting system of NEMA is subjected to the requirements of Articles 226 and 229 of the Constitution, which requires state organs and agencies to be under the accountability of the Auditor-General. They will submit reports, answer queries and provide documents to the Auditor-General, so that he can, pursuant to Article 229 of the Constitution, submit his report to Parliament as provided for.

The other provision which is amended is Section 29 which empowers the Governor to establish a county environmental committee, which as I have said, is a replacement of the existing provincial environmental committees and district environmental committees under the existing EMCA of 1999. These county environmental committees will consist of officials of county governments, representatives of NEMA, business communities, farmers' associations as well as Public Benefit Organizations, which is a term now used in the Amendment Bill, as opposed to Non-Governmental Organizations (NGOs) in the existing legislation.

Mr. Speaker, Sir, this Bill amends Sections 31, 32 and 33 to rename the Public Complaints Committee the National Environmental Complaints Committee. Under the existing law there is a Public Complaints Committee. One of the complaints that have been there over the last 15 years or so, of implementation of EMCA, is that there are too many institutions. There is NEMA, Public Complaints Committee, National Environmental Tribunal and the National Environmental Council. One of the things that this Bill is doing is to try and reduce these institutions for purposes of giving effect to Article 201 of the Constitution that talks about prudent utilization of state resources and making sure that there is no duplication of functions.

One of the casualties of this proposed streamlining is the Public Complaints Committee. There is a Public Complaints Committee which is like the Ombudsman in the environmental field and also, at the same time, we have the National Environmental Tribunal. So, what the amendment Bill is doing is to actually maintain the National Environmental Tribunal with more powers and better procedures of offering adjudicative functions in the environment field, but removing the Public Complaints Committee which was like an Ombudsman in the environmental field and transferring those functions to a department within the Ministry, so that you can have an administrative way of launching complaints. If you want a judicial process, instead of having both the Public Complaints Committee and the National Environmental Tribunal, you can actually use the tribunal in its new format.

Mr. Speaker, Sir, Section 37 of the principal Act is amended to entrench the principles of public participation in the making of the National Environmental Action Plan. There exist a National Environmental Action Plan under the current law, but this amendment Bill is saying that there would be need to enact within three years of entering into force of this amendment law, a new National Environmental Action Plan, which is alive to the issue of devolution and the role of counties and county governments, but at the time which involves public participation as a requirement and as a demand. In the past, public participation was just as a procedure of good practice which might have been adopted. However, now it is a requirement that it becomes part and parcel of the process. Otherwise, such policy documents will not have the force of law under the new Constitution.

Mr. Speaker, Sir, Sections 38 and 40 of the principal law are repealed. They relate to the issue of the preparation of the action plan which I have mentioned. It is envisaged that there would be a new National Environmental Action Plan in three years time.

At the county level, each county government through the County Environmental Committee is supposed to prepare County Environmental Action Plans two years after the entry into force of this law and every five years thereafter. In preparation of this action plan at the county level, each county government must ensure that there is public participation and that the county assemblies are given these reports or plans for consideration and adoption.

Mr. Speaker, Sir, this is one area that public participation can be improved because the county assemblies should not just be given these proposed County Environmental Action Plans for consideration and adoption, but it should be for consideration and approval. If the county assembly does not approve, then that

Environmental Action Plan should not be legitimate, in my view. At the moment, according to the amendment Bill, the county assemblies role will be limited to consideration and adoption.

The County Environmental Action Plans will be shared with the Cabinet Secretary for incorporation in to the National Environmental Action Plan. That is why counties have two years to prepare and then the national Government has three years. One year will be for collating the county plans and, the other, is for plans for incorporating and alignment with the national plan, so as to have a seamless and synchronized national policy on environmental management and conservation.

Section 53 of the principal Act is amended to require the putting in place for the protection and the enhancement of indigenous knowledge, in the conservation of environment and natural resources and also measures for protection of indigenous knowledge, or by diversity and genetic resources of communities.

Mr. Speaker, Sir, what this section is trying to say, is to add the protection of indigenous knowledge in the environmental management and conservation which has not been the case before. There are so many communities across this country which possess formidable amount of natural resource, environmental protection and management knowledge. They know how to preserve forest and know how to coexist with animals. For example, the Maasai Community coexists with animals as they graze their cows. But for a long time, they have used traditional indigenous methods and knowledge to exist with animals with very minimal conflict between wildlife and human beings. What this Bill is trying to do is to make it lawful for Government to incorporate traditional indigenous knowledge in the conservation of natural resources and the environment.

Section 54 is amended to require the precautionary principle in the issue of pollution. Let me explain briefly what the new Clause 54 is trying to do. It says that other than requiring the person who causes environmental degradation to pay for their pollution, the standard is enhanced so that even a person who has not actually caused actual pollution, but their activities portend a grave or imminent danger of polluting the environment, can also be held accountable.

Mr. Speaker, Sir, in environmental law, it is called the precautionary principle. In environmental matters, you do not wait until environmental damage has been caused or there is discharge of toxic materials and people are dying or they are in hospital and then you start asking the polluter to pay. If there is evidence that what somebody is about to do, whether a natural or juristic person is about to do has the propensity to cause environmental harm and either public health or plant life can be harmed, that person should be restrained from doing so before the actual harm happens, or they should be made to mitigate the effects of the potential harm, so that you do not wait until it happens. This precautionary principle is what Clause 54 envisaged.

Mr. Speaker, Sir, I have a few more comments before I end my remarks. Clause 56A, which is a new provision brings in the issue of climate change and empowers NEMA to make regulations on climate change as one of the emerging issues. In the environmental protection under the existing Environmental Management Co-ordination Act of the year 1999, the issue of climate change and the need for guidelines on climate change were left out and this Bill tries to correct that gap. There is a new Clause 58(10)

to create a new offence of submitting environmental impact assessment reports or environmental audit reports, which one knows are either false or misleading.

There has been a lot of collusion between experts and people engaged in development activities to prepare Environmental Impact Assessment (EIA) reports or Environmental Audit Assessment (EAA) reports which are misleading and sometimes false. Under the proposed legislation, it is an offence for any person who submits a report – whether EIA or EAA reports – which that person knows is either false or misleading. The penalty is a maximum of three years in prison, a maximum of Kshs5 million fine or both.

Finally, Mr. Speaker, Sir, in Section 71, the National Environmental Tribunal is strengthened so that, as I have said earlier, it can perform the roles which were being performed previously by both the Tribunal and the Public Complaints Committee. The Bill is quite voluminous, but I have tried to do justice by highlighting what I consider the key aspects of that Bill. I hope that through this Second Reading, hon. Senators will debate and enrich this amendment Bill. As I have said, this is necessary if we have to give effect to the new Constitution and the devolved system of Government.

Mr. Speaker, Sir, for those reasons and many other reasons that are outlined in the memorandum of objects, I beg to move that the Environmental Management and Co-ordination (Amendment) Bill (National Assembly Bill No. 31 of 2014) be read a Second Time. I have seen my counterpart, the Senate Minority Leader just coming in, but I request his ally, the Senator for Kakamega County, Sen. (Dr.) Khalwale, who has been taking notes, to second this Motion.

Thank you, Mr. Speaker, Sir.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I thank you and the Senate Majority Leader for giving me the honour to second such an important amendment Bill in this House. I would also like to thank the Government for ensuring that we move towards beating the constitutional timelines that require that this Bill should have passed by the 27th of this month.

Mr. Speaker, Sir, reading this Bill, I see that its objective is mainly to align the existing Act with the new Constitution. Before I comment on various sections in the Bill, allow me to decry the abuse of the environment in this country. No single forest is spared; from the big ones to the medium sized ones up to the smaller ones. If you go to the Mau – remember that the last Coalition Government made it a serious policy to remove squatters from there – this was done with a lot of success.

However, when you move around the country, you find that the gains that were made in those five years are slowly being lost. I happen to travel on a weekly basis between this City and my county and, invariably, I have to go through this water tower. It is a pity that the forest in Nandi – the one in Lessos – has been burning for the last three weeks; it is on fire. As recently as when I came to Nairobi on Monday, that forest was still burning.

How on earth can the Government allow the forest in Lessos to burn for three weeks without any intervention? How can it happen without the commissioners, the Governor, the Senator and the Members of Parliament (MPs) raising a finger? There might be a deliberate attempt to allow the forest to burn, especially now, so that people

can be allowed to come in and cultivate it. Even Kakamega Forest, where I come from, is under threat. There is so much encroachment. It is my belief and prayer that with this Act, these forests will receive protection.

Mr. Speaker, Sir, I would like to go to the following sections and make brief comments. With regard to Clause 3, the principal Act is being amended by inserting the following words; namely, “in accordance with the Constitution and relevant laws” immediately after the words “healthy environment.” This is so critical because we are now giving greater emphasis to the principal Act so that it is a constitutional provision for it to receive the recognition, emphasis and importance that it deserves. Under Clause 3(b), there is an insertion to (a) which reads that:-

“every person shall co-operate with the State organs to protect and conserve the environment and to ensure the ecological sustainability and use of the natural resources.”

Mr. Speaker, Sir, this is a very timely insertion because politicians, MPs, former councilors and current Members of County Assemblies (MCAs) are actually the ones who incite *wananchi*. I have heard many times a prominent politician being quoted, telling people in a public *baraza* that “we are being told that the rains are delaying because we have destroyed the forests.” That national politician then tells the congregation: “Since when did you see forests to be the reason why the sky is not bringing rain? The forests are down here and the rain comes from the sky; what is the connection?” To make matters worse, he is saying this on camera. So, this insertion is very timely

Mr. Speaker, Sir, it must not be forgotten that politicians are the ones who started the problem that is the big elephant in this country called the Mau Forest. When I say “politician,” I am not referring to any of the Senators here, the people in the Executive Arm or in the National Assembly; I am talking about the older KANU politicians who went and told villagers “I want you to sell to me your land in Bomet or in Belgut--- Definitely, that was not Sen. Keter.

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

Sen. Sang: On a point of order, Mr. Speaker, Sir. Sen. (Dr.) Khalwale has mentioned that the problem of Mau was started by the older KANU politicians. In this House, we have a number of those older KANU politicians, including the Senate Minority Leader, Sen. Wetangula. Could the Senator substantiate who he meant by “the older KANU politicians” who started this problem, whether that, includes the Senate Minority Leader?

(Laughter)

The Speaker (Hon. Ethuro): Order! You can only challenge a Member on a point of order if he or she has really breached something. But trying to get more information from him is a point of argument.

Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir, for the protection. What he is looking for is a matter which is in the library. Go to the library and just update yourself; it

is pathetic. In fact, in the Ninth Parliament, we almost had fist fights because I got them that time when I came to Parliament and I told them “you.” So, what they did is that they then wanted to expand their homes, so, they told people around themselves in the indigenous homes that they had found land in the Mau. So, they shifted their neighbours, settled them in the Mau and took up their land. When the former Prime Minister and retired President Kibaki started removing these squatters, these squatters were going to go back home and reclaim their pieces of land and the politicians could not allow it. This is where the rain started beating us.

Mr. Speaker, Sir, Clause 14 of the Bill is the issue of the remuneration of the Board. I want to submit that this is a very good insertion. This Board must be adequately remunerated because they are going to be sitting on a very important resource; timber is a very important resource. For example, in Kakamega Forest, we have the multimillion timber resource called *Omutukuyo*; the Elgon teak. This is the kind of timber that has been misused by some politicians and members of the former Provincial Administration who used to be in charge by literally selling it for their own benefits.

In Kakamega, there is one name, if you mention it - may the Lord rest his soul in eternal something – the late Mr. Mburu, the former Provincial Commissioner (PC); he messed our forests completely. It is only thanks to Sen. Haji, when he became the PC, that he brought some semblance of control on the abuse of Kakamega Forest. So, when you hear, Sen. Keter - my brother from Belgut; that Kakamega Forest is being abused, it is not by the people of Kakamega; it was because of elements in the former Provincial Administration. We are now happy that this will now be in the hands of our Governor.

Mr. Speaker, Sir, Clause 29 attempts to put in place a County Environmental Committee. In its composition in sub clause 2(a), we are told that every County Environmental Committee shall consist of:-

- (a) “The member of the County Executive Committee (CEC) in charge of the environment matters who shall be the Chairperson.”

Mr. Speaker, Sir, I want to speak to this. In the regulations, we should go further and provide that this person who will be chairperson and a member of CEC be none other than the Deputy Governor. This is the most important department if we want Kenya to remain Kenya and not end up being a desert. Some of the Scandinavian countries, Malawi and Britain are very successful in matters of environmental protection. This role that I am proposing that we give to the Deputy Governor is in the office of the President in Malawi, in the office of the Prime Minister in the United Kingdom (UK) and the respective Heads of Governments in the Scandinavian countries. This is just to emphasize how important it is.

Mr. Speaker, Sir, for those of us who have had the opportunity to fly over the forest in Malawi, we notice how successful they are in matters of environmental protection at rural level. It is a shame that Malawi in 1963 or 1966 thereabouts, came to learn from Kenya how the Kenya Forest Reserve Department was successful. Today our forests are gone. As I speak now, in Malawi, you go for a period of four kilometres and you see a watch tower. If you go for another four kilometres, you will see a deliberate demarcation between one block of a forest to another block of forest so that when fire

catches one block of the forest, it does not spread to the next block. In Kenya, I do not know why the officials of Kenya Forests Service draw a salary at all.

Mr. Speaker, Sir, still on that particular Clause 29(2) and also (d) we are told that, “there will be two representatives of farmers or pastoralists within the county who will be appointed by the Governor.”

This is important because, for example, like in Kakamega and many other forests, we have the *shamba* system. Farmers go to the forest, plant crops and, in the process, they take care of seedlings and young trees which are growing up. If you do not put these farmers there, this Board will not understand why farmers access the forest. In the case of pastoralists, they will understand why Maasais, for example, would want to access the forest so that their cattle can graze. In Kakamega, the only problem we have with the Kenya Forests Service (KFS) staff is that sometimes they deny our cattle from grazing in the forest. In fact---

(Sen. (Dr.) Khalwale spoke off record)

(Laughter)

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! I am sorry, your time is finished.

Hon. Members, I wish to propose the question.

(Question proposed)

Proceed, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Speaker, Sir, for the opportunity to contribute to this very important Bill. I start with a lamentation. In the tradition of our Parliament and the Committee systems, when such critical and technical Bills come to the House, the House expects the Committee responsible for the sector to go through the Bill very carefully and bring a report that can inform and guide the House in the debate. That is why we set up Committees.

We have lined up several Bills, but I am not aware of, neither have I seen any single Committee report on any of them that is supposed to assist the House. The gist of the Bill does not lie in the debate on the Floor. It lies in the draft that has to be scanned through very carefully and crosschecked with other laws and the Constitution. I urge you to wake up our Committees so that they do their work in a more organized and helpful manner.

My distinguished learned friend, the Senate Majority Leader, should also speak to our Committee leadership and tell them that they are lapsing in their duties.

The Speaker (Hon. Ethuro): Order, Senate Majority Leader! I want to defend the Committee. They are awake and up to the task. They tabled a Report yesterday.

The Senate Majority Leader (Sen. Wetangula): Mr. Speaker, Sir, that has not been circulated to the extent that I have not seen it. In any case, you cannot have tabled a report yesterday and expect it to help the debate today. More importantly, in the tradition

of the House, you know that we give the Committee Chairperson, immediately, after moving and seconding so that they give deeper input to a Bill.

Be that as it may, this Bill makes reference to a subject that is cross-cutting. Schedule 422 gives environment matters to the national Government. However, when you go to the Schedule that gives responsibilities to the county governments, every single portfolio, you can think about has an impact on environment. Therefore, it is important that we cascade the responsibilities of managing our environment to be shared responsibly and almost equally between the national Government and the county governments.

Equally important, at the Committee Stage, I will encourage the Mover to bring an amendment. Environment is a national responsibility. We are transferring a substantial responsibility of this to the counties. Under the Constitution, every responsibility must be followed by a monetary consideration. The Committees that will be set up at the counties should not join and share in the little envelop that we will give county governments, but have an equally measurable fund moving from the national Government to the county Government to manage the environment even if they were to move as conditional grants to the county governments.

As you go through the Bill, you will see that county governments will have a very heavy and costly responsibility in managing the environment. I would like to point out that county governments are obligated to form environmental committees. The qualifications of those who sit in these committees should be clearly defined so that we do not end up with counties rewarding cronies who know very little about environment and who will do very little to enhance environmental position of any counties. They will sit in committees in the Kenyan style of eating chips instead of working.

This issue becomes more important when you see what is happening in the Mau and some place in Nandi. I saw the young Senator from Nandi trying to drag my name into irrelevancies a few minutes ago.

There are people in Nandi who stay around a very critical wetland. Here, you will find an endangered antelope. Reports may show that they maliciously committed arson on this environmental set up simply because forest guards arrested two people who were poaching. Now, all antelopes are in danger of extinction because fire is consuming the entire wetland because of drought and the malicious acts of these individuals. I expect, when the Senator for Nandi speaks, to tell us what is happening because that is not a heritage of the Nandi people, but a heritage of the people of Kenya. We must protect our heritage at all costs.

The provisions in Clause 27 will create policies that will help to manage the environment. I want the Senate Majority Leader to consider management of environment as a national service. Giving environmental impact assessment certificates should be done nationally. In the process of working, NEMA is escalating the costs of doing business in Kenya. You are simply told that 1.5 per cent of the value of the structure must be paid to them. What for? Is it for giving a one-page certificate? So, if somebody is putting up in Nairobi a structure worth Kshs3 billion, that means that they will pay close to Kshs45 million to NEMA for nothing. They simply walk with hands in their pockets to tell you to proceed with your construction.

This has to be relooked into so that environmental management is a national service. We should have a professional body. If they find you building on a wetland, they should stop you and you obey. When they give you directions on how to build, you have to obey and that should not escalate the costs of investments in the country. Many countries do this. I do not see why Kenya cannot do it.

I hope the passage of this Bill and the incorporation of the county government will address some things; first, the protection of forests. I want to pick from where Sen. (Dr.) Khalwale left regarding Kakamega Forest. This is one of the few remaining tropical forests in Kenya apart from the Mau and Aberdares. When the Kakamega County Government came into place, the Governor was clearly told that he had nothing to do with forests.

Fellows sitting in Nairobi started giving out licences upon licenses to loggers. It had to take the villagers to move in and stop the loggers on Kakamega Forest because it was not clear who was responsible. Now that in this Bill, the county governments are responsible for the protection of the environment within their jurisdiction – this is very elaborate in Clause 50 all the way with about 14 or 15 sub clauses giving authority to the county governments to take care of dams, rivers, water resources, mining, forest related activities, agriculture, processing and manufacturing, electrical infrastructure, management of hydro carbons, water waste disposal and so on. This is very important. However, it must also be accompanied by the technical capabilities of each county to take care of this.

Mr. Speaker, Sir, if you go to some counties, you will find dams which were set aside by the colonial regime. I am not aware of any elaborate structure to set up land for dams in this country since Independence apart from haphazard constructions of dams. Some are constructed and end up holding no water. All the land that was set aside for dams has been encroached on and completely grabbed by land grabbers. We want to see county governments recover this.

Mr. Speaker, Sir, I know you come from a county with fewer rivers. In the past, where there are many rivers, farmers were not allowed to farm up to riverine or forest protection areas in the colonial days and immediately after post-Independence. Today, farmers are scratching up to the water of the river to the extent that the streams are contaminated and the water sources are dilapidated and drying up. As a result, we end up with some of the dirtiest streams and rivers in this region. If you look at Lake Victoria, you go to the Ugandan side, the lake is blue and clean, but on the Kenyan side, it is dirty; grey and sometimes almost red because of the heavy silt that the rivers are pouring into the lake. We want to see county governments putting up legislation through the county assemblies to ban farming at an agreed distance from streams and rivers so that the quality of water in the river is protected and the river itself too.

Mr. Speaker, Sir, in western Kenya where I come from and large parts of Kisii County, you will see some very bad trees called blue gum (*eucalyptus*) planted on all wetlands. We are told that these species of plants suck out almost all the water, both ground water and even the aquifers below them. I would want to see a situation where there is regulation. Plant indigenous trees along wetlands, at water sources, along riverine areas and that will help the environment.

Mr. Speaker, Sir, one other important thing is waste disposal. If you look at all our towns, waste management and disposal is an eye sore. Whether you are talking of the Dandora plant, Kisumu near the stadium or any town, there is completely haphazard and unplanned waste disposal to the extent that any empty space is a potential dumpsite. This undermines the clean air, ground water and creates some stench everywhere in towns to the extent that we wonder what we are doing. I urge that we do an amendment to make sure that every urban centre whether a town, city or market, has a designated, protected and fenced dumpsite where waste can be sorted out, managed, recycled and put to any use that one desires.

All these good ideas that we are bringing in this wonderful Bill will come a cropper if in this country we do not control the run-away corruption. Even as we say you need an Environmental Impact Assessment (EIA) certificate, you see work going on everywhere as long as one has paid. I hope that the men and women who will find their way to sit on the County Environmental Committees will be of high calibre, integrity and professionalism so that we can restore our environment.

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

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

Mr. Temporary Speaker, Sir, the other day you heard the Chairman of the Committee on Land and Natural Resources fumbling on the Floor and telling us that our forest cover has reached 7 per cent. We are still waiting for him to show us the map of Kenya and plotting where exactly these forests are.

This brings me to the Mau Forest which is one of the five water towers of this country. It is the Mau Forest that sustains lakes Nakuru, Naivasha, Elementaita, Natron and Victoria. It keeps the highlands of Kericho as admirably green as they are. Mau Forest is the lifeline of the Wonder of the World, the only one in Kenya; the Maasai Mara. What is happening now in the Mau Forest is lamentable. Right now, close to 1,000 acres of the Mau Forest has been consumed by forest fires, partly because of the drought, criminals who are burning charcoal and partly because of arsonists. I urge the national Government to take action and not to bring parochial politics into the protection of our water towers, whether it is the Mau Forest, the Mt. Elgon, Cherangany, Aberdares or Mt. Kenya.

Mr. Temporary Speaker, Sir, I loud you particularly because you told me that your family that had settled in a public forest had voluntarily moved out. That is the spirit we want to encourage. We should not have situations where we want to play cheap ethnic politics with facilities that save this country. If the Mau Forest is gone we are going to say bye to the very successful horticulture and floriculture industry around Lake Naivasha that generates over Kshs60 billion in a year. We are going to say bye to lakes Nakuru, Magadi and Natron which may not be in Kenya, but we have a shared interest.

My brothers and sisters from the Rift Valley, we urge you to convince our brothers who have encroached on the Mau Forest. If you fly over the Mau Forest, you will be shocked to see how much is going on in terms of human settlement, cutting down

of trees and rebuilding of homes. We, as Parliament, may have to vote money to obligate the national Government to fence off all public forests so that there is no pretense that people do not know where the forest starts and where it ends. We have a similar case in Mt. Elgon. I encourage the national Government that the destroyed forests of Mt. Elgon in both Trans Nzoia and Bungoma Counties need to be restored. We want to see a situation where the environment is brought back to what it used to be.

When we were growing up in Bungoma County, you could not go for more than 2 kilometres without crossing a permanent stream that flowed from January to December. Today, even those we used to call rivers, now flow for only half the year. As soon as the rains stop, they dry up because the water tower that is Mt. Elgon has been completely destroyed.

Mr. Temporary Speaker, Sir, I was frightened to read that the criminals that have been killing elephants in Tsavo and other parts of Kenya have now reached Mt. Elgon. In my own village of Chwele, people were arrested with elephant tusks which had been obtained from the destruction of elephants in Mt. Elgon. We need to strengthen the law because this is our national heritage. We should not let criminals roam from wherever; whether they are from Somalia or within Kenya to come and destroy our heritage. Maasai Mara has been one of the principal marketing tools of this country. Anywhere you go, when you say you have come from Kenya you are asked: "Is that where the Mara is?" If Mara River dried up because of the activities in the Mau Forest, that will be disastrous for this country.

One other thing I want to mention is the reckless manner in which our farming activities are carried out; the use of pesticides and the use of chemicals. We want to see the environmental authorities check the alkaline content of fertilizer so that we do not continue destroying our soils by using fertilizers that are not properly certified to be user friendly on our farms. I know we have been encouraging organic farming, but how much farm yard manure can you generate to put on a large scale farm? What we need is to have a situation where whatever fertilizers we use are tested so that they enhance the presence of fertility in our soils instead of degrading the soils.

Mr. Temporary Speaker, Sir, the Bill also sets up a national environmental complaints committee. I would want to see that this committee remains national with jurisdiction through counties so that we also do not waste public resources to set up complaints committees in every county. A single national environmental complaints committee, properly structured, properly equipped can handle environmental complaints across the country by, maybe, having one or two small field offices in counties and giving them days in which they can go and listen to problems arising out of environmental management.

More importantly is the issue of planning because part of the conservation of the environment must go hand in hand in with planning. If you look at the mushrooming small towns, whether you are talking of Burnt Forest, Chwele in my county, Kutus, Khayega, Kyumvi in distinguished Sen. Muthama's county or Ugunja in Ugenya, they are all growing as rural slums. There is no planning, there are no facilities and anybody who wakes up as a flip load stands up and starts building. You find that some of those

buildings do not even have access. You can neither drive nor even ride a *boda boda* there; houses are back to back.

As part of the management of the environment, we want to have proper planning of all our markets and urban centres, including open spaces for recreation, green fences, sewage, water, play fields and so on. This is one way of managing our environment. If you look at Nairobi, since the pools in Nairobi were created in the colonial days, Nairobi Dam is dead and we hope it is going to be resurrected. We have some small dam near Kangemi which has been encroached on until it is chocking completely. There was some wetland just next to the Kenya Veterinary Vaccines Production Institute (KEVEVAPI); it has been encroached on completely. If you look at our sewage treatment plan, you keep on hearing stories that the sewage treatment all over the country is sometimes compromised. After treatment and oxidation, we release the same water into rivers and streams which are used by animals and human beings. We need the highest degree of standards.

Mr. Temporary Speaker, Sir, those of you who are old enough like Sen. Karaba or Muthama know that 15 years ago the River Thames in London was greasy and you could not swim in it. However, because of prudent environmental management, if you go to London today, you will see people fishing in the River Thames. It has been properly cleaned and fish is back. Now people can fish and roast fish on the banks of the river. The River Rhine is another example. The other day I was in Juba and when I went to the banks of River Nile, I was very impressed to see how clean the Nile passing through Juba looks like; I could see fish in the water. But as that was going on, I could see people half naked, naked doing all manner of things. I want our continent to learn how to protect our environment.

As I end, I know we have a separate law on forests and we said in the last Parliament that a minimum of 10 per cent of Kenya's land mass must be forest. The Act provided that every land owner, whether it is Government, or an individual must have a minimum of 10 per cent of their land planted with trees. You can plant a wood load or perimeter fencing. However, it is now over 5 years down the line, and there is absolutely no enforcement. If anything, people are cutting down trees at an alarming rate.

Mr. Temporary Speaker, Sir, if you go to a country like Belgium, even if a tree is in your own compound, you must seek civic authority to cut it whereas it is a tree you planted and brought up on your own compound. But once it grows up, it becomes part of the national pride, heritage and ownership. Today, there is a group of young men with power saws who maul down all trees whether they are mature or not. There is no recourse in law even when the law is there. We must make it very difficult for people who destroy the environment to get away with it.

Counties like Elgeyo-Marakwet, Kakamega, Uasin Gishu and others which have public forests, must have a very clearly defined relationship between the national government and the county government. The national Government has a duty to help those county governments to protect those forests, and those counties have a duty to allow the forests to be used for industrial activities. I have in mind Panpaper Mills in Bungoma which is now on its death bed, but which only depended on logs from Uasin Gishu, Elgeyo-Marakwet, Kakamega and Trans Nzoia.

If Panpaper Mills is resurrected today, the national Government must come up with a policy on how to compensate counties like yours to allow logging to go and sustain the factory and, more importantly, to continue to grow. Like the Sultan of Zanzibar, a man who did not go to school two centuries ago, if he was able to decree that if you cut one tree, you plant two. Today you do not just cut one tree, you cut it and uproot the stem and go away and nobody cares. This is not good for our country. We must all stand up to be counted.

Lastly, Mr. Temporary Speaker, Sir, I want to encourage Members of this House, that this Bill is giving very strong authority to our county assemblies. Our county assemblies have limited capacity in legislation and oversight. I want to encourage Members that upon passage of this Bill, let us take it upon ourselves, to go back to our assemblies and address and inform our assemblers on what this law is all about and how beneficial it can be and will be to our counties. If trees can be planted and can grow in the Sahara, they can grow anywhere else.

I am sure if this country is determined to change the face of our environment. We can be like South Korea and Japan which at Independence in the 1950s had 7 per cent forest cover. Today, South Korea has 70 per cent forest cover. Japan has 78 per cent forest cover. They have more than 100 million people yet they have a land mass smaller than Kenya's. So, we can do this, informed by the fact that only 23 per cent of our land mass is arable. The rest is either arid and semi-arid land (ASAL), arid or semi desert. If we wake up to this reality, we will bequeath a good country to the future. If we do not, we will be judged very harshly. I want to urge my colleague from Nandi to save the rare antelopes by talking to the arsonists to stop what they are doing.

I beg to support.

The Temporary Speaker (Sen. Murkomen): Sen. (Dr.) Khalwale, what is your point of order? The Member is no longer on the Floor. Let us just proceed. What is out of order?

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. The Senate Minority Leader has had an opportunity to tell and give you very good words for the noble action you took in moving out of the Mau Forest because that is a very rare thing. As I join him, may I request you, in the same spirit, to prevail upon a former President, who has built a factory in the Mau Forest to also learn from you and move out?

The Temporary Speaker (Sen. Murkomen): Sen. (Dr.) Khalwale, you are out of order. That is not a point of order. There is a better Senator in this House who has closer access to the former Head of State than me.

Sen. (Dr.) Machage: Thank you, Mr. Temporary Speaker, Sir. I support this Bill on The Environment Management and Co-ordination (Amendment) Bill (National Assembly Bill No.31 of 2014). I have looked at the Memorandum of Objects and Reasons for this amendment. Mainly it is to make provisions for the current environmental management and co-ordination Act to realign itself to the current Constitution. It also enhances the penalties for people who willfully pollute the environment.

The environment is life and so, there is need to consolidate all the laws that manage the environment. I am thinking of the Forest Management Act, The Waste

Management Act and The Public Health Management Act. All these Acts talk about the same thing as it has been ably pointed out by the Senate Leader of Minority in his presentation. If we interfere with the environment, we interfere with vary many factors which affect our life in terms of health. We are now having climate change which we have to be very open to and take action to save our environment.

Mr. Temporary Speaker, Sir, the ozone layer is depleting at a very fast rate. However, in Kenya, we have not even come up with laws to limit the carbon monoxide emission from vehicles. When you move through the streets and highways, you meet vehicles remitting so much smoke to the detriment of not only our health and environment, but also the rain patterns. The *El nino* and *La Nina* patterns are due to environmental mismanagement.

If you are a believer in evolution, the Darwin's law, the Lamarck's theory and the Mendelian laws were very much hinged on environmental factors. Indeed, the human existence is very highly dependent on how the environment is managed. Mention has been made of the forest cover in this country. We are losing forests and the Sahara Desert is moving into Kenya at a rate of about 45 kilometres per year. How long will it take for the Sahara Desert to cover the whole country?

Mr. Temporary Speaker, Sir, there was the introduction of the *Mathenge* tree in the North Eastern region which raised a lot of hue and cry. That was a noble action. The *Mathenge* tree should have been left to sprout and even encouraged to be grown in the whole of that desert place. We know that it has some disadvantages on goat husbandry. However, the advantages far much outweigh the disadvantages. We need to encourage the growth of trees in that area, especially the heat resistant trees so that area is not left bare.

The rain patterns have changed in this country. We are now at the end of the month of March yet most areas in this country are experiencing a dry spell. Apart from maybe two days ago, most areas have not received even a drop of rain. The planting season which was supposed to start in February is yet to begin. We face the prospect of famine in a few months to come, yet we do not pay much interest or allocate enough resources to the environment management and protection.

This Bill should not only be seen as an alignment Bill just to insert counties and sub counties in some areas to align the law to the current Constitution. But it should be looked at as one of the best laws that have to be observed by all Kenyans at all times, especially the introduction of the factor of protection of indigenous trees which has hitherto been ignored.

I am happy with the introduction of the county environmental action plan of every two years. To me, maybe two years is too long at the county level. They should actually report every year. Anyway, let us start with the two years. We have the national environmental action plan that is three years. However, the national environmental complaints committee which has been set is not enough. We should have complaints committees even at the county level because there will be a herculean task for the national committee, unless some of the duties of the environmental action plan committees will also be to raise complaints to the national environmental committee.

Mr. Temporary Speaker, Sir, the environment is, indeed, life. Environment destroyed, means destruction of mankind. We have looked at as our forests and different species of animals disappear. It has been mentioned today that fires are burning in the Nandi Forest, yet the Government has turned a blind eye to it and is not interested to even comment on that disaster.

You can imagine how many species of animals and plants are getting destroyed by these fires. Is it because we do not have resources to manage such catastrophies? No. I think it is ignorance. Most of the destruction of our environment is human made; the sprouting of industries left, right and centre, without due regard to its effects on human beings. We have just been looking at the Uhuru/Owino catastrophe in Mombasa where a lead factory was put in the midst of the population of people. We now have cases of lead poisoning leading to death and maiming of children.

We also have the sprouting of gold industries in Kakamega and Migori counties where we have mercury used without any protective gear. We have started seeing cases of mercury poisoning. Mercury and lead poisoning are very slow poisoning that you may not see within a short time, but they tend to develop chronic illness not related at all to the mercury you are looking at. They cause nerve interference to human beings, early dementia, abortions and so on. It takes time for one to realize that what is happening is poisoning of some heavy metals to the environment.

This is because of the negligence of the so-called public officers at that level for not alerting the Government and the population of the introduction of a poisonous chemical. This includes the haphazard use of other chemicals in spraying like insecticides and fertilisers. We have seen a lot of this in the treatment of tobacco in Migori. Very poisonous chemicals are used and the springs are being poisoned and nobody knows what people are thinking at that level. Therefore, environment is life.

Mr. Temporary Speaker, Sir, it is interesting that we have to think of reviewing and amending this Bill just because we have to align it to the new terminologies in the new Constitution. This is an issue that we should be concerned about. Every year, new issues should be picked up and lined up for action because we have new chemicals, new factories and so on. It is, therefore, important that every Kenyan should be aware of the impact of the environmental management in the livelihood of citizens.

Sen. Musila: Mr. Temporary Speaker, Sir, I want to thank you for giving me this opportunity to make my contributions to this very important Bill. Let me say that this country has been in the fore-front of talking about the environment. We are very advanced on paper in terms of the environment. We even house the United Nations Environmental Programme (UNEP). This was a foresight by our forefathers to provide this global facility in our country. The late Prof. Wangari Maathai was recognized internationally as an environmentalist to the extent that she got a Nobel Peace Prize for her role in the conservation of the environment. That is about all we can show despite the fact that we have laws in this country.

Mr. Temporary Speaker, Sir, diseases like cancer have increased in this country tremendously due to the careless handling of our environment. Pollution of our rivers goes on unchecked. Industrial toxic waste is pumped into our rivers, but nothing is done despite the existence of laws on environment.

Polythene paper bags litter every town of this Republic and even on top of trees. I remember we passed laws to control the manufacture of these materials, but nothing has been done to control them. The late hon. John Michuki, may his soul rest in peace, was very serious about the environment during the short period that he was the Minister in charge. He even banned noise pollution in *matatus*. He even banned noise pollution from preachers who preach at night and in the streets of Nairobi. That was done, but we have now gone back to square one.

Mr. Temporary Speaker, Sir, regarding the cleaning of Nairobi River, as you cross the Globe Cinema Round-About, you will see a beautiful forest on your left planted by the late hon. John Michuki. Although you have laws, these practices are individualized. What am I talking about? We have neglected our environment and, therefore, these amendments we are making to devolve environment to counties will have no impact, unless we have shown at the national level that we are serious.

A good example is the forest cover in this country. Do you know that those ladies and gentlemen called foresters are actually the ones responsible for the destruction of forests in this country? Every time there are lorries full of charcoal coming from Kitui County where I represent. That is supposed to be a county which has no trees and requires the planting of trees. Forest officers are the ones responsible for giving permits for people to go and cut the few indigenous trees in the county for charcoal burning. It is these foresters who own the lorries and are responsible for destroying the trees.

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

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

As the Senator now and even when I was a Member of Parliament, I did everything possible to draw the attention of the Ministry to these problems. All they say is that we are giving permits for selected trees.

(Sen. Hassan spoke off record)

For the benefit of Sen. Hassan, my record stands for itself during the time I was the Provincial Commissioner (PC). I championed tree planting. Where I was, even if he visits there now, he will see beautiful trees.

Mr. Temporary Speaker, Sir, I was interrupted when I was talking about forests. I am very passionate when talking about destruction of forests by foresters. What will we do because we do not have sanctions? The people who should protect forests are the ones who destroy them and there is nothing we are doing about it.

Mr. Temporary Speaker, Sir, we use agricultural chemicals, some of which are toxic, in our farms. Yesterday, there was a report from, I believe, the World Health Organisation (WHO) warning people that some of the chemicals used as herbicides, for example, *roundup* which is very commonly used in Kenya, is toxic and likely to cause harm to all of us. We have had laws. However, what have we done to ensure that the laws

are implemented? The problems we have today are not because we lack laws. We can continue amending laws, but we shall not be doing service to our people.

With regard to the forests, the Constitution states that we should have a minimum of 10 per cent forest cover. However, whenever questions are asked here about forests, the national Government comes with figures stating that we are at six per cent and moving towards 10 per cent forest cover. The Government does not show us where that six per cent is. Therefore, we, as a country and a Government, have not done enough to protect our environment despite the fact that the UNEP headquarters is in this country. We should be on the forefront. We have been given examples of countries outside Africa which have done well in forest cover such as; Belgium, Korea, Japan and Scandinavian countries. We, as the host of the UNEP, should be in the forefront. However, we are not providing the example despite the fact that we have laws.

Mr. Temporary Speaker, Sir, my lamentation is that the national Government has failed to do anything about our environment despite the long period that we have had laws and we are now devolving. We are asking the Members of County Assemblies (MCAs) to pass laws and to oversight. We are asking governors to form environmental institutions when the national ones have failed. Do the governors have the capacity to plant trees? I see them planting trees when there are no rains.

Mr. Temporary Speaker, Sir, I emphasise on pollution in the rivers. We cannot get fish from our rivers. When we get fish from rivers, they are already infected with disease. The disease is passed on to individuals. We dump our garbage at any open space. You have been to Mombasa many times. As you cross the island going to the airport just beside the sea is a dumping ground. You have to cover your nose as you cross the channel. I know that Sen. Wangari has passed through that channel and experienced the awful smell. That dumping is supervised by the Mombasa County Government yet we say that we have devolved environmental management to counties.

Mr. Temporary Speaker, Sir, I decry the lack of action by the national Government. I propose that in all areas of environment; whether pollution of rivers, cutting of trees, noise pollution or mining, unless we take serious steps and wake up to the fact that our environment is in serious need for checkup, our future generations may not have a good life. The diseases which are so common and prevalent today are as a result of the environment that has deteriorated in the manner it has.

With that, Mr. Temporary Speaker, Sir, I beg to support this Bill and hope that this time round, we shall act and ensure that sanctions prescribed in this Bill are effected.

I support.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I rise to support this Bill. This is a very important Bill because life cannot go on without the environment and proper protection of our natural resources. It is just yesterday that we voted on the Natural Resources Benefit Sharing Bill. We cannot share anything which does not exist. Therefore, this Bill plays a major role in ensuring that protection of resources is achieved in the first instance before we talk about sharing the resources.

Mr. Temporary Speaker, Sir, this is a very important Bill because if you read Schedule Four of the Constitution, you will see that environmental management is a shared function. The implementation of national policies on protection of environment is

a function of county governments. Whereas the national Government will deal with matters of conservation, implementation of specific conservation laws and procedures are shared between the two levels of government. Therefore, I agree with the Senate Minority Leader who said that it should be our desire to follow the Constitution by devolving some of the environmental functions as provided by Schedule Four and follow up this with resources.

Mr. Temporary Speaker, Sir, one of the things that we debate about here all the time is about the money we devolve. However, we must also discuss other resources that we receive as a country as a result of carrying out environmental protection. For example, we receive grants and donations from various entities and agencies, including the United Nations (UN). There must be a clear way as enunciated in the Paris Declaration for management of donor funds that will ensure that in the discussion of financing and funding environmental issues, county governments are involved and represented. We, therefore, need to ensure that in addition to the allocation that we give out, there are other mechanisms that will ensure county governments receive resources.

Mr. Temporary Speaker, Sir, I have a few highlights to make from this Bill. The first one is on Clause 18. This one is about the county environmental committee which shall consist of certain members who will be appointed by the governor. This is a good proposal. However, we must go ahead and show that it is not an exclusive responsibility of one person to do the appointments. The danger here is that it is possible for a governor to appoint persons if he has a desire of continuing to destroy the environment or to benefit from the environment at the expense of the people. He will appoint people who support him and will carry out his own agenda.

If we truly believe that a county assembly plays an oversight role and ensures that representation of various communities and groups of people in the county are achieved as provided for in Clause 18 which amends Section 29 of the parent Act, we should provide, in that Clause, that the county assembly will approve all the nominees by the governor.

It is very important that we ensure that approvals are achieved. I wish the Mover of the Bill was here to take notes. In fact, Section 29 can be amended accordingly to give the county assemblies responsibility to approve all the names that are going to be appointed to the county environmental committees.

Mr. Temporary Speaker, Sir, the other highlight is in Clause 23 which talks about the formulation of the National Environmental Action Plan. We are told in Clause 23 (2) that the Authority shall submit the plan to the Cabinet Secretary for approval. How can one person approve a national environmental action plan that will affect this country for many years? You have reminded us that the desert is growing at the rate of 45 kilometres per year. You cannot leave the responsibility to one individual. We are the representatives of the people and must amend this to make it very clear that approval of the National Environmental Action Plan is done by Parliament, so that both Houses of Parliament have a responsibility to debate and interrogate.

You cannot give one individual the responsibility of approving a very important document like this. I propose that this clause be amended accordingly, so that Parliament has a responsibility to approve a national environmental action plan. Under Article 94 of the Constitution, the role of Parliament is to represent people in such important issues.

We must also be very clear to ensure that the responsibilities and powers that are given for the preparation of national environmental action plans and environmental impact assessments must not be an opportunity for people to create middlemen, so that they can make it difficult for certain persons that are pursuing projects to achieve. We must also provide clear mechanisms for transparency to avoid corruption and use of regulatory procedures and institutions for purposes of making it more difficult for people to do business in Kenya or do what they ought to do rightfully for the benefit of the people.

Mr. Temporary Speaker, Sir, I am so impressed by Clause 38 – and this should also impress the Senator for Mombasa - which provides that a person responsible for polluting or hazardous substance which is discharged to the coastal zone shall be held responsible for it. The coast region has suffered a lot as a result of pollution by companies, factories and persons who do not care about the future of this country. That has resulted in the destruction of people's lives. It goes even ahead to destroy our heritage as a nation. It makes it difficult for tourists to come and enjoy our beautiful coastline, if they see the pollution of the sea, coastline and beaches. This is in consonance with the “polluter pays” principle of the international environmental law.

We must hold those who are polluting our environment responsible but this should not just be confined to the coast region. It must be apply both to our cities and villages, where factories are built. It must also go to all institutions of Government or private institutions that are operating anywhere in this country. They must provide proper sewer systems where all materials are checked before they are disposed to rivers and lakes, so that our country can become clean and healthy. If we can set this “polluter pays” principle and make it very clear, it will be expensive for factories to dispose of waste and cause pollution. If you go to Kayole, Eastleigh and many parts of Eastlands, there is a big problem. The Nairobi River has been polluted and is stinking. You will find people washing their clothes on the river bank and even bathing. The reason poor people are suffering is because a rich man somewhere is taking a shortcut in terms of the requirements of the law to ensure that whatever they discharge to the rivers or outside their factories must be clean.

The Senate Minority Leader talked about the need to protect our forests. That is a very important point. If you overfly most of the forests in this country, you will feel sick. Two weeks ago, I travelled to Mt. Elgon, which is in Bungoma County, Cherangany Hills which is in my own place and Mau. I saw fire and smoke everywhere. As the Senate Minority Leader said, that is a disaster because we have lost perhaps even 2,000 acres of forest as a result of fire, either engineered by individuals, illegal loggers or charcoal burners. The first thing that I did was to ask the Kenya Forest Service if they had the aerial capacity to put off fire in our forests in the most difficult terrains. I realized that they do not have that capacity. Therefore, the National Assembly should budget accordingly for the Kenya Forest Service to acquire firefighting equipment to put off forest fires in Mt. Kenya, Mt. Elgon and Mau Forest, because this can really be a disaster.

Even as we do that, there are communities which lived within the forest for many years. One of those communities is my own community. There are also communities that lived in the Mau Forest for a long time. One of the things that must be done for those who have lived and interacted with the forests for many years is to create incentives to show

them that forests continue to be useful to them. We should not just burn houses, chase people away, beat them and take their property. It is important to show them that conservation of the forests can be beneficial to them, so that they are involved in the process of conserving the forests and shown the mechanisms of ecotourism. The resources that come from those areas should be useful to them.

I was once involved in the collection of views under what was referred to as the Ghai Commission that was working on the Constitution. I went to Mwakinyungu in Taita-Taveta and remember so well, despite the fact that it is more than ten years ago, one lady asking: "If we want to conserve the elephants for foreigners to come and see them, why do we not just kill all the others and have one of them caged in one area?" Since these elephants were destroying their property and nobody showed them how they were benefiting from them, they just saw them as enemies.

We must help our people to appreciate that a forest is a friend. The only way that the environment can be a friend, is if they are going to benefit from that environment. If you continue conserving the environment, you will support another principle for international environmental law which is "intergenerational equity," to ensure that your children and the children of our children can see the animals that we are seeing today. There are places in this world where elephants used to exist, but they no longer have them. They have to come to Africa to see an elephant. It must be possible for our great grandchildren to enjoy the environment that we left behind.

I agree that we must look for mechanisms for fencing or any other mechanism that will ensure that we conserve the forests and wildlife. When the national environmental action plan comes to this House after we amend this Act, it must show how we will change our settlement behaviour, so that people can live together and avoid the desire of accumulating as many acres of land as possible or sub-dividing existing land to the extent that wild animals are threatened. These wild animals are threatened in this country, yet they are a wonderful and great heritage, foreign exchange earner and source of economic growth and development in this country.

Mr. Temporary Speaker, Sir, I support this Bill. I hope that the suggested amendments will be considered by the Mover or the relevant Committee, so that we adopt them accordingly in the Committee of the Whole.

Sen. Wangari: Mr. Temporary Speaker, Sir, I rise to support this Bill right from the beginning. I want to assure Sen. Murkomen that even when the Chair of this Committee is not there, he is ably represented. These are issues that we have canvassed in the Committee and we will be sure to move amendments at the Committee Stage. Article 42 of the Constitution gives the right to clean and healthy environment including that the environment be protected for the benefit of the present and future generations through legislative and other measures. That said, it then takes us to where we are right now because as you know this has a constitutional deadline in terms of aligning it to the Constitution, but as has been said before, this should not be the only motive why we are moving this Bill.

I also concur with the sentiments made by Sen. Musila. I have said it here before that in this country our problem is not the papers or laws. We have very many progressive laws on paper but the problem is the implementation. We also have very

many scattered laws touching on environment. Right now we are debating the Environmental Management and Co-ordination (Amendment) Bill (National Assembly Bill No. 31 of 2014). We have the National Drought Management Bill (National Assembly Bill No.42 of 2014); the Mining Bill (National Assembly Bill No.8 of 2014) and the Natural Resources (Benefit Sharing) Bill (Senate Bill No.34 of 2014) which also touches on environment. There is need to consolidate the gains we have made and have a comprehensive kind of approach in terms of dealing with the environment.

Mr. Temporary Speaker, Sir, just recently, there was a study done in Nairobi, where it interviewed 8,000 people and had tests of Tuberculosis (TB) prevalence in the city. More than half of the samples tested positive. That shows that even in the city when we talk about environment, it is a living hazard because this is a very communicable disease. It is prevalent in the city because of how we have treated our environment. It is not an option for us to conserve the environment; it should be the moral thing to do.

This law has some progressive amendments that will make our conservation better. Hopefully, we will implement them the way they are. Apart from dealing with the former districts, provinces, systems and aligning to the devolution system, we have had problems especially dealing with the appeals from counties since early last year. One function that they felt as county governments and most of us agreed with them that they needed a role, was the management of the resources in the counties.

Mr. Temporary Speaker, Sir, my home is near, River Nderit, my local river that never dried in the 1980s and 1990s but today, it is a road and right now people are harvesting sand in it. We are feeling the impact of the destruction of the Mau Complex 10 or 20 years down the line. I am looking forward to 20 years when our children and grandchildren would be living, it will be worse because if we do nothing about it, the destruction that is going on will only continue. If you stand outside my house in the evening, the fires that are raging now are crazy and that has been said by other Senators.

We are losing many hectares of land and forest in the Mau and other areas to fires. I read in the media and see Kenya Forest Reservists saying and begging the counties to have a role and the counties say that “no that is not our area; it is the role of the national Government”. These are the areas that we need to streamline, at the end of it, it should not be a tussle. Everyone should have an interest, a chance and a stake to protect the environment, whatever it takes.

Mr. Temporary Speaker, Sir, on Saturday, it was reported in the media of a place in Nandi called the Kingwal Swamp which is about 5000 acres. Members of the public torched this swamp and burnt it to the ground. This swamp is home to a very rare antelope in this country called Sitatunga. Right now, they have fled and bodies of the antelopes have been collected, just because there was a disagreement between the community and the Kenya Wild Service (KWS). The community felt that the poachers had been wrongly arrested. Therefore, the public took their anger on the swamp. That has a far-reaching impact and these problems can be sorted out if we include the community in our efforts to conserve the environment.

Therefore, one thing this Bill seeks to address is to entrench public participation because if we leave it to the National Environment Management Authority (NEMA) to fight these wars, and they are fighting from Kakamega to Nandi to everywhere in this

country, it will not be possible. At least the Constitution has given us a chance to devolve these functions to the counties and we must do that through legislation. That is why we are here. If we do not carry and take along the community, these conflicts will always lead to destruction of our environment and wildlife; things we cannot take back.

The logging going on in this country and I say that because another Senator has said it - that it is becoming political, even if we want to victimize the people who have been in the *shamba* system due to a breakdown of our own system because they do not understand what it exactly means to encroach forests. Every day, there is logging going on, charcoal being transported and it still goes through our weigh bridges and roads. Corruption will finish this country, whether in environment, even if we have very good laws, as long as the implementation is not being done properly, then we will keep re-writing again and again, every year.

This Bill seeks to put very punitive consequences in terms of pollution of the environment especially if you are found to have discharged something into the lakes or ocean that is destructive to either life or water. This law will have some clear cut consequences but they are good only if they are implemented. If they are not, they will remain good in paper.

The establishment of County Environmental Committees, though even when you read the Bill, you find that the authority will still be housed in Nairobi, it also has a qualifier to say that the services must reach every corner of this country. The reason why Kenyans voted very overwhelmingly for the 2010 Constitution is to make sure that services are closer. If we leave the community out of this, even establishing county environmental committees will not be enough. We must cascade down to the sub-county level and the village level and let everyone have a stake to feel that the environment is their responsibility. We must link the problems that are going on in this country with our own destruction, with our own hands as a country and the part we have played as human beings to cause us to be where we are today.

About 80 per cent of this country's landmass is basically Arid and Semi Arid Land (ASAL) and as a people, we are just adding to that percentage every day by our actions by making sure that we move into the forests; by protecting those that move into the forests and by making sure that nothing is done in terms of consequences for anyone who has taken part in the destruction of forests.

Mr. Temporary Speaker, Sir, the environment is quite a wide subject; even when we talk about mining, we are talking about the environment. When we open up the coal basins in Kitui for mining, what does it mean for the environment? It again takes us back to this law; that is why we are saying that the harmonization of the laws must be very clear. When you talk about titanium mining in Kwale, it is not just mining and we must not just focus on the royalties. We must not just say "let us talk about how much is in it for me."

When we talk about public participation and public awareness that is very well provided for in Clause 9 of this Bill, we must teach the public and show them that it is not just about you and just about the money today. When we talk about rehabilitation of whatever landmass we open up in mining, we must put it in law, even as we develop the Mining Bill, that the person or the company extracting the minerals must take part in the

rehabilitation and that includes planting back vegetation and trees. It must be in law and it must be implemented to the letter.

Mr. Temporary Speaker, Sir, as a Committee, we have held public participation forums where we have taken very serious views from very serious stakeholders, including educationists and universities because we need to carry everyone along. We cannot be experts in everything. Just to repeat what I had said about Sen. Murkomen's worry, which is that we will be moving very serious amendments to this Bill at the Committee Stage.

The other one is on the structure of the Bill. Maybe it was selfish for it to be put that we report to the National Assembly at that time. But one thing we must be clear about is that we must put it that the report and even the plan that is done by the Authority must be tabled to Parliament, because you cannot table it to the National Assembly and leave out the Senate because it is the Senate which is dealing with and protecting counties and their interests. We will definitely be putting it in law as an amendment that it should be tabled in Parliament, as it should be.

Mr. Temporary Speaker, Sir, the funding of the County Environmental Committees is another critical issue that is not very well provided for in the Bill. We will also be looking at exactly how that is done so that you also do not create a body just for the sake of it which will not execute its mandate. This Committee will be dealing with a very serious issue and it will be dealing closer to the people. The people will have a closer interaction with it and it will be reporting to the county assembly within the timelines that are provided. It is, therefore, definitely a requirement that we give it enough resources in terms of personnel and even the expertise. We should not just pick people for political reasons; we should pick people who have also had an interaction with environmental matters – from lawyers, biologists and zoologists – who have been involved in the management, education and studies that have been done elsewhere about the environment.

Mr. Temporary Speaker, Sir, this law will also help in terms of linking Kenya with international treaties that we are party to. As you know, it is a requirement in the Constitution that we also honour the international treaties that we have entered into as a country. So, I will be looking forward to Members supporting this Bill and giving suggestions so that as we do the Committee Stage, we will make very informed amendments at the right time so that we make it more productive and progressive.

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

Sen. Okong'o: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to also comment on this Bill. I listened very carefully to the Senate Majority Leader when he was elaborating on this Bill and I heard most of the legal issues that he raised. This country, as most Senators have mentioned in this House, has had laws since Independence. The biggest problem has been the selfishness of the people who are charged with the responsibility of protecting the environment. The cancer that is the so-called corruption has impeded all the avenues of dealing with issues in this country.

Mr. Temporary Speaker, Sir, you said that the environment, just like water, is life. We have lost almost everything, including water, in this country. The environmental degradation in this country is as rampant as corruption. This country requires a miracle or

prayers, both traditional and religious, to salvage it from where we have fallen short of the glory. We need patriots like the late hon. John Michuki, may the Lord rest his soul in peace. He single-handedly used the relevant laws within three months to deal with eucalyptus trees. He gave directives to the district commissioners and officers and we saw those directives being followed in Murang'a. Within a month or so, you also saw the said hon. Michuki cleaning the Nairobi River.

Why do we need to amend these laws if we cannot amend our souls and stand for this nation? Why do we have these myriads of laws? You have heard Sen. Wangari mentioning several laws which touch on the environment like the Mining Act and other Acts which touch on the same issues.

Mr. Temporary Speaker, Sir, where I come from in the County of Nyamira, there is a junction called Konate, which is a riparian area that supplies water to my home area. Ten years ago, a private investor was stopped from dealing with that area, where he wanted to put up a petrol station. Three months ago, because of the lack of will power, enforcement officers and laws from the county government, he has put up a structure on the riparian area which he intends to be a petrol station. I have personally written to the National Environmental Management Authority (NEMA) and there is no response. The county government is handicapped and this guy is moving on.

Gusiiland, which was sometimes referred to as "God's bathroom" is lacking water as we speak. If you go to Nyamira Town, you will find guys pushing *mikokoteni*, carrying water jerricans. If you go to Kisii Town, there is no water in an area which people referred to as "God's bathroom!" The danger caused by eucalyptus trees in Kisii County is enormous. One blue gum tree takes 12 gallons of water a day. How many millions of trees do we have in that county? So, on my part, these laws, just like the many policies we have in this country, can just be a mirage if we cannot satisfy our souls and if we cannot have selfless patriots who can use the relevant laws to deal with these issues.

Mr. Temporary Speaker, Sir, if you go to the areas of this country where electronics, for instance, are imported, do we have disposal mechanisms? Yes, we have. Are they followed? No, they are not followed. Then what are we talking about? We have the Kenya Bureau of Standards (KEBS) but, once in a while maybe by virtue of either the media or a few patriots who raise the alarm on what has been done, then you see them just standing up and saying that they have done this or "we are destroying that." This country requires more than laws; this country, maybe, requires education to be inculcated to our young children in primary schools to understand the role of defending their country in terms of environmental protection.

Mr. Temporary Speaker, Sir, you mentioned about the ozone layer. Most people in this country think that the ozone layer is just a laughing stock of the West but it has affected this country. For the last two or three years, you have seen what happens in July; the cold spell of July has extended. The farmers in this country were waiting for rains which never came on time. The effects of the ozone layer - the *El Nino* and the *La Nina* effect is going to be felt effectively. Yesterday, for those who watched television, we saw that there are floods in Mombasa and more is going to come. Are we prepared? Are there mechanisms to sensitize our people? Have Government agencies sensitized our people that the effects of the heavy rains, which have delayed are going to be rampant? Are

those mechanisms there in our county governments? The only beauty about this law is that the county governments are going to be involved and as many have mentioned here, it should not be that the county governments are going to be given an opportunity to act in futility. It should be that if the functions are going to be unbundled and they are going to be given a function to do, then as the Constitution says, monetary implications should also be catered for.

On the issue of international treaties, there are many corporates who are now yearning to milk the Kenyan cow in terms of mining prospects; be it from Kwale, Kitui or Turkana. Those who are going to be mandated must be very careful when entering into these treaties with these corporates, in terms of Corporate Social Responsibility (CSR) and environmental protection when they come to this country. I have a lot to say because I am a student of political history. This country requires prayers, as I said earlier, so that we can have men and women of repute who can be selfless to deal with issues of this country.

With those few remarks, I beg to support.

Sen. Karaba: Thank you very much, Mr. Temporary Speaker, Sir, for allowing me to contribute in support of this Motion. This is a very important Motion. It is significant in the sense that it does not require a lot of interpretation, it has been there in the past and we have lived in it but it is only that we have been ignorant to a very large extent. If you were to go some years back, especially when we were in school, there used to be a very serious consideration of a day called the Commonwealth Day, which was observed.

For those people who might not have been there then, the young boys and girls in school planted trees and made sure it grew to a point where it could be harvested. So long as you were in that school, you were supposed to take care of that tree. It made our environment green at that time. The population at that time was not as high as it is today, considering that we have more than 15 million pupils and children in schools. If today there was to be a law that every child has to plant one tree, every other year, how many millions of trees do you think we can have in 10 years' time? We would have many; but the problem is that we sit here, talk, go abroad for benchmarking, and come back without having learned any lesson out there. We waste a lot of time and money as we make trips out and in for no reason.

The reason for this one is spelt in this Bill in the environment. If we were to study this Bill critically, we would not lament over the shortage of rainfall, serious soil erosion on our farms. We would not be talking desertification which you ably amplified when you were contributing. You said that every other year, the desert is moving closer to where people are, and this is a very serious problem. If those are empirical examples and we can see the evidence, why then must we wait until we have a catastrophe? Why do we not curb or prevent that from taking place? We can prevent it by planting trees as we did before and we can reintroduce those by-laws which were there at that time because they are useful.

If you asked every child to plant a tree in every school and location in the 47 counties, I am sure most of the counties would be green, there would be a lot of tap roots to arrest the soil from being eroded, there will be a lot of evapo-transpiration coming

from such services and a lot of cloud in the sky for us to have rainfall, be it relief or orographic. Therefore, this matter is important, yet we are not paying a lot of attention to it. But the problem is real and serious.

Every other time we have rainfall, watch the amount of rainfall that falls, the amount of erosion that takes place particularly on the river banks and watch the colour of these rivers which turns brown. The amount of alluvial deposits which will be transported from such areas to the sea is in terms of millions and billions of tonnes, all of it going to waste. That means that we are going to allow the alluvial fertile top soil to be washed away to the ocean, as if it has no significance at all to our economy. This is what we are trying to prevent.

In Europe--- Many people have talked about Europe and the rivers – River Thames, River Rhine and River Danube and many other rivers in America. What you see there is because the government has made deliberate efforts to canalize the rivers. These rivers will only flow with that water which is regulated. This is water which will move from the mountains all the way to the seas in a defined channel meaning that there will not be much of lateral erosion, there will be no destruction of banks and there will be no advancement of banks towards the residential areas. That is not the same here in Kenya, yet it is possible for us to prevent that.

The moment we canalize such rivers, we will also add more value to it because barges or some small boats, fishing and even communication infrastructure will be improved. That way, we are going to harness even transportation from the rural to urban areas and *vice versa*. Even the tourist sites will increase and we are going to have better money coming to our country in form of invisible exports. This is what we should address ourselves to and it is well covered by this Bill.

So, Mr. Temporary Speaker, Sir, we should be serious to ourselves and be honest that we have rivers here which have never been taken care of. We have water towers which have been left without any attention at all; they have been neglected. The forest cover has been destroyed either by fire or by misuse by mankind or both by domestic animals and wild animals, yet this can be controlled. The moment you control all these things, you are conserving the environment and that is what the Bill is seeking to address.

Mr. Temporary Speaker, Sir, we have to address ourselves to the issue of who should benefit from the environmental cover and especially the vegetative cover. We are all beneficiaries. Some of us will benefit from the waters that will be harvested from the water sources or the regions covered by high vegetation like the mountain cover; Mt. Elgon, Cherangani Hills, Mt. Kenya and Mt. Elgon, among others. People living in the lowlands should also be allowed to enjoy the benefits accruing from rivers which originate from the mountains. For that reason, by-laws should be passed by various counties to ensure that trees are planted to ensure there is forest cover in the mountains. Trees should also be planted in the lowlands so that water permeating from the hills flows in a defined manner. That way, we will create reservoirs and dams for use during the time of drought. That is important and can happen.

It is important to note that a lot of our industrial locations have been misplaced. Most of these are found in big towns like Mombasa, Nairobi, Thika and Kisumu. There is pollution in these towns which can lead to urban climate. Urban climate also leads to

ozone layer corrosion from the base. This can lead to global warming. The same has happened in the West.

Kenya is a signatory to global treaties and should tell the West to reduce the number of industries and pollution in the seas and in the air. We need to enjoy a good environment out there in the troposphere. This is something we need to address ourselves to when we access forums of these international conventions out there.

It is important to redistribute industries so that we do not have a lot of pollution in towns. We need to have industries which are based on local raw materials. These materials can either be perishable or non-perishable. Let those industries be located in places of origin so that we have industries redistributed all over. That way, we will have reduced the chances of global warming.

It is also important to note that as much as we talk about global warming, we also need to discuss how we can prevent desertification or encroachment of deserts into arable land. That can happen if we ensure that areas which are arable are protected. We can reclaim those areas either from the deserts or the sea. If that happens, we can increase the arable land in our country. This may forestall the advancement of either the Kalahari or the Sahara deserts. Since we live in between these two deserts, we are an endangered country and species.

It is important, therefore, that we address ourselves to reclamation. Ewaso Nyiro River has no external outlet. It flows into the Lorian Swamp in the north eastern side of Kenya. In this case, we need to know how we can tame that swamp so that it is useful to the population living there. It could also be used by the pastoralists living in the region. That way, we will increase land which can be used for arable farming. Similarly, we have other swamps like the Yala and Bunyala swamps. These swamps can be used for cultivation using rivers Nyando and those others that flow from the Nandi Escarpment, among others.

Let us not always be moving and travelling in areas which have been successful in the past. There are countries which have struggled to maintain their environment. However, we do not practice what we see there when we come back. The moment people travel out and come back, they should tell us what they saw and what they will put into practice so that we are seen to be equal if not better than what the other countries have learned. We have learned a lot and many people have moved and seen how some countries like Korea, Japan and China have developed. Therefore, we can also do the same. There is nothing different. Human beings are there to learn. That is what we do when we go for benchmarking. Whatever we learn out there should be put into good use. That is what is referred to as environment.

I am, therefore, asking county governments to ensure that they have proper by-laws. After we have finished with legislation, we should move to counties. Every county should be responsible for protection of its environment. We should reward those counties that perform better in the protection and implementation of environmental impact programmes.

The other person who is very important is the meteorologist. Our Meteorological Department is fake. You will find that most of the time they give us weather forecast which is wrong. They even tell us that there will be no rain tomorrow only to find that

there will be a lot of heavy rainfall coming the following day. We should train our people so that they advise our farmers properly and not to operate on guesswork. The moment they operate on guesswork, farmers will not trust them. The moment we are told that there will be rainfall and it does not come, then reliability and distribution of the same may not be of much use to farmers. Our farmers may, therefore, not attend to their gardens and farms, which is a great loss.

We are addressing a Bill which should come alive in our country. Let us take it seriously. This Bill is of great use to us as a country. The moment it is implemented, we will have a lot of wealth coming to us. We are capable of doing that. It is only 10 per cent of our country that is arable. We can increase this to 12 per cent or 15 per cent. It is not too late to increase it up to 20 per cent as long as we understand what we are doing and the impact on the environment.

I support.

The Temporary Speaker (Sen. (Dr.) Machage): Yes, Sen. Fatuma Adan Dullo.

Sen. Adan: Mr. Temporary Speaker, I was advised to withdraw owing to time factor since we need to move on to the other Bills. Therefore, I have stepped down my request. I will contribute to the next Bill.

Sen. Mositet: Thank you, Mr. Temporary Speaker, Sir. Let me start by congratulating the Senate Majority Leader for bringing this Bill. This Bill ought to have been brought two years ago because its importance lies in how to manage the wealth of this country.

I will be very brief because of time constraint. I will start by congratulating those who take issues related to their environment seriously. I also want to congratulate the former President, Daniel Toroitich arap Moi. We know the campaigns he made to control erosion in this country. I laud him very much. I also congratulate the late Mr. Michuki for what he did.

We have the ozone layer, the atmospheric zone and the earth crust itself. You can imagine the kind of wealth we are talking about in connection to a country when we refer to the rivers, forest cover, grassland and even vegetation. We are now talking of how we can make sure they are well managed. I believe a number of us, as professionals, have contributed to the destruction of our environment. This Bill has come at the right time when we were almost requesting that the environmental pollution needs to be declared a national disaster. The Bill is trying to align itself with the new Constitution and will allow counties to come up with laws which can assist them to manage their counties properly.

Mr. Temporary Speaker, Sir, when we talk about depletion in our forests, many have talked about the water towers in our country like the Mau Complex, which is the heart of almost each and every county. Today, River Ewaso Nyiro which traverses my county does not go all the way up to Lake Natron. It dries up just past Narok. That is how sad it is. The cover of Ngong Hills, which is quite near here and the source of River Athi; the Galana, is completely finished and naked. It used to be the catchment area for Athi River. It has now dried up.

The Bill talks about the Impact Assessment Reports and those who write them. If they cheat, there are consequences which they will face. I am really happy about that. I remember River Nol Turesh in my county used to be a very nice river and the ecology of

the area used to be so good. Oloitokitok people knew that by April and September, there would be rains but of late, they do not know when it will rain. Water from that river is tapped and taken to Machakos and Athi River, and many people have continued to suffer downstream and almost the entire Oloitokitok has suffered simply because the river was tapped and the ecology of the area changed completely.

Mr. Temporary Speaker, Sir, I would like the same Act to be aligned with the many Acts of forests, mining and transport, so that we can try to harmonise and see that our air is not polluted. You will also agree that a number of the many diseases we are witnessing in this country like cancer which used not to be there, is simply because of pollution of our air and the environment. I believe that with the passage of this Bill, we will curb pollution of the environment and protect it.

I support.

The Temporary Speaker (Sen. (Dr.) Machage): We really are pressed for time because of other things. I request that the next speakers can have two minutes so that we get a few summarized remarks.

Sen. Ongoro: Mr. Temporary Speaker, Sir, I will not take more than the two minutes you have given me and I am not going to belabour my reasons for supporting this very appropriate amendments. I just want to draw our attention to Section 9 of the National Environmental Management Authority Act, No. 8 of 1999, which is also proposed to be amended. If you read the extensive mandate given to this Authority, it states:-

“The object and purpose for which the Authority as established is to exercise general supervision and coordination over all matters relating to the environment and to be the principal instrument of Government in the implementation of all policies relating to the environment”.

Just bearing that in mind, you find that these proposed amendments are very relevant because they are making specific references to how this Authority is supposed to execute its mandate in relation to the various amendments that are proposed here, which now give very good terms and references to other provisions that were, otherwise, ambiguous.

With those few remarks, I think I have exhausted my two minutes.

I support.

Sen. Sang: Thank you, Mr. Temporary Speaker, Sir. I rise to support this Bill. This is one of the most important Bills in this House. It would be unfair that we have heard opportunities to contribute to many Motions in this House but when the serious business of discussing some of the Bills that are provided for and have constitutional timelines, then we have only two minutes to make those presentations. Nonetheless ---

The Temporary Speaker (Sen. (Dr.) Machage): Order! You have your two minutes. Use them well.

Sen. Sang: Most guided, Mr. Temporary Speaker, Sir. The issue of environment is very critical. I support this Bill because of the establishment of county structures that will help our counties to participate in the management of the environment. I come from a county where we have forests. As communities, we participate within the region to protect the forest. Unfortunately, when it comes to harvesting of those forests, then the

whole exercise is left to the Kenya Forest Service and the national Government. The communities that have participated in protecting these forests are locked out. I hope that the county environmental committees that are being set up, courtesy of this Bill, will take up that challenge.

A lot of issues have been mentioned about forest fires that have been witnessed in this country courtesy of the long dry spell and my county has not been spared. One of the swamps in my county caught fire the other day but it is important that Members of this House are factual. Some of the things that are being reported in the Press may not reflect the truth. We know that it was accidental and we have asked the Government and security agencies to investigate. We know Kingwal Swamp and Sitatunga are a heritage for this country and also for our county. It would be wrong for anybody to imagine that residents of Nandi do not understand the meaning and importance of protecting this environment.

Therefore, as a leader from Nandi County, I want to be on record to say that we are protecting the forest, we are investigating the matter and hopefully, we will know what really happened. If it is accidental, we will leave it at that, but we are protecting the forest because we know it benefits the citizens of the county and it is an important resource that we are protecting for the people of Kenya and the whole globe. We look forward to getting this done.

I support.

Sen. G.G. Kariuki: Thank you, Mr. Temporary Speaker, Sir, I am sorry it is going to be only two minutes. I thought I would have more time. Anyway, this is a very important Bill which all of us accepted and we believe if this Bill was there some years ago, maybe we would have gone some miles towards protecting our environment. When you sit down and think about this country and many others critically, you see that we are looking for investors from all over the world and yet there is something here that God and nature has given to us.

There is no way, as a country, we will develop until we know what we have. We have enough water and the best soil in this world but all of it disappears to the sea without anybody thinking about it. We have natural resources like forests and many other resources that we have never thought were important other than running around calling for tourism. We keep on asking tourists to come to this country to build hotels and enjoy our environment and there is nothing that we are doing to protect the environment that these people are supposed to come and see. In other words, we have been enjoying talking rather than doing what we are supposed to do, because you can promise people---

The Temporary Speaker (Sen. (Dr.) Machage): Order. Your time is up. May I call upon the Mover to reply.

The Senate Leader of Majority (Sen. (Prof.) Kindiki): Thank you, Mr. Temporary Speaker, Sir. I have listened through the contributions of hon. Senators. Even when I was outside the Chamber, I was able to follow from the screen. Very valuable suggestions have been made and I want to thank my colleagues for those suggestions. We will work very hard with the Chairperson of the Committee to ensure that those suggestions are taken on board even as we proceed with this Bill to the Committee of the Whole.

Without much ado, I beg to move.

The Temporary Speaker (Sen. (Dr.) Machage): Have you forgotten to do something else?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, pursuant to Standing Order No.54 (3), given the numbers that we have at the moment, I request that the Speaker defers the putting of the question to a time and date to be designated by the Speaker. I request that you consider my request.

The Temporary Speaker (Sen. (Dr.) Machage): The request has been accepted. The Division should be done this afternoon. You should make sure that we have the numbers.

Next Order!

Second Reading

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

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

THAT, the National Drought Management Authority Bill
(National Assembly Bill No.42 of 2013) be read a second time

The issue of drought has become a major national concern. It is not farfetched to suggest that the ecological crisis that this country is facing is a threat to national security unless it is mitigated. It is because of the recognition of the serious challenge posed by drought that on 22nd July, 2009, the National Assembly passed a Motion to establish the National Drought Management Authority for three purposes. The first was to deal with the issue of national preparedness on the issue of drought, to advise and deal with the issue of mitigating the adverse effects of drought on the economy of our country and thirdly, to put in place appropriate drought response mechanisms for the country.

Following that Motion of 22nd July, 2009 by the National Assembly of the Republic of Kenya, the President of Kenya, through Legal Notice No.171, namely the National Drought Management Order of 2011, established a body known as the Drought Management Authority. The purpose of this Bill, therefore, is very simple. It is to give statutory status to this Authority which already exists but by virtue of a Legal Notice which is subsidiary legislation. Therefore, this Bill entrenches or makes this Authority have legal powers and, therefore, it is a very straightforward Bill. I will not spend a lot of time on it. I will highlight a few things.

Before I highlight a few things, allow me just to emphasize that drought which is caused by deficiency in either precipitation or inadequacy inland water resource supplies or climate change has had serious environmental, economic and social impacts.

Mr. Temporary Speaker, Sir, allow me to say that every part of our country today is witnessing very severe and drastic environmental changes. Scientists call this “climate change” which means a permanent and irreversible change in the long-term climatic conditions that has adverse effects on the flora and fauna, including human life in our country. We are witnessing our country turn into an oven; very severe temperatures, some unmatched since Kenya came into existence. We are witnessing the disappearance

of our precious snow cap in Mt. Kenya and even in our neighbouring country, Mt. Kilimanjaro. We are also witnessing diminishing quantities in the supplies of inland water resources.

When the Senator for Kajiado was contributing during debate in the previous Bill, he mentioned a number of rivers that have dried up in Kajiado County. He was referring to a phenomenon that is taking place in almost each and every county in our nation today.

In Tharaka-Nithi, for example, more than 15 permanent rivers traverse that county, but about five of them, as I speak, have dried up in the last six months alone. Rivers that have flowed since God created Tharaka-Nithi County, today are dry river beds.

I know many Senators here have examples to give about the disappearance or the diminishing supplies of inland water resources from their counties. Because of this phenomenon, the importance, therefore, of a body to direct the country on how to mitigate the effects of drought and also to prepare the country to have contingency arrangements in times of drought - that utility cannot be over-emphasized.

Mr. Temporary Speaker, Sir, very quickly, I will highlight what this Board will be about and what it will do. The functions of the Board as stated in Section 5 of the Bill include, coordination of drought management matters, coordination of drought response matters, development of early warning mechanisms, making sure there is in place national and county level drought contingency mechanisms and plans, conducting research on how to prevent drought, how to mitigate drought and how to respond to drought. Finally, but not least, to provide technical support to Government agencies at national and county government level, to ensure that these agencies are technically equipped to combat or address the issue of drought.

Mr. Temporary Speaker, Sir, Clause 6 of the Bill, talks about the powers of this Authority. They are very straightforward; the usual powers that a juristic person or a corporate body should have. There is the power to sue or be sued, contract, receive grants or donations and own property. In Clause 7, the Bill deals with the requirements by the Authority to put in place and establish an institutional framework for drought management in the country at the national and county government level, and to provide policy directions for this institutional framework. The institutional framework, envisaged in Clause 7, includes:-

- a) national forum for drought and climate change policy; and
- b) county forum to oversee drought related interventions.

Under Clause 8, the Board is constituted in terms of composition. It will consist a chairperson, who is competitively appointed by the Cabinet Secretary in charge of the relevant Ministry. The other person, who will sit in this Board is the Principal Secretary who is in charge of the relevant Ministry or their designate. Thirdly, the Principal Secretary for matters of Finance or the designate plus four other persons who are competitively appointed. The Board will also consist of the secretary, who shall be the chief executive officer (CEO) of the Board. The qualifications for chairing this Board are: One must have a university degree from a recognized university.

That is important because these days, there are many people with degrees from all the places in this world, some of them are claiming to get degrees from non-existent

places where if you google, you discover that it is a Chinese restaurant in some country. So, the person must have a degree from a recognized university, ten years experience in the relevant field, meet the requirements of Chapter Six of the Constitution on integrity and leadership, and must not be a state officer.

Mr. Temporary Speaker, Sir, when appointing the seven Board members, including the chairperson, the Cabinet Secretary must ensure regional representation, gender and other diversities. This is in accordance with the Constitution. The vice-chairperson will be elected by members during their first meeting and the term of office for the Board is four years with the possibility of reappointment for a final second term of two years.

In Clause 9, death, resignation or conviction for a prison term of more than six months, or absence from three consecutive meetings without a reasonable cause, can be grounds for removal from office as a board member. There is a curious addition there, which I think this House might want to reflect on even as we debate this Bill. A vacancy may also occur if the person is removed on constitutional grounds. However, I find that a bit vague. It needs to be a little bit focused, so that it is not used as a window to harass board members.

The Temporary Speaker (Sen. (Dr.) Machage): Order! I thought that this is your Bill?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, it is my Bill but I am just saying that, we need to improve the way it is framed. The purpose of Second Reading is to ensure that the Bill is improved. I am not casting aspersions at the quality of the Bill.

The function of the Board is mainly to provide strategic direction. Under Clause 11, the secretary and the CEO of the Board will be appointed by the Board through a system of merit, open, transparent and competitive process. The CEO must have a degree, ten years of experience including five years in the relevant field and he or she must meet the requirements of Chapter Six on Integrity and Leadership. The term of office is five years for the CEO on terms and conditions to be set by the Board and he or she may be reappointed for a further term of five years which is final.

The CEO or the secretary may be removed from office for inability to perform, gross misconduct, incompetence or bankruptcy. If the intention of the Board is not to reappoint the CEO, they must notify him or her three months before the expiry of his or her initial appointment and advertise the position.

Mr. Temporary Speaker, Sir, I want to rush very quickly because of time and highlight three other provisions. The first one is Clause 27, which deals with the immunity of the Board. The Board members, according to this Bill, must enjoy functional immunity. By functional immunity, it is envisaged that any action that is taken by a board member, or an employee of the board, in performance of their duties under this Bill, cannot be the subject of individual liability unless it is a criminal offence. There is a limited functional liability. You are only immune if you are doing the functions of the Board. So, if you commit a crime, it is not your job description as a board member to commit crime. So, the immunity will not arise. I think that at the same time, it is

important to have the immunity because it helps the board members and employees of the Authority to act without fear or favour, so long as they do so in good faith.

Clause 28 deals with proceedings against the Authority which will be deemed as proceedings against the Government of Kenya. Therefore, Cap 40, which is the Government Proceedings Act, will apply to any proceedings against this Authority. Any notice of legal proceedings against the Authority will be served on the secretary or the CEO.

Finally, this Bill establishes three types of offences that may be committed pursuant to this Bill. The first one is; if a person willfully and without lawful excuse, ignores or fails to obey instructions by a member of the board, employee or agent, who is exercising their function under this Bill. Secondly, any person who willfully obstructs any member of the board, employee or agent from performing or exercising their functions and finally, any misrepresentation or submission that is false or misleading – any person who gives the Board false or misleading information knowingly – the penalty for such kind of offences is a maximum of five years in prison or a fine of Kshs100,000 or both.

This Bill is just a typical draft of how the Board will be conducting its meetings in terms of quorum and how meetings are called, voting, who calls meetings and how the decisions will be made in the board. In a nutshell, this Bill is about converting the National Drought Management Authority which is established under a legal notice into a statutory board and giving it powers and legal capacity to deal with drought mitigation, prevention and drought response mechanisms.

I will not over-emphasize the need for this Board or the need to reverse the serious effects that have already taken place in our country in terms of drought and climate change. We are watching high potential areas that used to feed the rest of the country now begging for relief food. The other day, I saw people in Murang'a and Kirinyaga looking for relief food. The other day I saw farmers in Uasin Gishu and Nandi saying that the rains were inadequate last year. They were saying that from the way things are going, agriculture is not reliable any longer.

Mr. Temporary Speaker, Sir, the Jubilee Government intends to irrigate one million acres of land within five years but without adequate supplies of inland water, that dream cannot be realised because you require rivers and other water bodies to provide water for irrigation. The other sources are quite expensive. For those reasons and many more, I think this is an important Bill and I beg to move.

I request Sen. Ongoro to second.

Sen. Ongoro: Mr. Temporary Speaker, Sir, I rise to second this Bill. I will not belabour to repeat all the points that have been raised by the Mover.

If you read this Bill and all the provisions contained therein, you will realise that if this Authority is given the extensive powers that it has been given here and the extensive mandate that it now has, then drought should be a thing of the past in this country.

Mr. Temporary Speaker, Sir, a nation that cannot feed itself cannot pride in calling itself an independent nation. With the persistent perennial drought that we

experience in this country, we have not been able to feed ourselves. The issue of drought management relates directly to the issue of flood management.

If this Authority executes its mandate and is able to have the powers that it has been given to mitigate floods and drought and help this country to have the relevant information, they should come up with tailor-made policies, specific to certain counties according to those counties climatic challenges that will help manage drought and help those counties and other authorities know what kind of crops to grow. This will also help us to mitigate against drought and floods. It will also help to increase food security and make the nation work closely according to the mandate they were given to enter into association as given in Section 6(c). They have been given express authority to enter into association with other bodies or organizations within or outside Kenya.

Mr. Temporary Speaker, Sir, in this authority alone, we can have facilitation or a platform to engage with countries elsewhere that have mitigated against drought. We are seeing very interesting scenarios in countries that could be referred to as deserts but they feed themselves and we sometimes run to them for help. If they have been given this authority to engage with any organization within or outside Kenya, then they should draw from those kinds of experiences to help us have our own mitigation. They have also been allowed express authority to support research and to work closely with research institutions.

Mr. Temporary Speaker, Sir, I do not want to spend a lot of time belabouring, if you read the mandate and the powers given to this Authority under Sections 5 and 6, you will realize that--- Let me just take time to read one:-

One of the mandates that they have been given is to exercise overall coordination over all matters relating to drought management. They have simply been given a platform to coordinate all policies and pieces of legislation contained elsewhere in this country so that we have one platform of engagement. In Clause 5(c), they have been given the authority to implement those policies. If you read Clause 5(e) regarding the facilitation of national and county level drought contingency processes, they now have the authority to synthesize that information and have them made into specific policies which are relevant to specific counties.

The mandate is so extensive that if you read the extensive powers that they have been given, for example, in Clause 6(c) and (f) which I have just made reference to, it says that appropriate action should be taken aimed at minimizing drought. That, coupled with the power to sue and to be sued, it means that when this Authority starts to operate, it can sue anybody who is not complying with the policies that they will have set forth.

Mr. Temporary Speaker, Sir, in this Authority we are going to deal with not just mitigating against drought but also against floods and also helping us to be food secure.

With those few remarks, I beg to second.

(Question proposed)

Sen. Karaba: Thank you very much, Mr. Temporary Speaker, Sir, for giving me this opportunity to support this Bill. This is another Bill which should have been brought earlier. If this Bill was to be taken seriously, we would not talk about food shortage, food

insecurity and the related proverbs and adjectives. We have examples elsewhere where countries have coped with the drought scourge. We have countries, though advanced, like America, which have the technology. We can also develop the technology here because we are not that poor; the technology of cloud seeding where you seed clouds for a region to receive rainfall.

That can be done in the northern part of Kenya and areas which experience drought over the years. With the assistance of technicians both from America and Israel, cloud seeding is possible. It is about creating the cloud system in the atmosphere and creating artificial evapo-transpiration in areas which are watery. This creates clouds which cause rainfall. This has happened and it is a possibility of increasing artificial rainfall which in the end can be used in some drought stricken areas. This is what is called climatic management efforts. Kenya should be thinking in that direction.

Mr. Temporary Speaker, Sir, the other thing which should consider is that there has to be the climatic change. Climatic changes have been there in the past. In Egypt, there are pyramids. Where on earth did the Egyptians get poles from if they were not from the same area which had very thick equatorial forest? Since that time, the equatorial forest has ceased. We have living examples of what happened in the past. We have seen the consequences of destruction of vegetal cover on the earth's surface. We know what can happen if the vegetation is destroyed. You may destroy vegetation and very many people may suffer because of food shortage. Even animals will disappear. Important flora and fauna will also be destroyed by humankind. This is what we are addressing; the consequences of drought.

Drought, therefore, is as bad as flood. If we control drought, that will ensure that people who live in affected areas live longer. They will have food and industrial development because raw materials of certain agro-based industries will be developed in the same areas which will be salvaged. These are areas affected by floods and droughts.

Mr. Temporary Speaker, Sir, in America in 1945, there lived somebody called Franklin Roosevelt. He found it fit to reclaim the Appalachian Mountains from River Tennessee, Paducah and all the way to Cairo Town in America. He was able to harness water from that river which was persistently causing havoc in the lowlands of Alabama. Most of the people would die as a result of floods.

Just one person was enough to transform that region into what is now called the Tennessee Country through the Tennessee Valley Authority which was created. This is what this Bill is seeking to do. The Bills seeks to create an Authority which will make sure that the affected areas are well taken care of, just as it happened in the America Tennessee Valley Authority through the then President called Franklin Roosevelt. Today, we are talking of towns down River Tennessee which can easily be accessible through a river which otherwise would not have been there if it were not for the efforts of that Authority. From that example, it, therefore, can happen.

Mr. Temporary Speaker, Sir, in the same country, we have rivers such as Sacramento and San Joaquin. These are rivers in California. One river flows in a very wet area, that is, on the Rocky Mountains. Another one flows in a very populated area but with low rainfall. However, waters from the River Sacramento have been diverted from

the river course to another course. The river transfers water from high rainfall areas to low rainfall regions. That should happen here in Kenya.

I am sure that, that Authority is coming up with instruments which were allowed. Some of the rivers which are causing problems in the lower parts of Nyanza and even Tana River can have their water diverted, so that during the rainy season it can be used in areas which are drought stricken. This has happened in Kirinyaga. River Nyamindi which has permanent water has been diverted through a canal which has been constructed by the Japanese to add more water into River Thiba. River Thiba can then be used to irrigate parts of Mwea. We can emulate that example, so that we help the very dry areas to produce enough food.

The Authority should also be able to address the problem of court cases. In Kirinyaga, we have the Lukenya Dam which will cost the Government Kshs20 billion but nine farmers have taken the management of that dam to court. How can nine people prevent the completion of a dam worth Kshs20 billion, just because they have not been compensated? I hope that the Authority, as envisaged in this Bill, will come up with eviction orders of such people so that we can have a dam of that magnitude constructed to store water not just for domestic use but also irrigation. If that construction is blocked through a court injunction obtained by some nine people, the Government should intervene and make sure that construction of the dam goes on as anticipated.

Mr. Temporary Speaker, Sir, I thank the Mover, Sen. Kindiki, who happens to come from an area which needs a lot of water. Let him come to Mt. Kenya where we have the snowline and get water. We should create a dam whose water will flow into Tharaka-Nithi, which requires water for irrigation. The moment we grow crops, we will reduce famine, and drought will be something of the past. People will also grow cash crops which can be exported raw, semi-processed and processed form. They can also create agro-based industries. The moment that happens, we will be a self-sufficient country not only in food production, but even in exports. We will have money for development and building of infrastructure.

This Bill should be passed without much ado and assented to, so that those simmering problems emanating from unscrupulous people can be minimized for the good of the country.

I beg to support.

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, it is now time to interrupt the business of the Senate. The Senate, therefore, stands adjourned until this afternoon, at 2.30 p.m.

The Senate rose at 12.30 p.m.